TESTIMONY OF ALI GUY MD; 2000 Trial Trans. LEXIS 686

New York Supreme Court, Nassau County

020372/95

September 6, 2000

Reporter
2000 Trial Trans. LEXIS 686 *

VINCENT MARTELLO AND AUDREY MARTELLO, Plaintiff v. THE SOUTHLAND CORP D/B/A SEVEN ELEVEN JOHN STEIGER AND JOAN STEIGER AS FRANCHISEES, Defendant

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

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Counsel

READY & PONTISAKOS, ESQS. Attorneys for Plaintiffs, Mineola, New York BY: KENNETH READY, ESQ., CONGDON, FLAHERTY, O'CALLAGHAN, REID, DONLON, TRAVIS, & FISHLINGER, ESQS. Attorney for Defendant SOUTHLAND, Garden City, New York BY: JAMES P. NUNEMAKER, ESQ., RYAN & BRENNAN, LLP Attorneys for Defendant STEIGER, Floral Park, New York BY: JOHN E. RYAN, ESQ.

Proceedings

A L I G U Y, M.D., a witness called on

[2]behalf of the Plaintiff, having been first duly

[3]sworn by the Clerk of the Court, was examined

[4]and testified as follows:

[5]THE **[*2]** WITNESS: My name is Doctor Ali Guy.

[6]A-L I is my first name, G-U-Y is my last name. My

[7]office address is 15 Jericho Turnpike, Jericho New

[8]York, 11753.

[9]THE COURT: You may inquire.

[10]MR. READY: Thank you, Judge.
111 DIRECT EXAMINATION
121 BY MR. READY:

[13]Q Good morning, Doctor Guy.

[14]A Good morning, sir.

[15]Q Are you here today at my request on behalf of

[16]the Plaintiff, Mr. Martello, in this case?

[17]A Yes, sir.

[18]Q Would you tell the jurors something about your

[19]educational and professional background?

[20]A Yes, sir.

[21]College, I went to Queens College.

[22]Medical school, I graduated from the University

[23]of Northeast Dominican Republic in June of 1981.

[24]I then did three separate residencies. My

[25]first residency was at Mount Sinai School of Medicine,

[1]Mount Sinai Medical Center in the field of internal

[2]medicine for a period of 18 months.

[3]Then I did one year of general surgery at

[4]Cabrini Medical Center.

[5]Then I did three years of physical medicine and

[6]rehabilitation at Mount Sinai School of Medicine, Mount

[7]Sinai Medical Center. **[*3]**

[8]I'm board certified in the field of physical

[9]medicine and rehabilitation.

[10]I'm the director of the Department of Rehab

[11]Medicine, at Maimonides Medical Center in Brooklyn, New

[12]York, where my duties are to be in charge of all of the

[13]inpatient, outpatient physical therapy services, conduct

[14]teaching rounds to the house staff, to the orthopedic

[15]residents, to the internal medicine residents, provide

[16]quality assurance to other doctors in my department, to

[17]conduct consultations to other doctors in the hospital.

[18]I'm also the director of the Neuromuscular

[19]Equipment Clinic at the Hospital for Joint Diseases / NYU.

[20]I'm also a clinical instructor for the

[21]residents of NYU that rotate through that hospital and

[22]that clinic. My duties are to prepare them for the

[23]boards, part one and part two; to go over the patients we

[24]treat; and to teach them as well.

[25]Q This specialty is what, Doctor Guy?

[1]A Physical medicine and rehabilitation, also

[2]known as physiatry.

[3]Q And when did physical medicine and

[4]rehabilitation become a board certifiable specialty of **[*4]** a

[51]medical doctor?

[6]A Shortly after World War II. This specialty is

[7]over 50 years old. There is approximately 65 hundred

[8]board certified doctors in this specialty throughout the

[91]United States.

[10]Q Can you tell the jury, Doctor Guy, what does a

[11]medical student study as they are heading into the area?

[12]And I don't mean just, quote, study, but also interns and

[13]residents, study. What does a doctor study in order to

[14]become a physical medicine and rehabilitation specialist?

[15]A First you have to complete medical school

[16]training. You then have to have prior training in the

[17]field other than physical medicine and rehabilitation,

[18]preferably internal medicine and general surgery, a

[19]minimum of one year each training period.

[20]And then you have to satisfactorily complete a

[21]three year training program in physical medicine and

[22]rehabilitation, pass the yearly examinations that are

[23]given by the department, score at least 70 percent or

[24]higher.

251 Q Now you mentioned that part of the training

[11]involved internal medicine and surgery?

[2]A Yes, sir. **[*5]**

[3]Q Tell us a little bit about your interning in

[4]those areas?

[5]A I did 18 months of full residency in the field

[6]of internal medicine at the Mount Sinai School of

[7]Medicine. I did one year of general surgery at the

[8]Cabrini Medical Center.

[9]This involves training in orthopedics,

[10]neurology, interpretations of CAT scans, x-rays, MRI's, so

[11]on and so forth.

[12]Q Now you mentioned that you were board certified

[13]in the field of physical medicine and rehabilitation?

[14]A Yes, sir.

[15]Q And how did you go about becoming board

[16]certified?

[17]A To become board certified in this specialty you

[18]have to complete the following prerequisites:

[19]As I indicated, two years of prior training in

[20]the field other than physical medicine and rehabilitation.

[21]That was met.

[22]You have to satisfactorily complete a three

[23]year training program in physical medicine and

[24]rehabilitation.

[25]You must then take your boards, part one and

[1]part two. Part one is taken shortly after your training

[2]period is finished. It's an eight hour written

[3]examination. It **[*6]** encompasses your whole entire training

from beginning to the end. It tests you on principles of

orthopedics, neurology, internal medicine, cardiac

rehabilitation, pulmonary rehabilitation,

electrophysiology, interpretations of different

radiological studies. And then you must be in private

practice for a period of no less than 18 months, be
sponsored by two other board certified doctors, or

preferably your previous teachers, they have to vouch for

your integrity and your knowledge.

You then apply to the Mayo Clinic in Minnesota,

where all of the research and all of the textbooks are
written.
You then take your boards, part two, which is a

half day oral examination. You are tested on principles

of physical medicine and rehabilitation, orthopedics,

neurology, interpretations of CAT scans, x-rays, MRI's, so

on and so forth. If you prove to the doctors your

knowledge is up to par, they pass you, and you are given a

title of a Diplomate of the American Board of Physical

Medicine and Rehabilitation. That title was obtained in
May of 1989.

Q And can you tell the jury, Doctor **[*7]** Guy, how many

times you took the certification exam in order to receive

your board certification status?

A Just once.

Q I want to move to a different subject for just

a minute, Doctor Guy.

Have you ever testified in court before this

morning?

A Many times over in my 15 years career as a

physician, between 100 to 110 times, could be slightly

less, slightly more. It averages to about eight, nine
times per year, some years less, some years more.
Q And can you tell us, Doctor Guy, in terms of
the number of times that you have testified in court, can
you tell us what percentage would be on behalf of a
plaintiff such as Mr. Martello in this case, as opposed to
on behalf of the defense in the case?
A I mostly testify for my patients. I guess the
legal terms would call them plaintiffs. I have only
testified once for the defense.
Q Now in addition to coming into court to testify
in matters such as these, are you sometimes asked by
attorneys to review cases where you don't wind up coming
into court?
A **[*8]** That is correct.
Q And can you tell the jury when you review
cases, is that for plaintiffs' law firms exclusively, or
defense firms, or some combination?
A Both sides.
Q In terms of the time that you spend working as
a doctor with patients, teaching the medical students you
told us about -- and I'll come back to that in a little
while -- lecturing, you mentioned that, and then also
reviewing cases for attorneys, or coming into court; what
are the percentages of how you time is spent?
A The vast majority of my time, 90 to 95 percent
is devoted to treating patients and teaching the medical
students, or the residents that are assigned to me. Out
of that 90, 95 percent, one-third is devoted to strictly
teaching.

[15]Q Doctor Guy, have you ever testified for me

[16]before?

[17]A Yes, I have.

[18]Q And can you tell the jury approximately how

[19]many times you testified for me?.

[20]A I can't give you an exact number, but

[21]approximately several times, under 10, 12 times.

[22]Q And can you tell the jury, do you **[*9]** remember when

[23]the last time was you testified for me?

[24]A I think it was over a year, a year and-a-half

[25]ago.

[1]Q You told us earlier that you were the director

[2]of the Department of Rehabilitation Medicine at Maimonides

[3]Medical Center, and as part of your responsibilities there

[4]you engaged in the rounds where you teach, among other

[5]specialties, the orthopedic students.

[6]A Orthopedic residents.

[7]Q Orthopedic residents?

[8]A Yes.

[9]Q Can you give the Court and jury a short

[10]description about your role and responsibilities, both as

[11]the director of the department, and also in terms of

[12]teaching the orthopedic residents?

[13]A With reference to the orthopedic residents, my

[14]job is to prepare them for their boards on the

[15]rehabilitation section. Orthopedic residents also have to

[16]take rehabilitation medicine. One part of the questions

[17]on the board exam is in rehab medicine. My job is to

[18]prepare them for that section so they do well.

[19]Also, I'm a disability and an impairment

[20]expert, because my field deals with traumatic **[*10]** injuries-

[21]Many doctors in my department refer patients to me for the

[22]purposes, sole purpose of disability and impairment

[23]evaluation, to see if the patient is disabled. If so, is

[24]it mild, moderate, or a severe disability. Is it a

[25]partial, or is it a total, and what types of

[1]rehabilitation treatments they need.

[2]And the rest is basically teaching and doing

[3]consultations to other doctors-

[4]Q Now as the director of the department, are

[5]there physicians who work under you?

[6]A Yes, there are approximately seven, eight other

[7]physicians that work under me, yes.

[8]Q And just briefly you mentioned that you were

[9]the director of the Neuromuscular Clinic at the Hospital

[10]of Joint Diseases, where you also teach the New York

[11]University medical students who rotate through that

[12]facility as well as. Briefly, what is your responsibility

[13]in that regard?

[14]A The clinic, mostly we treat patients with birth

[15]defects, patients that are born with cerebral palsy,

[16]multiple sclerosis, birth defects from spinal cord

[17]injuries, myelomeningoceles. And my job is **[*11]** to examine

[18]those patients as to their rehabilitation needs.

[19]And I have residents assigned to me. As we see

[20]patients, my job is to teach them about the patients as

[21]well, and also separately to prepare them for their

[22]boards, part one and part two.

[23]Q Maybe you can help me out with this, Doctor

[24]Guy. Why is it that the hospital would want a rehab

[25]doctor, the director of the rehab department, to instruct

[1]the orthopedic residents?

[2]A Well, as I explained earlier, the orthopedic

[3]residents, the specialties are very similar. A lot of the

[4]questions deal with rehab. For example, a lot of

[5]questions about the management of lower back pain.

[6]Physiatrists are trained in the treatment of

[7]nonsurgical spinal cord injuries, and conservative

[8]treatments to back injuries, joint problems,

[9]electrophysiology, electromyography, and prosthetics and

[10]orthotics. So that they need to be taught by someone, and

[11]they feel that the rehab doctors are the best qualified

[12]people to teach them in that area.

[13]Q Did there come a time, Doctor Guy, that Vincent

[14]Martello came to **[*12]** your office?

[15]A Yes, sir.

[16]Q With respect to Mr. Martello, did you keep
171 office notes?

[18]A Yes, sir.

[19]Q Is it the custom and practice of your office to

[20]keep notes of every patient that you treat?

[21]A Yes, sir.

[22]Q Are those notes made at or about the time that

[23]you see the patient?

[24]A Yes, sir.

[25]Q Can you tell us, doctor, when Mr. Martello

[1]first presented to you, did he have any complaints?

[2]A Yes, he did.

[3]Q And by the way, doctor, when did you see

[4]Mr. Martello for the very first time?

[5]A July 23, 1999.

[6]Q When you saw him in July of 1999, what

[7]complaints did Mr. Martello have at that time?

[8]A Right knee pain made worse by prolonged

[9]standing, going up and down the stairs, walking fast,

[10]anything that stresses the knee joint.

[11]Q And in connection with the complaints that he

[12]made in the form, did you perform a clinical examination?

[13]A I took his information, and I performed a

[14]clinical examination, yes, sir.

[15]Q And in terms of -- what do **[*13]** we mean by "clinical

[16]examination?"

[17]A I examined the area of chief complaint, that's

[18]his right knee. I examined it for tenderness. I examined

[19]it for range of motion, muscle power, sensory exam, reflex

[20]exam, his gait -- the way he walked.

[21]Q And then did you make any abnormal findings in

[22]connection with the clinical examination that you

[23]performed?

[24]A Yes, sir, I did.

[25]Q Can you tell the jury what abnormal finding you

[11]made back in July of 1999?

[2]A His right knee was tender over the medial and

[3]lateral joint line. He had crepitation -- crepitation is

[4]defined as a grinding sensation, when you put your hand

[5]over the kneecap and you ask the patient to extend his

[6]knee. That crepitation, that grinding sound indicates

[7]there is chondromalacia, that which is defined as wearing,

[8]the abnormal wear and tear of the undersurface of the

[9]patella, what is your kneecap.

[10]MR. RYAN: Objection, your Honor. This is

[11]not his field.

[12]MR. NUNEMAKER: Join in that, and well

[13]beyond the scope of the question.

[14]THE COURT: Overruled. You have an

[15] **[*14]** exception.

[16]Continue.

[17]Q Why don't you tell us, Doctor Guy, what the

[18]abnormal findings were, and then I'll take it from the

[19]different individual issues.

[20]A Yes, sir.

[21]There was right knee joint line tenderness.

[22]There was crepitation. Range of motion was normal, but

[23]with pain. Muscle power was two grades weaker than

[24]normal. There was a positive McMurray's test. The back

[25]was also tender. The straight leg raising on the right

[1]side was 75 degrees, on the left side it was 90 degrees

[2]with complaints of lower back pain. His gait was slow and

[3]antalgic with the use of a knee brace and a cane.

[4]That's pretty much the abnormal findings.

[5]MR. NUNEMAKER: Your Honor, I move to

[6]strike the latter portions for the reasons previously

[7]set forth on the record.

[8]THE COURT: That is denied.

[9]MR. READY: May we have this marked, your

[10]Honor? I think we're up to 10, Plaintiff's Exhibit

[11]10 for identification.

[12](Handing)

[13](Item referred to was marked Plaintiff's

[14]Exhibit 11 for identification, as of this date.)

[15]MR. READY: Can I hand this up to the

[16]witness your **[*15]** Honor?

[17]THE COURT: Yes.

[18](Handing)

[19]Q Doctor Guy, is that a fair and accurate

[20]anatomical model of the human knee?

[21]A Yes, sir, it is.

[22]Q And will that assist in the testimony that you

[23]are about to render here this morning?

[24]A Yes, sir.

[25]MR. READY: I would offer that into

[1]evidence.

[2]THE COURT: Show counsel.

[3]MR. RYAN: No objection.

[4]MR. NUNEMAKER: No objection.

[5]THE COURT: All right, it is in evidence.

[6](Handing).

[7](Plaintiff's Exhibit 11 for identification

[8]now received and marked Plaintiff's Exhibit 11 in

[9]evidence.)

[10]Q Doctor Guy, can you pull out of your file -- I

[11]know you have a lot of papers there with you -- just the

[12]treatment notes that you made with respect to this

[13]patient?

[14]A Yes, sir.

[15]MR. READY: Your Honor, I'm going to ask

[16]they be marked as Plaintiff's Exhibit 12 for

[17]identification.

[18]THE COURT: All right, 12 for

[19]identification.

[20](Item referred to received and marked

[21]Plaintiff's Exhibit 12 for identification.)

[22]MR. READY: I'll offer those into evidence

[23]as well.

[24]THE COURT: **[*16]** All right you have to show

[25]counsel.

[1](Handing)

[2]MR. READY: With any necessary redactions.

[3]MR. RYAN: Your Honor, is this whole

[4]document being offered?

[5]THE COURT: That is what he said.

[6]MR. READY: No, just the handwritten office

[7]notes.

[8]MR. RYAN: Well, why don't we just offer

[9]them?

[10]MR. READY: Well that is what I asked for.

[11]MR. RYAN: No objection to these three

[12]pages. I just note on the record, your Honor, I

[13]can't read most of this. So if there is something in

[14]here that has a problem that we discussed earlier, I

[15]reserve my right to object.

[16]MR. NUNEMAKER: And your Honor, subject to,

[17]I have no objection, subject to certain redactions.

[18]THE COURT: All right, in evidence with

[19]that understanding.

[20]MR. READY: May I see the big blowups?

[21](Handing)

[22]Thank you.

[23]BY MR. READY: (Continuing)

[24]Q Doctor Guy, I just want to call to your

[25]attention that we have these three blowups in evidence.
I And I would ask you to use them to the extent that they

[2]assist you in your testimony here this morning. I just

[3]want you to **[*17]** know that we have them.

[4]A Yes, sir.

[5]Q Let me get to the knee, Doctor Guy. What bones

[6]make up the knee joint?

[7]A We have the femur, we have the tibia, and the

[8]fibula, the distal portion of the femur, the proximal

[9]portion of the fibula, and the tibia. And then we have

[10]the patella, the kneecap. And we have the different

[11]structures; the meniscus, and the medial and the

[12]collateral ligaments.

[13]Q Let me ask you, doctor: What is it that holds

[14]those two bones together?

[15]A The meniscus, the medial meniscus, the lateral

[16]meniscus and the cruciate ligament, the posterior cruciate

[17]ligament, and the lateral, collateral ligament, the medial

[18]collateral ligament.

[19]Q Would you tell the jury what is the function of

[20]the anterior cruciate ligament?

[21]A The anterior cruciate ligament attaches the

[22]kneecap to the quadricep muscle.

[23]Q What is the function of the menisci?

[24]A The function of the menisci is threefold.

[25]Number 1, the meniscus serves as a shock

[1]absorber between the two bones. That is function number

[2] **[*18]** 1.

[3]Function number 2. It serves as a support. It

[4]attaches the two bones together.

[5]Third. It takes the synovial fluid, which is

[6]the lubrication portion of the knee, it takes it and it

[7]swishes around the difference parts of the knee joint. It

[8]is the equivalent of the oil pump of an engine.

[9]Q Now can you contrast for us, doctor, the

[10]differences in the way, let's say the hip joint, the ball

[11]and socket attaches, as opposed to the knee joint, which

[12]is attached in the way you just described?

[13]A The knee joint is attached by a complex

[14]structure of fibers, muscles, tendons, menisci, and other

[15]structures. For example, the femur is in perfect

[16]synchrony with the patella. The undersurface of the

[17]patella is slightly irregular, but very smooth. It sits

[18]right over the femoral grove, right over here.

[19]If anything were to happen to the undersurface

[20]of the kneecap, which is chondromalacia, which means a

[21]softening of the undersurface of the patella, and as a

[22]result the patella shifts either medially or laterally

[23]away from its center. As a result, when you flex and

[24]extend the knee **[*19]** joint, you have abnormal increased

[25]friction, and you get a sound of bone rubbing. That is

[1]called chondromalacia or crepitus from the increased

[2]friction. And if this were to happen, the knee joint, the

[3]structures wear out much more rapidly than normal.

[4]The menisci. Again, the meniscus; the medial

[5]meniscus supports the inner part of the knee, the lateral

[6]meniscus supports the outer portion, or lateral portion of

[7]the knee. And if one structure were to be damaged or

[8]torn, it would put increased additional stress on the

[9]other structures, because they would now have to

[10]compensate and do the additional work of that particular

[11]structure that is torn.

[12]MR. NUNEMAKER: Your Honor, can we have a

[13]question here?

[14]THE COURT: Overruled. Your objection is

[15]overruled.

[16]Continue.

[17]A So this is the medial meniscus. This is the

[18]medial collateral ligament. The function of that medial

[19]collateral ligament is to prevent the knee from moving

[20]inwards. The function of the lateral collateral ligament

[21]is to prevent the knee from buckling outwards. The

[22]function of the anterior **[*20]** cruciate ligament is to support,

[23]give anatomic support to the front portion of the knee, to

[24]attach the kneecap to the quadricep muscle, and to also

[25]add stability to the knee joint from the front portion.

[1]The posterior cruciate ligament gives support

[2]to the knee from the back, so that you don't buckle

[3]forwards and backwards. All of these structures work in

[4]harmony, one with the other.

[5]Q Now, I'm going to jump ahead, and then I'm

[6]going to come back.

[7]I see that along with your office notes you

[8]brought various records with you.

[9]A Yes, sir.

[10]Q And in connection with a report that you

[11]prepared some years ago, you indicate what records you

[12]reviewed?

[13]A Yes, sir.

[14]Q Can you tell us, Doctor Guy, did you review the

[15]MRI report of Bethpage Magnetic Resonance Imaging?

[16]A Yes, sir.

[17]Q Did you also look at various other records?

[18]A Yes, sir.

[19]Q And based upon your review of the various

[20]documents, your clinical examination, and the complaints

[21]that the patient made to you, did you reach a diagnosis of **[*21]**
[22]what the Plaintiff's condition was?

[23]A Yes, sir.

[24]Q And why don't you tell us what injuries he had,

[25]and then I'll go through each one individually.

[11]A Yes. He had a tear of the lateral meniscus, a

[21]complex tear. A complex tear means that it is a very

[3]severe tear. It means most of the meniscus was torn; both

[4]the front portion, the inner portion inside the knee

5 joint, and the lateral aspects. That was torn.

[6]He had extensive chondromalacia that the

[7]undersurface of the patella was wearing out much more

[8]rapidly than normal. That is, that is severe crepitation

[9]of the knee joint.

[10]He had the natural early osteoarthritis which a

[11]44, 45 year old person would undergo. He had that as

[12]well.
131 And he also had a microfracture or microdamage

[14]to the medial femoral condyle. That is the trabeculation

[15]of the medial femoral condyle. That was damaged as well.

[16]And the medial femoral condyle, or the joint line was also
171 damaged as a result.

[18]Q Now if you would, Doctor Guy, I would like you

[19]to contrast for us the difference between somebody who **[*22]**
[20]fractures a bone, and the capability of the body to repair

[21]a bone, as compared to in this case someone who tears a

[22]menisci, or who tears the cruciate ligament, or who tears

[23]the cartilage resulting in a chondromalacia. That is;

[24]what is the body's ability to repair those structures as

[25]compared to the ability to heal bone?

[1]A The meniscus consists of soft cartilage.

[2]Cartilage, once it is torn does not ever, ever have the

[3]ability to repair itself. It is considered a permanent

[4]and irreversible damage to the structure. Bone, when it

[5]breaks, it has a tremendous ability to repair itself by

[6]callus formation or bone cement. In fact, once an area of

[7]bone breaks, it becomes the strongest part of that bone.

[8]If you were to fracture that same bone again,

[9]the area that was previously broken will not break.

[10]Slightly above it, or slightly below it may break, but not

[11]the site previously. That is the body's defense mechanism

[12]to make that area stronger.

[13]Unfortunately, cartilage does not have that

[14]ability. Even with surgery you can't suture meniscus back

[15]together. **[*23]** You can't glue it back together. All you can

[16]do by way of arthroscopic surgery, is you shave the jagged

[17]edges so that you have a better articulation and movement

[18]when you flex and extend your knee, so that those jagged

[19]edges do not get caught inside the joint line and cause

[20]abnormal range of motion and loss of range of motion and

[21]mal-tracking.

[22]Q Doctor Guy, can you just give us an indication

[23]of what documents, what records you reviewed when this
241 patient came under your care?
251 A I reviewed the medical records from the Nassau

[1]County Medical Center. When the patient first went there

[2]x-rays were taken. It showed some mild arthritis and a

[3]joint effusion, suprapatellar joint effusion. He was

[4]treated. He was given an injection of Toradol, 30

[5]milligrams intramuscularly. That is a very strong pain

[6]medication.

[7]I also reviewed records of Doctor Robert

[8]Carter, the orthopedic surgeon. I reviewed a record from

[9]Doctor Barratta, the family doctor. I reviewed the

[10]operative records. I reviewed the medical records from

[11]Central General Hospital; the MRI record from Bethpage; **[*24]**
[12]records from Performance Sports Physical Medicine, the

[13]physical therapy place where he attended. That is

[14]basically it.

[15]Q Now in connection with the review -- I'll take

[16]that back.

[17]MR. READY: I would like to have this

[18]document marked as Plaintiff's Exhibit 13 for

[19]identification.

[20](Item referred to received and marked

[21]Plaintiff's Exhibit 13 for identification.)

[22](Handing)

[23]MR. READY: I'm going to offer these

[24]records into evidence.

[25]MR. NUNEMAKER: Objection, your Honor.

[1]MR. RYAN: I object too, your Honor.

[2]THE COURT: I'm going to have to take the

[3]application outside of the presence of the jury.

[4]Come on in.

[5](The following occurred in chambers:)

[6]MR. READY: If I might, let me just state

[7]for the record what I'm offering into evidence at

[8]this time, and they can place their objections.

[9]There has been a fair amount of talk about Doctor

[10]Barratta, who is the family doctor and treated the

[11]Plaintiff prior to the date of the fall for various

[12]things, including a knee problem.

[13]I asked Doctor Barratta to provide

[14]certified copies of his records, **[*25]** and he has given us

[15]a certification page, and then those reports. My

[16]only interest this morning is in offering into

[17]evidence the office notes of Doctor Barratta. If

[18]there is anything else there, I would consent to a

[19]redaction.

[20]MR. RYAN: This is what takes up your time.

[21]He consistently says he is offering office notes, or

[22]something like that, and then he offers Worker's Comp

[23]records, a report. Now so we're in the same thing of

[24]coming back to you. Now secondly, ironically --

[25]THE COURT: There also was no foundation

[1]laid that this guy, Doctor Guy -- not this guy --

[2]Doctor Guy reviewed these notes to make a

[3]determination.

[4]MR. RYAN: There is one other thing that I

[5]find amazing, given what he just said. These notes

[6]begin -- they don't have the '93 office notes, which

[7]is the whole point of this case.

[8]MR. READY: I apologize if that is the

[9]case, and I withdraw the application. These were

[10]just handed to me, Judge.

[11]THE COURT: I understand everybody is under

121 some --

[13]MR. READY: You know what? If it doesn't

[14]have the '93, I will withdraw the application, **[*26]** and I

[15]will do it on the record with my apologies.

[16]MR. RYAN: Thank you.

[17](The following occurred in open court:)

[18]THE COURT: Okay.

[19]MR. READY: The application with respect to

[20]those records is withdrawn.

[21]BY MR. READY: (Continuing)

[22]Q Doctor Guy, did you review the records of

[23]Doctor Barratta in connection with the opinion that you

[24]reached of Mr. Martello's condition?
251 A Yes, sir.

[1]Q And in connection with the review of the

[2]records that you made of Doctor Barratta, I would like you

[3]to assume that Mr. Martello told us that in May, 1993, to

[4]about August of 1993, that he saw Doctor Barratta four or

[5]five occasions, I don't remember. And based on his

[6]testimony, and your review of Doctor Barratta's records,

[7]does that change your opinion as to what caused these

[8]injuries?

[9]MR. NUNEMAKER: Objection, multiple

[10]questions.

[11]THE COURT: Yes, sustained, form.

[12]MR. READY: I'll go back to that then,

[13]Doctor Guy.

[14]Q I would like you to assume that on February 14,

[15]1994, that Mr. Martello was leaving a 7-Eleven store. I

[16]would like you to further **[*27]** assume that as he was leaving he

[17]was stepping forward with one foot in front of the other,

[18]slipped with the other, and then landed on his knee.

[19]I would like you to further assume that after

[20]that time he was taken from the scene to the Nassau County

[21]Medical Center where they wrote his complaints down, where

[22]they did a clinical examination, and where they did

[23]x-rays. You have those records, and those records are in

[24]evidence.

[25]1 would like you to further assume that

[1]thereafter he came under the care of his family doctor,

[2]Doctor Barratta. And that shortly after that he came

[3]under the care of the orthopedic surgeon, Doctor Robert

[4]Carter.

[5]Based on the testimony of Mr. Martello, based

[6]on your review of the records, based on your clinical

[7]examination; do you have an opinion within a reasonable

[8]degree of medical certainty as to what caused the torn

[9]anterior cruciate ligament?

[10]MR. NUNEMAKER: Objection.

[11]MR. RYAN: Objection.

[12]THE COURT: You have to move to declare

[13]Doctor Guy an expert.

[14]MR. READY: I move the Court to declare

[15]Doctor Guy an expert medical doctor **[*28]** in the field of

[16]rehabilitation and physical medicine.

[17]MR. NUNEMAKER: For the record, stated

[18]yesterday on the record outside of the presence of

[19]the jury, we object.

[20]MR. RYAN: And I join in that objection

[21]again for the reasons stated earlier, as to the scope

[22]and field of expertise.

[23]THE COURT: Do either of you gentlemen want

[24]to voir dire the expert, the person wanting to be an

[25]expert?

[1]MR. NUNEMAKER: I'll reserve my examination

[2]of this witness for cross-examination.

[3]MR. RYAN: Same, your Honor.

[4]THE COURT: All right, the witness is

[5]declared an expert for this particular purpose.

[6]MR. RYAN: Just so I'm clear though, Judge,

[7]in what area of expertise?

[8]THE COURT: In his board certified

[9]capacity.

[10]MR. RYAN: As physiatrist?

[11]THE COURT: Yes.

[12]MR. READY: I'm going to ask the question

[13]again.

[14]BY MR. READY: (Continuing)

[15]Q Assume that Mr. Martello testified that he had

[16]--

[17]THE COURT: Well, it was a long question.

[18]There are a lot of long questions.

[19]Do you remember the question?

[20]THE WITNESS: Yes.

[21]THE COURT: Can you answer the **[*29]** question?

[22]THE WITNESS: I can.

[23]THE COURT: All right, we'll save time,

[24]answer the question.

[25]Q Assuming all of the facts I gave you, do you

[11]have an opinion as to what caused the tear of the anterior

[2]cruciate ligament?

[3]MR. NUNEMAKER: Note my objection to the

[4]question, form of the question.

[5]THE COURT: Overruled.

[6]A Yes, sir, I do have an opinion.

[7]Q What is your opinion?

[8]A That the accident of 2/14/94 caused the tear of

[9]the anterior cruciate ligament and the lateral meniscus.

[10]Q Do you have an opinion within a reasonable

[11]degree of medical certainty as to what caused the

[12]trabecular injury to the medial femoral condyle?

[13]A That is caused by trauma. It's fairly obvious.

[14]Q And which trauma are we speaking of, doctor?

[15]A The fall on his knee.

[16]Q And do you have an opinion, Doctor Guy, within

[17]a reasonable degree of medical certainty, as to what

[18]caused the chondromalacia that we have been speaking

[19]about?

[20]A Same, same accident.

[21]Q Let's go to the Nassau County Medical **[*30]** Center,

[22]and those records are in evidence. Do you have them with

[23]you, Doctor Guy?

[24]A Yes, I do.

[25]Q You're aware there was an x-ray taken of the

[1]knee when he got to the Nassau County Medical Center?

[2]A Yes, sir.

[3]Q Did you review that, that report?

[4]A I did.

[5]Q There is an entry in there having to do with an

[6]x-ray that was taken of the knee. Do you see that?

[7]A Yes.

[8]Q Have you seen that, and can you tell the jury,

[9]does that x-ray show any preexisting degeneration?

[10]A Mild, medial femoral condyle joint space

[11]narrowing, yes.

[12]Q And can we have a translation?

[13]A Yes. This is the medial femoral condyle. This

[14]is the medial joint space. This was partially narrowed

[15]from the natural aging osteoarthritis. Osteoarthritis in

[16]a male starts at the age of 40, in a woman it starts

[17]earlier, 26 to 28. Different hormones protect different

[18]sexes from different problems. So this problem is a

[19]natural aging process that a normal 44 year old man

[20]undergoes.

[21]Q Doctor Guy, **[*31]** you also noted in the radiological

[22]reading, suprapatellar spur noted on lateral views?

[23]A Yes.

[24]Q What is that?

[25]A A spur is a bony spicule. I'll show you a spur

[1]over here. This little spicule was found over here. That

[2]is the lateral view.

[3]Q That spur that was, we have just spoken of, and

[4]the mild joint space narrowing that we spoke of; is that

[5]medically significant?

[6]A Yes, sir.

[7]Q And tell us why?

[8]A It indicates that this patient had a normal

[9]natural aging osteoarthritic process. And when he became

[10]injured -- when you have an underlying natural arthritic

[11]process, the injury is that much more significant. It is

[12]like mixing nitroglycerin with glycerin --

[13]MR. RYAN: Objection.

[14]MR. NUNEMAKER: Objection.

[15]THE COURT: Overruled, I'll allow it.

[16]A Nitroglycerin or glycerin itself is not

[17]dangerous. But when you mix the two together, it becomes

[18]dangerous. So when you have a natural underlying

[19]osteoarthritic process in itself is not dangerous, unless

[20]you have a trauma happen to it. It accelerates **[*32]** rapidly

[21]that normal osteoarthritic natural aging process. It's

[22]called traumatic arthritis. That is what happens.

[23]So what would normally happen to a normal

[24]person, would now be accelerated. And from the tears, the

[25]kneecap shifts from its normal position and now starts to

[1]wear out abnormally. That is what the chondromalacia is.

[2]Q I would like you to assume, Doctor Guy, that

[3]Doctor Carter initially saw the patient, took a history,

[4]did an examination, and then referred the patient out for

[5]physical therapy.

[6]Now the question I have for you now, Doctor

[7]Guy: Is that good medical practice?

[8]A Yes.

[9]Q I would like you to assume that the patient

[10]underwent physical therapy for a period of several months

[11]and didn't get any lasting or prolonged relief; that an

[12]MRI was done, a copy of which you have. And ultimately

[13]Doctor Carter recommended that the patient have

[14]arthroscopic surgery, and arthroscopic surgery was

[15]performed.

[16]Do you have an opinion as to whether or not

[17]that is good medical practice?

[18]A Yes, except you left a couple of **[*33]** little things

[19]out in between.

[20]MR. NUNEMAKER: Objection.

[21]THE COURT: Overruled.

[22]Q What did I leave out, Doctor Guy?

[23]MR. NUNEMAKER: Well, objection

[24]THE COURT: That is sustained.

[25]Q Doctor Guy, I'm not a physician. Is there
I anything that happened between the physical therapy and

[2]the surgical procedure that would have been medically

[3]significant?

[4]MR. NUNEMAKER: Objection.

[5]THE COURT: Overruled.

[6]A Yes, sir. The patient has tried cortisone

[7]injections. He has tried antiinflammatory medications.

[8]He was given a full conservative approach, which failed.

[9]Then the surgery became medically indicated.

[10]Q Now you have, as part of your records, you

[11]mentioned the hospital report of Central General Hospital?

[12]A Yes, sir, I do.

[13]Q Have you seen the operative report?

[14]A Yes, sir, I have.

[15]Q I'm going to ask you some questions now about

[16]the operative report.

[17]MR. RYAN: I object to this, in view of

[18]yesterday's testimony. It is cumulative of

[19]yesterday's testimony.

[20]THE COURT: I'll allow it.

[21]MR. NUNEMAKER: **[*34]** Your Honor, I'm going to

[22]object to it for the reasons stated on the record

[23]this morning.

[24]THE COURT: That is also overruled.

[25]Q You mentioned, Doctor Guy, that on the Nassau

[1]County Medical Center record, that there was a mild joint

[2]space narrowing?

[3]A Yes, sir.

[4]Q And you told us that a trauma would accelerate

[5]that process?

[6]A Yes, sir.

[7]Q Looking at the operative report from Central

[8]General Hospital done about a year after he fell, are you

[9]able to make any determination as to whether or not there

[10]was any progression of the narrowing that we saw a year

[11]earlier?

[12]MR. NUNEMAKER: Objection.

[13]A Yes, sir.

[14]THE COURT: Overruled.

[15]A Yes, sir.

[16]Q And can you tell us, doctor, what was revealed

[17]by the operative report a year after the initial onset of

[18]injury that is medically significant with respect to that

[19]preexisting mild narrowing?

[20]MR. RYAN: Objection.

[21]THE COURT: Overruled.

[22]A According to the operative report, it indicates

[23]that the medial joint space which was initially picked **[*35]** up

[24]on x-ray as being mild, had now been extensive

[25]degenerative changes present. So the arthritic process

[1]which I said was going to happen, was confirmed, as it did

[2]happen, and it still continues to happen.

[3]So it showed that the medial femoral condyle

[4]joint space was markedly diminished. There was a great,

[5]substantial chondromalacia of the patella, Stage V,

[6]meaning a very advanced chondromalacia of the kneecap.

[7]The kneecap is almost completely worn out. And it also

[8]showed other findings as well.

[9]Q Just if would you again, doctor --

[10]MR. RYAN: I'm going to object to that, and

[11]move to strike. That document is in evidence. Now

[12]this witness is just reading and reinterpreting. I

[13]move to strike it.

[14]THE COURT: Overruled.

[15]Q Now Doctor Guy, we have been using the word,

[16]"chondromalacia, " this morning. Can you just, if you

[17]wouldn't mind backtracking for me for a minute; what is

[18]chondromalacia?

[19]MR. RYAN: Objection, your Honor, asked and

[20]answered twice.

[21]THE COURT: Overruled.

[22]A Chondromalacia refers to the kneecap, right

[23]here. As **[*36]** I showed earlier, the undersurface of the

[24]kneecap has rugged edges, but smooth. The word

[25]"chondromalacia, " means softening of this bone. As a

[1]result you have more jagged unevenness so this structure

[2]can no longer slide smoothly in its proper location.

[3]THE WITNESS: May I stand?

[4]THE COURT: Yes.

[5]A When you normally bring up the knee and you

[6]fully extend the knee, you should feel no crepitation, no

[7]grinding. When you have advanced chondromalacia, when you

[8]put your hand over the kneecap, you actually feel the

[9]crepitation, the grinding, and you also hear the grinding.

[10]That indicates a severe wear and tear of this problem.

[11]And what happens is, the joint starts to wear

[12]out rapidly as a result of this one single problem, and it

[13]causes pain.

[14]Q I would like you to assume, Doctor Guy, that
i

[15]Doctor Carter performed a meniscectomy with respect to the

[16]complex tear of the lateral meniscus. Is that good

[17]medical practice?

[18]A Yes, sir.

[19]Q Was there nothing else that can be done at this

[20]particular stage?

[21]MR. RYAN: Objection.

[22]THE COURT: **[*37]** Overruled.

[23]A At this particular early stage of the

[24]treatment?

[25]Q Yes.

[1]A That is fine, but there are other things that

[2]could be done later on.

[3]Q I would like you to assume, Doctor Guy, that

[4]after the surgery was performed, that Mr. Martello started

[5]on a regimen again of physical therapy. And that for a

[6]period of time his condition would get somewhat better,

[7]and then would get worse.

[8]Can you tell us, Doctor Guy, the condition that

[9]he has in his knee by virtue of the fall of 1994, is that

[10]permanent?

[11]MR. RYAN: Object to the form of that

[12]question.

[13]A Yes.

[14]MR. NUNEMAKER: Objection.

[15]THE COURT: Do you understand the question?

[16]THE WITNESS: Yes, Judge.

[17]THE COURT: All right, overruled.

[18]A Yes, this condition is permanent for many

[19]different, very good reasons.

[20]Q Let me ask you this: Are there conditions in

[21]medicine know as progressive?

[22]A Yes, sir.

[23]Q What do we mean when we speak of a "progressive

[24]condition?"

[25]A It means over time the condition gets **[*38]**
[1]progressively worse, not better.

[2]Q Can you tell us the medical significance of the

[3]knee as being a weight-bearing joint, and the potential

[4]for progression?

[5]MR. NUNEMAKER: Objection to form, leading.

[6]THE COURT: Do you understand the question?

[7]THE WITNESS: Yes, Judge.

[8]THE COURT: Overruled.

[9]A There are two major weight bearing joints in

[10]the body. The first one is the foot at the ankle; next

[11]comes the knee joint. Mostly your body's weight goes

[12]through, is balanced on the knee joint.

[13]When the structures in the knee joint are torn

[14]or damaged, they are asked to bear an abnormal amount of

[15]force. If you have a partial tear, with increased force,

[16]with increased wear and tear, that partial tear extends to

[17]a full complete tear.

[18]A good analogy would be, you have a damn with

[19]water behind the damn. The damn begins with a tiny crack.

[20]As the pressure builds up, it progressively causes that

[21]crack to expand. And eventually you have a complete

[22]damage to the damn wall, and all of the water comes out,

[23]and you have floods and disasters.

[24]Same thing happens **[*39]** with a knee joint. One

[25]structure is torn. It starts to put stress on the other

[1]structures. Then you have a second structure damaged, the

[2]chondromalacia. This puts more stress on the other

[3]joints. You have the medial femoral condyle with the

[4]trabecular damage, with indicative minor fracture to the

[5]medial femoral condyle. That puts more stress to the

[6]area. As time goes on traumatic arthritis sets in, and

[7]gradually worsens. This is exactly what this operative

[8]report shows --

[9]MR. RYAN: Objection, move to strike it.

[10]THE COURT: What, "the operative report

[11]showed?" That statement is stricken.

[12]MR. RYAN: I also move to strike everything

[13]he said before that as speculative.

[14]THE COURT: Well --

[15]MR. RYAN: As speculative, and not within

[16]his province of expertise.

[17]THE COURT: Overruled.

[18]A So as time goes on, this condition gets

[19]progressively worse. There is no cure for arthritis.

[20]There are treatments for it, but there is no cure. And no

[21]one has ever claimed that arthritis stops. It continues

[22]over time. It is progressive.

[23]Q I would **[*40]** like you to assume that after the

[24]surgery, that he continued with physical therapy for a

[25]period of time. That he has been doing home care

[1]exercises. And that as he moved from 1994 when the

[2]surgery was performed, into 1996 and into 1997, that there

[3]came a time -- and I think it was 1996, and I have Doctor

[4]Carter's notes in evidence -- when Doctor Carter began to

[5]give injections.

[6]Is that good medical practice?

[7]A Yes.

[8]Q Now I know that you have Doctor Carter's notes,

[9]and you're probably more familiar with it than I am. Can

[10]you tell us what kind of injections were tried?

[11]A Yes, injections that are the synthetic

[12]lubricating gel present in the knee joint. That is

[13]synovial fluid that I was talking about.

[14]Q I would like you also to assume, and I'm

[15]looking at Doctor Carter's records, that there were

[16]injections of Cortisone and Lidocaine?

[17]A Yes.

[18]Q And why would a physician gives those

[19]injections?

[20]A Cortisone is a very strong anti-inflammatory

[21]medication, and also serves as a painkiller. And

[22]Lidocaine **[*41]** is a local anesthetic. It numbs the area. So

[23]with that combination the patients get some sort of

[24]temporary relief. And that varies from patient to

[25]patient.

[1]Q I would like you to assume that the injections

[2]were given on a series of occasions. Again, you have the

[3]records yourself. That Mr. Martello continued to complain

[4]of knee pain.

[5]I would like you also to assume that at the

[6]time that he hurt his knee, he was employed as a prep man

[7]at a Buick, or at a car dealership, whatever it was, where

[8]he was involved with changing tires, doing cleanup work,

[9]and things of that sort. And that there came a time in, I

[10]think it was 1996 or a couple of years after this

[11]incident, when he could not carry on with that work

[12]because of his physical nature.

[13]Do you have an opinion, Doctor Guy, within a

[14]reasonable degree of medical certainty, as to whether or

[15]not this type of injury has any impact on a man's ability

[16]to do physical work?

[17]MR. RYAN: Objection.

[18]MR. NUNEMAKER: Objection.

[19]THE COURT: Overruled.

[20]A Yes, it does, for all of the obvious reasons.

[21]You **[*42]** have a knee joint --

[22]MR. NUNEMAKER: Objection, "for all of the

[23]obvious reasons." We're here to listen to what they

[24]are.

25I THE COURT: All right, sustained.

[1]You can ask the next question.

[2]Q What are the reasons that this has an impact on

[3]the man's ability to do physical labor?

[4]A First of all, the chondromalacia will get worse

[5]if you put any increased stress on the condition. The

[6]lateral meniscus will get worse. The tear will get

[7]significantly worse if you put more increased stress on

[8]it. And the other structures that have not yet been

[9]damaged, also begin to get damaged by overloading. That

[10]would be the medial meniscus. That would be the

[11]collateral ligaments as well, and the joint space as well.

[12]Q I would like you to assume, Doctor Guy, that in

[13]Doctor Carter's notes he mentions that there was a

[14]weakness of quad strength. And I'm reading from the May

[15]19, 1998 note.

[16]Is weakness of the quad strength a condition,

[17]with the injuries that you found that Mr. Martello

[18]suffered, as a result of the fall?

[19]A Yes, sir.

[20]MR. NUNEMAKER: **[*43]** Objection.

[21]THE COURT: Overruled.

[22]Q Can you tell us why the quad strength was

[23]consistent with the injuries that Mr. Martello suffered?

[24]A Once you have an injury to the area, the
251 patient tends to use that area less, or with less force.

[1]And the less you use a muscle, the muscle strength begins

[2]to diminish, and/or atrophy, which means you get a loss of

[31]muscle bulk.

[4]If you don't use a muscle properly, the muscle

[5]becomes weak, or atrophies at a rate of three to five

[6]percent per day.

[7]If you put a guy like Arnold Schwartznager in

[8]bed to rest for 30 days, he would have lost approximately

[9]90 to 150 percent of his strength. The less you use it,
101 the more you lose it.

[11]So once you have an injury, the area becomes

very, very inflamed. It causes pain, and naturally the patients tend to use that area less, and put less force on it. As a result, the muscle begins to weaken.

When you have an arthroscopic surgery, you have direct trauma to the muscles, and you invade the normal integrity of a joint. And as a result, again there is pain. The patient uses **[*44]** that area less. And again, that causes muscle weakness and atrophy. And this is progressive over time.

Q I'm looking at Doctor Carter's notes now from May of 1998, where he indicates in his notes the following words: Popping and swelling.

And are those conditions -- those symptoms, I should say -- consistent with the type of injury that Mr. Martello suffered?

A Yes, sir.

Q What is it in the injury that causes popping and swelling?

A The swelling comes from increased inflammation in the joint. The swelling is the effusion. When you have an injury to a joint, or increased stress or inflammation, the joint produces water to protect itself from any further injuries. The water environment gives the body extra protection. So that is an inflammatory substance- And the popping and the crackling comes from the chondromalacia.

Q We are now six years, more than six years past the point in time when this condition first came into existence.

Do you have an opinion, Doctor Guy, with a

[17]reasonable medical certainty, as **[*45]** to what his prognosis is

[18]for future medical care?

[19]MR. RYAN: Objection.

[20]MR. NUNEMAKER: Objection.

[21]THE COURT: Overruled.

[22]A Yes, sir, I do.

[23]Q Before you tell me what that opinion is, can

[24]you tell the jury on what you're going to base your
25, opinion?

[1]A I will base it on medical literature, my vast

[2]experience with treating these types of injuries. I have

[3]treated over tens of thousands of these types of problems

[4]over 15 years. And basically my personal knowledge, and

[5]the literature.

[6]Q And what is your opinion as to what will be

[7]necessary with respect to future medical care?

[8]A Since this condition is permanent, and since we

[9]already explained that a torn lateral meniscus is

[10]permanent irreversible damage because the cartilage can

[11]not repair itself. And because we already have clearcut

[12]documentation that there is increased osteoarthritis

[13]setting in, and we do have documentation that there is

[14]advanced chondromalacia; this condition has progressively

[15]worsened over time. This will continue to worsen over

[16]time. When you **[*46]** are treating with a permanent injury, the

[17]patient needs periodic medical supervision, evaluation for

[18]pain medications.

[19]New York State law requires that a physician --

[20]MR. RYAN: Objection.

[21]MR. NUNEMAKER: Objection.

[22]THE COURT: All right, sustained as to what

[23]New York State law requires.

[24]A For good medical practice, the patient needs to

[25]be monitored at least once per month for evaluation of his

[1]condition, pain medications, physical therapy needs. He

[2]will need physical therapy treatments on an as needed

[3]basis. And eventually, as time goes on, this joint space

[4]will continue to erode, and the only thing left that can

[5]be done is a total knee replacement.

[6]MR. RYAN: Objection, move to strike.

[7]MR. NUNEMAKER: Objection.

[8]THE COURT: Overruled.

[9]Q I would like you to assume, Doctor Guy, that

[10]Doctor Carter has a note on June of 1989, where he writes:

[11]"He is quite young to undergo total knee --

[12]MR. READY: Objection.

[13]MR. NUNEMAKER: Objection.

[14]THE COURT: Yes, sustained.

[15]MR. READY: This is a document in evidence,

[16]MR. RYAN: Objection.

[17]MR. **[*47]** NUNEMAKER: Objection.

[18]THE COURT: Sustained. Just ask him a

[19]question about what he --

[20]Q Do you have an opinion -- let me take that

[21]back.

[22]When does he need a total knee replacement,

[23]Doctor Guy?

[24]MR. RYAN: Objection.

[25]MR. NUNEMAKER: Objection.

[1]THE COURT: Overruled.

[2]A Sometime in the near future. In my report I

[3]predicted --

[4]MR. NUNEMAKER: Objection, quoting from his

[5]own report.

[6]THE COURT: You don't have to quote from

[7]your report. Just answer the question.

[8]A When he is approximately between the ages of 47

[9]and 50.

[10]Q Why then, as opposed to now?

[11]A Because you don't want to give a knee

[12]replacement to a young person, because these joint

[13]replacements at the best they last ten years, slightly

[14]less, slightly more, depending on how much work, or how

[15]much activity he does.

[16]So if you do it earlier, he will require four

[17]or five of these over his life span, taking the average

[18]life spans to be 75 years of age. So the longer you wait,

[19]the less of these procedures he will need. The less major

[20]surgery someone **[*48]** undergoes, the less chances of

[21]complications. And there are many complications

[22]associated with knee replacements.

[23]Q And can you tell us, Doctor Guy, what are the

[24]major risks that Mr. Martello will face when he undergoes

[25]knee replacement in several years?

[1]MR. RYAN: Objection.

[2]MR. NUNEMAKER: Objection.

[3]THE COURT: Sustained.

[4]Q What are the complications of a knee

[5]replacement, Doctor Guy?

[6]MR. RYAN: Objection.

[7]MR. NUNEMAKER: Objection.

[8]THE COURT: I'll allow it.

[9]A Deep vein thrombosis; pulmonary embolism, which

[10]is a blood clot flowing from the calf in the legs, goes

[11]into the lungs and cuts off your breathing, and it can

[12]kill you. The anesthetic has risks; infection is another

[13]risk; the hardware becoming loose. These are the most

[14]common complications.

[15]MR. RYAN: Objection and move to describe

[16]that as speculative.

[17]THE COURT: Overruled.

[18]Q Generally speaking, doctor, would you expect

[19]that a knee replacement would provide some relief?

[20]A Yes, it should provide some relief.

[21]Q The knee replacement we have **[*49]** been speaking of,

[22]is any care typically required immediately after the

[23]surgical procedure itself?

[24]MR. NUNEMAKER: Objection.

[25]THE COURT: For this limited purpose, I'll

[1]allow it.

[2]A Yes.

[3]Q And what would that be?

[4]A It requires medical attention. It requires

[5]physical therapy. This is basically the most common

[6]needed treatment afterwards.

[7]Q And at present, doctor, what is the cost of a

[8]knee replacement, including medical services, as well as

[9]hospitalization?

[10]MR. RYAN: I'm going to object to that,

[11]your Honor.

[12]MR. NUNEMAKER: Objection.

[13]THE COURT: If he knows.

[14]Do you know?

[15]THE WITNESS: I do know, yes, Judge.

[16]THE COURT: Overruled.

[17]Q Don't answer the question, Doctor Guy.

[18]Do you know what the cost is?

[19]A Yes, I have seen the bills.

[20]MR. RYAN: Objection.

[21]Q How do you know?

[22]MR. RYAN: Objection.

[23]THE COURT: I'll allow that question.

[24]Q How do you know?

[25]A As chief of my department, many times I'm asked

[1]to review patients' treatments. **[*50]** And that includes records

[2]of bills, et cetera. And I have spoken to many, many

[3]orthopedic surgeons. And that is what they charge for a

[4]knee replacement, and I am familiar with the price they

[5]charge in the city.

[6]MR. RYAN: Objection, hearsay.

[7]THE COURT: Overruled.

[8]MR. RYAN: Objection, not within his field.

[9]THE COURT: Overruled.

[10]A The approximate cost is $ 15, 000. That includes

[11]the hospital stay, the anesthesia, and all of the other

[12]surgical expenses associated with it.

[13]Q And what would the cost then be of the

[14]postsurgical physical therapy that you told us of?

[15]A It is done three times per week for

[16]approximately four to six months, at a cost of

[17]approximately $ 100 per session.

[18]Q Doctor Guy, I would like you to assume that in

[19]February of this year, that the patient was seen by a

[20]physician named Gerald Gorski, seen on behalf of the

[21]defense in this case.

[22]I would like you to further assume that that

[23]physician told us of what his opinion was.

[24]I would like you to further assume that he told

[25]us that the patient has a mild to moderate impairment in **[*51]**
[1]regard to his right knee.

[2]Now with those assumptions, I want to ask you

[3]some questions. When we talk about mild or moderate,

[4]using that vernacular, what are the difference degrees of

[5]impairment that are recognized in medicine?

[6]MR. NUNEMAKER: Objection.

[7]THE COURT: Overruled.

[8]A You have mild, moderate, and severe. It's

[9]classified as that; mild being the mildest form, and

[10]severe obviously is the most advanced form, and moderate

[11]is in between.

[12]Q And can you tell, can you give us an idea,

[13]doctor, if you wouldn't mind, in terms of percentages;

[14]when we talk of mild, what kind of percentage disability

[15]is it; medium, what percentage is that; and severe, what

[16]percent range would that include?

[17]MR. RYAN: Object to that.

[18]MR. NUNEMAKER_ Objection.

[19]THE COURT: Overruled.

[20]A Mild is 33 and-a-third percent; moderate is 66

[21]and two-thirds percent; and severe is more than that.

[22]Q Now can you tell us, Doctor Guy, whether or not

[23]you agree with the opinion of Doctor Gorski, that as of

[24]February 2000, that Mr. Martello has a mild to moderate

[25] **[*52]** impairment?

[1]A I do agree. I would say more closer to a mild

[2]-- more closer to moderate, than to mild.

[3]Q And as of the first half of the year 2000, if I

[4]were to ask you to put a percentage on it, to be more

[5]precise than just saying, "moderate, " what would you tell

[6]us is the percentage of impairment at this time, as to the

[7]first half of 2000?

[8]MR. RYAN: Objection.

[9]MR. NUNEMAKER: Objection.

[10]THE COURT: Overruled.
11, A I would say, moderate.

[12]Q Can you be any more specific in terms of

[13]assigning a numerical percentage?

[14]A Moderate I classify as can 66 and two-thirds

[15]percent.

[16]Q I would like you to further assume, Doctor Guy,

[17]that Doctor Gorski, again the physician on behalf of the

[18]defendants, commented that, or I should say -- withdrawn.

[19]Assume that Doctor Gorski made an, had an

[20]opinion. And with respect to the preexisting and the

[21]post-accident injury, that it was his opinion that while

[22]the patient did have a preexisting arthritic condition,

[23]that the majority of his current condition is due to the

[24]trauma in 1994. **[*53]**
[25]Do you agree with the defense physician in that

[1]regard?

[2]MR. NUNEMAKER: Objection.

[3]MR. RYAN: Objection.

[4]THE COURT: Do you agree with the doctor in

[5]that report?

[6]THE WITNESS: Yes, Judge, I do.

[7]Q I would like you to assume, Doctor Guy, that in

[8]1994 Mr. Martello was working at the dealership doing

[9]labor that required him to squat and raise cars, and move

[10]tires, and things of that sort. A couple of years after

[11]that he left that job and went to Harry Katz, a carpet

[12]place, where he was required among other things to do

[13]some, he said unloading of trucks, and some manual cutting

[14]of carpet.

[15]That became too physical, and then he left that

[16]and went to Home Depot, where he is now employed in a job,

[17]that while it requires physical labor, it is less

[18]demanding than the other jobs.

[19]I would like you also to assume that during

[20]this whole course of time, that he had a job at nights

[21]where he would clean an office building, where he would

[22]empty garbage cans, and do some vacuuming. And with

[23]respect to that job before he got hurt, it would take him

[24]somewhere **[*54]** in the range of two hours to complete the task.

[25]And that now it takes him longer to complete the task.

[1]Given your examination, given the progression

[2]that you have seen, given the records that you have

[3]reviewed, and assuming that what Mr. Martello told us

[4]concerning his work conditions is accurate; do you have an

[5]opinion with respect to his ability to work going into the

[6]future?

[7]MR. RYAN: Objection.

[8]MR. NUNEMAKER: Join in that.

[9]THE COURT: With a reasonable degree of

[10]medical certainty.

[11]Q With a reasonable degree of medical certainty?

[12]THE COURT: With that understanding,
131 overruled.

[14]MR. RYAN: Same objection.

[15]A Yes. As time goes on, his ability to work

[16]would become less and less, for the following reasons:

[17]He will have the natural aging arthritis which

[18]will set in, and you have the traumatic arthritis which

[19]will set in, and the complex tears of the lateral meniscus

[20]will only continue to worsen. The joint space on the

[21]inner and outer portions will continue to worsen. The

[22]joint space will become more and more damaged and more and

[23]more narrowed, **[*55]** adding more stress to the Grade V

[24]chondromalacia, will continue to become more and more

[25]advanced.

[1]And when pulling the whole picture together, it

[2]shows a continued progressive condition. And as a result,

[3]the patient will have less and less ability to continue to

[4]work.

[5]Q And can you quantify for us then what the

[6]nature of his disability will be?

[7]MR. RYAN: Objection.

[8]THE COURT: Yes, too broad, I'll sustain

[9]it.

[10]Q Do you have an opinion, Doctor Guy, as to

[11]whether or not this condition will affect Mr. Martello's

[12]work life?

[13]MR. RYAN: Objection.

[14]MR. NUNEMAKER: Objection.

[15]THE COURT: That is already asked and

[16]answered.

[17]All right, continue.

[18]Q Can you tell us in terms of years, Doctor Guy,

[19]the impact that this injury will have on his work life?

[20]MR. NUNEMAKER: Objection.

[21]MR. RYAN: Objection.

[22]THE COURT: How many years before this

[23]would take into effect, where he can't work any more?

[24]THE WITNESS: Well he can probably work to

[25]the age of 60. And after that point he will probably

[1]be unable **[*56]** to work beyond that point. That would be

[2]approximately 20 years from the time of the trauma.

[3]Q Have you been in touch with Doctor Carter in

[4]connection with this patient?

[5]A No, there was no need.

[6]MR. RYAN: Objection.

[7]THE WITNESS: There was no reason.

[8]MR. RYAN: Objection, move to strike that.

[9]THE COURT: "There was no reason, " is

[10]stricken.

[11]Q Have you been in touch with Doctor Barratta,

[12]the family doctor, in connection with this patient?

[13]A No, sir.

[14]Q Have you reviewed the records of Doctor

[15]Barratta and Doctor Carter in connection with this

[16]patient?

[17]A Yes, sir.

[18]MR. NUNEMAKER: Objection, asked and

[19]answered.

[20]THE COURT: He already testified to that,

[21]sustained.

[22]Q Was it medically necessary, Doctor Guy, for you

[23]to be in communication with his physician in order for you

[24]to reach the opinions that you rendered in court here

[25]today?

[1]MR. NUNEMAKER: Objection.

[2]THE COURT: Sustained.

[3]Q I would like you to assume, Doctor Guy, that

[4]Mr. Martello was asked by Doctor Carter throughout **[*57]** his

[5]course of treatment to lose weight. You treated the

[6]patient, you know what his weight is.

[7]Can you tell us the relationship of the actual

[8]cause of injury, if there is any -- the progression of the

[9]injury, if there is any, of his weight to his condition,

[10]as a result of the trauma in 1994?

[11]MR. NUNEMAKER: Objection as to form.

12 MR. RYAN: Objection as to form.

[13]THE COURT: Overruled.

[14]A First of all, when a patient is overweight you

[15]put increased. stress on the area. When you have, when you

[16]have obesity, you have less muscle mass and you have more

[17]fat mass. As a result, the muscles do less work and most

[18]stress goes to the joints. When you have an injury to the

[19]area, and if you're overweight, you can't help but not

[20]exercise properly to lose weight, because if you do, you

[21]will put more stress on the joints.

[22]Weight bearing exercises to use the large

[23]muscles would be walking on a treadmill, would be doing

[24]different things that would stress the knee joint. So

[25]patients, because of the pain, they do less exercise. As

[1]a result they continue to **[*58]** accumulate more weight. And the

[2]problem becomes progressive and more stress goes on the

[3]knee joint that is already damaged and stressed.

[4]Q Thank you, doctor.

[5]A You're welcome.

[6]THE COURT: All right, before

[7]cross-examination we will give the jury a break.

[8]We'll take a break and resume again in about ten

[9]minutes.

[10]Please don't talk about the case amongst

[11]yourselves or with anybody else.

[12]MR. RYAN: Your Honor, can we look at his
131 file?

[14]THE COURT: Sure.

[15](Whereupon a recess was taken, after which

[16]the following occurred:)

[17]THE CLERK: Case on trial.

[18]Plaintiff ready?

[19]MR. READY: Yes.

[20]THE CLERK: Defense ready?

[21]MR. NUNEMAKER: Yes.

[22]THE CLERK: Doctor Guy, you're reminded

[23]you're still under oath, sir.

[24]THE WITNESS: Yes, sir.

[25]THE COURT: Cross-examination,

[1]Mr. Nunemaker?

[2]CROSS-EXAMINATION

[3]BY MR. NUNEMAKER

[4]Q Good morning, Doctor Guy.

[5]A Good morning, sir.

[6]Q By the way, you said chemistry before you got

[7]to med school; right?

[8]A I studied, yes, sir.

[9]Q Nitroglycerin, **[*59]** Doctor Guy, is nitric acid and

[10]glycerin; right?

[11]A Yes.

[12]Q We have met before over in the old building?

[13]A About three, four years ago, yes.

[14]Q And in fact that was a case that you were asked

[15]about your home up in Westchester; right?

[16]A That I don't remember.

[17]Q And that was before Judge Winick?

[18]A That's correct.

[19]Q And you were testifying for attorney Joe Kelner

[20]of Kelner and Kelner; right?

[21]A That is correct.

[22]Q And you testified for that law firm a lot;

[23]right?

[24]A No, I have testified for them about three or

[25]four times.

[1]Q Well at least three, four times. You're aware

[2]that there is a service that tracks when people testify?

[3]Well, there are several services, but at least there is

[4]one called the New York Jury Verdict Reporter, that tracks

[5]when people testify in court; right?

[6]A Yes.

[7]Q And that is only cases that people phone into

[8]them, or write into them about; right?

[9]A I have no idea how that service is compiled.

[10]Q You **[*60]** have been in court, you told us earlier

[11]today that you have been in court a lot, right, a hundred,

[12]110 times?

[13]A Between a hundred and 110, right.

[14]Q More than Mr. Ready and Mr. Ryan and I

[15]combined?

[16]MR. READY: I can speak for myself, Judge.

[17]I object to the question.

[18]THE COURT: I don't doubt that, but that is

[19]okay.

[20]MR. READY: Thank you.

[21]MR. RYAN: I take no position.

[22]Q I found 104 reported cases. Does that sound

[23]about right?

[24]A It is about a hundred, 110; is it not? Yes.

[25]Q Thank you for the math.

[1]But the case that we're involved in,

[2]Kovach-Anta. That isn't even in the reported cases;

[3]right?

[4]A Are you blaming me for not reporting it?

[5]Q No, I'm not. I'm just saying it, so that there

[6]is, if they are reporting a hundred and four cases, there

[7]is probably a whole bunch more. Is that right?

[8]MR. READY: Judge, that is speculative. I

[9]have to object to that. I don't know how they put

[10]this stuff together.

[11]A No, I have no idea.

[12]Q Just focusing for a moment on some **[*61]** of those

[13]cases that you told us, when I asked you about that lawyer

[14]Kelner. There were, you testified in a case for a lawyer

[15]Kelner called the Driscoll case; right?

[16]A That's correct.

[17]Q And you're aware in that case, Conrad Berenson

[18]also testified on that case?

[19]A I don't know if he did.

[20]Q And there was another case called Taplani,

[21]where you testified for attorney Kelner; is that right?

[22]A What was the patient's last name?

[23]Q Taplani, or you were retained in the Taplani

[24]case; right?

251 A I don't recognize that name.

[1]Q A case settled sometime last year?

[2]A If it settled, if I didn't testify, I don't

[3]recognize the name.

[4]Q You also testified for attorney Kelner in a

[5]case called Spoto versus City of New York?

[6]A Was that the one with the crush injury to the

[7]foot?

[8]Q April 1999.

[9]A Is that in Staten Island?

[10]Q I don't know. Yes.

[11]A That's the one, yes.

[12]Q And in that particular case Conrad Berenson

[13]also testified; is that right? **[*62]**

[14]A How should I know, Doctor Berenson doesn't work

[15]for me. I have no idea.

[16]Q By the way, the Kovach-Anta case that we were

[17]involved in, that is another case where you said that in

[18]the future the Plaintiff was going to need a total knee

[19]replacement; correct?

[20]A That's correct. Would you like to know why I
211 said that?

[22]Q No, no.

[23]A I'm sorry.

[24]Q No, I'm asking the questions. I have a whole

[25]pile of questions here.

[1]A Okay.

[2]Q Now you said earlier that you testified for

[3]Mr. Ready 10 or 12 times, something like that?

[4]A Several times, yes.

[5]Q And in addition, I assume that there are cases

[6]that you looked at in which Mr. Ready was the layer?

[7]A May have.

[8]Q Would you estimate how many of those cases that

[9]didn't go to trial you reviewed for Mr. Ready?

[10]A No way for me to tell you. I have no idea.

[11]Q And in addition to testifying for Mr. Ready,

[12]you also testified for his law partner Michael R. Rossi on

[13]or about September 17, 1998 in Supreme Court, **[*63]** New York

[14]County, before Madam Justice Schlesinger in the case of

[15]Giannioudis versus Rosado?

[16]A Did I testify, or was that settled?

[17]Q You testified.

[18]A I don't recall that case.

[19]Q And on or about March 1, 2000, you testified

[20]for another one of Mr. Ready's law partners, Christopher

[21]P. Gladd in Supreme Court, Queens County, Supreme Court

[22]Justice Thomas, Giunta, I guess G-I-U-N-T-A versus Panda

[23]Transportation Corp.?

[24]A I remember that case.

[25]Q So the 10 or 12 is now 12 or 14 cases that you

[1]have testified for their firm?

[2]A How do you get --

[3]Q Well you said there were 10 or 12 cases you

[4]testified for Mr. Ready, and then there is two more for

[5]his law partners?

[6]A I'm talking about the whole firm, the whole

[71]firm.

[8]Q And you do an awful lot of work for the Daniel

[9]Buttafuoco firm. You have testified on 8 or 10 cases for

[10]them. They are over here in Mineola and Woodbury; right?

[11]A It is not 8 or 10 cases, it is less than 6

[12]cases.

[13]Q You were involved in Mark **[*64]** Buttafuoco versus

[14]Halfin in Supreme Court, Kings County; right? You

[15]testified in that?

[16]A That's correct.

[17]Q You testified, that was a Buttafuoco case?

[18]A Correct.

[19]Q You testified in Osieczkowski versus Schaeffer

[20]in Supreme Court, Queens County, for Mr. Buttafuoco's

[21]firm; right?

[22]A I remember the case, yes.

[23]Q You also were, would have testified for

[24]Mr. Buttafuoco's firm in a case called Holt versus Glen

[25]Oaks, which was settled about three years ago in Supreme

[1]Court, Queens County; right?

[2]A I didn't testify. I don't recognize the name.

[3]I don't remember if it was settled.

[4]Q That isn't one that -- you don't recognize the

[5]name of your patient?

[6]A Do you know how many patients I have? A lot.

[7]Q Millions?

[8]A Not millions, but a lot.

[9]Q You also testified before Judge Winick in Janet

[10]O'Brien versus Zoeller for Mr. Buttafuoco's office in '98;

[11]right?

[12]A That is correct.

[13]Q You also testified for Mr. Buttafuoco's office

[14]before Judge Cannabo **[*65]** in Queens Court, Suffolk County in

[15]Bader versus Sandra Lundell; is that correct?

[16]A That is correct.

[17]Q You also testified last year, last summer

[18]before Judge Winslow for Mr. Buttafuoco in Rubbo versus

[19]Gonias; is that right?

[20]A That is correct.

[21]Q You also testified for Mr. Buttafuoco in

[22]Supreme Court, Kings County, before Judge Schneier, in

[23]Luciano versus New York City Housing; right?

[24]A Did I testify, or did that settle? I don't

[25]recall testifying in that case.

[1]Q Well it's reported here. It was a defendant's

[2]verdict.

[3]A Did I testify, was my question.

[4]Q You would have come in. You were ready to come

[5]in and testify.

[6]A Your question is, how many times did I testify.

[7]I did not testify in that case, so your count is

[8]incorrect.

[9]Q You were ready to come in and testify in that

[10]case?

[11]A I'm ready to come in, as I'm obligated to, if I

[12]have to, yes. But I was never asked to come in.

[13]Q And you testified for the Buttafuoco firm in

[14]Usan versus Verone in Supreme **[*66]** Court, Nassau County, before

[15]Judge Palmieri in November of last year; right?

[16]A That is correct, yes.

[17]Q Five cases for the Block firm; right, Jeffrey

[18]A. Block?

[19]A Five? I don't keep count of these cases.

[20]Q You're being paid for your testimony here in

[21]court today; right?

[22]A No, sir, I'm being compensated for my time

[23]being away from my practice.

[24]Q Of thousands of patients.

[25]MR. READY: Note my objection to the

[1]comment, your Honor.

[2]THE COURT: Overruled.

[3]Q How much are you being compensated for your

[4]time here in court today?

[5]A My fee is $ 3, 000 for half a day of testimony.

[6]Q And you also charged Mr. Ready your usual fee

[7]of $ 1, 000 for speaking with him in preparation for trial;

[8]correct?

[9]A That is correct, yes, sir.

[10]Q And you also charged the Plaintiff for the

[11]consultation you had back in July, 1999; right?

[12]A For the office visit?

[13]Q For the office visit.

[14]A No, this is a Worker's Comp. I bill the

[15]Workers Comp.

[16]MR. RYAN: **[*67]** Move to strike that, your Honor.

[17]THE COURT: Stricken.

[18]Q And there is a report in your file. Did you

[19]charge the Plaintiff's attorney for preparing that form?

[20]A $ 300 for a narrative report.

[21]Q And you had Mr. Martello in your swimming pool

[22]over in your office; right?

[23]A Yes.

[24]Q How much did you charge him for that swim?

[25]A Charged him nothing for it, charged the

[1]carrier, according to New York State law.

[2]MR. RYAN: Move to strike.

[3]THE COURT: Strike. That remark is

[4]stricken.

[5]Q Now you told this Court and jury you have an

[6]office at -- did you say 15 Jericho Turnpike in Jericho?

[7]A Yes, sir.

[8]Q That is right opposite the Home Depot over

[9]here?

[10]A Yes, sir.

[11]Q And you, you do admissions at mid-Island

[12]Medicine?

[13]A Mid-Island Physical Medicine and

[14]Rehabilitation, yes, sir.

[15]Q But in addition to the Jericho location, you

[16]also have an office at 7 Gramercy Park in New York City.

[17]Isn't that right, Doctor Guy?

[18]A Yes, sir.

[19]Q And there **[*68]** you do business as Gramercy Park

[20]Physical Medicine and Rehabilitation, P.C.; is that right?

[21]A That is correct.

[22]Q You're aware that doctor Robert F. Carter is
231 and was the Plaintiff's treating orthopedic surgeon;
241 correct?
251 A Yes, sir.

[1]Q And you're aware that Doctor Carter is board

[2]certified in orthopedics for surgery; aren't you?

[3]A I assume he is. I didn't know if he was or

[4]wasn't, but let's assume that it is correct that he is.

[5]Q There is a book, a blue book that is put out

[6]every year by the state medical society regarding the

[7]qualifications of doctors. You didn't think to look up

[8]Doctor Carter?

[9]A No, a doctor doesn't look them up. Maybe an

[10]attorney looks up in that book, but not a physician.

[11]Q And it wouldn't have been important to you to

[12]know that he was board certified in orthopedic medicine?

[13]A Absolutely not. Wouldn't have changed my

[14]diagnosis or my treatment plan.

[15]Q And you're not an orthopedist; are you?

[16]A No, sir. I am not.

[17]Q And you're not board certified **[*69]** in orthopedic

[18]surgery by the board of orthopedics; are you?

[19]A Absolutely not.

[20]Q And you are not a fellow of the American

[21]Academy of Orthopedic Surgeons, as is Doctor Carter;

[22]correct?

[23]A I am not.

[24]Q Now isn't it a fact that the first time you saw

[25]Mr. Martello was on July 23, 1999?
I A Yes, sir.

[2]Q Now that is over in your office over here in

[3]Jericho?

[4]A Yes, sir.

[5]Q And when you saw him, you became aware that he

[6]had been treated by Doctor Carter for approximately five,

[7]five and-a-half years at that point?

[8]A Yes, sir.

[9]Q By the way, did anyone accompany Mr. Martello

[10]to your July 23, 1999 office visit?

[11]A I don't recall. I have no indication in my

[12]notes.

[13]Q By the way, do you know who referred

[14]Mr. Martello to you?

[15]A The patient told me a former, a patient in

[16]Doctor Carter's office.

[17]Q Do you know who it was?

[18]A Told me the patient's name was John. I don't

[19]know who the person was, no.

[20]Q On the notes, you have in your **[*70]** file a

[21]pre-printed intake sheet; right?

[22]A Yes, sir.

[23]Q I think it's hooked to the documents that are

[24]on your left.

[25]A Yes.

[1]Q Do you record in there who referred the

[2]patient?

[3]A- No.

[4]Q You told us that you received various medical

[5]records with respect to this case; right?

[6]A Yes, sir.

[7]Q Who did you receive them from?

[8]A I asked the patient who would have them. The

[9]patient told me I should contact his attorney, he would

[10]probably have most of his records.

[11]Q Can I see a copy of your letter from your

[12]office to the Plaintiff's attorney?

[13]A I don't have any such letter. It was a phone

[14]call.

[15]Q Did you make a notation any place that you gave

[16]him a call?

[17]A Don't make that notation.

[18]Q Now when the Plaintiff's attorney sent those

[19]records to you, I assume they came with a cover letter;

[20]right?

[21]A I don't know if they did or they didn't.

[22]Q Would it be fair to say that your file -- there

[23]is no cover letter that would state: **[*71]** Dear Doctor Guy,

[24]enclosed please find Nassau County Medical Center, such

[25]and such, such and such and such?

[1]A No, sir.

[2]Q You would agree with me there is no such

[3]letter?

[4]A There is no such letter.

[5]Q And is it that you never got it, you just don't

[6]have it, or you took it out of the file, or some other

[7]explanation?

[8]A No. First of all, I don't know who brought the

[9]records. I don't know if someone in Mr. Ready's office

[10]brought the records to me, or the patient brought the

[11]records. But after they were requested, they were

[12]received and reviewed.

[13]Q In the seventh line of your report, also dated

[14]July 23, 1999, you report that you reviewed records from

[15]Suffolk General Hospital. Could you pull out the Suffolk

[16]General Hospital record, first page, first paragraph?

[17]A No, no. I see -- I'm looking -- I have a lot

[18]of records here.

[19]That's Central General Hospital in Suffolk.

[20]Q That is a, just a typo; is that right?

[21]A That is correct.

[22]Q In the next line you report that you reviewed **[*72]**
[23]Doctor Barratta's records dated January 31, 1998 through

[24]May 11, 1999; correct?

[25]A Yes.

[1]Q But you didn't review any of Doctor Barratta's

[2]medical records prior to February 14, 1994; correct?

[3]A They are in there. They are in there, the

[4]records are all mixed up, but they are in there.

[5]Q You didn't, in your report you didn't say that

[6]you had them, or reviewed them; did you?

[7]A That is because when I was reading the files,

[8]the records were misplaced, but they are in here.

[9]Q I think it's clear, but we probably ought to

[10]make it a little clearer that the first time you saw this

[11]patient was July 23, 1999; correct?

[12]A Yes, sir.

[13]Q And so of course you weren't present at the

[14]arthroscopic surgery; correct?

[15]A Obviously not.

[16]Q And sometimes some doctors make videotapes of

[17]the arthroscopic surgery; correct?

[18]A That's correct.

[19]Q But you didn't see, you don't know whether

[20]Doctor Carter made a tape. But any event, if did he make

[21]a tape, you haven't seen it? **[*73]**
[22]A That is correct.

[23]Q They just hook a VCR up to a video camera;

[24]right?

[25]A Some surgeons do, yes, sir.

[1]Q Did you review the x-rays that Doctor Barratta

[2]took of Mr. Martello's knee in 1993?

[3]A I have the record in my file.

[4]Q That wasn't my question. Did you review the

[5]x-rays?

[6]A No, sir.

[7]Q Now you also told this Court and jury that you

[8]reviewed the NCMC medical records, and you had a copy of

[9]them in your file?

[10]A Yes, sir.

[11]Q And you told us earlier that they showed early

[12]osteoarthritic changes of the knee; correct?

[13]A Yes, sir.

[14]Q Now osteoarthritis doesn't occur overnight;

[15]right?

[16]A That is correct.

[17]Q And so it didn't occur in the three or four

[18]hours between the time of the accident and the time when

[19]they took the x-ray in NCMC?

[20]A No, sir.

[21]Q And you said there was a patella spur shown on

[22]the report, or reported on one of the x-rays; right?

[23]A Spur, yes.

[24]Q You called it a spicule?

[25]A **[*74]** A spur is like a spicule.
I Q Spicule?

[2]A Yes.

[3]Q And that is an accumulation of arthritic

[4]material; right?

[5]A That is correct.

[6]Q And again, that takes time to build up; right?

[7]A Yes, sir, that is correct.

[8]Q That takes months, or years to build up?

[9]A Yes.

[10]Q By the way, Mr. Martello was treated and

[11]released from the Nassau County Medical Center; right?

[12]A Yes, sir.

[13]Q In your history section of your July 23rd

[14]report, we can agree, can we not, that there is no

[15]reference to the patient telling you that he was treated

[16]by Doctor Barratta for knee complaints in the summer of

[17]1999, and that Doctor Barratta had his knee -- I'm sorry,

[18]1993 -- and at some time in the summer of 1993 he had

[19]x-rays of his knee taken?

[20]A That is correct.

[21]Q That information wasn't conveyed to you by

[22]Mr. Martello; right?

[23]A That is correct.

[24]Q And I think we have talked to Doctor Carter

about this, but history from patients are an important **[*75]**
part of a clinical examination of a patient; right?

A Yes, sir.

Q And you rely on the patient to tell you the

truth until proven otherwise; right?

A Yes, sir.

Q Now you told us that as part of the material

you received, you received the report and the underlying

films of the Bethpage MRI that was done 8 July, 1994;

correct?

A That is correct.

Q It would be a fair statement to say that on or

shortly after your July 1999 examination of Mr. Martello,

you, or any member of your facility, did not conduct any

x-rays or MRI's or CAT scans of Mr. Martello's right knee;

right?

A That is correct.

Q And it would be an equally fair statement to

say that you didn't refer him for any MRI's or x-rays or

CAT scans outside the office to some diagnostic

laboratory?

A Yes, sir, that is correct, because there was no

need.

Q You knew that you were coming to court, or

there was a real chance of coming to court to testify in

this case when you saw Mr. Martello in July, 1999; right? **[*76]**
A Yes, that holds true for any patient that I

treat for a traumatic injury.

Q In fact you already knew that the case was on

the trial calendar by the time you saw him in July of

1999?

[6]A No, I didn't know that. I'm not an attorney.

7 1 don't have that information conveyed to me.

[8]Q Now let's focus a little bit on your testimony

[9]here today.

[10]If I understand correctly, what you were

[11]telling us was that there is no way that you, your staff,

[12]any physical therapist, or Mr. Martello doing home

[13]exercises, could strengthen his quadricep muscle. Is that

[14]your testimony here today?

[15]A No, sir, that is not my testimony. You can try

[16]and strengthen the muscles to prevent further atrophy.

[17]But you're not going to undo the torn structures and the

[18]damaged structures that have been complained of earlier.

[19]Q So when you said that there was some atrophy;

[20]that atrophy of the muscle, whatever that was, the

[21]quadricep muscle that you told us about, that is something

[22]that can be reversed with exercise?

[23]A In some cases it can. But **[*77]** in five years if it

[24]hasn't improved, it is considered permanent at this time.

[25]Q Well, Doctor Carter, would you disagree with

[1]Doctor Carter that when he said on each occasion he has

[2]urged Mr. Martello to do home exercises for the purposes

[3]of, among other things, strengthening the quadricep

[4]muscles?

[5]A That is the purpose of exercises. That is one

[6]of the purposes of exercises, yes.

[7]Q And would you agree with me that Doctor

[8]Carter's note contained a number of notations where there

[9]are references to increasing strength of the quadricep

[10]muscles after physical therapy and/or after home exercise?

[11]A That is the general goal of the physical

[12]therapy, yes.

[13]Q That wasn't my question. My question was,

[14]would you agree with me that there are notes in Doctor

[15]Carter's records that say: After exercise the patient has

[16]been regaining his strength in the quadricep muscle?

[17]A With all due respect, there are a lot of notes

[18]here before me. I don't recall that particular note, or

[19]that, with that particular specificity.

[20]Q **[*78]** Well you're the person who is coming in to

[21]testify as an expert here. You don't recall that?

[22]A No.

[23]Q Now you said something that has me truly

[24]baffled. That a person who doesn't exercise a muscle,
251 three to five percent of the muscle mass per day, and

[1]after a month they lose 90 to 150 percent.

[2]How can anybody lose more than a hundred

[3]percent of anything?

[4]A If you put a patient at bed rest, completely at

[5]bed rest -- I'll give you textbooks of medicine to refer

[6]to for your information -- a muscle at rest, complete

[7]rest, without being used, loses three to five percent per

[8]day. That is a board question. It appeared on my boards.

[9]Q So how can you lose 150 percent of anything?

[10]A If you do the calculations: Three to five

[11]percent, 30 times 3, is what -- 90 percent. What is three

[12]times five, is a hundred fifty percent. I just did the

[13]calculation.

[14]Q I'm missing something. How could anyone lose

[15]more than a hundred percent?

[16]A You can refer to textbooks for your
171 edification.

[18]Q I guess I ought **[*79]** to.

[19]Now you also said that when Doctor Carter

[20]performed the arthroscopic surgery on February 17, 1995,

[21]he in some manner insulted or damaged the quadricep

[22]muscle.

[23]A Did I say he damaged the quadricep? I said the

[24]actual procedure invades normal joint integrity.

[25]Q Then I misunderstood you, and I apologize.

[1]A Okay, you're forgiven.

[2]Q I appreciate that.

[3]Doctor Carter said that it was, the arthroscope

[4]was inserted into the joint space. Now that would be a

[5]correct statement; right?

[6]A There are usually two or three portal entries.

[7]In fact, there is a chart here. I can show you where it's

[8]inserted.

[9]Q Well Doctor Carter told us that there are three

[10]entries.

[11]A Sometimes less, sometimes more.

[12]Q Now in your testimony this morning, questions

[13]from Mr. Ready, you talked about a tear of the anterior

[14]cruciate ligament?

[15]A Yes, sir.

[16]Q We can agree, can we not, that that is not

[17]mentioned in the section of your report called the

[18]"assessment;" right?

[19]A That is correct. **[*80]**
[20]Q And you would disagree, I assume, with Doctor

[21]Carter, a board certified orthopedic surgeon, when he came

[22]in and said that upon surgery he found a -- well let me

[23]back up.

[24]You told us earlier that you had read the

[25]Central General operative report; correct?

[1]A Yes, sir.

[2]Q And you studied the Central General operative

[3]report; correct?

[4]A Yes.

[5]Q And that was one of the things that you based

[6]your examination on; right?

[7]A Yes, sir.

[8]Q And you as a physician know that such records

[9]are made in close proximity to the time of the surgery;

[10]right?

[11]A Yes, sir.

[12]Q And so when the surgeon, the orthopedic surgeon

[13]told us that there was only a ten percent tear, you would

[14]have to agree with Doctor Carter, as he was the fellow who

[15]was looking right into that knee; right?

[16]A Yes, sir.

[17]Q And you would also have to agree with Doctor

[18]Carter, the board certified orthopedic surgeon, when he

[19]said that that was not a medically significant finding;

[20]correct?

[21]A **[*81]** I disagree. I can tell you why.

[22]Q Now, Doctor Carter came into this -- I want you

[23]to assume that Doctor Carter came into this courtroom and

[24]told this Court and jury yesterday that he, as a board

[25]certified orthopedic surgeon, was not recommending any

[1]future surgery for Mr. Martello. You would have to defer

[2]to his opinion as a board certified orthopedic surgeon?

[3]MR. READY: Objection to that, your Honor.

[4]I think that misstates what Doctor Carter said.

[5]THE COURT: Sustained.

[6]Q You would agree with me that if Doctor Carter

[7]did not say that with a medical, reasonable degree of

[8]medical certainty, that surgery is indicated for

[9]Mr. Martello for his right knee in the future, you would

[10]have to defer to that conclusion as a Board Certified

[11]orthopedic surgeon; correct?

[12]MR. READY: I have to object, Judge, the

[13]same basis.

[14]THE COURT: I'll allow it, if he can

[15]understand the question.
Y -i

[16]THE WITNESS: I understand the question,

[17]THE COURT: All right, answer it.

[18]A First of all, I don't believe that is what

[19]Doctor Carter said, because **[*82]** I have his records. He

[20]indicates he will need a future total knee replacement in

[21]the future.
, 22 And let's assume you're right. Let's play

[23]devil's advocate.

[24]Q No, I don't play devil's advocate. I just

[25]asked you to answer the question, yes or no.

[1]A I'm trying to.

[2]Q So if Doctor Carter disavowed --

[3]MR. READY: Your Honor, can the doctor --

[4]THE COURT: We're not playing devil's
S advocate.

[6]Are you finished answering the question?

[7]THE WITNESS: No, I'm not, Judge.

[8]A Even if Doctor Carter, even if he did say that

[9]the patient does not need repeat surgery, I know what is

[10]medically indicated. I would get a second opinion, a

[11]third opinion, a fourth opinion. And I'm sure there would

[12]be differences of opinions amongst different orthopedists,

[13]board certified.

[14]Q But as far as you're aware, Mr. Martello has

[15]not sought a second opinion from any board certified

[16]orthopedic surgeon that future knee surgery is indicated;

[17]correct?

[18]A He knows future knee surgery is indicated, but
I

[19]he has told me --

[20]Q **[*83]** That is not my question. My question is very

[21]simple: What is the name of the board certified

[22]orthopedic surgeon who has said Mr. Martello will need

[23]further knee surgery in the future?

[24]A Doctor Carter's records.

[25]Q No, that wasn't my question. You're not

[1]listening.

[2]You said you would get a second opinion from a

[3]second orthopedist. I'm asking you for the name of the

[4]second orthopedist?

[5]A I said, if Doctor Carter told him he would not

[6]need a repeat surgery, he would then go and get a second

[7]opinion. But he did tell him he will need future surgery

[8]in the future. It is in his notes.

[2]
[9]Q And are you aware that Doctor Carter came in

[10]here yesterday and disavowed that note?

[11]MR. READY: No, no, Judge.

[12]THE COURT: Sustained.

[13]MR. READY: Objection to that.

[14]THE COURT: Sustained.

[15]Q Are you aware that Doctor Carter came in here
q +" i

[16]and said, quote: I don't agree with that note.

[17]Are you aware of that statement?

[18]A No, sir, I'm not aware of that statement.

[19]Q And if Doctor Carter were not recommending **[*84]** the

[20]future knee replacement, this $ 15, 000 cost disappears;

[21]correct?

[22]A Not really, because then I would refer him to a

[23]different knee specialist.

[24]
Q You're going to get this man knee surgery if it
" 25 kills him; right?

[1]A No, sir.

[2]MR. READY: That is not really fair. Let

[3]me object to that.

[4]THE COURT: Sustained, strike it.

[5]1 don't think we're going to get to the

[6]other witness, based upon what is going on here, as

[7]far as what is going on here. You might as well call

[8]him off.

[9]MR. READY: I'll do that, Judge.
n x s., 10 Q If Doctor Carter came in here, I want you to

[11]assume that Doctor Carter came in here yesterday and

[12]testified that the patella femoral joint pain was, after
?_trE u

[13]review of the NCMC x-ray, a result of the preexisting

[14]osteoarthritis; would you agree with him?

[15]MR. READY: Note my objection to that, your

[16]Honor.

[17]THE COURT: If he can answer that question.

[18]MR. READY: I'm only objecting to the

[19]basis, the accuracy of the underlying question.
t. W1,

[20]THE COURT: Again I instruct the jury, it

[21]is **[*85]** your recollection of.what each of these witnesses

[22]testified to.
' 23 MR. READY: Thank you.

[24]THE COURT: The questions alone are not

[25]evidence. It is just what the witnesses testified

[1]to.
X

[2]And if you can answer that question, I'll

[3]allow you to answer that question.

[4]THE WITNESS: The way that question is
;? 5 phrased, I can not answer that question.

[6]Q Doctor, coming back -- you're saying, if I

[7]understand correctly, Mr. Martello is going to need knee
:3 8 surgery; right?

[9]A A knee replacement, yes, sir.

[10]Q And in order to reach that conclusion, you

[11]don't think that the sensitive test of an MRI would be the

[12]goal standard to determine what the state of

[13]Mr. Martello's knee is today?

[14]A Absolutely not. MRI only picks up soft

[15]tissues. Bone is best picked up by a simple routine

[16]x-ray.

[17]Q Could it be done with a CAT scan?

[18]A You do not do a CAT scan of a knee joint. You

[19]would be there four and-a-half hours, expose the patient

[20]to tremendous amount of needless radiation. There is no
;fi 21 reason.

[22]Q **[*86]** Now you said that Doctor Carter gave

[23]Mr. Martello injections into the knee prior to February
A 24 17, 1995?

[25]A Yes, sir, both before and after that time.

[1]MR. NUNEMAKER: I have nothing further of

[2]this witness.

[3]CROSS-EXAMINATION

[4]BY MR. RYAN:

[5]Q Doctor Guy, as I said before, going last I try
;' 6 to avoid repeating myself. But I do have to start by

[7]asking you this: Have we ever met before?

[8]A I don't think so. I don't recognize you.
;, 9 Q Too bad, I'm not as memorable, I guess.

[10]Do you recall being involved in a case last

[11]year in the Federal Court house in Uniondale involving a

[12]fellow by the name of Alphonso Burke?
"0"

[13]A Guy who lost his arm?

[14]Q Lost some fingertips?

[15]A Lost, yes, part of his fingertips, yes.

[16]Q Do you remember that case?

[17]A I do, yes.

[18]Q Do you remember I questioned you in that case?

[19]A I'm sorry, I don't remember you. But I'm sure

[20]you questioned me, and I'm sure you will question me

[21]again.
4' 22 Q I have to.

[23]A Yes, I understand.

[24]Q You were **[*87]** retained in that case by Frederick K.

[25]Brewington; correct?
y4?7aat, x? 1 A I believe it was the Plaintiff's attorney, yes,

[2]sir.

[3]Q And you had done, had other cases where you
0A,
", 4 worked on for Mr. Brewington?

A Very few, one or two other cases.

[6]Q And in the case of Mr. Burke, am I correct you

[7]never treated that man at all?

[8]A That might be true.

[9]Q You just came in to give testimony as to your
[10 review of records, and what you thought would happen to

[11]him; correct?
.

[12]A I saw the patient. I made some recommendations

[13]to him. He had a different treating physician, and I
%' 14 believe he came one or two more visits subsequent to that.

[15]And he was happy with the treatment he was getting locally

[16]where he lived.
w 17 Q Subsequent to the trial?

[18]A No, when I see a patient I take a history and I

[19]make recommendations. If the patient chooses to treat

[20]with me, they can. I can't put a rope around their neck

[21]and force them to treat with me. They do what they want.

[22]Q Well just to make it clear here. You were **[*88]**
;.K 23 retained in that case to by Mr. Brewington to render an
b

[24]opinion with regard to Mr. Burke's condition, prognosis,

[25]and diagnosis; correct?
P

[1]A I believe, my recollection is, I was asked to

[2]evaluate the patient, render an opinion as to his

[3]disability and impairment. And if the patient needs any

[4]treatment, to recommend what types of treatments he

[5]needed.
s

[6]Q So he was your patient?

[7]A Yes. Any time you make recommendations to a

[8]patient, and give medical advice, that is considered a
r 9 doctor-patient relationship.

[10]Q You had been seeing him for one time?

[11]A I did not see him for one time. I saw him more

[12]than two or three times.

[13]Q Okay, and you said you come in here and testify

[14]for your patients, and they just happened, the vast

[15]majority of times, to be the Plaintiff?

[16]A That is what the patient is. The patient is

[17]the person who gets injured. The person that gets injured

[18]is -- if they have an injury, eventually a lawsuit comes

[19]about if the two sides can't resolve the dispute amicably.

[20]Q **[*89]** I have to say, you come in here because you're

[21]paid for your time?
, 4 22 A No, sir, I'm obligated to come according to the

[23]law. I could lose my license if I don't show up when I'm

[24]requested to do so by one of my patients. The medical
., 25 boards demand that I become present.
zMh

[1]Q So you would be here if you weren't getting

[2]paid?

[3]A I have to be here. I could come under
w, 4 subpoena. I can't deny a subpoena.

[5]Q But you are paid in all the cases you testify?

[6]A Some cases I have not been paid.

[7]Q You're being paid in this case?

[8]A Yes, sir, I hope so.

[9]Q You don't know? Do you have some kind of
"" 10 agreement here, a written agreement?

[11]A Have you ever heard of attorneys violating

[12]agreements?
#n..' 13 Q Even if I did, do you have an agreement in this

[14]case?

[15]A Yes.

[16]Q Is it a written agreement?

[17]A No written agreement, a verbal agreement.

[18]Q You had prior agreements with Mr. Ready in this

[19]trial?

[20]A My standard fee is $ 3, .000 for half a day of

[21]testimony, **[*90]** $ 1, 000 for pre-trial preparation.

[22]Q And no problems with his firm; right?
y4s
?" 23 A So far one or two misunderstandings, but no

[24]problems.

[25]Q Let's just move on a second.
Alk

[1]I'm sorry?

[2]A He said: Me?

[3]And I said: No, your partner, John.

[4]Q I'm sorry, I didn't know I asked a question.

[5]Just on your background. I want to get the

[6]sequence straight. You went to school, college in Queens?

[7]A Queens College, yes, sir.

[8]Q Right over here, or over the border?
? FPd r?-, A

[9]A Flushing, yes.

[10]Q Then you left the country and went to medical

[11]school?

[12]A Yes, sir.

[13]Q And then you came back?

[14]A Yes, sir.

[15]Q After your residency?

[16]A No, after medical school you begin your

[17]residency.

[18]Q Where did you do that?

[19]A Right here in, residency in Mount Sinai.

[20]Q Now not to belabor the point, but you are not
.. 21 an orthopedist?

[22]A No, sir, I am not an orthopedic surgeon.

[23]Q Is there a specialty in the field of medicine

[24]dealing **[*91]** with arthritic conditions?

[25]A There are more than one specialty. There is

[1]rheumatology. There is physical medicine rehabilitation,

[2]and there is also orthopedics that deals with the
4, 3 rheumatologic condition.

[4]Q So you're not an orthopedist, and you're not a

[5]rheumatologist?

[6]A I am physiatrist. That deals with treating

[7]those conditions as well.

[8]Q The question is: Are you a rheumatologist; yes

[9]or no?

[10]A No, sir, I am not.

[11]Q Thank you.

[12]Now like all doctors you have to rely on what
rx 13 your patients tell you when you are treating them?

[14]A To some extent, yes, sir.

[15]Q And if they give you misinformation, that would
AIR 16 be a problem; correct?

[17]A It can be.

[18]Q And if they failed to tell you things that

[19]existed, that could be a problem?

[20]A Yes, that could be a problem.

[21]Q Do you have in your files a report or records

[22]of Doctor Barratta, the treating physician?

[23]A Yes, sir, I do.

[24]Q Could you just get them out, and I just want to

[25]see what records you **[*92]** have there?

[1]A Sure.

[2]Q Just Doctor Barratta.

[3]A Yes. If you're looking for his 1993 note, I

[4]have that too.

[5]Q Let me take a look.

[6]A There you go, I circled it for you.

[7]Q How come?

[8]A Because he made complaints of a knee problem

[9]then.

[10]Q You circled this when?

[11]A Last night when I was reviewing the notes.

[12]Q That is the first time you noticed it?

[13]A I believe so.

[14]Q Not indicated in any reports you prepared?

[15]A No, sir, it is not.

[16]Q Somebody call you up and tell you; you better

[17]take a look at these notes --

[18]A No, I can circle --

[19]Q Let me finish my question.

[20]A Okay.

.. s

[21]Q That maybe it would become a subject of today's

[22]questioning?

[23]A No, sir. I circled a lot of things in the past
;"., .'. 24 records. I can show you more things that I circled.

[25]Q So now you have circled entries going back to

[1]May of 1993, in which Doctor Barratta is treating this

[2]patient **[*93]** for pain in his right knee?

[3]A Tendinitis.

[9]
[4]Q Does that involve pain?

[5]A It can, yes.
'?. Q

[6]And an x-ray, I see you got circled down here,

[7]8/4/93, an x-ray of that knee was taken; right?

[8]A Yes, an x-ray was taken.

[9]Q Do you have that?

[10]A Yes, sir.

[11]Q You do?

[12]A I don't have the x-ray report, but I have that

[13]note that says an x-ray was taken.

[14]Q Do you have the x-ray?

[15]A No, sir.
"? 16 Q You did not review that x-ray; did you?

[17]A No, sir.

[18]Q That is not important to you; right?
r? 19 A It can be.

[20]Q Well if you didn't review it, so it is not

[21]important to you in this case?

[22]A There is no mention of it. If it was

[23]important, I'm sure Doctor Sarratta would have mentioned

[24]it, or he would have referred the patient to an orthopedic

[25]surgeon. He did the second time around.
Q

[1]It is important enough for you last night to

[2]circle your notes about this treatment and this x-ray, but

[3]is in not important enough for you to review it. Is that

, .rt 4 what **[*94]** you are telling us?

[5]A I don't have it to review. I have the most

[6]recent x-ray. If I have the results of the most recent

[7]x-ray, why would I want the note x-ray?

[8]Q Well, you're testifying about what happened to

[9]this man; correct?

[10]A That is correct.

[11]Q And you are testifying that he suffered an

[12]jury, and have given an opinion that that injury was due

[13]to a fall in '94?

[4]14 A That is correct.

[15]Q And you don't think an x-ray of his knee in '93

[16]would be important?
.' g a

[17]A No, because there was no fracture.

[18]Q Well how do you know, you never saw it?

[19]A Because Doctor Barratta mentioned here that it

[20]was tendonitis. If there was a fracture he would have
rr]

[21]referred the patient to an orthopedist, and in subsequent

[22]notes the problem would be resolved.

[23]Q And the prior arthritic condition that appeared

[24]in the '94 Nassau County medical records, that you told us

[25]about, that would have shown to some degree, would it not,

[1]on the '93 x-ray?

[2]A It may have.

[3]Q But that is not **[*95]** important?

[4]A Important to what sense; to my diagnosis and my
x 5 treatment, and my prognosis? No. Here we're dealing with

[6]a torn meniscus, and here we're dealing with an anterior

[7]cruciate tear which doesn't show up on x-ray. Here we're

[8]dealing with a Grade V chondromalacia, that which again

[9]would not show up on x-ray.

[10]So to answer your question, for that reason it

[11]would not be important to me.
v,,,. 12 Q There was no MRI taken of this man's knee

[13]before this fall?

[14]A Obviously, correct, for the obvious reasons.
]. 15 There was no medical need.

[16]Q So the only medical diagnostic test in terms of

[17]a x-ray, MRI, or anything of that nature, was the '93

[18]x-ray performed by Doctor Barratta?

[19]A That is what I have in my possession based on

[20]past medical records.

[21]Q And you're telling us, this Court and jury,

[22]that that would not have been relevant to you in deciding

[23]what the condition of this man's knee was before he fell?

[24]A I'm saying to you, I already know what his

""" 25 condition was. He had preexisting natural aging **[*96]**
[1]arthritis. I do know that based on the initial x-rays

[2]that were taken at Nassau County.

[3]So the only thing the x-ray would tell me, is

[4]what I already know. He had natural preexisting arthritis

[5]to his knee. I know that already-

[6]Q You know that without looking at it?
a" 7 A Yes.

[8]Q Now one other thing on the Nassau County.

[9]We're done with that, doctor.

[10]A Okay.

[11]Q On the Nassau County x-ray reports,

[12]Mr. Nunemaker asked you about one dealing with the knee.

[13]There is a report, is there not, dealing with

[14]Mr. Martello's pelvis, an x-ray of the pelvis as of

[15]February 1994; correct?
;' 16 A I believe I saw a report of that. Just give me

[17]a second.

[18]Q Sure.

[19]A Yes, that is correct.

[20]Q And could I just see that a second, so that we

[21]don't waste time?

[22]A It shows some mild arthritic changes.

[23]Q Where?

[24]A The right hip.

[25]Q And sir, in your opinion is that condition one

[1]that existed before this gentleman claims he had this

[2]incident?

[3]A Absolutely correct, **[*97]** osteoarthritis affects the

[4]whole body, not just one area.

[5]Q So he had it up in his right hip?

[6]A Probably both sides.

[7]Q And sir, is that in your opinion medically
r?Y 8 significant in terms of what the condition of his knee

[9]might have been prior to February 14th of '94?

[10]A Is it important? At this point, no, because he

[11]has no hip problems. No hip problems have persisted, so

[12]at this point, no. It is not relevant and/or significant.

[13]Q Weight?

[14]A I'm sorry?

[15]Q Weight -- I'm now moving to a new topic.

[16]A Yes.

[17]Q I am talking about weight.

[18]You reviewed Doctor Carter's notes; correct?

[19]A Yes, sir.

[20]Q And one of the things Doctor Carter urged

[21]Mr. Martello, was to lose weight; correct?

[22]A Yes, sir.

[23]Q Now Mr. Martello has testified that he weighed

[24]210 pounds in February of 194?

[25]A Okay.

[1]Q And he is about five-six in height?

[2]A Okay.
''' 3 Q He gains 30 pounds?

[4]A Okay.

[5]Q Is that medically significant in terms of the **[*98]**
[6]stress put upon his knee?

[7]A Yes.

[8]Q And I just want to get this straight. Was it
w i 9 your testimony that a person such as Mr. Martello, after

[10]he had this accident, can't exercise?

[11]A No, cannot exercise to the way that he should
i

[12]because of the problems he had in his right knee. He can

[13]exercise, but he can't run; he can't go on a treadmill; he

[14]can't do heavy duty weight bearing exercises with that

[15]right knee, such as going on the Stairmaster. He can't do

[16]anything that stresses his knee joint. He can do walking,

[17]mild walking.

[18]Q Walking?
'''' 19 A Yes, that is not enough to really strengthen.

[20]Q How about to lose weight?

[21]A Do you know how hard that is? You try to lose
.'.. 22 weight.

[23]Q I do it all the time.

[24]A It is not that easy. People try --

[25]Q Let me ask you, sir; could he diet?

[1]A I'm sorry?

[2]Q Diet.

[3]A My understanding is, he has been dieting.

[4]Q Now doctor, just one other side issue; pain.

[5]Is it fair to say that in the field of medicine there **[*99]** are

[6]objective and subjective complaints?

[7]A Yes, sir.

[8]Q In the case of pain, that is a subjective

[9]complaint; right?

[10]A Yes, but it has objective components as well.
V E;" 11 Q I understand. But you're not in a position to

[12]tell this Court and jury the degree of pain Mr. Martello

[13]is feeling?

[14]A No, sir, pain is subjective.

[15]Q Okay, and by the way, Mr. Martello hasn't

[16]missed a day of work since 1996; are you aware of that?

[17]A No, I don't know about if he missed days or

[18]not, but I know he has been working on a regular basis.

[19]In fact, I have that in my records: Due to financial

[20]reasons he has to continue to work.

[7]
[21]Q Right. No one is questioning that. I'm just

[22]saying, physically he has been working every day since

[23]1996.

[24]A My understanding is, he has been working. I

[25]didn't know it was every day.

[1]Q And he hasn't only been working one job, he has

[2]been working three jobs. Did you know that?

[3]A I knew two jobs, I didn't know about the third

[4]job.

[5]Q Did you know he was **[*100]** working in excess of 70

[6]hours a week?

[7]A No, I do not know that.

[8]Q And did you know that the work he was doing in

[9]all three jobs involved, at various times, physical

[10]activity?

[11]A Some jobs, yes.

[12]Q Is that degree of performance consistent with a
w 'ti o

[13]man who has a moderate disability?

[14]A Yes, many people work through their pain. Many

[15]people work through their disability injuries. We have a

[16]doctor that comes to rounds in a wheelchair. She is

[17]paralyzed from the shoulder down.

[18]Q Let me not talk about somebody else. Let's
F,. 19 talk about this man.

[20]A Yes, sir.

[21]Q Are you telling us by your definition that it
"" 22 is your opinion that a man who works 70 hours a week has a

[23]moderate disability?

[24]A According to the medical, yes. He absolutely

[25]has a disability.

[1]Q So he is disabled to 66 and two-thirds percent?

[2]A In reference to his right knee, yes.

[3]Q Everything else is okay, just his knee?

[4]A His arms work, his heart works, his lungs work,

S the other **[*101]** leg works. His right knee works, but it's

[6]damaged.

[7]Q He is able to work?

[8]A He is able to work.

[9]Q And he does work?

[10]A He does work, yes, sir.

[11]Q And your opinions regarding the future are

[12]based --.as to what is going to happen to him in the

[13]future -- are based upon a number of assumptions?

[14]A No, sir, it is based on the medical guidelines,

[15]based on my experience, and based on what happens to a

[16]joint after it gets injured, and what happens for the

[17]sequence of events: What the first x-ray showed, what the

[18]operative report showed a year later truly showed

[19]significant worsening.

[20]Q But you believe this man will work until he is

[21]60?

[22]A He can work, sure.

[23]Q He could work until he was 61, 62, or is it

[24]just 60, and it's all over?

[25]A I'm giving you a general guideline.

[1]Q Sure, he could he work until he is 65?

[2]A Doing what? The same time of work he is doing,

[3]no. Can he do work sitting monitoring TV screens, TV

[4]monitors? Yes, if he is sitting.

[5]Q Less **[*102]** strenuous work, but he can work?

[6]A Yes, sir.

[7]Q You use the word, "microfracture?"

[8]A Yes, sir.

[9]Q Where can you get that from?

[10]A On the MRI report it says that type three

[11]trabecular injury to the medial femoral condyle. That is

[12]a type of a microfracture on the condyle.

[13]Q I just want the terminology -- that thing you

[14]just read, does it say, "microfracture?"

[15]A No, that is what --

[16]16 Q I just find it interesting that Doctor Carter

[17]yesterday used the same terminology, "microfracture."

[18]Were you aware of that?
=z;, 19 A I was not, no, that is what is a stress

[20]fracture is. It is a microfracture.

[21]Q One other thing on what he told us. You

[22]reviewed the records of a physical therapist, we have a

[23]bunch of them in there?

[24]A Yes, sir.

[25]Q Do you recall Mr. Martello ever telling you

[11]that he hurt his knee in April of '94 catching it in a car

[2]door?

[3]A He didn't tell me, but I have it in the past

[4]records.
" 5 Q You saw it there?

[6]A Yes, sir.

[7]Q **[*103]** Did you ever talk to him about that?

[8]A No.

[9]Q Did you ever note that in your report?

[10]A No, sir.

[11]Q And that is in fact in those records that were

[12]given to you; correct?

[13]A Yes, sir.

[14]Q Now you don't perform arthroscopy; correct?

[15]A I do not, no, sir.

[16]Q And you have never done a knee replacement?

[17]A I have assisted on many of them, but I

[18]personally have not done them, no.

[19]MR. RYAN: Bear with me, your Honor. I'm

[20]just going over my notes.

[21]THE COURT: Okay.

[22]Q You're treating this man a physician told us

[23]about; right?

[24]A Yes, sir.

[25]Q And you know he is being treated by Doctor

[1]Carter for surgical needs?

[2]A Yes.

[3]Q Well you're involved in the same part?

[4]A I'm doing the physical therapy thing.

[5]Q You're trying to work him through this problem

[6]with his knee?

[7]A I have been, yes, that's correct. I'm trying

[8]to.

[9]Q And they have given us opinions about what he

[10]is going to need to do, and you know he needs surgery, **[*104]** and

[11]all of these things; correct?

[12]A Yes, he doesn't need surgery now.
F..'. 13 Q But you never talked to Doctor Carter about

[14]him?

[15]A There was no need.
., 16 Q In your opinion?
vYI

[17]A That's correct, it should be my opinion because

[18]I'm treating him.

[19]Q So is Doctor Carter; right?

[20]A Did he call to speak to me? No. There is no

[21]need, because if there was a need I or him would have

[22]picked up the phone and called one another.

[23]Q You didn't even -- did you know he was still

[24]under the care of Doctor Carter?

[25]A He still is.

[1]Q You knew that?

[2]A Yes-

[3]Q There is no need to coordinate these things?

[4]A No. Would you like to know why?

[5]Q I'm just asking you a question. There is no

[6]need to coordinate the physical therapy with the course of

[7]orthopedic treatment. Is that your testimony?

[8]A No. You asked me a simple question: Did you

[9]call him? And I said, no. Why? There is no need to

[10]contact him.

[11]Q Let me try to ask another simple question

[12]again. **[*105]**
[13]Is there any need to coordinate the physical

[14]therapy with the course of orthopedic care?
?h

[15]A It is being coordinated with the orthopedic

[16]care. He rendered orthopedic care. I rendered the

[17]physical medicine care.

[18]Q So you should be coordinating?

[19]A It is being coordinated through the patient. A

[20]patient tells them he is seeing me. The patient tells me

[21]he is seeing Doctor Carter. And Doctor Carter is not

[22]doing any more therapy. I'm going the therapy on him now.

[23]Q What if I told you that Mr. Martello testified

[24]yesterday in this court that he has never told Doctor

[25]Carter that you're treating him?

[1]A I can't comment on that.

[2]Q That is not good; is it? As a doctor, you just

[3]said that he should tell his doctor that he is going for

[4]physical therapy at your facility.

[5]A It should be good to tell one other physician

[6]what the patient is doing, yes. It should be good.

[7]Q It makes sense; right?

[8]A Yes.

[9]Q And he told us he never did that, because he

[10]was embarrassed. That is what his **[*106]** testimony was

[11]yesterday.

[12]A Embarrassed?

[13]Q Did you know that?

[14]A No, I did not know that.

[15]Q You saw this man for the first time July 23,

[16]1999; correct?

[17]A Yes, sir.

[18]Q And you prepared a report that same day;

[19]correct?

[20]A No, I did not prepare a report that same day.

[21]I prepared a report a few days later.

[22]If you look at my notes, this is the report I

[23]prepared that first day. It is right here, handwritten

[24]notes. I waited for records, then I prepared the report.

[25]Q Would you tell me what date is on the report

[1]you prepared?

[2]A The same date I examined him.

[3]Q So the report is dated the same date?

[4]A That's right. I transferred my history and my

[5]handwritten notes to a typed report of that date.

[6]Q Maybe I'm confused here. You prepare a report

[7]a week later, but you date it the date you saw him?

[8]A That's correct. That is the time I saw him,

[9]and that is the history I obtained.

[10]Q Well it is not just history. This has a number

[11]of things **[*107]** beyond the history.

[12]A That's correct.

[13]Q But you dated it back to the exact same day you

[14]see him?

[15]A That's correct. Because that's the time I put

[16]history, and rendered the physical exam.

[17]Q How long were you with the man that day?

[18]A Can't tell you exactly, 45 minutes to an hour,

[19]maybe less, maybe more.

[20]Q You had to take all of this information down?

[21]A That's correct.

[22]Q Did you have to review the records before or

[23]after you saw him?

[24]A The first time I saw him, I did not have the

[25]records. I got the records after I saw him. A few days

[1]later I got the records. That's when I dictated the

[2]report.

[3]Q But at the time you were physically examining

[4]him, you didn't know what the MRI showed, or what the

[5]x-ray showed?

[6]A At that point, no.

[7]Q Or what Doctor Carter said. All of these

[8]things you talked about, you didn't have?

[9]A That is correct.

[10]Q And again -- this will be my last question --

[11]you have no correspondence in your file that shows how

[12] **[*108]** these records got to you, and from what source; correct,

[13]no transmittal sheet?

[14]A I have no correspondence.

[15]Q And no request in there and correspondence as

[16]to what you were asked to do?

[17]A Verbal request by telephone.

[18]Q Nothing in writing?

[19]A No.

[20]Q No?

[21]A No, sir. No, sir.

[22]Q Thank you, sir?

[23]A You're welcome.

[24]MR. RYAN: No further questions.

[25]THE COURT: Redirect?

[1]MR. READY: Yes, I do have some redirect.

[2]REDIRECT EXAMINATION

[3]BY MR. READY:

[4]Q Doctor Guy, you were asked questions earlier

[5]about the ability of a patient to strengthen the quadricep

[6]muscle after he suffered an injury of the kind that

[7]Mr. Martello suffered.

[8]I would like you to assume for the purposes of

[9]this question that Doctor Carter places Mr. Martello a

[10]home exercise regimen. I would like you to further assume

[11]Mr. Martello generally follows that regimen when he is
.<., 12 able.

[13]Can you tell us, is that good medical practice?

[14]A That is good medical practice.

[15]MR. NUNEMAKER: Objection.

[16]Q **[*109]** And with respect to --

[17]THE COURT: The objection is overruled.

[18]MR. READY: Excuse me, Judge.

[19]THE COURT: I didn't know whether -- I

[20]thought he was standing up to make an objection. I

[21]overruled that.

[22]MR. READY: Thank you.

[23]Q With respect to a home exercise regimen, would

[24]that have any, or would it have impact on the quadricep
"" 25 muscle?

[1]A Yes, it would strengthen it, and it would

[2]prevent atrophy.

[3]Q And are there any other reasons that home

[4]exercises are recommended?

[5]A The joints get their nourishment by range of

[6]motion exercise. There is no blood supply to a joint.

[7]Any time you do range of motion ten times or more, you

[8]feed the joints, that type of joint gets fed. So it is

[9]very important that you do range of motion exercises on a

[10]daily basis.

[11]Q Now earlier in response to a question by

[12]Mr. Nunemaker, you told us that the arthritic process was

[13]one which occurred when -- it's an aging process which

[14]occurs over a period of time.

[15]A Yes, sir.

[16]Q And as the patient ages it will increase to

[17] **[*110]** some extent?

[18]A I think I answered this earlier in response to

[19]one of his questions.

[20]Q It doesn't clear up or go back. And that is

[21]not the way it works?

[22]A That is correct.

[23]Q So let's then think for a minute, and I'll ask

[24]you a question about the degree of arthritis, that mild

[25]degree that was shown in the Nassau County Medical Center

[1]records. And let's talk about the x-ray that Doctor

[2]Barratta performed.

[3]Is it medically feasible, Doctor Guy, that in

[4]the x-rays that Doctor Barratta took, that it showed an

[5]advanced arthritic condition, and that somehow it cleared

[6]up in the months that led to the x-ray that was taken at

[7]the Nassau County Medical Center?

[8]A No, sir.

[9]Q That x-ray did not have any medical

[10]significance to this case, Doctor Guy?

[11]A Not to me, not at this point.

[12]Q You were asked whether or not you had done any

[13]knee replacement surgery. You just said, no, but that you

[14]had assisted in some?

[15]A Yes, sir.

[16]Q Have you ever assisted in arthroscopic

[17]surgeries **[*111]** of the knee?

[18]A Over a hundred.

[19]Q You told us that you disagreed with Doctor

[20]Carter in connection with the medical significance of the

[21]anterior cruciate ligament tear in this particular case,

[22]but you haven't told us why.

[23]A That is correct.

[24]Q Can you tell us why?

[25]A Yes. The anterior cruciate ligament holds the

[1]patella by its fiber. So the quadricep muscle, if you

[2]have a ten percent tear when you're doing full knee

[3]extensions, the last one-third, the range of motion, you

[4]put 70 times more force on that tendon. So if you have a

[5]partial tear, and you're doing a full one-third knee

[6]extension, you will cause -- you run the risk of rupturing

[7]that tendon to a hundred percent.

[8]So it is important, especially by weight

[9]training and by resistive exercises, in fact it is very

[10]important.

[11]Q Doctor Guy, I just have one last area and he

[12]then I'll sit down.

[13]We know from looking at the Nassau County

[14]Medical Center that there was some mild arthritis in the

[15]knee. We also know, do we not, that there was some mild

[16] **[*112]** arthritis in the right hip?

[17]A Yes, sir.

[18]Q I would like you to assume, Doctor Guy, that in

[19]February of 1994 Mr. Martello got hurt and suffered the

[20]injuries we have been speaking of all day today. And I

[21]would like you to assume that there was the x-ray at the

[22]Nassau County Medical Center. And I would like you to

[23]assume all of the treatment he has had from then until now

[24]on the right knee; physical therapy, arthroscopic surgery,

[25]injections of Cortisone and Lidocaine, and the synthetic

[1]fluid you told us about. And that he has had burning and

[2]popping and buckling and locking and pain in his knee.

[3]But he has had no significant, no signs, no pain, no

[4]therapy, no notes about his right hip. Is that medically

[5]significant, Dr. Guy?

[6]MR. RYAN: I object to that. That is

[7]summation, your Honor.

[8]Q Is it medically --

[9]THE COURT: Sustained.

Q Is this medically significant in terms of when
the injuries were suffered, in knowing that in the records
which are in evidence, that there are no complaints with
respect to the right hip, where there **[*113]** would seem to be
some mild arthritis back at the time of the fall?
MR. NUNEMAKER: Multiple objection.
THE COURT: Overruled. If he understands
that question.
THE WITNESS: Yes, I understand the
question, Judge.
A As I explained earlier, the osteoarthritis in
essence affects the body as a whole. Most areas are not
symptomatic. The right hip is not the cause of his
problem. He has no symptoms there, so the x-ray just
picked up a routine natural aging osteoarthritic process.
If you take the same x-rays of his left hip, it
may show the same thing, but has no symptoms there. So it
is irrelevant.
MR. READY: No further questions.
THE COURT: All right, recross of the
doctor?
MR. NUNEMAKER: No recross, your Honor.
THE COURT: Mr. Ryan?
MR. RYAN: Yes.
RECROSS-EXAMINATION
BY MR. RYAN:
Q Doctor, do you know what the date of the last
x-rays are?
A No.
Q Do you have any in '99?

[15]A No, I took no x-rays, because there was no

[16]medical indication to take x-rays.

[17]Q But you come into this court **[*114]** without any of

[18]those x-rays currently --

[19]A I have some x-rays.

[20]Q Doctor, let me finish the question.

[21]A I'm sorry.

[22]Q And you have an opinion that this man needs

[23]surgery within a few years, and you don't have a current

[24]x-ray?

[25]A I have some x-rays. They are not current.

[1]Q You don't have a current x-ray?

[2]A I do not need a current x-ray for two reasons:

[3]I know he had previously existing arthritis. I had a

[4]record that shows worsening. And we're not contemplating

[5]doing anything. Why expose this man to increased

[6]radiation, when we're not going to do anything about that

[7]x-ray?

[8]Q Well let me ask you this then, sir: You don't

[9]have x-rays of what his knee was like before he fell, and

[10]you don't have x-rays of what his knee is now; correct?

[11]You're just relying on the x-rays taken in that gap;

[12]correct?

[13]A I'm relying on many factors.

[14]Q Are you relying -- in terms of x-rays, those

[15]are the only x-rays; yes or no?

[16]A I'm not relying only on x-rays.

[17]Q In terms **[*115]** of the x-rays you're relying on, which

[18]I believe you told us earlier was the simplest and best

[19]way to diagnose in terms of a procedure like that -- it is

[20]the best way. You said that?

[21]A Yes, sir, yes.

[22]Q The only x-rays you have -- you have none

[23]before, none after -- you're relying on the x-rays in the

[24]middle?

[25]A Again, I am not relying on x-rays. I am

[1]relying on the physical exam findings. I'm relying on an

[2]operative report, and comparison in the first x-rays.

[3]MR. RYAN: I have no further questions.

[4]MR. NUNEMAKER: May I?

[5]THE COURT: All right.

[6]RECROSS-EXAMINATION

[7]BY MR. NUNEMAKER:

[8]Q You just said you're relying on the operative

[9]report. The operative report of Doctor Carter where he

[10]said when he looked inside the knee, said that the patella

[11]femoral joint revealed no significance chondromalacia;

[12]right?

[13]A Keep reading.

[14]Q Did he say that?

[15]A That is not where it ends. It continues.

[16]Q Did he also say that there was good tracking of

[17]the patella?

[18]A That is what it says. **[*116]**

[19]Q And that is a normal finding; right?

[20]A Except that the next sentence, that is the part

[21]that is abnormal.

[22]Q And there is also indication of early

[23]arthritis; right?

[24]A Yes.

[25]Q And that is the same thing that was found in

[1]the NCMC record; right?

[2]A Yes, except for that next sentence.

[3]Q Doctor, you're not answering my question.

[4]A That is because you're trying to make me say

[5]things --

[6]MR. NUNEMAKER: Your Honor, can we have

[7]some help here? I asked a simple question, and it

[8]seems that the witness had no trouble answering

[9]Mr. Ready's questions. But he is having an enormous

[10]amount of difficulty answering my question.

[11]MR. READY: Let me object to that, Judge,

[12]because you know there is a reason for that. And I

[13]object.

[14]THE COURT: Don't go into it.

[15]The objection is overruled. Continue with

[16]the questioning.

[17]MR. NUNEMAKER: I have nothing further.

[18]THE COURT: You can redirect.

[19]MR. READY: I'm sorry, Judge.

[20]FURTHER REDIRECT EXAMINATION

[21]BY MR. READY:

[22]Q The rest of **[*117]** the sentence, Doctor Guy?

[23]A That is the important clue here.

[24]The medial joint space revealed extensive Stage

[25]V chondromalacia and early osteoarthritis of the medial

[1]femoral condyle. This was debrided and shaved with the

[2]red shaver of any loose arthritic cartilage fragments down

[3]to a smooth subchondral and thin chondral base.

[4]That was the part that was important.

[5]MR. READY: No further questions.

[6]THE COURT: Any further questions?

[7]MR. RYAN: No.

[8]THE COURT: All right, you're excused.

[9]
[10]C E R T I F I C A T I O N

[11]I hereby certify that the foregoing is a
true and accurate transcript of my stenographic

[12]notes, ONLY if an original, and not a photostatic
copy, and signed by me.

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Ellen Smith Combs, CSR

[15]Official Court Reporter

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[4]Dr. Ali Guy 2 59
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[8]FOR THE PEOPLE:

[11]-- Model of the knee 14 15

[9]12 - Notes, Dr. Guy 15

[13]- Medical records, Dr. Barratta 23

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