TRIAL TRANSCRIPT OF ALI ERAJ GUY, M.D., F.A.A.P.M.R.; 2001 Trial Trans. LEXIS 932

SUPREME COURT NEW YORK, NEW YORK COUNTY, TRIAL TERM PART SEVENTEEN

INDEX NUMBER: 122524/98

October 17, 2001

Reporter
2001 Trial Trans. LEXIS 932 *

GERTRUDE PETT, Plaintiff, - against - BETH ISRAEL MEDICAL CENTER, Defendant.

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

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Counsel

OGEN & ASSOCIATES, P.C., Attorneys for the Plaintiff, New York, New York, BY: EITAN ALEXANDER OGEN, ESQ., NATALIE SEDAGHATI, ESQ.

HAYES FINGER & WENICK, P.C., Attorneys for the Defendant, New York, New York, BY: FRANK J. WENICK,, ESQ., CARLA M. MARINO, ESQ.

ALSO PRESENT: GABRIEL GRAYSON, Sign Language Interpreter, BARRY INFELD, CSR, VICKI GLOVER, CSR.

Judges

BEFORE: HONORABLE EMILY JANE GOODMAN, Justice and a Jury

Proceedings

1 Proceedings

[2]THE COURT: Mark this, please,

[3](Note from jury marked Court's Exhibit L)

[4]THE COURT: Bring in the jurors.

[5](Whereupon, the jurors **[*2]** entered the courtroom

[6]and took their' respective seats in the jury box.)

[7]THE COURT: Good morning, everybody.

[8]First of all, I want to comment on the note

[9]that I received from the jury asking about the

[10]schedule. Whatever I say to you is always subject to

[11]some change because there are things that are not

[12]foreseeable, but let me tell you the things that I

[13]think you can count on,

[14]You can count on being here this morning,

[15]which you are here and you can count on being here

[16]this afternoon, but probably only to mid-afternoon.

[17]Tomorrow I have an idea it will be the same,

[18]that you will be here to mid-afternoon. It is

[19]beginning to look like Friday, although I said we

[20]would not be in session for the morning, it is

[21]beginning to look like we will not be in session at

[22]all on Friday and with permission of the lawyers I'll

[23]mention why because I don't want you to think that

[24]they or' their' clients are in any way causing us to

[25]delay this trial or' to inconvenience the jury, which

[26]they certainly are not,

[1]Proceedings

[2]But the things is, you know in the recent

[3]events of September, several Court Officers were lost

[4]and **[*3]** on Friday there's going to be a memorial service

[5]When I mentioned it yesterday, I thought it

[6]might be concluded by the morning, but it won't be, I

[7]don't think it will be, so I'd rather' not have you

[8]come in and then we can't proceed

[9]So assume that Friday you are off as far as

[10]this case. And I would think that on Monday we will

[11]probably have finished all the witnesses, probably

[12]There could be somebody else, but probably on Monday

[13]we'll be reaching the lawyers' summations to you and

[14]my instructions and then your deliberations, which of

[15]course are open-ended

[16]I have no idea how long the deliberations

[17]will take, that's completely a function of the jury

[18]So we're talking about going no later than the

[19]beginning of next week

[20]Does that answer your questions?

[21]We'll mark the note as a Court Exhibit

[22]Are your' ready to call a witness?

[23]MR. OGEN: Yes, I call Dr. Ali Guy.

[24]DR. ALI GUY,

[25]called as a witness by and on behalf of Plaintiff

[26]herein, having been first duly sworn, was examined and

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]testified as follows:

[3]THE WITNESS: Doctor Ali Guy, A-L-I, Guy,

[4]G-U-Y 7 Gramercy Park, **[*4]** New York, New York 10003

[5]DIRECT EXAMINATION

[6]BY MR. OGEN:

[7]Q Good morning, Dr. Guy,

[8]A Good morning

[9]Q Are you duly licensed to practice medicine and

[10]surgery in New York State?

[11]A Yes, sir, I am

[12]Q When did you receive your' license?

[13]A 1995

[14]Q And could you briefly go over your educational

[15]background

[16]A Yes,

[17]Elementary school, I went to P S 20,

[18]Flushing, New York. Junior High School I went to

[19]PS 194 I went to Bayside High School, Went to Queens

[20]College Medical school, I graduated from University of

[21]Northeast, Dominican Republic, June of 1981

[22]Afterwards I did three separate

[23]residencies I did my first residency in the field of

[24]internal medicine at Mount Sinai School of Medicine for' a

[25]period of 18 months. Then I did one year of general

[26]surgery at Cabrini Medical Center:

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]Then I did three years of physical medicine

[3]and rehabilitation at Mount Sinai Medical Center I'm the

[4]director of the department of rehab medicine at Marmonides

[5]Medical Center

[6]I'm in charge of the neuromuscular equipment

[7]clinic **[*5]** at Hospital for Joint Diseases where my duties are

[8]to examine the patients that come to the clinic and teach

[9]the residents from the NYU Medical Center,

[10]I'm also on the staff of Cabrini Medical

[11]Center,

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

[13]medicine and rehabilitation

[14]Q What does it mean to be board certified?

[15]A To be board certified in my specialty is the

[16]highest level of specialization of a degree which you can

[17]obtain. It's analogous of a Ph.D. to a layperson

[18]To become board certified in my specialty

[19]you have to have the following prerequisites You have to

[20]have training in two other specialties besides physical

[21]medicine and rehabilitation That was accomplished by

[22]internal medicine and general surgery,

[23]You have to satisfactorily complete a

[24]three-year training program in physical medicine and

[25]rehab You have to pass the yearly examination as given

[26]by the department. You have to score at least 70 percent

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]or higher

[3]Then once you finish, you have to take your

[4]boards, part one, which encompasses an eight-hour written

[5]examination which covers everything **[*6]** you have learned from

[6]beginning to the end

[7]You then have to be in private practice for

[8]a period of no less than 18 months, be sponsored by two

[9]doctors that are already board certified, preferably your

[10]former teachers

[11]You then fly to the Mayo Clinic in Minnesota

[12]where all the research and textbooks are written You

[13]then take your boards, part two, which is an oral

[14]examination It's half a day. It covers the following

[15]topics: Orthopedics, neurology, interpretations of

[16]x-rays, CAT scans, MRI and other principles of physical

[17]medicine and rehabilitation

[18]If you prove to these doctors that you are

[19]up to par, they pass you and give you a title of a

[20]Diplomate of the American Physical Medicine and

[21]Rehabilitation

[22]That title was obtained in May of 1989.

[23]Q Were you ever a chief resident in any of your

[24]training programs?

[25]A Yes, sir, I was the chief resident in physical

[26]medicine and rehabilitation for a period of six months

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]during my Mount Sinai residency

[3]Q Are you a clinical instructor at any teaching

[4]hospitals?

[5]A Yes, sir, I am I'm a clinical **[*7]** instructor at

[6]Hospital for Joint Diseases, Orthopedic Institute,

[7]Downtown Manhattan

[8]I'm also a clinical instructor' at Maimonides

[9]where I'm in charge of the department of rehab medicine,

[10]where my duties are to be in charge of all the in-patient

[11]and outpatient rehab services, provide teaching to the

[12]orthopedic residents, to prepare them for their boards on

[13]the rehab section Teach and train students from Touro

[14]College, the physical therapy students and physician

[15]assistance students. Also the medical doctors in that

[16]department

[17]Q What are the requirements to become a clinical

[18]instructor to teach?

[19]A First you have to be board certified

[20]Second, you have to pass a credentials

[21]committee. The group of doctors, a panel of doctors that

[22]review your credentials and they judge and see if your

[23]knowledge and training and your credentials are up to par

[24]Third, you have to be in good standing with

[25]the medical board

[26]Fourth, you have to have the ability to

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]teach.

[3]Q Are you a member of any medical organizations?

[4]A Yes, sir, I am

[5]I'm a diplomate **[*8]** and a fellow of the American

[6]Board of Physical Medicine and Rehabilitation. I'm a

[7]member of the New York County Medical Society and a member

[8]of the New York State Medical Society

[9]Q Can you describe for the jury briefly what the

[10]field of physical medicine and rehabilitation is

[11]A Yes

[12]This field is a medical specialty that was

[13]founded shortly after World War II by Dr. Howard Rusk,

[14]mainly the Rusk Institute at NYU is named after him.

[15]This field deals with traumatic injuries to

[16]the body covering the whole body from head to toe. We are

[17]trained in many, many different disciplines, including

[18]internal medicine, surgery, orthopedics, neurology,

[19]Our job is to restore function to an injured

[20]patient, whether it's from a slip and fall, whether it's

[21]from a sports accident or birth defect or stroke or

[22]job-related accident.

[23]Our job is to rehabilitate and bring an

[24]injured patient to the optimum letter of care to their

[25]preinjured state

[26]And we are also experts in disability and

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]impairment evaluation. In fact, that's what I do at

[3]Maimonides. I get a lot of referrals **[*9]** for disability and

[4]impairment evaluation

[5]So we have training in all those areas and

[6]we restore function to an injured patient.

[7]Q How does this field differ from the field of

[8]neurology and orthopedics?

[9]A The field of orthopedic surgery deals with mostly

[10]the surgical aspect of traumatic injuries. They usually

[11]refer the nonsurgical cases to us in most hospitals and an

[12]orthopedic surgeon deals with the bony system.

[13]We as physiatrists -- physiatrist is a

[14]doctor that practices my specialty which is physical

[15]medicine and rehabilitation.

[16]Physiatrist concentrates on the whole body

[17]from head to toe, the internal organs, the heart system,

[18]the lung system, the musculoskeletal system and the

[19]neurological system. And we try to prevent surgery if at

[20]all possible and we get most of the patients from the

[21]orthopedic surgeons after they have performed surgery for

[22]the purposes of rehabilitation and continued care.

[23]How this field differs from neurology is, a

[24]neurologist concentrates on neurological disorders of the

[25]central nervous system. We concentrate on the peripheral

[26]nervous system.

[1]Dr. Guy - **[*10]** By Plaintiff - Direct/Ogen

[2]specialty in any courts, Supreme or Federal?

[3]A Every time I've testified, yes, I have been.

[4]Q How many times have you been at least an expert

[5]in the medical field?

[6]A In my 15 year career, I would say somewhere

[7]between 110 and 125 times. It could be slightly less or

[8]slightly more.

[9]Q Have you ever been turned down as an expert in

[10]the field of medicine?

[11]A No, sir.

[12]MR. OGEN: Your Honor, I'd like to introduce

[13]this doctor as an expert witness in the field of

[14]physical medicine and rehabilitation.

[15]THE COURT: Any questions?

[16]MS MARINO: No, your Honor.

[17]THE COURT: So everybody is in agreement

[18]that you are an expert, Doctor.

[19]THE WITNESS: Thank you, Judge.

[20]MS MARINO: In rehabilitation.

[21]THE COURT: That's what we are talking

[22]about, naturally. We are not talking about something

[23]else, we are talking about this.

[24]Q Doctor, do you give lectures to various different

[25]groups?

[26]A Yes, sir, I give lectures just about every walk

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]of life. I give lectures to medical students, other

[3]doctors, nurses, **[*11]** fire fighters, police officers,

[4]attorneys.

[5]In fact, once a year' I give lecture to the

[6]entire Bar Association at Mount Sinai School of Medicine

[7]Through those lectures attorneys get continued legal

[8]education seminar' points.

[9]Q When you give lectures, do you get compensated

[10]for that?

[11]A No, I enjoy to teach I don't do it for

[12]financial gains.

[13]Q Do you do any volunteer work?

[14]A Yes.

[15]One half day a week for' the past 11 years at

[16]the Hospital for Joint Diseases I ran the neuromuscular

[17]equipment clinic I see patients with birth defects, with

[18]spinal cord injury patients and the clinic is

[19]approximately half a day, I do it on a strictly voluntary

[20]basis, I don't get paid for' this.

[21]Q Okay

[22]Do you testify mostly for' plaintiffs or

[23]defendants?

[24]A I testify mostly for my patients, I guess the

[25]legal sector designates them as plaintiffs

[26]Q What percentage of your' practice is devoted to

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]The peripheral nervous system covers the

[3]nerves and the segments to the arms and legs and the spine

[4]and the central nervous system covers **[*12]** specifically the

[5]brain and the spinal cord.

[6]And, of course, there's an a great deal of

[7]overlap between what we do and what a neurologist does.

[8]We diagnose and we treat for the neurologist. They do

[9]mostly disorders like multiple sclerosis, Parkinson's

[10]Disease, Lou Gehrig's disease, so on and so forth.

[11]So there's a great deal of similarity and

[12]overlap. They do mostly central nervous system, we do

[13]mostly spinal cord and peripheral nervous system

[14]Q You mentioned similarities and overlap.

[15]Did you get formal training in neurology,

[16]orthopedics, internal medicine, general surgery and

[17]interpretation of things like x-rays, MRIs and CAT scan

[18]films?

[19]A Yes, sir.

[20]MS. MARINO: Objection, your' Honor,

[21]THE COURT: What are you objecting to?

[22]MS, MARINO: It's leading,

[23]THE COURT: This is just going through

[24]credentials

[25]Thank you,

[26]A The answer is yes, sir.:

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]Q Do you consider yourself to be a neurologist, an

[3]orthopedist or radiologist?

[4]A No, sir' My title is physiatrist,

[5]Q And have you had experience with hip replacement?

[6]A **[*13]** I have assisted on operating on over one hundred

[7]hip replacements and I've treated thousands of patients

[8]that have had hip replacements that required

[9]rehabilitation after the procedure has been completed.

[10]Q Does your field deal with traumatic injuries and

[11]are you considered a trauma expert?

[12]A Yes, I deal with a lot of traumatic injuries.

[13]These are mostly patients that require rehabilitation

[14]Q Does your field also deal with disability and

[15]impairment evaluation?

[16]A Extensively so, yes

[17]Q And do you do any such evaluations for people,

[18]all kinds of people?

[19]A Yes, sir, I do evaluations in my hospital,

[20]Maimonides for' orthopedic surgeons, internal medicine

[21]doctors, neurologists and other specialists.

[22]Q Because you deal in the field of trauma and you

[23]are a trauma expert, are you sometimes called into Court

[24]to testify?

[25]A Yes, that is correct

[26]Q Have you ever been deemed an expert in your

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]treating patients or to teaching.?

[3]A The vast majority, 95 to 98 percent of my time is

[4]devoted to treating patients **[*14]** and teaching and when I'm at

[5]the hospital, Hospital for Joint Disease and Maimonides,

[6]as I am treating patients, I'm also teaching the residents

[7]or students that are assigned to me

[8]So I would say the vast majority

[9]Q Do you do any consultations for any other

[10]doctors?

[11]A Yes, I do consultations for just about every

[12]specialist, spine surgeons, neurosurgeons, orthopedic

[13]surgeons, neurologists, cardiologists, internal medicine

[14]doctors, chiropractors, so on and so forth

[15]Q Is that done in the hospital or outside?

[16]A Well, inside the hospital and outside the

[17]hospital

[18]Q And are you here today to render expert testimony

[19]regarding the plaintiff in this action, Gertrude Pett?

[20]A Yes, sir

[21]Q Are you being compensated for your time to appear

[22]here today?

[23]A Yes, sir

[24]Q And how much?

[25]A My fee is 3,000 for half a day of testimony,

[26]1,000 for pretrial preparation, a total of $ 4,000.

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]Q Did you cancel any of your appointments today in

[3]your medical schedule or patient schedule and spent time

[4]to prepare **[*15]** for this trial?

[5]A Yes, sir

[6]Q What did you do to prepare for this trial?

[7]A Basically review all the past medical records, go

[8]over the medical definitions of the case with you to

[9]educate you about the medical significance of her

[10]injuries

[11]Q And who --

[12]MS. MARINO: Can I have the answer read

[13]back I couldn't hear it.

[14]THE COURT: Okay

[15](Whereupon, the requested answer was read

[16]back by the Reporter)

[17]MS MARINO: Thank you.

[18]Q Who referred the patient to you?

[19]A You did.

[20]Q And what did you do when the patient came to you?

[21]A I did what I was asked to do

[22]The purpose of my evaluation was to examine

[23]her, review pertinent past medical records and render an

[24]opinion about her current disability and impairment,

[25]prognosis and future medical needs.

[26]Q Okay

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]Could you please review for us briefly the

[3]patient's history, her physical examination and your

[4]findings and what it all means.

[5]A Yes

[6]Well, the first time I saw the patient, only

[7]once, was July 2nd of this year, just a couple of months

[8]ago. **[*16]**
[9]The patient came accompanied by Marc Chanti,

[10]the interpreter. As we all know she's deaf and mute. He

[11]helped me by sign language to get the history from her

[12]The history that I obtained was the patient

[13]was 64 --

[14]MS. MARINO: Objection, your Honor --

[15]IHE COURT: I don't know what you are

[16]saying

[17]MS. MARINO: The witness is beginning to

[18]testify to what was told to him by Mr. Chanti and this

[19]is improper for a medical witness who has only seen

[20]the patient once and he's not a treating patient

[21]THE COURT: I don't know why you are

[22]testifying

[23]Okay

[24]Don't tell us what other people told you

[25]except if the doctor addresses --

[26]MR. OGEN: I'm asking about her history

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]THE COURT: Yes And if it has to do with

[3]what another doctor reported to you that affected your

[4]diagnosis or treatment

[5]Go ahead

[6]THE WITNESS: Yes, Judge

[7]History obtained was the patient was 64

[8]years of age

[9]On October 27, 1997 she went to Beth Israel

[10]Medical Center' to visit her mom who was in a coma from

[11]a stroke --

[12]MS. MARINO: Your Honor, this is hearsay

[13]MR. OGEN: Objection. It's all in the

[14] **[*17]** hospital record Everything he's saying is in the

[15]hospital record

[16]THE COURT: Thank you.

[17]Overruled.

[18]THE INTERPRETER: A little slower and

[19]louder, please

[20]THE WITNESS: Yes, sir

[21]THE COURT: We have a sign language

[22]interpreter.

[23]THE WITNESS: Yes, sir; I'm sorry, Judge

[24]Q Please continue

[25]A She went to visit her mother at Beth Israel

[26]Medical Center. Her' mother was in a coma from the

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]stroke. She slipped and fell on a wet slippery floor,

[3]landed on her right hip.

[4]She fractured the femoral neck of the light

[5]femur, required surgical intervention by way of a right

[6]hip replacement, which was performed at Beth Israel

[7]Medical Center two days later. That was performed on

[8]October 27, 1997.

[9]Subsequently --

[10]Q You mean October 29th?

[11]A I'm sorry, October 29, 1997, two days after the

fall.

Subsequently she had three other subsequent

hip dislocations which also required admissions and a

closed reduction.

When I first saw her, she complained to me

of right hip pain with being very fearful about falling

again and re-dislocating her right **[*18]** hip,

She complained to me about being fearful and

anxious in walking in uneven terrain. She was afraid to

walk outside of her house at the fear that if she falls

she could not get the attention of others to assist her,

That was basically my history and I examined

her,.

Q Okay.

Tell us why medical history is important.

Dr. Guy - By Plaintiff - Direct/Ogen

A 70 percent of a working diagnosis comes from the

history 10 percent comes from the physical exam, that's

80 percent The remainder 20 percent comes from other

diagnostic studies, such as x-rays, CAT scans, MRIs

So a doctor can make a diagnosis only just

by history alone. To give you two examples.

If a patient is an 50 year old male and

complains of chest pain and the chest pain is crushing,

subexternal, until proven otherwise, that's a heart attack

waiting to happen. You admit the patient and you do all

the tests to see if, in fact, there was a heart attack or

no heart attack

Second example. Any young patient under 45

years of age complains of right lower quadrant abdominal

[16]pain Until proven otherwise, you admit the patient to

[17] **[*19]** the hospital, you rule out on appendicitis If you don't

[18]do this, you have committed malpractice, an a departure

[19]So a history is very, very important.

[20]Q Okay

[21]Can you please explain any medical diagnosis

[22]or' terminology that you are going to need in explaining

[23]the patient's condition and please let me do if you need

[24]any demonstrative charts

[25]MS MARINO: Objection.

[26]THE COURT: You have to repeat the

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]question I had trouble hearing you

[3]MR. OGEN: Okay.

[4]Q Please explain any medical terminology that you

[5]are going to need in order' to explain the patient's

[6]condition

[7]THE COURT: Oh, no, let's wait until we get

[8]to it,

[9]MR. OGEN: Okay.

[10]Q Are you going to need any demonstrative --

[11]THE COURT: Let's wait until we get to it.

[12]A I--

[13]THE COURT: Hold it a second.

[14]Q What were your findings of Ms. Pett?

[15]A Yes.

[16]The right hip was tender to touch There

[17]was a long curvilinear' scar, that means it was curved and

[18]the range of motion of the hip was diminished. It was

[19]only two-thirds normal range of motion

[20]The muscle power' testing **[*20]** of the right hip

[21]was three grades weaker than normal It was four minus

[22]over five Normally it's five over five Next it is five

[23]minus over five Next it is four' plus over five. Next is

[24]four' or four minus over five

[25]So her' hip, there was weakness And there

[26]was a loss of sensation in the right lateral thigh and her'

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]gait was slow and antalgic. She walked with a limp

[3]Q Do you need a diagram to explain her condition

[4]further?

[5]MS. MARINO: Objection, your Honor', no

[6]foundation for this

[7]THE COURT: Is there any aid that you

[8]brought with you to assist the jury?

[9]THE WITNESS: Yes, Judge, I was going to

[10]mention my diagnosis and then use the models to

[11]explain it

[12]THE COURT: All right.

[13]Are you going to be using the light box?

[14]IHE WITNESS: Yes, Judge.

[15]Q Please explain your'diagnosis

[16]A My diagnosis was status post, means the condition

[17]after, fracture of the femoral neck, I will show you what

[18]that is by way of x-rays and by way of models

[19]Status post right hip arthroplasty on

[20]October of 1997. Status post multiple dislocations of the

[21]right hip --

[22] **[*21]** MS. MARINO: Your Honor, it appears to me

[23]the doctor is reading from a document that is not in

[24]evidence I would ask that the Court please ask the

[25]doctor --

[26]THE, COURT: Is that the hospital records you

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]are reading from?

[3]THE WITNESS: It's a summary.

[4]MR. OGEN: That is the x-ray report --

[5]THE COURT: If you need to refresh your

[6]recollection, you may refer to that.

[7]THE WITNESS: Yes.

[8]MR. OGEN: The x-ray report we provided to

[9]them in the expert disclosure

[10]THE COURT: All right.

[11]Continue.

[12]A Status post multiple dislocations of the right

[13]hip Permanent scarring to the right hip Internal

[14]derangement of the right hip Internal derangement of the

[15]lumbar spine. Status post celitis of the right leg when

[16]she was in the hospital.

[17]Rule out lumbar disk bulge versus

[18]herniation. And reactive anxiety and depression

[19]Q Do you have an opinion with a reasonable degree

[20]of medical certainty that these injuries were related to

[21]her accident on October 27, 1997?

[22]A Yes, sir, I do have an opinion

[23]Q And what is your opinion?

[24]A That the answer is yes

[25]Q **[*22]** Please tell us why

[26]A Well, the patient went to the hospital. By

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]history she never had any fractures to her right hip And

[3]I have x-rays of prior hip x-rays never showing any

[4]fractures

[5]She goes into the hospital, the hospital

[6]records confirm. She was lifted up, aided and taken for

[7]x-rays. The x-rays show a fracture of the femoral neck.

[8]She required admission. She required surgery. She had

[9]multiple dislocations of the right hip. The records again

[10]indicated, the x-rays indicated

[11]And based on the history, the physical exam,

[12]the review of past medical records, it all is confirmatory

[13]that the accident was the competent producing cause of the

[14]patients problems.

[15]Q And do you consider her injuries to be permanent?

[16]A Yes, sir, they are permanent.

[17]Q Why do you say that?

[18]A Many reasons.

[19]First of all, in the medical field, anything

[20]that lasts for more than one year is considered

[21]permanent Number one. She has permanent scarring of her

[22]right hip,

[23]Number two, she has weakness of the right

[24]hip. This is now approximately four years after So

[25] **[*23]** anything that lasts after one year is considered

[26]permanent, four years is most definitely considered

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]permanent,

[3]She still has range of motion deficits in

[4]the right hip and weak muscle power. She still walks with

[5]an altered gait, which is affecting her lower back

[6]All these problems put together confirms the

[7]causation

[8]Q And what is your prognosis for the future for

[9]Ms, Pett?

[10]A Prognosis means future outcome. She's left with

[11]a permanent partial disability. She's not totally

[12]disabled but she's permanently and partially disabled.

[13]And she's going to need future medical evaluations,

[14]expenses, treatments, physical therapy.

[15]Q And do you have an opinion with a reasonable

[16]degree of medical certainty as to whether her medical

[17]condition is subject to being exacerbated or to secure

[18]again?

[19]A Yes, sir

[20]Q What is that opinion?

[21]A First of all, laws of physics. We know that cold

[22]contracts, makes a joint stiff. Heat expands, makes a

[23]joint less stiff So the extremes of temperatures will

[24]have a role to play.

[25]Lack of proper exercise, **[*24]** lack of proper

[26]walking will cause further atrophy or loss of muscle power

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]to those muscles. And she's fearful of walking because

[3]she's afraid that she may fall again and re-dislocate the

[4]hip.

[5]So as a result she doesn't walk, she stays

[6]fearful and tries to minimize her' walking and as a result

[7]the muscles that are made weak, don't get a chance to get

[8]stronger. So it becomes a vicious cycle.

[9]And also as time goes on, the hip

[10]replacement wears out. A hip replacement average

[11]life-span is anywhere between seven years to twelve years,

[12]average about ten So every ten years she needs a new hip

[13]replacement, and a revision.

[14]And once you dislocate the hip once, the

[15]chances of repeat dislocations are very, very high,

[16]because the hip falls out of it's track. Once a toy

[17]derails, one of those toy trains and the rail is bent or

[18]it's off it's track, it can re-fall off. Same analogy.

[19]So once the hip socket, again I have the

[20]pictures I will show you, falls out of its track, the

[21]chance goes of re-dislocation is very, very high, repeat

[22]dislocations.

[23]Q Once you have had three **[*25]** repeat dislocations are

[24]the chances even higher?

[25]A Yes. Once you have multiple dislocations of

[26]three or more, the chances of further repeat dislocations

[1]Dr. Guy - By Plaintiff - Direct/Ogen

[2]can remains high.

[3]Q Did you further discuss the condition using

[4]x-rays -- withdrawn.

[5]Did you review any x-rays in preparation for

[6]today's testimony?

[7]A Yes, sir.

[8]MS. MARINO: May I see them?

[9]IHE COURT: While the lawyers are looking at

[10]these x-rays, I forgot to mention, I was just handed a

[11]note to remind me, that because there's going to be a

[12]Court program, special Court program also tomorrow.

[13]Thursday, at noon, there will be a longer lunch hour

[14]than usual. We will be breaking at 12:00 until 2:00

[15]instead of 1:00 to 2:00 and it all relates to the

[16]incident of September.

[17]MR. OGEN: With the Court's permission, may

[18]I approach the witness and show him the shadowbox?

[19]THE COURT: Yes.

[20]Q Dr. Guy, if you wouldn't mind stepping down so

[21]you can demonstrate to the jury some things,

[22](Continued on next page)

[23]
[24]
[25]
[26]
[1]Dr. Guy - by Plaintiff - direct/Ogen

[2]CONT'D DIRECT EXAMINATION

[3] **[*26]** BY MR. OGEN:

[4](X-ray film placed on shadow box.)

[5]Q Dr. Guy, is this one of the x-rays that you

[6]examined?

[7]A (Nodding.)

[8]May I begin?

[9]Q Yes, please

[10]A This is an x-ray of the patient taken in 1988,

[11]approximately nine years before this accident. This is the

[12]left hip It's designated left This is the right hip

[13]This is the femur, the long bone that goes from the leg into

[14]the hip socket. This is the head of the femur. This is the

[15]femoral neck, okay. This is the greater trochanter. This

[16]is the lesser trochanter

[17]As you can see, the neck of the femur is

[18]approximately this long (indicating) The fracture was

[19]right along this femoral neck. Once you have a fracture

along this area (indicating), along the femoral neck, on an

x-ray you see the neck missing So this is a normal x-ray,

Now I will show you the x-rays when the hip broke

(X-ray film placed on shadow box)

This is the x-ray of Gertrude Pett - her name

is here (indicating) - taken on October' 27, 1997, This is

the right side. This is the femur. This is the hip

Dr. Guy - by Plaintiff - direct/Ogen

socket This is the head **[*27]** of the femur

As can you see, there's a crack or a breakage

right along this area (indicating) This is the femoral

neck Okay?

Another film

(X-ray film placed on shadow box.)

This again is the right side. This is the

left side On the left side you can clearly see the neck

Here (indicating) the neck is sort of impacted You've lost

it And here's the fracture line (indicating)

There's two other films

Q Yeah, did you review any films that show the hip

postsurgery?

A Yes, sir

(X-ray film placed on shadow box.)

This is the hip replacement device Whenever

they do hip replacement, whether the joint is completely

worn out or you have a bad fracture, you do a hip

replacement. This is a metal object, a metal rod with a

shaft. This is the artificial metallic femoral neck right

here (indicating). This is the ball and socket

(indicating). This is the artificial or the metallic head

[24]of the femur sitting in the socket. So this is the surgical

[25]procedure that was performed on October 29, 1999

[26]MR. WENICK: '97.

[1]Dr Guy - by Plaintiff - direct/Ogen

[2]Q 1997.

[3]A I'm sorry, '97

[4](X-ray **[*28]** film placed on shadow box.)

[5]This is another view that shows how this ball

[6]and socket, it has been secured. It's secured with screws

[7]and cement As a result, over time, wear and tear, the

[8]screw loosens, the cement loosens and this can break and

[9]this ball and socket can slip out of place very easily; from

[10]a fall, from extreme range of motion. Bring your hip too

[11]high or bend the hip too far out, you can pull it out of its

[12]socket

[13]Q Thank you

[14]A Okay,

[15](Witness resumes the stand.)

[16]Q Dr. Guy, in order to explain the procedure that

[17]Miss Pett went through, would you need the assistance of a

[18]demonstrative aid?

[19]A Yes. There's a diagram that shows that procedure

[20]also.

[21]MS. MARINO: I'm going to object, your Honor,

[22]to this witness' competence to describe the procedure

[23]THE COURT: If I understood you, of course

[24]it's the jury's recollection that controls so correct

[25]me, I thought I heard you say that you had assisted in

[26]hundreds and treated thousands afterwards?

[1]Dr. Guy - by Plaintiff - direct/Ogen

[2]THE WITNESS: Yes, Judge, that is correct,

[3]THE COURT: Overruled. Overruled.

[4]Q **[*29]** I'm going to show you what has been previously

[5]marked for identification as Plaintiff's Exhibit 3. If you

[6]need to step down, please step down,

[7](Witness steps down into well of the

[8]courtroom.)

[9]Please describe for the jury the procedure.

[10]A This is the femur., This is the tibia. This is the

[11]fibula. This is the hip socket. This is the femoral neck

[12]and this is the femoral head inside the hip socket

[13](indicating).

[14]When you have a breakage of the femoral neck

[15]you cannot attach this bone with this hip socket. So you

[16]have to do something artificial. So this is the artificial

[17]means, the hip replacement.

[18]The way this procedure is done, you cut the

[19]portion off here (indicating) and you insert this metallic

[20]device. Nowadays it's made up of titanium. It's a very

[21]light metallic alloy and it lasts longer than steel. And

[22]this is the artificial or the metallic hip socket. This is

[23]the ball, this is the socket and this is the artificial or

[24]the metallic femoral neck (indicating).

[25]So by way of this device, the patient is now

[26]able to stand and ambulate and have a range of motion

[1]Dr. Guy - by Plaintiff - direct/Ogen

[2] **[*30]** significantly decreased,

[3]Q Thank you very much, Doctor

[4]One last question Does this diagram

[5]accurately depict the procedure that Miss Pett went through

[6]for her total hip replacement?

[7]A Briefly, yes

[8]MR. OGEN: I'd like for this to be admitted

[9]into evidence as Plaintiff's Exhibit 3.

[10]MS. MARINO: Objection I'm going to object.

[11]There's a lot of extraneous matter on that particular

[12]diagram. There's been no testimony that this particular

[13]prosthetic device that's indicated in that photograph --

[14]THE COURT: Is that the same one, same type?

[15]THE WITNESS: It's very similar, Judge

[16]Instead of the screws being on the bottom there, the

[17]screws are placed higher for security and stability, but

[18]it's very similar.

[19]THE COURT: Are you offering this as an aid to

[20]the jury rather than a document in evidence?

[21]MR. OGEN: Yes.

[22]THE COURT: All right. We'll treat it that

[23]way

[24]MR. OGEN: Thank you

[25](Witness resumes the stand)

[26]Q Dr. Guy, did you also review any medical records in

[1]Dr. Guy - by Plaintiff - direct/Ogen

[2]preparation of today's testimony?

[3]A Yes, sir.

[4]Q I'm going to show **[*31]** you part of what has been

[5]previously admitted into evidence as Plaintiff's Exhibit 2

[6]and Plaintiff's Exhibit 4 and ask you --

[7]MR. OGEN: May I approach, your Honor?

[8]Q -- and ask you to take a look at it and let me know

[9]if you've seen these documents before.

[10]A Yes, sir

[11]Q What do you note those documents to be?

[12]A These are the entire medical records from the Beth

[13]Israel Medical Center.

[14]Q And could you review for the jury very briefly some

[15]of the pertinent information that's in those medical

[16]records?

[17]A Yes, sir.

[18]I'm going in the order that these were kept

[19]in. There is a discharge summary from Beth Israel Medical

[20]Center dated October 31st, 1997 indicating a diagnosis:

[21]"Right femoral neck fracture."

[22]Next line is indicating what procedure was

[23]performed It states: "Right total hip arthroplasty,"

[24]Arthroplasty is another name for hip

[25]replacement That was performed on October 29, 1997.

[26]Next note indicates the brief history

[1]Dr. Guy - by Plaintiff - direct/Ogen

[2]"61-year-old deaf white female complaining of right hip

[3]pain after a fall"

[4]And the diagnosis section: **[*32]** "The x-rays reveal

[5]aright femoral neck fracture. Patient was admitted to the

[6]hospital"

[7]There's another note here. It states:

[8]"Orthopedic history."

[9]"Chief complaint: "Right hip pain status post

[10]fall."

[11]Past medical history states: "60-year-old

[12]deaf white female slipped on water" --

[13]MS. MARINO: Objection, your Honor He's

[14]reading -- this witness is reading hearsay included in

[15]medical records.

[16]THE COURT: Are these certified medical

[17]records in evidence?

[18]MR. OGEN: Yes

[19]MS MARINO: That's certainly true, your

[20]Honor, however portions regarding causation -- portions

[21]involving the causation of her alleged slip and fall are

[22]still hearsay to the extent that there's no basis for

[23]the writer to have made --

[24]THE COURT: Do you know who wrote whatever it

[25]is you're reading from?

[26]THE, WITNESS: The orthopedic residents from

[1]Dr, Guy - by Plaintiff - direct/Ogen

[2]the hospital.

[3]THE COURT: And are these things that you

[4]would have relied on in forming your opinion that you're

[5]giving us here today?

[6]THE WITNESS: Yes, Judge.

[7]THE COURT: I'll allow it

[8]Q Please continue.

[9]A As I was saying: "Patient **[*33]** slipped on water in

[10]hospital. Sustained fall Complains of right hip pain."

[11]So on and so forth

[12]Next note.

[13]MS MARINO: Your Honor, let me take a brief

[14]opportunity so that we can --

[15]THE COURT: I realize you have a cold but the

[16]reporter doesn't hear you, I don't hear you and I don't

[17]know about the jury; I don't think the interpreter can

[18]hear you,

[19]THE INTERPRETER: No, I Can't

[20]MS MARINO: May we take just a brief couple

[21]of minutes so I can see what order Dr. Guy has his

[22]records in? I'm at a distinct disadvantage in not being

[23]able to flip through the pages as easily as he is.

[24]THE COURT: Well, I'll have to ask the jury to

[25]step out, I'm sorry.

[26]Please do not discuss the case

[1]Dr. Guy - by Plaintiff - direct/Ogen

[2]MR. OGEN: He's just reading from some of the

[3]medical records in there I don't see why -- I mean,

[4]it's in the same order that they got them. That's the

[5]way the hospital sent them

[6]THE COURT: I'll give them a couple of

[7]minutes

[8]MR. OGEN: Okay.

[9](Whereupon, the jury exits the courtroom.)

[10](Recess taken.)

[11](Witness resumes the stand.)

[12]THE CLERK: Jury's entering.

[13](Whereupon, the jury enters **[*34]** the courtroom.)

[14](Sidebar conference off the record.)

[15]THE COURT: Okay. Continuing.

[16]You've had enough time to review whatever you

[17]needed to review?

[18]MS. MARINO: Your Honor, I had sufficient time

[19]to put my chart in appropriate order

[20]THE COURT: Very good Okay, okay

[21]MS MARINO: So if the Doctor could just give

[22]the dates and the name of the document he's looking at,

[23]that would be very helpful

[24]CONT'D EXAMINATION

[25]BY MR. OGEN:

[26]Q Dr. Guy, please continue.

[1]Dr. Guy - by Plaintiff - direct/Ogen

[2]A May I continue?

[3]Q Please

[4]A The next hospital note is dated October 27, 1997

[5]It states: "61-year-old female with right hip and femur

[6]pain after slipping and falling directly on to right hip."

[7]Next note: It states "Resident Note" on top.

[8]I do not see a date on this note.

[9]It states: "Called to the 7th floor to assist

[10]person falling on floor. Told that the patient slipped on

[11]the floor. Patient complains of pain in the right hip.

[12]Transferred to a long board and a gurney to the emergency

[13]room with a nurset transport."

[14]Next, I'm looking at an operative report dated

[15]October 29, 1997, It **[*35]** states the pre-op and the

[16]postoperative diagnosis being fracture of the right femoral

[17]neck

[18]"Operation: Right total hip arthroplasty,"

[19]Estimated blood loss: 250 cc's"

[20]It's about a pint of blood

[21]Next note, I'm reading the date is September

[22]30, 1998, It states: "61-year-old female complaining of a

[23]three-to-four day history of right hip pain."

[24]It states that, "Patient has had incontinence

[25]of bowel and bladder intermittently for one week,"

[26]Next note is dated -- I can't read the date.

[1]Dr. Guy - by Plaintiff - direct/Ogen

[2]The note states: "63-year-old hearing impaired female seen

[3]here twice so far. Complains of cough."

[4]Next note "63-year-old female complaining of

[5]right hip pain after falling at home today Patient was

[6]coughing a lot and sat down. Complained of right hip pain,

[7]Unable to walk Yelled 'help'".

[8]Q Is there a date on that, Dr. Guy?

[9]A The date, from all the photocopying, is missing

[10]This is in reference to her second hip dislocation. On the

[11]bottom it says: "Right hip dislocation."

[12]Next note is dated December 8, 1999, It

[13]states: "Fell at home Pain in the right hip. Was sitting

[14] **[*36]** on the floor at the scene. Could not get up,"

[15]And the next page, same date It states:

[16]"Relocation of the hip by orthopedics,"

[17]Next note again is dated December 8, 1999,

[18]"Diagnosis: Right hip dislocation,"

[19]It states: "Right posterior hip

[20]dislocation."

[21](Whereupon, Barry Infeld relieved Vicki Glover

[22]as official court reporter)

[23]
[24]
[25]
[26]
[1]Dr. Guy - By Plaintiff - Direct

[2]T3

[3]A Next note is the physical therapy notes dated

[4]11/4/97. It states the patient is getting physical

[5]therapy. She's getting transfer training, sitting

[6]training, ambulation training. She's able to walk 60 fee'

[7]twice with partial weight bearing and close contact

[8]guarding and verbal cues.

[9]Next page is dated -- has multiple dates.

[10]It shows the patient's blood count of October 31, 1997,

[11]her hemoglobin was 9.16, normally it's 12 to 16,

[12]indicating she had significant blood loss.

[13]Her hematocrit is 28.9, normally is 36 to

[14]46, again indicating she has had severe blood loss.

[15]And on subsequent dates, 11/1, 11/6, 11/2 it

[16]shows the blood count is slowly creeping up, but as of

[17]11/12/97 it's still significantly low.

[18]Next note is **[*37]** dated 10/3 1/97. It says admit

[19]through three Karpas, K-A-R-P-A-S rehab floor. It

[20]indicates the patient's medications.

[21]The patient was taking Percocet for pain, a

[22]strong narcotics as well as iron supplementation for her

[23]blood loss.

[24]Next page is a note dated 11/8/97, it's a

[25]doctor's order for pain medications, Percocet, 1 to 2

[26]tablets every four hours as needed for pain.

[1]Dr. Guy - By Plaintiff - Direct

[2]Next note is the physical therapy orthopedic

[3]assessment, the diagnosis is status post right total hip

[4]replacement after falling and slipping on a wet floor.

[5]MS MARINO: I'm sorry, was there a date on

[6]that particular note?

[7]THE COURT: What's that?

[8]MS MARINO: Was there a date on that

[9]particular document?

[10]THE COURT: I don't know what you are

[11]saying,

[12]MS MARINO: Is there a date on that

[13]document, Judge?

[14]THE COURT: You know you have the whole

[15]file. We are trying to get this doctor out of here by

[16]one o'clock, so every interruption you ask for another

[17]little thing. I gave you a recess so you could get

[18]the file in order.

[19]Please do not interrupt the proceedings

[20]where you don't really have an objection **[*38]** to make

[21]MS. MARINO: Judge, I'm sorry. I just asked

[22]that the doctor please identify the date and the

[23]document before he read it that's all.

[24]I'm sorry.

[25]THE COURT: Please carry on.

[26]A The date on the page is 10/29/97. At the top of

[1]Dr. Guy - By Plaintiff - Direct

[2]the page it states physical therapy, orthopedic

[3]assessment.

[4]Next document is the Beth Israel admitting

[5]sheet March 7, 1999. This is regarding the first hip

[6]dislocation

[7]Next is the hospital admitting and discharge

[8]summary diagnosis dated, admission date 3/7/99, discharge

[9]date 3/9/99.

[10]Principal diagnosis: Right hip

[11]dislocation. Status post right total hip arthroplasty.

[12]Surgical procedures performed, closed reduction of the

[13]right hip under conscious sedation. That means the

[14]patient was awake when they put the hip back in socket

[15]Next note is dated March 8, 1999 It states

[16]the patient is status post hip closed reduction, status

[17]post dislocation

[18]Next note is dated December 28, 2000. It

[19]states neighbor heard patient fall and fall out. Patient

[20]complaining of right hip pain. Objective exam.

[21]Shortening but no external rotation, positive **[*39]** pulse.

[22]Next note It is dated 10/17/2001. It

[23]states reduction of dislocated right hip. This is the

[24]third reduction of the right hip

[25]Q Sorry, what was the date on that?

[26]A December 28, 2000

[1]Dr. Guy - By Plaintiff - Direct

[2]Next note is dated -- again, I can't see the

[3]date It is so eligible.

[4]It states: 64 year old female tripped on

[5]the carpet and fell Hit her right hip region. No head

[6]trauma, no loss of consciousness. Patient was on the

[7]floor for half hour prior to EMS coming.

[8]Next note is dated December 28, 2000, it's

[9]the Beth Israel medication sheet. There's an order of

[10]fentanyl, 150 micrograms intravenous push Fentanyl is a

[11]very, very strong painkiller, stronger than morphine

[12]It's a synthetic morphine.

[13]Next note is a date of December 28, 2000,

[14]morphine sulfate, four milligrams, IV push slowly

[15]Morphine again is a very small painkiller.

[16]Next note, fentanyl, 100 milligrams, I very

[17]burn, that's a strong killer again

[18]Next note is a note from the orthopedic

[19]service emergency room department dated -- again, I can't

[20]read the date, it's illegible. It states dislocation of

[21]the right hip. **[*40]** Orthopedic surgery located the hip in the

[22]emergency room.

[23]Patient wearing a brace.

[24]Next note is a note dated December 28, 2000,

[25]orthopedics note It states that the patient is three

[26]years status post right total hip replacement and this is

[1]Dr. Guy - By Plaintiff - Direct

[2]the second episode of dislocation. The first one was also

[3]caused by tripping. And they performed a closed reduction

[4]of the right hip.

[5]That's basically it.

[6]Q Thank you very much.

[7]Now, having reviewed all these medical

[8]records and having reviewed the x-rays and having examined

[9]the patient yourself, do you have an opinion with a

[10]reasonable degree of medical certainty as to the effect

[11]that these injuries have had on Ms Pett's overall

[12]condition?

[13]A Yes

[14]Q What is that opinion?

[15]A Well, multiple effects on the patient's

[16]condition

[17]First, once you fall and dislocate the hip,

[18]it's very painful. And having had a prior fall and having

[19]the hip requiring surgery and now the second time it

[20]happened, you become very fearful. You question yourself,

[21]you question your strength, you question your ability, you

[22]question **[*41]** the terrain which you are walking on and it leads

[23]to reactive anxiety. The anxiety is caused by the fear of

[24]falling and re-disclocating the hip.

[25]So as a result the patient holds herself in

[26]a reflexed posture to prevent falling. That alters the

[1]Dr. Guy - By Plaintiff - Direct

[2]normal gait pattern the way a patient walks. It alters

[3]the normal biomechanics and a normal alignment of the

[4]spine and the hips.

[5]As a result, the patient walks unevenly and

[6]she also was found to have a leg discrepancy on more than

[7]one occasion. It means that the hip is rotated, so the

[8]patient is either walking unevenly or' walking with a hip

[9]rotated. This is a form of a compensatory mechanism to

[10]compensate for the problem that she has.

[11]And also the patient still has weak hip

[12]muscles. Once you cut the muscles to do surgery, the

[13]muscle fibers do not become completely reattached. They

[14]heal with permanent scarring and it heals with atrophy.

[15]Atrophy means the loss of muscle size, so

[16]you are always going to have weakness Once you have

[17]atrophy, the vast majority of patients never recuperate

[18]from that atrophy, especially once they have had two **[*42]** and

[19]three further dislocations.

[20]So once you have atrophy, once you have

[21]cutting of the muscle fibers, once you don't exercise

[22]properly, it leads to continuous loss of muscle power.

[23]Q So, Dr. Guy, let me ask you this:

[24]If someone would say that the muscle has

[25]healed completely and that her muscle power has returned

[26]to normal, would you agree or disagree with that?

[1]Dr. Guy - By Plaintiff - Direct

[2]A I would say I respectfully disagree. It makes no

[3]sense in the medical context.

[4]Q Now, having reviewed all the medical records and

[5]with your experience and background, do you have an

[6]opinion as to what is the reasonable value of the medical

[7]expenses that Ms. Pett has had to incur to date?

[8]A I had a chance to look at the hospital records

[9]and review the certified hospital bills and I did a

[10]brief --

[11]MS. MARINO: Objection.

[12]THE COURT: What is the objection?

[13]MS. MARINO: Objection with regard to

[14]foundation of the medical paying of the bills.

[15]THE COURT: We have had this discussion

[16]before the jury came in I don't know why you are

[17]returning to that. There was an agreement amongst **[*43]** all

[18]the lawyers about how that would be handled, so don't

[19]waste time.

[20]Q Continue

[21]A Yes, it was approximately $ 80,000 That does not

[22]include the doctor's office and/or' hospital visits.

[23]Q And do you have an opinion as to what types of

[24]medical treatment Ms. Pett will need in the future?

[25]A Yes, sir

[26]Q What is that opinion?

[1]Dr. Guy - By Plaintiff - Direct

[2]A Since she's left with a permanent partial

[3]disability, she will require periodic medical

supervision. She will need to see at least a physiatrist at least once per month and the proximate cost of that visit would be $ 100.

She would need to see an orthopedic surgeon at least, at least four times per year. The visit is $ 100.

Repeat annual x-rays to make sure the hip and the socket are properly aligned. That will cost approximately $ 1.50

She's going to need physical therapy for the rest of her life because as she becomes sedentary and doesn't walk around, the muscles will continue to weaken.

Minimal would be 20 to 30 physical therapy sessions per year at a cost -- $ 100 per session.

The hip replacement **[*44]** lasts approximately ten years She's going to need another hip replacement in ten years, that will cost $ 15,000 just for the hip replacement alone.

And then she will need physical therapy three times per week for the six months at a cost of $ 100 per session. I believe that cost would be something like seven to $ 8,000.

She's going to have at least one hip

Dr Guy - By Plaintiff - Direct

dislocation once every other year; at least, based on her history And the costs associated with that, with the hospital stay, x-rays, the doctors' exams and everything is approximately $ 5,000

She requires a hospital stay after each hip replacement or closed reduction It's seven to $ 800 per

[8]day per hospital stay.

[9]And periodic pain medications for pain and

[10]inflammation and transportation to and from a doctor's

[11]office, preferably by an ambulette, because she's unsafe

[12]to travel on her own in the city streets because of the

[13]fear of recurring fall and dislocations. Ambulettes

[14]charge $ 75 for each way, a round trip would be $ 150.

[15]Q And how about MRIS and x-rays?

[16]A For her lower back she needs a CAT scan **[*45]** or MRI.

[17]The proximate cost for CAT scan is $ 500. An MRI is $ 900

[18]She is also going to need an EMG for the

[19]lower back to see why she has that shooting pain down the

[20]right leg and the sensory deficit in the right lateral

[21]thigh The cost for an MRI is approximately $ 1,200

[22]Q And the medical expenses that you mentioned, that

[23]would be for the rest of her life?

[24]A That is correct.

[25]Q Thank you very much

[26]A You are welcome.

[1]Dr. Guy - By Plaintiff - Direct

[2]MS MARINO: Your Honor, may I have an

[3]opportunity to review the doctor's file?

[4]MR. OGEN: Objection.

[5]THE COURT: Are you talking about -

[6]MS. MARINO: His own file.

[7]THE COURT: Yes.

[8]MR. OGEN: May I just take a look at that

[9]file?

[10]THE COURT: I don't know why all these

[11]things don't happen at nine o'clock in the morning

[12]CROSS-EXAMINATION

[13]BY MS MARINO:

[14]Q Doctor, you testified on direct that you

[15]testified in court on prior occasions?

[16]A That's correct, ma'am.

[17]Q About how many times have you testified in court?

[18]A I believe I said approximately 110 to 120 times.

[19]It could be slightly less or slightly **[*46]** more.

[20]Q Is that within 15 years, ten years, five years?

[21]A Fifteen years.

[22]Q And on many of these court appearances you were

[23]asked by plaintiffs to testify as an expert in their

[24]behalf, is that correct?

[25]A On the patients that I treated, yes.

[26]Q Have you ever testified in a case where the

[1]Dr. Guy - By Plaintiff - Cross

[2]individual you are testifying for was not your patient?

[3]A That is correct, yes

[4]Q Okay.

[5]And approximately what percentage of the

[6]testimony that you give as an expert based on individuals

[7]who were not your' patients?

[8]A Very few. The vast majority are my patients.

[9]Q What percentage?

[10]A If I had to pick a percentage, I would say one

[11]percent, two percent, maybe less

[12]Q Do you consider Gertrude Pett a patient?

[13]A No. If she sees me again and follows my advice,

[14]then she will be a patient. She was seen once for the

[15]purpose of evaluation for disability and impairment

[16]Q Of the times that you testified in court, have

[17]there been other times that you were asked to testify but

[18]didn't have to go and testify? **[*47]**
[19]A On very rare small occasions

[20]Q So most of the testimony that you have given,

[21]which is 110 to 120 times in court over a 15 year period,

[22]that has been -- you haven't reviewed the case for the

[23]purpose of trial first?

[24]A No, no, no. Let me make the record clear

[25]The vast majority of those people who I

[26]testify for' are actual patients that I had treated for

[1]Dr. Guy - By Plaintiff - Cross

[2]numerous years or months.

[3]Q Were you contacted by plaintiff's attorney in

[4]connection with this case?

[5]A On Gertrude Pett?

[6]Q Yes.

[7]A Yes.

[8]Q Were you contacted by letter or by telephone?

[9]A By telephone.

[10]Q Do you have any notes of the conversation that

[11]you had with plaintiff's attorney?

[12]A I do not.

[13]MR. OGEN: Objection.

[14]THE COURT: You have the file there.

[15]He already said he was introduced by the

[16]patient through counsel.

[17]MS MARINO: I understand that. I want to

[18]find out if there were any notes of the conversation

[19]THE COURT: You have the file in front of

[20]you.

[21]MS MARINO: No, I gave it back to him.

[22]THE COURT: You have **[*48]** it.

[23]MS MARINO: I'll withdraw the question,

[24]your Honor.

[25]Q The file that you have in front of you right now

[26]comprises everything that you have on this case that you

[1]Dr. Guy - By Plaintiff - Cross

[2]attorney when he retained you to represent the plaintiff?

[3]MR. OGEN: Objection.

[4]THE COURT: Sustained.

[5]Q What did plaintiff's attorney tell you with

[6]regard to what you would be reviewing?

[7]MR. OGEN: Objection.

[8]THE COURT: What's the objection?

[9]MR. OGEN: Hearsay, work product.

[10]THE COURT: Well, the thing is we are not

[11]going to make you a witness here. Maybe you can amend

[12]that question.

[13]Q What, if anything, did Mr. Ogen tell you you

[14]would be examining plaintiff for?

[15]MR. OGEN: Objection.

[16]THE COURT: Did there come a time at the

[17]very beginning of your involvement with this case that

[18]you were aware that this patient had sustained a

[19]broken hip and hip replacement?

[20]THE WITNESS: Yes, Judge.

[21]Q Did Mr. Ogen tell you to evaluate this patient

[22]for anything other than hip?

[23]MR. OGEN: Objection.

[24]THE COURT: What did you understand to be

[25]the purpose of your examination?

[26]THE WITNESS; **[*49]** This was the essence of my

[1]Dr. Guy - By Plaintiff - Cross

[2]conversation with Mr. Ogen that I recall

[3]He called me, asked me if I would be

[4]interested in doing a disability and impairment

[5]evaluation on this patient, that is deaf mute that had

[6]sustained a hip fracture, that has had three

[7]dislocations and has had surgery.

[8]He wanted me for' the purpose of disability

[9]and evaluation, review her medical records and render

[10]a report

[11]Q Did you discuss payment with him at that time?

[12]A Discuss payment, no.

[13]Q When was this?

[14]A This was sometime at the end -- middle of June,

[15]end of June,

[16]Q Based upon that, did you schedule an appointment

[17]with the plaintiff?

[18]A That was done through my office. Somebody called

[19]and made an appointment and the patient came, I got the

[20]records and I made the evaluation.

[21]Q Did you get the records before you did the

[22]evaluation or after the evaluation?

[23]A The records were there when the patient was

[24]there.

[25]Q Had you had the opportunity to go through the

[26]records when you did the evaluation on the plaintiff?

[1]Dr. Guy - By **[*50]** Plaintiff - Cross

[2]relied upon in forming your opinions and giving your

[3]testimony today?

[4]A Yes.

[5]Q There are no other documents that you relied upon

[6]in connection with your testimony today?

[7]A No

[8]Q Did you at any time make any notes when you went

[9]through and digested your records?

[10]A No, I made no notes

[11]Q Did you make any personal notes or jottings when

[12]you examined Ms. Pett?

[13]A No, I dictated the report and I have the report

[14]in my possession.

[15]Q You didn't make any handwritten notes?

[16]A It was dictated simultaneously with the first

[17]evaluation.

[18]Q Okay.

[19]Doctor --

[20]THE COURT: Do you have a question?

[21]MS. MARINO: Yes, I do, your Honor.

[22]Just a moment I'm trying to go through my

[23]papers here

[24]Q Do you recall, Doctor, testifying in a case of

[25]Jennifer Davies and Eugena Kramer sometime in 1997 in the

[26]Supreme Court?

[1]Dr. Guy - By Plaintiff - Cross

[2]MR. OGEN: Objection.

[3]THE COURT: Overruled.

[4]A Yes, I do remember.

[5]Q Okay

[6]Was Ms. Davies your patient?

[7]A Yes.

[8]Q And for how long **[*51]** was she your patient?

[9]A Three years.

[10]Q Were you paid for testifying for Ms. Davies?

[11]A If you ask me if I got compensation for my time,

[12]yes. I didn't do it for free.

[13]Q How much did you charge to testify?

[14]A Same fee.

[15]Q That would be $ 3,000 -- that is a day in Court or

[16]$ 3,000?

[17]THE COURT: The way we are going now will be

[18]a week. Please, let's get this going.

[19]Q May I have an answer.

[20]A Same as today.

[21]Q $ 3,000 for half a day?

[22]A $ 3,000 for half a day.

[23]THE COURT: Which is why I'm trying to get

[24]this doctor out of here by one o'clock.

[25]Next question.

[26]Q Do you recall your conversation with plaintiff's

[1]Dr. Guy - By Plaintiff - Cross

[2]A Yes, I had some of the records, not all the

[3]records on the initial evaluation,

[4]Q Which of the records did you have?

[5]A They are right here in my possession.

[6]Q So what are the dates of the records that you

[7]have?

[8]A They are basically summaries. They are in my

[9]report, the report of July 2, 2001. Whatever I reviewed

[10]is in that report.

[11]Q **[*52]** Doctor, you testified that you rendered a report

[12]here?

[13]A Yes.

[14]Q You rendered that report concerning your

[15]examination of the plaintiff?

[16]A Yes, that's correct.

[17]Q Do you have an independent recollection of that

[18]examination without looking at your records?

[19]A I do have an independent --

[20]Q Close your file and testify from that independent

[21]recollection,

[22]A Yes.

[23]Q Who was with plaintiff when she came with her

[24]examination?

[25]A Marc Chanti. He was standing right in the back

[26]Q Where was that held?

[1]Dr. Guy - By Plaintiff - Cross

[2]A In my office at 7 Gramercy Park.

[3]Q Do you remember -- did you have an opportunity to

[4]who at a clock or watch to make a determination as to when

[5]that examination began?

[6]A No, that's not something that I normally do

[7]Q So that you wouldn't know when it ended either,

[8]is that correct?

[9]A No, that is correct.

[10]Q Did you examine her in the examining room?

[11]A Yes.

[12]Q Did you ask her to remove her clothes?

[13]A I gave her a gown and asked Mr. Chanti **[*53]** to leave.

[14]Q Mr. Chanti was not present when you did the

[15]examination?

[16]A Yes, he was.

[17]Q Okay

[18]Was he present after she put the gown back

[19]on?

[20]A Here's what happened She came in--

[21]Q No, no, I'll go step-by-step.

[22]THE COURT: In other words, was -- did she

[23]have some sort of a tie or' rope on her when he was

[24]there?

[25]THE WITNESS: She had the gown.

[26]Q The examination was done in Mr. Chanti's

[1]Dr. Guy - By Plaintiff - Cross

[2]presence?

[3]A Yes, because I needed him to communicate with the

[4]patient

[5]Q Did you have any communication via handwriting

[6]with the patient?

[7]A No,

[8]Q When was the last time you testified in any kind

[9]of Court or administrative proceedings?

[10]A Approximately three, four weeks ago, if my memory

[11]serves me correctly,

[12]Q And what was the context of that?

[13]A The context of it?

[14]Q What was the administrative tribunal, was it in

[15]the Supreme Court?

[16]MR. OGEN: Objection.

[17]THECOURT: I didn't understand the

[18]question Prior' to this case?

[19]MS, MARINO: Yes, prior to this case.

[20]Q **[*54]** When was the last time you gave testimony prior

[21]to this case?

[22]MR. OGEN: Objection.

[23]THE COURT: In some other' case?

[24]MS MARINO: Yes.

[25]MR. OGEN: He already said three, four weeks

[26]ago.

[1]Dr. Guy - By Plaintiff - Cross

[2]THE COURT: Yes.

[3]Move on.

[4]MS. MARINO: I'm just asking whether it was

[5]in Court for plaintiff -

[6]THE COURT: What difference does it make?

[7]MS MARINO: Judge, it makes a lot of

[8]difference.

[9]THE COURT: It does?

[10]MS. MARINO: Yes.

[11]Q The file you brought with you today is a total

[12]and complete file that you reviewed for Ms. Pett in

[13]connection with giving testimony today?

[14]MR. OGEN: Objection, asked and answered.

[15]THE COURT: Sustained.

[16]Ask a new question.

[17]Q In your review of those Beth Israel records, did

[18]you come across any records that relate to the 1988 hip

[19]x-ray that you displayed previously?

[20]A No.

[21]Q So there is no record that goes along with that

[22]1988 x-ray?

[23]A I did not see. If it exists, I could cannot find

[24]it, I did not see it.

[25]Q So you don't know why she was x-rayed in 1988?

[26]A That is correct, I do not know.

[1]Dr. Guy **[*55]** - By Plaintiff - Cross

[2]Q You don't know if she was x-rayed in 1988 because

[3]she had complaints of pain or any or problems in her hip?

[4]A I simply don't know.

[5]MR. OGEN: Objection, foundation.

[6]THE COURT: Sustained.

[7]Q Doctor, when you did the report, you said you did

[8]this contemporaneously with your examination?

[9]A Correct

[10]Q Were you dictating while you were examining her?

[11]A No. The way it works, I take the history and I

[12]examine the patient. I dictate it when the patient goes.

[13]Sometimes I have a lot of scrap sheets of notes, I

[14]scribble stuff on it. Once I dictate it, the scribble

[15]sheets, I get rid of it and that's it.

[16]Q You don't know if you had any scribble sheets on

[17]this?

[18]A I don't remember

[19]Q Everything that you did, which you might have put

[20]on scribble sheets, you put into this report, is that

[21]correct?

[22]A Yes. This report includes the history and my

[23]examination

[24]Q Okay

[25]Whatever findings you made were included in

[26]this report?

[1]Dr. Guy - By Plaintiff - Cross

[2]A That's right.

[3]Q The information **[*56]** given to you would be in this

[4]report as well?

[5]A Yes.

[6]Q This is a complete report?

[7]A Yes.

[8]Q And when you were preparing this report, did you

[9]prepare it knowing that Ms, Pett was involved in a

[10]personal injury action with Beth Israel Medical Center?

[11]A Yes.

[12]Q You knew there was litigation involved that you

[13]could potentially be asked to testify as a medical expert

[14]for Ms. Pett, is that correct?

[15]MR. OGEN: Objection.

[16]THE COURT: I didn't hear the question.

[17]MS MARINO: Could you read it back?

[18](Whereupon, the requested question was read

[19]back by the Reporter.)

[20]MR. OGEN: Objection, we have had this

[21]already.

[22]THE COURT: Yes, sustained, we know he was

[23]called by a lawyer.

[24](Continued on following page.)

[25]
[26]
[1]Dr. Guy - by Plaintiff - cross/Marino

[2]CONT'D CROSS-EXAMINATION

[3]BY MS. MARINO:

[4]Q What was the first thing you did in connection with

[5]your physical examination of Miss Pett? Other than take the

[6]history, the physical examination of Miss Pett?

[7]A It's right there in my notes. The first thing I

[8]did was took her vital signs; blood pressure **[*57]** --

[9]Q Doctor, I'm asking you to testify now from your

[10]independent recollection.

[11]THE COURT: Is this something you always do?

[12]THE WITNESS: Yes.

[13]THE COURT: You always take vital signs?

[14]THE WITNESS: Yes.

[15]THE COURT: So you did the same thing in this

[16]case, right?

[17]THE WITNESS: Yes.

[18]THE COURT: Next question.

[19]Q And when you checked her blood pressure and her

[20]pulse, was it normal?

[21]A Yes

[22]Q Okay, What else did you do?

[23]A I examined the areas of her chief complaint Then

[24]I did range of motion, a muscle power testing, a

[25]neurological examination, a gait analysis.

[26]THE COURT: Next question.

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]Q Is there anything else that you did?

[3]A May I be allowed to look through my notes?

[4]Q If you need to refresh your recollection, that's

[5]fine.

[6]THE COURT: All right. Tell us every single

[7]thing you did.

[8]THE WITNESS: Okay.

[9]I took her vital signs; blood pressure, pulse,

[10]respiration, I examined her head, ear, nose and

[11]throat. I examined the lungs, the heart, I examined

[12]the extremities, I examined the neck, I examined **[*58]** the

[13]back.

[14]I did a straight leg raising test, I examined

[15]the right hip, I did range of motion and muscle power

[16]testing, I checked for sensation, for reflexes and her

[17]gait. That's it.

[18]MS. MARINO: Judge, if I may, one moment.

[19]THE: COURT: What's that? I don't hear you.

[20]MS. MARINO: I'm sorry, Judge, If I may just

[21]have a moment to organize my documents This podium is

[22]very small.

[23]THE COURT: I am stressing this because I want

[24]this doctor finished by 1:00. I don't want to find out

[25]that he has to come back this afternoon

[26]Q Doctor, let's talk about the straight leg raise

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]test that you performed on plaintiff.

[3]A Okay.

[4]Q How did you perform that straight leg raise test?

[5]Was she lying down, standing up?

[6]A Lay the patient on the table and very gently and

[7]slowly lifted up the leg.

[8]Q Did you lift it yourself or did she lift it?

[9]A I lifted it myself.

[10]Q Was the leg completely straight at that time?

[11]A Yes

[12]Q It wasn't bent in any area or anything like that?

[13]A No.

[14]Q What was the significance **[*59]** of that test? Why did

[15]you perform that particular' test on her?

[16]A Because the patient complained to me of lower back

[17]pain If you have an abnormal straight leg raising test, it

[18]can be indicative of damage to the nerve roots in the lower

[19]back or the disks or a combination of both.

[20]Q Did you perform any other testing to determine

[21]whether there were any neurological problems in her back?

[22]A Yes.

[23]Q What tests did you perform?

[24]A Muscle power testing and a sensory exam and it

[25]indicated that there might be a possibility of a

[26]neurological compromise stemming from her back.

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]Q Doctor, what is a toe extensor?

[3]A A toe extensor?

[4]Q Toe extensor.

[5]A That's a muscle that controls toe extension.

[6]Q Did you do a toe extensor test?

[7]A I checked all the muscle groups. That was normal

[8]Q Does the toe extensor, fudge -- I'm so sorry

[9]Does the toe extensor, Doctor, relate to any

[10]level in the lumbar spine?

[11]A In itself alone? No. It can. If you have

[12]weakness of a toe extensor, it means there's **[*60]** nerve damage

[13]either locally or stemming from the lumbar' spine because all

[14]the nerves that go to your legs originate in the lower

[15]back.

[16]So if you ask me the question does a weakness

[17]of a toe extensor in itself indicate a pathology in the

[18]lumbar spine in itself, no. Toe extensor checks the L5

[19]and/or the L5-S1 nerve root.

[20]Q And you performed that?

[21]A That was normal, yes.

[22]Q So that would indicate that L5-S1 is normal; is

[23]that correct?

[24]A Clinically, yes

[25]Q Clinically Where are L5 and SI located?

[26]A In the lower back or in the legs.

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]Q Indicate for the jury where L.5 and SI is located in

[3]the spine

[4]THE COURT: Well, do you have some way for' him

[5]to do it? Did you bring a model of a spine for that

[6]purpose?

[7]MS. MARINO: Well, I do have a Netter book

[8]that we can use.

[9]THE COURT: I don't know what you have, but

[10]how can the doctor point it out without some

[11]demonstrative tool?

[12]Q Perhaps, Doctor, you can describe.

[13]THE COURT: Okay. Describe it.

[14]THE WITNESS: May I stand, Judge?

[15]THE COURT: Don't use yourself. **[*61]**
[16]A book won't help because it's too small The

[17]jury can't see it

[18]MS MARINO: Okay

[19]Q Doctor, you indicated that there could be some

[20]defect in the plaintiff's lumbosacral area; is that correct?

[21]A Yes.

[22]Q According to your diagnosis, you diagnosed a

[23]potential -- a possible condition in her lumbosacral spine;

[24]is that correct?

[25]A That is correct,

[26]Q What is the lumbosacral spine made up of? What

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]constitutes -- what levels constitute the lumbosacral spine?

[3]A LI through SI.

[4]Q And L5 was normal and SI was normal based upon your

[5]clinical findings; is that correct?

[6]A That is correct.

[7]Q Did you perform any knee jerk tests?

[8]A Yes.

[9]Q What were the results of your knee jerk tests?

[10]A Normal.

[11]Q And did you perform an ankle jerk test?

[12]A Yes.

[13]Q Was that normal as well?

[14]A Yes.

[15]Q Now, the ankle jerk and the knee jerk tests, these

[16]ate reflex tests; are they not?

[17]A That is correct.

[18]Q This is where you can sit a patient, **[*62]** say for the

[19]knee jerk test, on a cot or in a chair of some sort and tap

[20]the knee to see if the knee reflexes were normal; is that

[21]correct?

[22]A That's correct.

[23]Q And the ankle reflex, how did you do the ankle

[24]reflex?

[25]A You can do it two ways You can do it with the

[26]patient sitting on a chair with their legs dangling. You

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]hit the Achilles tendon and you look for the response. Or

[3]you can have the patient kneel on a chair and hit him on the

[4]Achilles, or you can have him laying down and you tap on the

[5]Achilles.

[6]Q So the knee jerk and the ankle jerk tests

[7]indicate -- don't the knee jerk and ankle jerk tests

[8]indicate that there is no pathology at L.3 and L4 and SI as

[9]well?

[10]A You're absolutely strongly mistaken. That does not

[11]rule out such pathology absence

[12]Q Is it clinically indicative of such absence?

[13]A If you don't have it or if you do have it?

[14]Q If you have a normal knee jerk and a normal ankle

[15]jerk, isn't that indicative, indicative clinical finding of

[16]a normal L.3, L4 and SI?

[17]A The answer' is no. **[*63]** You need other criteria. You

[18]need muscle power; you need sensory exam, and to confirm it

[19]you need an EMG test.

[20]You can have a perfectly normal ankle jerk and

[21]still have an L5-S1 radiculopathy. It means the fibers that

[22]were affected were the sensory fibers and not the motor

[23]fibers.

[24]You can have mixed fibers affected and you can

[25]get different clinical findings depending on which fibers

[26]are affected.

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]Q Did you perform an EMG test on Miss Pett?

[3]A I did not

[4]Q Do you have the equipment, diagnostic equipment in

[5]your office to perform an EMG test?

[6]A I do.

[7]Q But you didn't perform one on July 2nd when you saw

[8]the plaintiff? Yes or no.

[9]A I did not.

[10]Q You didn't perform it?

[11]A No.

[12]Q You just indicated that there could potentially be

[13]a problem with her lumbosacral spine. She could potentially

[14]have a radiculopathy there?

[15]A Yes, that is correct. And I indicated what had to

[16]be done for it

[17]Q You never actually made a diagnosis based on any

[18]diagnostic tests that you performed? **[*64]**
[19]A Based on a clinical assessment

[20]Q Okay, So you would -- in order to give an opinion

[21]within a reasonable degree of medical certainty, it would be

[22]useful for you, would it not, to have an EMG test?

[23]A I'm sorry?

[24]Q It would be useful for you to have an EMG test

[25]result in order to make --

[26]MR. OGEN: Objection. Lack of foundation.

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]THE COURT: Overruled.

[3]A The EMG would confirm the exact level of the injury

[4]and shed light as to the severity of the problem. You can

[5]also have a clinical diagnosis based on a history and a

[6]physical exam You don't always have to have an EMG The

[7]EMG confirms.

[8]As I indicated, 70 percent of the working

[9]diagnosis comes from the history, and 10 percent from the

[10]physical exam The remaining 20 percent is confirmed by

[11]objective diagnostic studies.

[12]So to answer your question, I don't always

[13]have to have an EMG to diagnose. The EMG confirms my

[14]diagnosis

[15]Q So Doctor, when you wrote your'report did you

[16]indicate that the diagnosis was a rule out lumbosacral

[17]radiculopathy, or did you write --

[18]A **[*65]** I wrote down rule out lumbosacral radiculopathy,

[19]yes.

[20]Q So rale out means I'm not a hundred percent sure.

[21]Might be, might not be; I need further' information?

[22]A That is correct.

[23]Q I want further information to make that

[24]determination, that diagnosis?

[25]A Clinically, that is correct.

[26]Q Within a reasonable degree of medical certainty I

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]need more information?

[3]A That is correct.

[4]Q Doctor, you never examined Miss Pett prior to the

[5]July 2nd examination that you testified to?

[6]A I did not.

[7]Q So did you have any -- did you ever have the

[8]opportunity to see her walk and to watch her gait pattern

[9]prior' to the total hip replacement?

[10]MR. OGEN: Objection.

[11]THE COURT: Well, if he didn't see her, he

[12]didn't see her' walk.

[13]You never saw her before?

[14]THE WITNESS: That is correct.

[15]Q You never saw her before. So you don't know

[16]whether' she walked quickly before or slowly before; is that

[17]correct?

[18]A That is correct

[19]Q And you don't know whether she walked in any

[20]particular way before. **[*66]** You didn't have the opportunity to

[21]observe her; is that correct?

[22]A That is correct.

[23]Q Let's go back to the straight leg raise, Doctor.

[24]Did you have any concern doing the straight leg raise of a

[25]prosthetic hip to 75 degrees?

[26]A First of all, hip flexion to 90 degrees is

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]perfectly safe. As long as you go very, very slowly, you

[3]are supporting the leg and you have your hand on the hip

[4]socket so it doesn't dislocate, it's very safe. If you

[5]don't do it slowly the way I indicated, it might be unsafe

[6]Q How many times did you raise the leg up?

[7]A Once

[8]Q Now, you indicated you checked -- you examined her

[9]for her range of motion; is that correct?

[10]A For the other joints, yes.

[11]Q Did you do it also for the hip?

[12]A Yes, I did.

[13]Q Did you do it for both hips?

[14]A I did.

[15]Q Now, when you did the range of motion for her hips,

[16]what position was her body in?

[17]A I'm sorry?

[18]Q Was she standing? Was she sitting?

[19]A She was sitting.

[20]Q And was this active range of motion **[*67]** testing or

[21]passive range of motion testing?

[22]A Passive range of motion

[23]Q Now, Doctor, you testified previously that

[24]everything in your report was correct, and this report

[25]essentially --

[26]A No, that's not what I said.

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]MR. OGEN: Objection.

[3]Q What did you testify to?

[4]MR. OGEN: Objection.

[5]THE COURT: Sustained. Sustained.,

[6]Q Did you tell me the report was complete?

[7]THE COURT: Tell you what?

[8]Q Did you testify that the report was complete?

[9]MR. OGEN: Objection.

[10]A My report -

[11]MR. OGEN: She's characterizing his testimony.

[12]THE COURT: Is your report complete?

[13]THE WITNESS: My report is complete. It has

[14]two small mistakes in it, Typo errors.

[15]Q Typographical errors?

[16]A Yes, If you'd like to know what they are, I can

[17]tell you.

[18]THE COURT: Is there anything else?

[19]MS. MARINO: Yes, of course.

[20]THE COURT: Of course?

[21]MS. MARINO: I'm sorry, yes.

[22]THE COURT: Well, let's go. It is almost

[23]1:00.

[24]Q Doctor, you recommended that plaintiff have some

[25]physical therapy at this time; is that correct? **[*68]**
[26]A Yes.

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]Q And you said she needs continuous physical therapy

[3]essentially for the rest of her life?

[4]A As needed, yes,

[5]Q Do you know if she's ever had any prior physical

[6]therapy?

[7]A From the hospital records we know she did. She was

[8]admitted to Beth Israel She had physical therapy there,

[9]yes.

[10]Q Do you know if she had physical therapy subsequent

[11]to the admission at Beth Israel Hospital?

[12]A That I'm not sure about.

[13]Q Do you know if she was given physical therapy by

[14]Visiting Nurse Service or any other agency that may have

[15]been taking care of her post --

[16]THE COURT: When?

[17]MS. MARINO: Sorry?

[18]THE COURT: When?

[19]Q -- post discharge after the total hip replacement?

[20]MR. OGEN: Objection

[21]THE COURT: What?

[22]MR. OGEN: Form

[23]THE COURT: What?

[24]MR. OGEN: Objection to the form of the

[25]question.

[26]THE COURT: Well, let's not take time to ask

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]it again.

[3]Is that something you would know?

[4]THE WITNESS: I'm not a hundred percent sure.

[5]I recall looking through the notes **[*69]** there was something

[6]from a visiting nurse going to her house. This is,

[7]again, by memory. I'm not a hundred percent sure,

[8]Q What were the notes that you were picking through,

[9]Doctor?

[10]A These, These here in front of me.

[11]THE COURT: The hospital records.

[12]Q All right, the hospital records.

[13]If there had been physical therapy notes that

[14]were post--

[15]THE COURT: Sustained.

[16]Q If there were other' medical records that would

[17]indicate that she --

[18]THE COURT: Sustained.

[19]MR. OGEN: Objection.

[20]Q In connection with forming your opinion with regard

[21]to whether or not Miss Pett needs additional physical

[22]therapy, would it be necessary for' you to review prior

[23]physical therapy records?

[24]MR. OGEN: Objection.

[25]A No, it would not be.

[26]O Would you agree that there are hip precautions that

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]are in place after' hip surgery, total hip replacement?

[3]A Yes. I believe I mentioned some of them earlier.

[4]Q What are those precautions?

[5]A You don't want to do hip flexion past 90 degrees.

[6]You want to avoid abduction past 50 **[*70]** percent range of motion.

[7]Q What is abduction?

[8]A Bringing your legs away from the body.

[9]You want to avoid abduction and you want to

[10]avoid the internal and external rotation past 50 percent

[11]normal range of motion

[12]Q Are there any particular activities or any

[13]particular positions that would be contraindicated as part

[14]of a total hip precaution?

[15]A If you're laying in bed, to crisscross your legs,

[16]that's contraindicated.

[17]Q Would sitting in a chair with your knees above your

[18]hip replacement be contraindicated?

[19]A Again, if it's under 90 degrees, no If it goes

[20]above 90 degrees, yes.

[21]Q Would crossing your legs be contraindicated,

[22]Doctor?

[23]A I believe I just mentioned, if you lay in bed and

[24]you cross your' legs, yes.

[25]Q What about while seated; is that a problem?

[26]A If you cross your legs above the knee it can be

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]contraindicated If you cross your' legs at the ankle, no,

[3]that's fine

[4]Q Doctor, you're not an orthopedic surgeon; are you?

[5]A I already said I'm not

[6]Q And you **[*71]** said you were director of Physical Medicine

[7]and Rehabilitation at Maimonides; is that correct?

[8]A Yes

[9]Q Do you supervise other physical medicine and rehab

[10]doctors, or do you have orthopedists in your service that

[11]you supervise?

[12]A I supervise the doctors in my department

[13]Q So those would be physical medicine and rehab

[14]doctors?

[15]A Yes. I also teach the other house staff.

[16]Q And you also supervise physical therapists?

[17]A While it's being performed directly, no.

[18]Q Would they be under your department?

[19]A Yes, they would be under my department.

[20]Q How about occupational therapists as well?

[21]A Yes

[22]Q Doctor, when did you perform your last hip

[23]replacement surgery?

[24]A The last time I assisted was at Hospital for Joint

[25]Diseases. That was during my training at Mt Sinai.

[26]Q And what year was that?

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]MR. OGEN: Objection, irrelevant.

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

[4]A I would say sometime in '96 or' '97.

[5]Q Would you agree, Doctor, that -- withdrawn.

[6]Do you currently **[*72]** perform any joint replacement

[7]surgery, Doctor?

[8]A I do not.

[9]Q Let's go back to your examination.

[10]THE COURT: Next question, please.

[11]MS. MARINO: It's based upon a piece of paper

[12]I've got to get my hands on.

[13]Q Doctor, do you know when Miss Pett last took a trip

[14]on public transportation?

[15]A I do not know.

[16]Q Do you know when she last took a trip outside of

[17]New York City?

[18]A I do not know

[19]THE COURT: Sustained

[20]MR. OGEN: Objection.

[21]THE COURT: These are not medical questions.

[22]Q Based upon your medical testimony and your opinion,

[23]is it unsafe for the plaintiff to be traveling on New York

[24]City streets?

[25]THE COURT: Sustained.

[26]Q Doctor, do you know when plaintiff last went food

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]shopping for herself?

[3]MR. OGEN: Objection.

[4]THE COURT: Sustained.

[5]Q Do you know -- Doctor, is it your testimony that

[6]the tests that you did for range of motion were passive as

[7]opposed to active range of motion?

[8]MR. OGEN: Objection, asked and answered --

[9]THE COURT: Sustained.

[10]MR. OGEN: -- couple of times

[11]Q **[*73]** In a passive range of motion diagnostic test, do

[12]you physically put the patient through the motions or does

[13]the patient go through the motions by herself?

[14]MR. OGEN: Objection, asked and answered.

[15]THE COURT: Sustained

[16]MS. MARINO: I didn't ask that question

[17]before.

[18]MR. OGEN: He said he lifted the leg

[19]Q Is there any participation from plaintiff -- was

[20]there any participation from plaintiff?

[21]In other words, did you ask her to lift her

[22]leg when you did the range of motion test?

[23]A When I did the range of motion for the other

[24]shoulders -- for the other joints, it was active range of

[25]motion. For the hip I did that That's passive range of

[26]motion That's with the strict percaution not to dislocate

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]the hip again, the fourth time

[3]Q Did you do the left range of motion -- left hip

[4]range of motion active or passive?

[5]MR. OGEN: Objection

[6]A Right hip was passive All the others were active

[7]Q So the left hip was active range of motion?

[8]A That is correct

[9]Q Now, when you did the muscle testing, you performed

[10]muscle testing **[*74]** on her arms; is that correct?

[11]A That is correct.

[12]Q That was normal?

[13]A Yes.

[14]Q And you performed muscle testing on her left leg

[15]and it was normal?

[16]A Yes.

[17]Q When you performed the muscle testing on her right

[18]leg, how does one perform the muscle testing, Doctor?

[19]A You ask the patient to hold the leg in place. You

[20]exert pressure on it to see if the leg gives way and you

[21]compare it with the other side.

[22]Q And you would have to ask the plaintiff or the

[23]patient to do something, right? You would have to ask her

[24]to raise her leg?

[25]A Simply resist my hand. That's all.

[26]Q So the patient could decide at what level of

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]strength she wanted to use to resist your hand?

[3]A No, I feel the resistance based on what the patient

[4]gives

[5]Q Doctor, do you know if plaintiff engages in any

[6]walking activities?

[7]MR. OGEN: Objection.

[8]THE COURT: Sustained.

[9]Q Do you know if the patient has done any walking,

[10]say, this summer?

[11]MR. OGEN: Objection.

[12]THE COURT: Sustained.

[13]Q Is plaintiff **[*75]** capable of walking outside of her

[14]house?

[15]A Yes.

[16]Q Is plaintiff capable of, say, traveling?

[17]MR. OGEN: Objection

[18]THE COURT: Sustained.

[19]Q Say plaintiff wanted to get on a bus, in your

[20]opinion could she do that?

[21]MR. OGEN: Objection.

[22]THE COURT: Can she You mean can she step up

[23]to the bus?

[24]MS MARINO: Sure.

[25]Q Is she capable to get up on the bus?

[26]THE COURT: Can she climb high steps?

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]A If they have special handicapped-accessible buses,

[3]yes. The normal steps, like Greyhound, no, that's

[4]dangerous.

[5]Q How about a New York City bus?

[6]THE COURT: He says if it has the handicapped

[7]access, yes.

[8]Q Do you know how much plaintiff weighed when you

[9]examined her on July 2nd?

[10]A I did not weigh her

[11]Q Do you know if she gained any weight in between the

[12]date of total hip replacement and the date that you examined

[13]her?

[14]A That was not discussed.

[15]Q Now, Doctor, you testified from hospital records

[16]that painkillers were given to the plaintiff while she was

[17]in the hospital?

[18]A Yes. **[*76]**

[19]Q You testified that she was given morphine; is that

[20]correct?

[21]A Yes.

[22]Q And Fentan --

[23]A Fentanyl, F-E-N-T-A-N-Y-L.

[24]Q These are powerful painkillers?

[25]A That is correct, yes.

[26]Q And the general function of a painkiller is to kill

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]pain; is that correct?

[3]A I think everybody knows what it's supposed to do.

[4]Q So it would be anticipated if somebody were taking

[5]painkillers, that they weren't feeling in pain at that

[6]particular time, correct?

[7]A It depends on the dosage and the severity of the

[8]pain.

[9]Q Did you have an opportunity to review the dosage of

[10]either of those drugs?

[11]A Yes. Morphine sulfate was 4 milligram. Fentanyl,

[12]one point was 50 micrograms and another place was 125 or

[13]150. Those are pretty strong dosages

[14]Q Doctor, did you examine plaintiff's range of motion

[15]in her back?

[16]A Yes.

[17]Q Did you find that to be normal?

[18]A That was normal, yes

[19]Q Is the only manual muscle testing that you

[20]performed on plaintiff's right leg, was it **[*77]** a flexion test in

[21]a sitting position or was there any other manual muscle

[22]testing that you performed?

[23]MR. OGEN: Objection Multiple grounds.

[24]THE COURT: Sustained.

[25]MR. OGEN: First of all, asked and answered.

[26]THE COURT: Sustained.

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]Q Other than what you just described for the jury as

[3]the manual muscle testing you performed on plaintiff's right

[4]leg, did you perform any other type of manual muscle testing

[5]on that leg?

[6]MR. OGEN: Objection.

[7]THE COURT: Sustained.

[8]Q During your examination on July 2nd, did you

[9]perform manual muscle testing in any position other than

[10]sitting?

[11]MR. OGEN: Objection.

[12]THE COURT: Sustained.

[13]MR. OGEN: He never said it was sitting

[14]THE COURT: What's that?

[15]MR. OGEN: He said she was laying down, not

[16]sitting

[17]Q Did you say she was lying down when you

[18]performed --

[19]THE COURT: He's already told us what tests he

[20]performed Have you, Doctor?

[21]THE WITNESS: Yes. Yes, I have

[22]THE COURT: Okay,

[23]Q Doctor; you didn't write those results down

[24]anywhere, did you?

[25]A It's right here in my report.

[26]MR. **[*78]** OGEN: Objection.

[1]Dr. Guy - by Plaintiff - cross/Marino

[2]Q Okay But other than -- withdrawn

[3]The number that you ascribed, 4 minus over .5,

[4]did you use any type of equipment to arrive at that number?

[5]A There is no type of equipment It's the standard

[6]manual muscle power testing which all doctors use

[7]Q And you determined that 4 minus over 5 yourself?

[8]A That is correct

[9]MR. OGEN: Objection.

[10]Q Did you recommend to Miss Pett that she come back

[11]to you for any aftercare?

[12]A I recommended to her what she needs. That's her

[13]choice. If she wants to come back to me she can. If she

[14]wants to go elsewhere, she can Or if she chooses not to

[15]have any care, that's strictly up to her.

[16]Q But as of this date, you don't have an appointment

[17]to see her in the future?

[18]A I do not,

[19]Q Doctor, you found her right hip to be diffusely

[20]tender. Can you explain what that means?

[21]A Diffuse means the whole area Tender means painful

[22]to touch.

[23]Q How did she tell you it was painful?

[24]A By facial expressions.

[25](Whereupon, Barry Infeld relieves Vicki **[*79]** Glover

[26]as official court reporter.)

[1]Dr. Guy - By Plaintiff - Cross/Marino

[2]T5

[3]CROSS EXAMINATION (CONTINUED)

[4]BY MS. MARINO:

[5]Q Does that mean the skin is tender or does that

[6]mean there is scar tissue?

[7]A There is underlying tissue.

[8]Q You indicated plaintiff's hip is weak, is that

[9]correct?

[10]A That's correct.

[11]Q You are not talking about the titanium hip

[12]replacement --

[13]A I'm talking about the muscle power.

[14]Q What if any muscles in her right hip is weak?

[15]A The entire, all the muscles. The right hip

[16]flexors, the extensors, all the muscle groups.

[17]Q Other than--

[18]THE COURT: Don't repeat the testimony.

[19]Is this your' last question?

[20]MS. MARINO: I don't know, Judge.

[21]THE COURT: How much do you have? I've been

[22]asking you for' a long time. It is now after' one.

[23]MS. MARINO: Maybe another ten minutes

[24]THE COURT: What?

[25]MS. MARINO: Maybe another' ten minutes.

[26]THE COURT: You have redirect?

[1]Dr. Guy - By Plaintiff - Cross/Marino

[2]MR. OGEN: So far no.

[3]THE COURT: All right.

[4]Can the jury sit for another ten minutes?

[5]All right.

[6]Q **[*80]** Did you perform any additional tests to isolate

[7]which muscles in her right hip were weak?

[8]A That would be contraindicated because of her

[9]condition. Her hip would re-dislocate.

[10]Q The only signs of weakness you found in her hip

[11]were from the manual muscle testing?

[12]MR. OGEN: Objection.

[13]THE COURT: Sustained.

[14]Q Did you do a positional testing, such as look for

[15]a Trendelenburg sign?

[16]THE COURT: This witness has told us every

[17]test he did.

[18]MR. OGEN: Objection.

[19]Q Do you know what the Trendelenburg test is?

[20]A I do. In this case it's contraindicated.

[21]Q What muscle groups were tested?

[22]MR. OGEN: Objection.

[23]THE COURT: Sustained.

[24]Q Thank you, Doctor.

[25]A Okay.

[26]THE COURT: What's that?

[1]Dr. Guy - By Plaintiff - Cross/Marino

[2]MS MARINO: I said thank you, Doctor.

[3]THE COURT: You have no questions?

[4]MS MARINO: No, Judge.

[5]MR. OGEN: No redirect.

[6]THE COURT: Thank you.

[7]Have a nice lunch.

[8]We will resume at 2:15.

[9]Thank you, Doctor.

[10]THE WITNESS: Yes.

[11](Witness excused.)

[12](LUNCHEON RECESS)

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[1] **[*81]** Dr. Guy - By Plaintiff - Cross/Marino

[2]
[3]AFTERNOON SESSION

[4]
[5]TRIAL CONTINUED

[6]
[7]THE COURT: Bring in the jurors.

[8](Whereupon, the jurors entered the courtroom

[9]and took their respective seats in the jury box.)

[10]MR. OGEN: I call Ramon Cardona.

[11]THE COURT: What's the problem?

[12]MR. WENICK: I thought you said we should do

[13]the witness that requires the interpreter.

[14]MR. OGEN: I'll call Mr. Ramon Cardona

[15]RAMON CARDONA,

[16]called as a witness by and on behalf of Plaintiff

[17]herein, having been first duly sworn, was examined and

[18]testified through the Official Spanish Interpreter, as

[19]follows:

[20]THE COURT: Ramon, R-A-M-O-N, C-A-R-D-O-N-A,

[21]143 Flushing Avenue, Flushing, New York

[22]THE COURT: Is that Queens?

[23]THE WITNESS: Yes,

[24]DIRECT EXAMINATION

[25]BY MR. OGEN:

[26]Q Good afternoon, Mr. Cardona

[1]Cardona - By Plaintiff - Direct/Ogen

[2]THE COURT: You have to really speak up

[3]because we also have a sign interpreter and he has to

[4]be able to hear you after you translate from Spanish

[5]to English.

[6]THE INTERPRETER: Understood, your Honor.

[7]THE COURT: Thank you

[8]Q Who are you employed by?

[9]A Beth Israel **[*82]** Medical Center.

[10]Q And how long have you been employed at Beth

[11]Israel?

[12]THE COURT: Louder.

[13]A Four or five years.

[14]Q And when did you begin working there, month and

[15]year?

[16]A 1997, May,

[17]Q What is your position presently at Beth Israel?

[18]A Housekeeping.

[19]Q You have been employed as a housekeeper from the

[20]time you started working there?

[21]A Yes, still doing that.

[22]Q Now, are you aware of an accident that occurred

[23]at Beth Israel on October 27, 1997?

[24]A Yes,

[25]Q Do you know where the accident took place?

[26]A On the seventh floor

[1]Cardona - By Plaintiff - Direct/Ogen

[2]Q Were you on duty on October 27, 1997 on the

[3]seventh floor of Beth Israel?

[4]A Yes.

[5]Q And when did you begin work that day?

[6]A At seven o'clock in the morning.

[7]Q And were you mopping the floor on that morning?

[8]A As usual, I always mop the floor.

[9]Q And during what hours do you usually mop the

[10]floor there?

[11]A I start cleaning the floor at seven o'clock.

[12]Q At that time, in October of **[*83]** '97 did you have a

[13]custom and practice of which hours you would be mopping

[14]the seventh floor of Beth Israel?

[15]A That's the schedule. I start working, I start

[16]cleaning the floor around 7:00, 7:30 every day,

[17]Q Okay,

[18]Mr. Cardona, do you remember taking a

[19]deposition on January 17, 2001.

[20]THE INTERPRETER: Counsel, can you please

[21]repeat the date.

[22]Q January 17, 2001.

[23]THE COURT: All right

[24]Do you remember going to a lawyer's office

[25]and answering questions about this accident?

[26]THE WITNESS: Yes

[1]Cardona - By Plaintiff - Direct/Ogen

[2]Q And do you remember Ms. Marino being present at

[3]that deposition?

[4]A Yes

[5]Q Do you remember being asked -- being sworn to

[6]tell the truth in that deposition?

[7]A Yes.

[8]Q I'm going to ask you some questions from that

[9]deposition.

[10]Withdrawn

[11]I'm going to read to you some questions and

[12]answers from that deposition and ask you if that refreshes

[13]your recollection as to what was your custom and practice

[14]for when you would be mopping the floor.

[15]THE COURT: Sustained.

[16]He's going to ask you some questions, read

[17] **[*84]** to you some questions and answers from the date that

[18]you went to the lawyer's office.

[19]Q I'm reading from page 38 line -- starting at line

[20]11:

[21]"QUESTION: Do you know how long prior to

[22]you going on your break you mopped the floor in the

[23]area where the lady fell?

[24]"ANSWER: I can't tell exactly when because

[25]every day we started mopping at about eight o'clock

[26]and by 9:30 we were always finished."

[1]Cardona - By Plaintiff - Direct/Ogen

[2]Does that refresh your recollection as to

[3]when you were mopping on that day?

[4]MR. WENICK: Objection to the form.

[5]THE COURT: Sustained,

[6]MR. WENICK: It's the same as last time.

[7]THE COURT: Sustained.

[8]Q I'm going to ask you again when were you mopping

[9]that morning, on October 27th.

[10]A That's my schedule. I mean housekeeping, I

[11]clean.

[12]Q Does that --

[13]THE COURT: Do you remember that particular

[14]day of the accident?

[15]THE WITNESS: Yes.

[16]THE COURT: All right.

[17]Now, what he's asking is, do you know, do

[18]you remember what time you mopped the floor on that

[19]floor?

[20]MR. OGEN: On that floor, seventh floor that

[21]day.

[22]THE COURT: Seventh floor **[*85]** on that day?

[23]THE WITNESS: You mean the general area or

[24]the area in which the accident occurred?

[25]Q The seventh floor.

[26]A That's why I start cleaning at seven o'clock on

[1]Cardona - By Plaintiff - Direct/Ogen

[2]the seventh floor.

[3]Q So you are changing your testimony -

[4]MR. WENICK: Objection.

[5]THE COURT: Sustained.

[6]You can read that again, if you want.

[7]Q Now, that morning on October 27, 1997, do you

[8]remember when you finished mopping the seventh floor?

[9]A I don't remember.

[10]Q But usually you would finish mopping at 9:30 in

[11]the morning, is that right?

[12]A At 9:30 I go out and break.

[13]Q When you went - did you go out on a break that

[14]morning?

[15]A Yes.

[16]Q And how long was your break for?

[17]A Regularly it's like 15 minutes or half an hour,

[18]but 15 minutes.

[19]Q Fifteen minutes to half an hour you are saying

[20]now?

[21]A Regularly it's 15 minutes.

[22]Q I'm going to read to you again from your

[23]deposition of that day.

[24]Page 32, line 14, starting at line 14:

[25]"QUESTION: When was the last time you had

[26]been on the seventh **[*86]** floor prior to time you emerged

[1]Cardona - By Plaintiff - Direct/Ogen

[2]the elevator?

[3]"ANSWER: At 9:30 when I went for the break

[4]"QUESTION: How long was the break?

[5]"ANSWER: Fifteen to 20 minutes "

[6]MR. WENICK: Read the rest of it.

[7]Q (Reading:)

[8]"QUESTION: On this particular morning, did

[9]you take a break that was longer' than 15 or 20

[10]minutes?

[11]"ANSWER: I don't know. I can't remember if

[12]it was longer than usual."

[13]THE COURT: What's the answer?

[14]THE WITNESS: I don't know

[15]Q Now, when you left for your break that morning,

[16]did you see any signs on the seventh floor?

[17]A When I went to the break, no.

[18]Q When you came back in the break that you said you

[19]took, did you return to the seventh floor?

[20]A Yes.

[21]Q You took the elevator?

[22]A Yes,

[23]Q When you emerged from the elevator, did you see

[24]anything?

[25]A Yes.

[26]Q What did you see

[1]Cardona - By Plaintiff - Direct/Ogen

[2]A I saw a lot of people and I saw a lady on the

[3]floor.

[4]Q You saw a lot of people?

[5]A Yes, I saw people. I don't remember how many

[6]people.

[7]Q **[*87]** How many did you see?

[8]A People. I don't know how many.

[9]Q What kind of people, nurses, doctors?

[10]A I don't know.

[11]Q You don't know - do you know if they were

[12]patients, doctors, nurses?

[13]A No.

[14]Q You don't know,

[15]Did you see anybody laying on the floor when

[16]you emerged from the elevator?

[17]A Yes, a lady.

[18]Q And what did the lady look like?

[19]THE COURT: Is it possible to stipulate that

[20]it was this lady.

[21]MR. WENICK: Yes.

[22]A I saw her on the floor.

[23]MR. OGEN: I'm going somewhere with this.

[24]I'd like a little bit of leeway.

[25]THE COURT: Going where?

[26]MR. WENICK: It's his witness. I don't need

[1]Cardona - By Plaintiff - Direct/Ogen

[2]leeway.

[3]MR. OGEN: Would you like me to approach?

[4]THE COURT: Yes, come up and tell me because

[5]I don't think there is any question that this is the

[6]lady.

[7](Whereupon, at this point an off the record

[8]discussion was held.)

[9]THE COURT: The last question was who was

[10]the lady and I asked him to stipulate that this was

[11]the lady,

[12]Q Do you remember what the lady looked like?

[13]A It was the lady- a **[*88]** mature lady.

[14]Q Do you remember anything else about the lady?

[15]A No.

[16]Q Now, the people that you saw there, were they

[17]near the lady?

[18]THE COURT: Were they what?

[19]MR. OGEN: Were they near the lady?

[20]A I saw that they were like looking at her.

[21]Q And did you see anything else around the lady?

[22]A Yes, two signs.

[23]Q You say you saw two signs there?

[24]A Yes.

[25]Q And before you left for your break, there were no

[26]signs there?

[1]Cardona - By Plaintiff - Direct/Ogen

[2]A No.

[3]Q And what did you do when you saw the lady? Did

[4]you do anything?

[5]A Yes.

[6]Q What did you do?

[7]A I went to see the supervisor of the floor and I

[8]told her.

[9]Q The supervisor of what?

[10]THE COURT: Your supervisor.

[11]THE WITNESS: The head nurse of the floor.

[12]Q And did you find the head nurse of the floor?

[13]A Yes.

[14]Q How long did it take you to find her?

[15]A Maybe two minutes. The time that it took me to

[16]go to see her,,

[17]Q And did you see anything to her when you found

[18]her?

[19]A Yes. **[*89]**
[20]Q What did you tell her?

[21]A I said, Ina, there is a lady on the floor. I

[22]don't know what happened to her.

[23]Q Did you say it in Spanish to her?

[24]A No.

[25]Q Can you tell me the exact words that you said?

[26]A Yes.

[1]Cardona - By Plaintiff - Direct/Ogen

[2]Q Please,

[3]A I don't know what happened. I said the lady is

[4]on the floor.

[5]THE COURT: Wait, wait, let's clarify this

[6]for the record. You said something in English.

[7]THE WITNESS: Yes.

[8]Q Can you repeat it so that the court reporter can

[9]take it down?

[10]THE COURT: If you can say it in English?

[11]A (In English) Yes. "Ina, the lady is on the

[12]floor, I don't know what happened."

[13]THE COURT: You told her that you don't know

[14]what happened, is that what you said?

[15]THE WITNESS: Yes.

[16]THE COURT: Okay.

[17]Q And was Ina aware of the lady being on the floor?

[18]A I don't know.

[19]Q Did she give you any indication that she was

[20]aware?

[21]A She left.

[22]Q And where did she go when she left?

[23]A She said she was going to go to the place.

[24]Q Now, did there come **[*90]** a time when somebody from

[25]Beth Israel told you that they put signs up there?

[26]A Yes.

[1]Cardona - By Plaintiff - Direct/Ogen

[2]Q And who do you say told you that?

[3]A Victor, the supervisor.

[4]Q Who was your supervisor?

[5]A Yes.

[6]Q And what did he tell you?

[7]A That he had cleaned something, but I don't know

[8]what it was and that he had placed the signs there.

[9]Q I told you he placed signs?

[10]A That he mopped and when he mopped he put the

[11]signs up.

[12]Q Did he tell you he put signs up?

[13]A No, he didn't tell me about it, but when we

[14]cleaned the floor, we put the signs up.

[15]Q But did he tell you that he put signs up?

[16]Yes or no.

[17]MR. WENICK: Asked and answered, Judge.

[18]THE COURT: Well, there's a little language

[19]confusion.

[20]A He mopped the floor. I don't know.

[21]Q He only told you he mopped, he didn't tell you

[22]that he put signs up?

[23]A Yes.

[24]Q And you don't know who, if anyone, put the signs

[25]up?

[26]A No.

[1]Cardona - By Plaintiff - Direct/Ogen

[2]Q Now, did you ever' fill out any **[*91]** incident report in

[3]connection with this incident stating that there were

[4]signs up where the lady fell?

[5]A No.

[6]MR. OGEN: Nothing further.

[7]CROSS-EXAMINATION

[8]BY MR. WENICK:

[9]Q Good afternoon, Mr. Cardona.

[10]The signs that you saw around the lady that

[11]day, did they look like these?

[12]A They are identical.

[13]THE COURT: I can't hear you.

[14]THE WITNESS: They are identical.

[15]THE COURT: Okay.

[16]Q Where were they in relation to the lady?

[17]A One was right next to the elevator and the other

[18]one was behind the lady.

[19]Q How far from the lady's head was the sign that

[20]was near the lady's head?

[21]A Maybe two or three feet, I don't know.

[22]Q And how close was the sign that was next to her

[23]feet?

[24]A Maybe four or five feet.

[25]Q Were the signs standing up? Did it look like an

[26]upside down V?

[1]Cardona - By Plaintiff - Cross/Wenick

[2]A They were standing just like that but on the

[3]right-hand side of the hall.

[4]MR. WENICK: I have nothing further.

[5]MR. OGEN: Your Honor.

[6]THE COURT: Yes.

[7]REDIRECT EXAMINATION

[8]BY MR. OGEN:

[9]Q When you **[*92]** say they were standing on the other side

[10]of the hall, were they standing near the wall?

[11]A In the middle.

[12]Q So they weren't standing right up against the

[13]wall?

[14]A No, they were not against the wall.

[15]Q Mr. Cardona, whose been paying your salary the

[16]last four years?

[17]MR. WENICK: Judge, I object, the last

[18]time. I think this is --

[19]THE COURT: Sir, first of all, are you able

[20]to hear?

[21]THE SIGN INTERPRETER: I can't hear him.

[22]THE COURT: Ask your question again.

[23]Q Mr. Cardona, who has been paying your salary the

[24]last four years?

[25]THE COURT: Who has been?

[26]MR. OGEN: Paying your' salary.

[1]Cardona - By Plaintiff - Redirect/Ogen

[2]THE COURT: What are you objecting to?

[3]MR. WENICK: It's his witness. He can't

[4]impeach his own witness and it goes beyond my

[5]redirect.

[6]THE COURT: Overruled.

[7]Q Who?

[8]A Beth Israel

[9]Q Do you like your job there?

[10]A Yes, of course.

[11]Q You want to keep your job there, don't you?

[12]MR. WENICK: Judge, I object to this.

[13]THE COURT: I know you do.

[14]Overruled.

[15]A Yes.

[16]MR. OGEN: Nothing further. **[*93]**
[17]RECROSS EXAMINATION

[18]BY MR. WENICK:

[19]Q Mr. Cardona, did anyone ever tell you that your

[20]job depended on your testimony here today?

[21]A No.

[22]Q Anybody ever tell you what to say here today?

[23]A No.

[24]Q Did you tell the jury the truth today?

[25]MR. OGEN: Objection.

[26]THE COURT: Did anyone tell what you to tell

[1]Cardona - By Plaintiff - Recross/Wenick

[2]the jury?

[3]MR. WENICK: No.

[4]MR. OGEN: That's not what he asked.

[5]MR. WENICK: Did you tell the jury the truth

[6]today?

[7]MR. OGEN: Objection.

[8]THE COURT: What's the objection?

[9]MR. OGEN: To tell the truth?

[10]THE COURT: What?

[11]Overruled.

[12]Q Yes, I presume.

[13]A I'm saying the truth.

[14]Q Thank you.

[15]THE COURT: Thank you very much.

[16](Witness excused.)

[17](Continued on next page) 18

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[1]Proceedings

[2]THE COURT: Who is the next witness?

[3]MR. OGEN: Jose Corporan.

[4]THE COURT: Does that witness require the

[5]assistance of a Spanish language --

[6]MR. OGEN: I don't believe so.

[7]THE COURT: Let's find out.

[8](Witness takes the stand.)

[9]THE COURT: Just ask in English first and then

[10]we'll determine. **[*94]**
[11]THE CLERK: Raise your right hand.

[12]JOSE CORPORAN,

[13]called as a witness and having been first

[14]duly sworn by the Clerk of the Court, was

[15]examined and testified as follows:

[16]THE CLERK: Have a seat, please. Follow the

[17]officer's instructions.

[18]COURT OFFICER: State your full name and spell

[19]it, please.

[20]THE. WITNESS: Jose Corporan J-O-S-E

[21]C-O-R-P-O-R-A-N

[22]COURT OFFICER: And your county of residence?

[23]THE WITNESS: Queens,

[24]THE COURT: Sir, you speak and understand

[25]English; is that correct?

[26]THE WITNESS: Yes.

[1]Coiporan - by Plaintiff - direct/Ogen

[2]THE COURT: So the interpreter is not

[3]required Thank you very much

[4](Interpreter excused.)

[5]DIRECT EXAMINATION

[6]BY MR. OGEN:

[7]Q Good afternoon, Mr. Corporan

[8]A Good afternoon.

[9]Q Who are you employed by?

[10]A Beth Israel Medical Center.

[11]Q And how long have you been working there?

[12]A Approximately five years.

[13]Q And what is your job title there?

[14]A Operations manager, environmental services.

[15]THE COURT: Environmental manager --

[16]THE WITNESS: Operations manager,

[17]environmental services

[18]Q **[*95]** And on October 27th, 1997, were you employed by

[19]Beth Israel?

[20]A Yes, I was.

[21]Q And what was your job title at that time?

[22]A I was the supervisor

[23]Q Now, are you aware of an accident that happened on

[24]the 7th floor of the Dazian building of Beth Israel --

[25]A No, I was not.

[26]Q -- on October 27, 1997?

[1]Corporan - by Plaintiff - direct/Ogen

[2]A I was not.

[3]Q Did you at any time become aware of this accident?

[4]A Yes. Maybe approximately a year.

[5]Q A year after the accident or a year ago?

[6]A No, about a year ago.

[7]Q So you didn't see the accident happen, right?

[8]A No, I was not around.

[9]Q And you weren't on duty on the 7th floor on that

[10]day?

[11]A No, I was not

[12]Q But you are familiar with the practices and

[13]procedures of Beth Israel personnel in environmental

[14]services in cleaning; is that right?

[15]A Correct.

[16]Q Now, how often are the hallways of Beth Israel

[17]mopped? Specifically how often is the 7th floor of the

[18]building mopped?

[19]A Every morning.

[20]Q Once a day? **[*96]**
[21]A Once a day.

[22]Q And is it ever mopped more than once a day?

[23]A Unless there is a spill.

[24]Q Then it could be mopped more than once a day?

[25]A Spot mopped. Depending on the size of the spill.

[26]Q Now, when someone mops the floor', is there a

[1]Corporan - by Plaintiff - direct/Ogen

[2]procedure for that person to put up a sign?

[3]A Yes.

[4]Q Caution sign?

[5]A Yes, a sign, right. It says "Wet Floors" on it.

[6]Q One sign, correct?

[7]A Two signs.

[8]Q Two signs

[9]Do you remember giving a deposition on

[10]November 28th, 2000?

[11]A Yes, I do.

[12]Q Do you remember giving that deposition in the

[13]offices of the lawyers of Beth Israel Medical Center?

[14]A Repeat that.

[15]Q Do you remember giving the deposition in the

[16]offices of the lawyers of Beth Israel Medical Center?

[17]A Yes, I did.

[18]Q And you remember Miss Marino being present at that

[19]deposition?

[20]A Yes, Miss Marino

[21]Q Do you remember swearing to tell the truth during

[22]that deposition?

[23]A Urn-hmm. Yes, I do.

[24]Q I'm going **[*97]** to read to you a question and answer from

[25]that deposition.

[26]I'm reading from page 46, starting at line 4.

[1]Corporan - by Plaintiff - direct/Ogen

[2]MR. WE NICK: Your Honor, I know exactly what

[3]page he was going to and my objection is context, and if

[4]we could approach.

[5]THE COURT: I don't have -- you didn't give me

[6]a copy of it so I don't know what it says.

[7](Sidebar' conference off the record.)

[8]THE COURT: Overruled

[9]Q The question is on page 46, line 4

[10]"What was the procedure for mopping this floor

[11]depicted in Plaintiff's Exhibit 2?

[12]"Answer: The procedure for mopping is you

[13]got your equipment, you got your broom, you use a dust

[14]mop, you sweep the area, you get your cleaning water

[15]with the germicide and the mop and signs you place."

[16]Line 14, Continued.

[17]"You place the sign on the floor in front of

[18]you and another one 15, 20 feet away from you Then you

[19]mop half the corridor leaving half for whatever

[20]traffic

[21]"Question: When you say half of the corridor,

[22]is that lengthwise?

[23]"Answer: Half of the corridor you put one

[24]and you put one behind."

[25]Ms. Marino interjected. "Half the corridor,

[26]you **[*98]** do half?

[1]Corporan - by Plaintiff - direct/Ogen

[2]"Question: So that people can walk around

[3]you?

[4]"Answer': Traffic can go around you.

[5]"Ms. Marino: On the other half of the

[6]corridor?

[7]"Answer': The one that is being mopped, you

[8]move the sign as you go along. You mop 20 feet, 20 feet

[9]and move the sign forward another' 20 feet and so on

[10]until you complete the entire area. "

[11]MR. WENICK: Read the next two.

[12]MR. OGEN: I'll leave it up to you

[13]Q Now, the sign that the person would put up when

[14]they are moving, what direction would the sign face in?

[15]A Facing the person.

[16]MR. WENICK: Your Honor, I object at this

[17]point. As we had mentioned in colloquy, there are

[18]different types of mopping. I'd ask counsel to make

[19]clear --

[20]THE COURT: Please don't give testimony. This

[21]question was about what is the procedure. If there's

[22]something else, certainly you'll go into it

[23]MR. WENICK: But I'm asking -- there's more

[24]than one type of mopping

[25]THE COURT: You'll go into it when you want

[26]to. I don't know --

[1]Corporan - by Plaintiff - direct/Ogen

[2]MR. WENICK: You don't know what?

[3]THE COURT: Look, you are **[*99]** not a mopper, are

[4]you?

[5]MR. WENICK: No, Judge.

[6]THE COURT: We have someone here who's an

[7]individual involved with that procedure, so that's what

[8]he's telling us about,

[9]Overruled, Sit down

[10]MR. WENICK: I'm objecting to --

[11]THE COURT: Overruled.

[12]Q You put the sign up for people to be able to see it

[13]and is it -- what kind of sign is it?

[14]A It's aplastic sign that is closed and opens like a

[15]triangle, or it can be a cone. It can also be a cone. And

[16]it's put in front of the person who's mopping and one behind

[17]him. When I say half for the corridors, I mean it's

[18]lengthwise. The corridor is six feet long You close three

[19]feet. Sign in front. Sign behind. You mop. Damp mop.

[20]Wait for it to dry. Move -- depending on how long the

[21]corridor is

[22]Q You don't cordon off the area, right?

[23]A No, we don't

[24]Q Now, you said that you could either put up a cone

[25]or a sign, right?

[26]A The sign can be a cone or a triangle.

[1]Corporan - by Plaintiff - direct/Ogen

[2]Q And when you say triangle, do you mean this type of

[3]sign Mr. Wenick had shown us before?

[4]A Yes.

[5]Q **[*100]** When people are walking down the hallway, should

[6]they be looking at it this way (indicating) or this way

[7](indicating)?

[8]A If I'm mopping forward, it would be facing me

[9]Q It should be facing you, the lettering and the

[10]writing?

[11]A That's right

[12]Q It shouldn't be this way (indicating)?

[13]A I'm not going this way, I'm coming this way

[14]Q It's no good, right?

[15]Now, you also mentioned that the person --

[16]person waits there. Did you mention something about the

[17]person waiting there while they are mopping, waiting for it

[18]to dry?

[19]MR. WENICK: Objection

[20]A Sir, when we do mop --

[21]THE COURT: Wait, Repeat the question

[22]Q Did you mention something about the person mopping

[23]waiting there while it dries?

[24]THE COURT: And the objection is, mention it

[25]to whom?

[26]MR. OGEN: To us, to the jury.

[1]Corporan - by Plaintiff - cross/Wenick

[2]THE COURT: Today?

[3]MR. OGEN: Just going back to his testimony

[4]today, yes

[5]THE COURT: Your objection is what?

[6]MR. WENICK: To form There was nothing like

[7]that that was said to the jury

[8]THE COURT: Well, now you're asking a question

[9] **[*101]** of --

[10]MR. OGEN: I'll rephrase to make it easier

[11]THE COURT: All right

[12]Q When the person is mopping in the customary mopping

[13]procedure, are they supposed to wait till the area is dry?

[14]A They do not leave the area until the floor is dry

[15]Q They should not leave the area until it's dry?

[16]A No,

[17]MR. OGEN: I don't have anything else

[18]CROSS-EXAMINATION

[19]BY MR. OGEN:

[20]Q Good afternoon, Mr. Corporan

[21]A Good afternoon

[22]Q I just want to read to the jury the rest of the

[23]paragraph that Mr. Ogen had read a little earlier

[24]Page 47, line 12

[25]"Question: You mentioned the two signs that

[26]person would take with them?

[1]Proceedings

[2]"Answer: Yes."

[3]The cleaning procedure that you just described

[4]to Mr. Ogen, was that for the initial cleaning, a spill

[5]cleaning or something else?

[6]A Mopping. Just damp mopping the corridor'

[7]Q So when you're mopping the corridor as opposed to

[8]mopping a spill, is there a different conduct that a house

[9]cleaner should use with regard to putting signs up?

[10]A Yes Mopping a spill, the sign will be closer' to

[11]the area because **[*102]** I'm not going up and down the hallways

[12]Q There's no reason to move the sign because it's

[13]just a single spot?

[14]A Depending on the spill, the size of the spill

[15]MR. WENICK: I have nothing further

[16]MR. OGEN: No redirect.

[17]THE COURT: Thank you very much.

[18](Witness excused.)

[19]MR. OGEN: Can I approach for a second?

[20](Sidebar conference off the record.)

[21]THE COURT: Okay. As I told you, we would

[22]probably be finished with the witnesses by mid

[23]afternoon, and so we are I have nothing new to tell

[24]you in the way of scheduling except to confirm that at

[25]12 noon tomorrow court personnel has to go to a meeting

[26]about certain things and Friday the case will not be in

[1]Proceedings

[2]session Most likely we will break tomorrow at about

[3]this time and then you'll be returning on Monday for the

[4]lawyers' summations and my instructions to you, followed

[5]by your' deliberations So we're on a good schedule.

[6]Have a nice evening Please do not discuss

[7]the case. See you tomorrow. Let's say 10:00 because we

[8]have to set up tomorrow. Okay.

[9](Whereupon, the jury exits the courtroom)

[10](Whereupon, the trial was adjourned to

[11]Thursday, **[*103]** October 18, 2001.)

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