2006 WL 6658949 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.
Bronx County

Fatima PAREJA,
v.
NEW YORK CITY, New York City Transit Authority, M.T.A., M.A.B.S.T.O.A. & Alfred Cherry, Jr.

No. 2001-26771.
June 28, 2006.

Testimony of Plaintiff's Expert Witness, Dr. Ali Guy

Case Type: Common Carrier >> Bus/Streetcar
Case Type: Vehicle Negligence >> Bus
Case Type: Vehicle Negligence >> Passenger
Jurisdiction: Bronx County, New York
Name of Expert: Dr. **Ali** **Guy**
Area of Expertise: Health Care-Physicians & Health Professionals >> Internist

Representing: Plaintiff

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Hon. Norma Ruiz.

COURT OFFICER: Jurors entering. All rise.

THE COURT: Good morning, ladies and gentlemen. Have a seat. Welcome back. Everyone had a good night last night. Let me just explain, ladies and gentlemen, that we are interrupting the test?? of Dr. Neuman who because of scheduling constraints cannot be here this morning. We are hoping to have him back this afternoon. So we are interrupting his examination to take another doctor whom we are hoping to be done with today. So if we are not done with this doctor in the morning we'll conclude with this doctor tomorrow before we resume with Dr. Neuman. All right, ladies and gentlemen. I know it's kind of a hopscotch method of parsing out the testimony, but sometime because of various doctor schedules it becomes difficult. I'd like to have this testimony to you from start to finish, so that you can follow it from start to finish as opposed to breaking it up, all right, but we are going to try to get that back with Dr. Neuman once we have started and concluded with Dr. Guy's testimony today.

Mr. Zorowitz, call your next witness.

MR. ZOROWITZ: Thank you, your Honor. The plaintiff now calls Dr. Ali Guy.

(witness entering)

DR. ALI GUY, a witness, called by and on behalf of the Plaintiff, upon being duly sworn, testified as follows:

COURT CLERK: In a loud clear voice, please state your full name and the spelling of your last name and your business address for the record, please.

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

THE COURT: Good morning, Dr. Guy. How are you? Dr. Guy, I'm going to ask you first to speak nice and loudly, clearly but more importantly, slowly. All right, sir. And I'm going to ask you just as I have asked all of the other witnesses to please wait until the question is posed before you answer, and likewise the attorneys will wait until you respond before they proceed with the next question.

THE WITNESS: Yes, Judge.

THE COURT: Thank you so much.

Mr. Zorowitz.

MR. ZOROWITZ: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. ZOROWITZ:

Q. Dr. Guy, are you duly licensed to practice medicine and surgery in New York State?

A. Yes, sir, I am.

Q. When did you receive your license?

A. 1985.

Q. Could you briefly go over your educational background?

A. I went to Queens College. Flushing, New York Medical School. I graduated from University of Northeast Dominican Republic in June of 1981. Thereafter, I did three separate residencies.

THE COURT: I'm sorry. You're speaking very quickly. Northeast, when was that?

THE WITNESS: 1981. Then I did three separate residencies. My first residency was in the field of internal medicine. Mount Sinai Medical Center for a period of 18 months. Then I did one year of general surgery at Cabrini Medical Center. Then I completed a three year residency training program in the field of physical medicine and rehabilitation at Mount Sinai Medical Center. I was the director of the Department of Rehab Medicine at Maimonides Medical Center in Brooklyn. From 1997 until 2002 that's about five years, where my duties were to be in charge of all the impatient and all the out patient rehab services, provide teaching to the orthopedic residents to prepare them for their rehab section questions. To provide teaching to the intern medicine residents, the general surgical residents, physical therapist, occupational therapist, physician assistants and other doctors in my department. And also to provide consultations to other doctors in the hospital. I was in charge of the quality assurance in my department where my duties were to review all the work that was done by the other doctors in my department

for about twelve other doctors in my department, and if they were -- their work wasn't up to par my job would be to teach them and to discipline them if they are efficient on a continuous basis. Also, I was the director of neuromuscular equipment clinic at NYU Hospital for Joint Diseases from 1990 to December of 2005. That's about 15 years where my job and my duties were to see all the patients that are scheduled for the equipment clinic. Patients that were born with birth defects. Patients with polio, spinal cord injuries, wheelchair needs, and I had two residents assigned to me from NYU. My job would be to see the patients and to teach the residents as well.

Currently, I'm a clinical instructor of physical medicine and rehabilitation at NYU School of Medicine, NYU Medical Center from February 2006 to the present, where my duties are to teach the residents from NYU, to prepare them for the boards, part one and part two.

I'm also board certified in the field of physical medicine and rehabilitation as of may of 1989.

Q. And were you ever chief resident in any of your training programs?

A. Yes. I was the chief resident in my training in physical medicine and rehabilitation at Mount Sinai Medical Center for a period of six months.

Q. What does it mean to be board certified?

A. Board certification is the highest degree You can obtain in your level of specialty. In order to become board certified in my specialty you have to have the following prerequisite. You have to have training in the field other than physical medicine and rehabilitation. Preferably one year of general surgery and one year of internal medicine. That was met you then have to take a three year bonafide residency training program. Pass the annual examinations given by the department. Pass the monthly evaluations given by your predecessors. Once you finish the three year training program you have to take your boards, part one which is a written examination which covers topics from orthopedics, neurology, internal medicine, muscle and nerve physiology, general surgery, and it's about an eight to a ten hour written examination. Once you pass that you have to then prepare for your boards, part two, which is an oral examination. You have to be in private practice at least eighteen months be sponsored by two other doctors that know your work closely preferably your former teachers, and you then fly to Mayo Clinic in Minnesota where all the text books, all research and all experts come there and you get tested orally on interpretations of xrays C.A.T. scans, MRIs EMG's, muscle nerve physiology, orthopedics, neurology. And if you prove to the teachers that your knowledge is up to par they pass you and they give you the title of a diplomate of the American Board of Physical Medicine Rehabilitation. And then the Board reviews all your credentials from medical school, from college to the beginning, and if your credentials meets the standard they give you the full certificate of a diplomate that was received in May of 1989.

Q. Okay. You mentioned that you're a clinical instructor at NYU. What are the requirements to become a clinical instructor at major teaching hospitals and teach other doctors?

A. One, you have to be board certified. Two, you have to be in good medical standing. Three, you have to pass a credentials committee that review all your credentials, and you have to have knowledge and be able to teach.

Q. Are you a member of any medical organizations?

A. Yes.

Q. Could you briefly tell us what those medical organizations are?

A. I'm a Diplomate of the American Board of Physical Medicine and Rehabilitation. I'm a member of the New York County and New York State Medical Societies.

Q. Could you briefly tell us what the field of physical medical -- medicine and rehabilitation is?

A. Yes, sir. It's a medical specialty that was founded shortly after World War II by Dr. Howard Russ. It deals with traumatic injuries covering whole body from head to toe. It deals with disc herniations, nerve problems, joint problems. Problems after knee or hip surgery, polio, multiple sclerosis. Just about everything from A to Z. And the job of a doctor that practices this specialty which is called a physiatrist not a psychiatrist, but a physiatrist. Our job is to restore function to an injured person whether it's from a car accident, whether it's from a job related accident or whether it's from a sports related accident or birth defect. We try to restore them to as normal function as possible prior to the pre-injured state, and we are probably the most comprehensive of all the medical specialties because we have training in so many different areas.

Q. Doctor, how does it differ from neurology and orthopedics?

A. Well, orthopedic surgery just by the name deals with the surgical aspects of the muscular skeletal system. We deal with the non-surgical aspects of the muscular skeletal system.. That's the major difference. How it differs from neurology is neurologist concentrate primarily just on disease of the central nervous system. We deal with the central nervous system is to disease multiple sclerosis, Parkinson, Lou Gehrig's disease, disc herniations, radiculopathy, which means damage to the nerve root in the neck or back, and also damage to the nerves in the arms or legs, so on and so forth. There is a great deal of overlap between all these specialties, and we refer patients back and forth to one another.

Q. Doctor, as part of your training did you receive formal training in neurology, orthopedics, internal medicine, general surgery, interpretation of xrays, MRIs, C.A.T. scans and EMG's.

A. Yes, sir. It's parts of our boards, and we get tested on them.

Q. And doctor, you do not consider yourself to be a neurologist, orthopedist or radiologist, do you?

A. No, I'm a physiatrist.

Q. Does your field deal with traumatic injuries and are you considered a trauma expert?

A. Yes, sir.

Q. Does your field deal with disability and impairment evaluations?

A. Yes, sir, it does.

Q. Do you do any such evaluations for any people?

A. Yes, sir. I do evaluations in my private practice for other doctors, and at the hospitals. When I was at Maimonides regularly I would be asked to call upon to do disability impairment evaluation, and I still do it to this date.

Q. Isn't it true that because you're a trauma expert and because you treat patients that have been injured from accidents, that from time to time it may lead you into the-- withdrawn. Isn't it true that because you're a trauma expert and because you treat patients that have been injured from accidents that from time to time it may lead you into the legal sector mainly having to come to court just like you're doing now and testifying?

MR. RHODEN: Objection. Leading.

THE COURT: Yes. Sustained.

Q. Doctor, what, if anything -- what, if any connection is there between your practice and treating patients and your coming into court and testifying?

A. Well, I'm a rehabilitation specialist. I treat a lot of injured patients and when there is injuries sometimes there is lawsuits and sometimes the lawsuits don't settle treating doctors and other experts are asked upon to come into court and testify as to the opinions, the diagnosis and the prognosis of the patients. So this way the jurors can decide what should be done.

Q. what, if anything, happens if you're called upon and refuse to come to court?

A. I can be disciplined by the Office of Medical Professional Discipline.

Q. And do you know what the medical ethical laws are regarding this?

A. They encourage us and they dictate that we should appear on these such matters.

Q. Do you have an opinion as to why experts or treating doctors need to be called upon to come to court to testify for their patient?

THE COURT: That is not for him to comment upon. Next question.

Q. Have you ever been deemed as an expert in your specialty in any Supreme, Federal or other courts?

A. Many many times. perhaps, in my seventeenth year as a physician I testified on the average about ten to twelve times a year. Sometimes less, sometimes more. So I'd say I have been qualified approximately 145 to 150 times. It could be slightly less, slightly more.

Q. Which court?

A. Every court. State, Supreme Court, Federal Court. 6Q. Have you ever been turned down as an expert in your specialty by any court?

A. No, sir.

MR. RHODEN: Your Honor, I would now like to introduce this doctor as an expert witness in the field of physical medicine rehabilitation and traumatology?

THE COURT: He is here to testify based upon his qualifications. All right. Next question, please.

Q. Doctor, do you give lectures to various different people?

A. Yes, sir. I give lectures to medical students. I give lectures to doctors, to nurses, to police officers. I give lectures to attorneys as well. Once a year at Mount Sinai School of Medicine I give lectures to attorneys along with other professors. Department of Orthopedics, Neurology, Radiology through these lectures attorneys get CLE credits, points for their license.

Q. When you do give these lectures do you do it for monetary compensation?

A. No, sir. It is not liked in the medical field to accept money for these lectures. It's an honor and privilege. Nobody excepts money for those lectures.

Q. Doctor, who do you testify mostly, plaintiff's and defendant?

A. Plaintiff's.

Q. Why do you testify mostly for the plaintiff's?

A. Well, I treat patients, so patients are the ones that I treat. I went to school to treat patients not to come to court and testify so it's the patients that get injured.

Q. What percentage of your practice is devoted to treating patients and/or teaching?

A. The vast majority. I would say 98, perhaps slightly more or slightly less is devoted to treating patients. Out of that 98 percent I would say 30 percent is devoted to teaching.

Q. Do you do any consultations for other doctors?

A. Yes, sir, just about ever specialty.

Q. What type and in which hospitals or outside your practice?

A. In hospitals outside the hospital. For neurosurgery or a neurology orthopedics internal medicine, gastroenterology. Outside my practice to chiropractors. Just about ever specialty.

Q. Are you here today to render expert testimony regarding the treatment and care given to your patient Fatima Pareja?

A. Yes.

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

A. Yes, sir. My fee for appearing for half day is $3,000.

Q. Did you have to cancel other medical schedules or patient schedules and spend additional time to prepare for this case such as reviewing your medical file and so forth?

A. Yes, sir.

Q. Doctor, I see you have a manilla folder in your hand.

MR. ZOROWITZ: I'd like to have that folder and its contents marked as plaintiff's No. 17 for identification.

(So marked, Plaintiff's No. 17 for identification.)

COURT OFFICER: Plaintiff's 17 for identification so marked, Judge.

THE COURT: All right Mr. Rhoden, we will give you a full opportunity to go through it before cross.

Next question.

MR. ZOROWITZ: Would, you please hand the documents back to the doctor.

Q. Doctor, what do you recognize -- first of all, you have treated Fatima Pareja, correct?

A. Yes.

Q. Are you her treating doctor?

A. I'm one of her treating doctors. Yes, sir.

Q. What does it mean to be a treating doctor?

A. It means you examine the patient. You offer the patient diagnosis and opinion and treatment options and medical advice.

Q. And for approximately how long have you been seeing Ms. Pareja?

A. From July 3, 2002, to the present.

Q. And do you recognize what has been marked as plaintiff's 17 for identification?

A. Yes. These are my medical records and the review of other pertinent records.

Q. And as treating physician do you keep and maintain these particular records in the ordinary course of your business as a physician rendering care for patient's such as Fatima Pareja?

A. Yes, sir.

Q. And are these fair either accurate copies or originals of your medical records in plaintiff's 17?

A. Yes, sir.

Q. And do you rely on other doctor's reports that become part of your file that's in plaintiff's 17?

A. Yes, sir. That is which is pertinent.

Q. And do you keep and maintain those in the ordinary course of your business for the purpose of treating your patients?

A. Yes.

Q. And those toes records included within plaintiff's 17 for identification?

A. Yes, sir.

MR. ZOROWITZ: I would offer these as plaintiff's 17 in evidence.

MR. RHODEN: Transit Authority objects, your Honor.

THE COURT: All right. Overruled. Let's mark number 17.

(So marked Plaintiff's No. 17 in evidence.)

COURT OFFICER: Plaintiff's number 17 in evidence so marked.

Q. Debtor, please briefly review the patient history, pertinent physical exam and finding, and please tell us, what, if anything they mean?

A. Well, the first time I saw the patient was on July 3, 2002. The history that I obtained was that she was 37 years of age. She had a prior car accident accident-- in March of 2000, same year, eight months prior to this accident where she injured her neck, her back and her left knee, not the right knee. And in this accident she was a passenger on a bus. Apparently the bus driver made a fast u-turn, and she hit a body against a partition. She injured her neck, her right jaw, right elbow, lower back, her right knee and both feet. She was taken to Jacobi Hospital by ambulance where she was treated and released. In the Emergency Room they found traces of blood in her urine which is indicative of kidney contusion from the blow -- from the partition, and she was treated and released. She then saw different doctors. When she came to see me she complained to me of neck pain shooting down the right arm with numbness and tingling. She complained of lower back pain shooting down into the bilateral buttocks. She complained of pain in both knees, right worst than let. She complained of right leg pain with numbness and tingling. She had had many MRIs and EMGs, and she had ??ad prior surgery to her left knee.

Q. When you say bilateral pain shooting down both buttocks, what do you mean bilateral?

A. Bilateral means both sides. And any time you have shooting pain down the buttocks, down the arm if it goes down the arm the origin is the neck nerve roots in the neck. It goes into the legs or the buttocks it means the origin i?? from the low back. Perhaps a quick review of the anatomy I could explain this.

MR. ZOROWITZ: At this time, I would ask that the -- there is a spine model. If it may be deemed for identification for the purposes of demonstrating only, your Honor. It's a spinal model that is hanging from a metal pole.

THE COURT: Plaintiff's No. 18. And that's for demonstrative purposes only.

Q. Doctor, are there any other items while we are talking about this that you may wish to use during your testimony here today?

A. Yes, sir. I have a model of the spine indicating what a bulge protrusion or abnormality is. I have a model of the knee.

MR. ZOROWITZ: The model of the spine, I would ask that be -- is that the one that seems to have --

THE COURT: You know what. Why don't would do it this way. Let's do it one at a time, and we will deem this marked as we proceed. Why don't we start with the first one, number eighteen.

MR. RHODEN: Yes, Judge.

MR. ZOROWITZ: If I may ask the doctor to stand up with the spine model, approach the jury if need be. Let's see what ever details are necessary.

THE COURT: Doctor, why don't you prop the model on the shelf right by the juror's box, please. We are going to ask you to not obstruct the views of the jurors when you utilize the model.

Q. Please explain?

A. What we are looking at is that model of the human spine. The human spine has three segments. The neck is called the cervical spine. The mid back is known as thoracic spine. There are 12 vertebrae here. Cervical spine has seven. There are five vertebra and the lumbar spine ends with the sacrum and the coccyx which is what we sit on, and as the spine goes all the way down from the neck it gives rise to nerve roots from the spinal cord which runs into the spinal canal, and it gives rise to nerve roots on the right and left sides. All the nerves that go to your arm that come off the nerve root in the neck all the nerves that go to your leg that come off the nerve root in the lower back. So when you have say shooting pain down the arm it means the origin is coming from the neck. When you have shooting pain down the legs into the buttocks the source is the nerve root from the lower back. Now in the human spine we have disk between each vertebra. The function of a disk is to serve as a shock absorber. A disk is analogous to a jelly donut. It has two parts. The two nucleus palposis. Outside we have this fiber cartilage called annulus fibrosis. There are three abnormal conditions to a disk. The first is a bulge. Next is contusion. Third is a herniation. I have my other models to show what a bulge, protrusion, herniation is.

Q. Would you please get that model so we know to ask to be deemed as plaintiff's number 19 for identification demonstrative purposes only.

MR. ZOROWITZ: I'd ask that the model that shows four separate vertebral structures on a platform be deemed as plaintiff's 19 for identification for demonstrative purposes only.

THE COURT: Doctor, what is that a model of again?

THE WITNESS: Model of the spine showing the disk and -- a normal disk showing a bulge, a protrusion and herniation, and what happens to a disk once it gets damaged.

THE COURT: So that's a model of three disk, is it?

A. This is a model of three separate abnormal disk -- normal disk.

THE COURT: We will deem that number 19.

Q. Please continue, Doctor?

A. A normal disk looks like so. This is the front part of the spine. This is the back portion of the spine. This is called the spinous process. If you take your fingers and touch the back of your neck or your back you're touching this. This here i3 the spinal canal where the spin?? cord runs from the brain all the way down to the lower back. It ends between the first and the second lumbar vertebra. It continues with branches of nerve roots that's called corda equinus. That looks like a horse's tail. Now, a normal disc has approximately 100 rings of fibrous cartilage material inside this gelatinous material. It is this gelatinous material that gives us our ability to move our spine in forward posture, backward, left, right, lateral flexion, left and right lateral rotation. If we don't have this structure we could not do that. It also serves as a shock absorber. It works with a pump inside this area. Now, the first abnormality to a disc is called a disc bulge when there is a partial tear of this annulus fibrosis. And the second condition is a disc protrusion. A disc protrusion is defined as a complete tear of annulus fibrosis where disc material leaks out, but it stops right at the border of the disc margin. That's a disc protrusion. It's a complete tear of the disc, but it stops here. It passes the disc margin. It's called a herniation. Once you have a herniation the disc material leaks out and it hits the nerve root and it causes compression or irritation to the nerve root. When a disc bulges, protrudes or herniate the water content leaks out. Once the water contents leaks out the disc becomes shriveled up or becomes desiccated.

This is a normal disc filled with water as you could see. It's about this thick. This is a disc that's been protruded or ruptured and here also as you could see the thickness of the disc is about one half of this because the water content has leaked out. Now, once a disc gets injured the body tries to compensate and stabilize the area by forming osteofites around the vertebral body. As these osteofites begin to form they cause crowding to the nerve roots. This a called nueroforamina.

Q. What is an osteophyte?

A. Progression of either by the normal natural aging process or by trauma. In the case of a disc herniation is formed to stabilize the injured area and to prevent this area from becoming more injured. As time goes on these osteofites become longer and longer and they cause crowding to the nerve. As you could see the shock absorber becomes completely lost. That's why a tear of a disc is a permanent injury. And these other charts show what happens inside the disc. I note that one is marked Plaintiff's Exhibit 3 and one is marked Plaintiff's 4.

MR. ZOROWITZ: Your Honor, if I may there is a poster. I'd ask to be deemed as for Id as Plaintiff's No. 20. It is a poster. In the upper left hand corner is the word plate three.

THE COURT: Doctor, that's a diagram of what?

THE WITNESS: Intervertebral disc.

THE COURT: That is Plaintiff's No. 20 for demonstrative purposes only. Let's use the easel.

A. What we are looking at is that cross section of a disc. This is called the axial view. I called it the salami view or baloney view because what you're looking at is this fashion. This is the annulus fibrosis, the doughy portion of jelly donut. This is the gelatinous portion of the jelly donut. This is the spinous process right here. This is transverse process which is here. What you're looking at here is the disc from the side. The side view. So the first abnormality is a disc bulge?

A. The disc begins to bulge out. It's a partial fair of the disc material. It is not a complete tear of the disc. When you have a complete tear of a disc and the disc material leaks out, but it stops at the border, the margin of a disc is a protrusion as we saw in this model. When the disc material passes the disc margin it is a herniation. It's a complete herniation, and the disc works by a water pump, and as the water leaks out that pump becomes defective. The disc cannot do its normal function, and that is to serve as a shock absorber. Next --

MR. ZOROWITZ: That would be the poster, Judge, if I may have it deemed as Plaintiff's No. 21 for identification for demonstrative purposes only.

A. It has in the upper left plate four. It is a diagram of inflammation and lumbar pain. Now the outer one-third of a disc has nerve fibers. These nerve fibers are called nocicepetors. N-O-C-I-C-E-P-E-T-O-R-S. It's comes off the branch of a nerve root which is right behind the disc. Any time that you have a tear in the outer perimeter of a disc you cause destruction of these nerve fibers that causes pain. Once you have a complete tear of a disc you get a microscopic bleed in the perimeter, and you get the release of a lot of chemicals that are found inside the disc. You don't need direct compression of a nerve root to cause nerve root damage. You could have nerve root damage by forces irritating nerve root, stretching it and all by these chemicals that are released inside the disc, These chemicals which cause a radiculopathy. The word radiculopathy means damage to nerve root. If I said cervical. If I said the word lumbar radiculopathy it means damage to the lower back. Now, each area in the neck and back is labeled according to its anatomic location. If I said the wore C5 6 six which we will hear today means the space between the fifth and sixth vertebra or nerve root between the fifth or sixth vertebra or the disc between the fifth and six vertebra. If I mention the term L5 Sl that's the last disc in the lower back. It means the space between the last disc and the first, and L4 L5 is above it. And that's basically it. Once you have a tear of this fiber cartilage material it is a permanent injury because this structure does not have the ability to repair itself. You can't surgically glue it back together. You can't surgically suture it back together. Once it tears it's a permanent irreversible condition and the condition is progressive as you could see from these models. The condition is progressive and permanent.

Q. Now, that fluid once it leaks out is it capable of traveling from the site of the rupture or the tear?

A. The gelatinous material?

Q. Yes?

A. If a piece of it gets fragmented and cut off it could go right in the spine canal or this material can hit the nerve root or just touch it or it can compress the nerve root.

MR. ZOROWITZ: Thank you, Doctor, for that explanation. You might have a seat.

Q. Doctor, would you please tell the jury why a medical history is important?

A. Yes, 70 percent of doctors working diagnosis comes front the history. Ten percent comes from physical exam.

Q. That's 80 percent?

A. The remaining percent is confirmed by other diagnostic studies. History is very important. A doctor can actually make a diagnosis only by history without even doing any test. To give you two quick examples. If a patient is a male 50 years or older complains of chest pain. If the chest pain is crushing or stabbing, until proven otherwise that's a heart attack happening or waiting to happen. You admit the patient to the hospital. You don't do anything. Second, if a patient complains of abdominal pain, it has lasted more than four hours in duration, it's the right lower, until proven, that's acute appendicitis. Don't have to examine the patient to prove this or they're sent acute appendicitis. So history is very very important.

Q. Now, excuse me. Did you explain Fatima Pareja?

A. I mention the history. He didn't finish with my examination. We stop at the examination.

Q. I apologize. Would you please review briefly your examination of -- and any other personal history that's necessary your findings and explain what they mean?

A. The next showed severe spasm. Diffused tenderness. Muscle trigger points. Range of motion was one half of normal. The same was true. The back it was diffused and tender with severe spasm. Multiple trigger points. Range of motion was one-half normal. Definition of spasm is as follows: It's a prolonged involuntary contraction of muscle fiber means the patient has no control of tightness of muscle. Once a muscle gets injured it goes into reflex protective posture. The fibers shorten. You lose range of motion. Once you have that microscopic lever inside the muscle fibers it heals with permanent scarring. It's a permanent scarring in muscle fibers most commonly caused by the range of motion, bending, forward, backwards, left and right. Because the fibers were shortened. And that was the back straight leg raising. On the right was 60 degrees. On the left was 75 degrees. Normal range of motion for a 37 year old women is greater than 90. Between 90, and if it's below 90 it is indicative of disc herniation in the lower back which pinched nerve and or combination of both. The way the test is done you lay the patient flat on the examining table. A doctor takes his right hand, places it behind the patient's right ankle. The left hand by the patient's knee with the leg straight. You bring it up. Once you feel resistance, not just pain alone, you then record the abnormal finding. The right was 60. The left was 75. So it was significantly abnormal indicating a problem with the lower bark. So we have a history of a trauma accident. We have a history of neck pain shooting down the right. Comes from nerve root in the neck. We have a history of lower back shooting pain down the lower leg. So it points to trauma shooting behind and abnormal physical exam findings all point to a problem with the neck roots, neck and back and disc. To continue my exam the left knee was non-tender. Right knee was tender over joint line. That's where the meniscus is. It show positive crepitation, and there were two arthroscopic surgical scars. Muscle testing for right knee was two grades weaker than normal. Sensation to pin prick and touch. The right calf was decreased. The right calf from between nerve, between L5 and Sl.

Q. What would be a normal grade?

A. Normal is five over five. Negative is five minus over five. Negative is four plus over five. In this case is four plus over five.

Q. Please continue?

A. And her gait was slow and talgic. And talgic means she walked with a limp. Then I reviewed medical records later on were brought to me and the additional record that I reviewed gave me comprehensive overview of all her diagnosis and injuries.

Q. Approximately what percentage of the diagnosis comes from the history?

A. Seventy percent.

Q. What percent comes from the exam?

A. About ten percent?

Q. What percent comes from other test?

A. The remainder which is 20 percent.

Q. Dr. Guy, did you have the opportunity to review the Jacobi Hospital Emergency Record for the patient which is in evidence at this time as plaintiff's number, I believe, tea in evidence?

A. Yes, sir.

Q. And what, if anything, did you find of significance in those Emergency Room records?

A. They found traces of blood in her urine. There were red blood cells in the urine. As I indicated that's indicative of trauma to the kidneys. There was tenderness to her abdomen. There was tenderness to the back, the neck, the right hip. There was tenderness to the C6 C7 in the neck and L3 through L5 spinous processes in the low back. These were the pertinent significant findings at the hospital.

Q. And Doctor, when you have a trauma do all of the patient's symtomology occur immediately upon the cause of the trauma?

A. No, sir. The full and inflammatory process doesn't even begin till to two, three days later. Full picture is shown three to four weeks and sometimes longer. A good example is when boxers fight in the ring. The massive swelling doesn't begin until the second or third day. That's when they go into hibernation for days and weeks. The full picture begins after the third day and ends particularly a?? r the fourth week.

Q. Is that statement to a reasonable degree of medical certainty?

A. Absolutely. Yes, sir.

Q. Now, did you have an opportunity to also to review the EMS record which is part of the Jacobi Hospital records in evidence as Plaintiff's 10?

A. Yes, sir, I did.

Q. And Doctor, does that record indicate any injury to the right knee at that time?

A. No, sir.

Q. Would there be a reason why an EMS technician who arrives at the scene of an accident where there were injured people might not note something of that sort.

MR. RHODEN: Objection.

THE COURT: Sustained.

Q. What is noted at that point?

A. The chief complaint. If a patient complains of pain in my lower back.

Q. You have experience dealing with EMS records and also EMS technicians?

A. Yes.

Q. What, if any, purpose is the main purpose of an EMS technician when they arrive at the scene?

A. They learn to isolate pertinent emergency situations. If there is injury to spine, neck or back they want to be careful not to move the patient incorrectly. If there is injuries to the knees or extremities is less important because if you have an injury to the, knee foot or ankle you're not going to cause spinal cord injury where as opposed to your neck or back you might cause spinal cord injury.

Q. Is it fair to say that spinal cord injury would be there?

A. Those are the among top priorities.

Q. And at the hospital in reviewing the hospital records is it a more comprehensive evaluation, Doctor?

A. Yes, sir.

Q. And in that report at some point when she arrives at the hospital is there any designation with response to pain in her right knee or injury to her right knee?

A. Just give me a second. There is mention of lower back. There is mention of right hip, and there is mention of bilateral hip and bilateral knee pain, yes, sir.

Q. Now, based upon your treatment of Fatima Pareja, taking her history, looking at the pertinent records -- first of all, let me ask you this. Are there any pertinent records that you read from other doctors that are of significance with respect to treatment and prognosis?

A. Oh, yes, a lot. Dr. Alameda, a chiropractor saw the patient with reference to the prior accident and with reference to this accident. He was giving her chiropractor treatments. He opined the patient will need chiropractic treatment for life twice a week. He gave a treatment to the neck and spine for spinal subluxation problems. Examined the record of Prime Medical PC. That was a report of a Maria Ossman, who diagnosed the patient as having a cervical syndrome sciatica myositis. Acute traumatic lumbar sacro radiculitis.

Q. What is sciatica?

A. Shooting pain down the extremity. In laymen's term it indicates damage to a nerve root, but in medical field sciatica -- the sciatic nerve that's injury pain shooting from buttocks down legs.

Q. What is spinal subluxation?

A. Means the vertebra have moved out of place.

I continued to examine report from a Dr. Nagendra. N-A-G-E-N-D-R-A, a neurologist. He did an EEG because the patient was complaining of headaches and dizziness. He reviewed recordings of Dr. Maneole M-A-N-E-O-L-E, who performed surgery on patient's right knee. And he had found patient and right knee torn medial and lateral meniscus and damage to the joint space. He did surgery on the patient. I reviewed additional records from Dr. Park who found that the patient had right knee torn medial lateral meniscus. Disk bulge at L5 S1 with disc protrusion and right L4 L5 radiculopathy which means damage to the nerve lower back. Cervical radiculopathy. He mentioned the patient's prior injuries. I reviewed records from Dr. Kaisman. K-A-I-S-M-A-N. I believe, I referred the patient to Dr. Kaisman. He gave the patient three epidural injections. Epidural injection is when you take a long needle.

MR. RHODEN: Objection, your Honor, He is talking about what another doctor did.

THE COURT: Yes, sustained.

Q. Doctor, what is percutaneous discectomy?

A. Percutaneous one surgical procedures assigned for disc bulge, protrusion or herniation where doctor goes in with a disc probe, goes in and sucks out part of a disc that's ruptured. You try to shrink the massive swelling that's causing irritation to the nerve root.

Q. In taking her history did you determine epidural injections were given to her spine prior to having a percutaneous discectomy?

A. Yes, sir.

Q. Do you know the percutaneous discectomy tomorrow was performed?

A. Yes, sir, I do. That was done on 12/3/05.

Q. Did those three epidural injections that you discussed occur before or after the --

MR. RHODEN: Objection, your Honor.

THE COURT: Those objections were sustained.

Q. As part of your history did you determine whether or not she was given three epidural injections prior to having a percutaneous discectomy?

A. Yes.

Q. When were those these epidural injections given, if you know?

A. June of 2004. They did not help.

Q. What is the purpose of the epidural injection?

A. The purpose of an epidural injection is to inject lidocaine and cortisone directly in the epidural space around nerve roots and disc to diminish pain and swelling and irritation to the area caused by the disc tear.

Q. Before a patient undergoes a percutaneous discectomy surgery is an epidural injection treatment considered more conservative therapy?

A. It's pretty invasive because the patient can get paralyzed. Can get infected, and you could tear one of the membranes that cover the spinal canal, and you do have leakage of the fluid which will cause headaches, and when you stand or sit up from that laying down posture.

Q. What, if any, purpose -- withdrawn. What, if anything, might be recommended if the epidural injections don't obtain significant relief?

A. Well -

MR. RHODEN: Objection. Again, counsel's asking --

THE COURT: All right. Approach.

(Whereupon, a side bar discussion is held amongst the Court and counsel, off the record.)

(Open court.)

THE COURT: Sustained.

Q. Why did you refer Ms. Pareja as your patient to doctor Kaisman?

A. Because she was exhausting all conservative forms of treatment. She did not respond to medications. She did not respond to physical therapy, something more aggressive had to be done. The next more aggressive would be the epidural injection, and if that didn't work next would be surgery.

Q. Please explain the abnormal findings that you specifically determine and tell us their medical significance with respect to Ms. Pareja?

A. Well, she had tenderness, spasm in her neck and back with range of motion being one half normal. With reference to her low back the straight leg raising as I indicated was abnormal. There was weakness in the right knee muscle group. She walked with a limp and slow. It's all indicative of a problem to the lower back, and she had problems to her neck, and she wasn't getting better. So that's the next thing to do.

Q. Did you perform or refer the patient for any other diagnostic studies?

A. I performed EMG's on the patient of her neck and back, but I didn't finish your last question. You told me to review other records.

Q. Yes, I apologize. What if any other records did you review pertaining to your taking a history, and what, if anything, was pertinent?

A. Okay. I reviewed records from orthopedic surgery Dr. David Neuman. I reviewed surgery to the right knee. He found the patient had an ACL tear with instability and chondromalacia. Knee joint which is advanced. And patient had a micro fracture of the medial femoral condyle.

MR. RHODEN: He is doing the same thing again, Judge.

THE COURT: Sustained.

Q. Now. Let's continue. You perform or you referred the patient for further diagnostic studies, what were those?

A. I performed he EMG's of the patient myself of her neck and of her back. The neck was done on May 16, 2005, by me personally which confirmed evidence of a right side C5 6 cervical radiculopathy. Then the next EMG of the body was done on June 1, 2005, of her lower back, and the legs which showed a left lower lumbar radiculopathy at L4 L5. L5 S1. These are the two diagnostic studies performed.

Q. Doctor, can any doctor arrive at a complete picture of the patient's overall condition from just reviewing one diagnostic study such as xray, MRI or C.A.T. scan?

A. No, sir.

Q. You apply the history. You need the hysical exam, and then you need to review all other pertinent records?

A. If you didn't review the whole picture you won't have the full picture.

Q. And why is it important to put the whole 201 picture together?

A. To sae what exactly happened to the patient. What was their pre-existing. What came after. And to what extent came after, and what types of procedures or surgically or the patient had and what diagnosis and problems the patient had.

Q. What is diagnosis?

A. Diagnosis is what that doctor derives at, what is wrong with the patient. It's a medical terminology as to exactly what is wrong about the patient after he does his physical exam and other diagnostic studies.

Q. And what is your diagnosis with respect to patient Pareja, and what do they mean?

A. Okay. My overall diagnosis of the patient is as follows: She has exacerbation of a prior pre-existing L4 L5 a prior accident eight months prior to this. Pre-existing disc bulge at L5 S1. Shy has a new right L5 S1 disc protrusion. She has a new right knee torn medial meniscus and right knee torn lateral meniscus. She's had to two arthroscopic surgeries. With right knee traumatic chondromalacia and with medial meniscectomy and chondroplasty of patella formal joint. She has disc bulge from C2 to C6. That's a total of three disc bulges. She has a right sided C5 C6 201 radiculopathy. That is new. She has exacerbation of a prior pre-existing L5 left C5 C6 cervical radiculopathy that was old and made worst by this accident. She has traumatic myofascial pain. Status post percutaneous lumbar discectomy surgery.

Q. Do you have an opinion within a reasonable degree of medical certainty as to whether these injuries sustained are causally related to the accident of the bus of November 20th of 20002

A. Yes, sir. I do have an opinion. The answer is yes for a variety of reasons.

Q. And what is your reason?

A. The fact that she had an injury and she went to Emergency Room there was blood in her urine. That is the first indication that the kidney must have been hit in some capacity. It is not normal to have blood in your urine. The hit suggest she was hit on the right side. The different structures were injured including the kidney, that's the first thing. Number two, she had spasm. She had tenderness right from the Emergency Room. She had surgery to her right knee, two surgeries. A torn medial lateral meniscus with a tear to the ACL is not normal to have. You don't have this and walk around with it and not know about it. And also, the fact that shy required epidural injections which are very painful and dangerous injections and EMG test which in itself is dangerous, and it showed nerve damage at new levels not found before. She had prior MRI of the neck. No disc pathology. Showed that these were three disks in her neck. We have her medical record from eight months prior to this accident. So we know what was pre-existing and now we know what's new. So when you put the whole picture together you arrive at all those diagnoses, conditions and the opinions.

Q. What does an EMG require?

A. It requires needle insertion into various muscles, arm, neck. Various muscles in the leg and lower back.

Q. Are the injuries that you described both new and exacerbations of her older injuries permanent?

A. Yes, sir, they are permanent.

Q. Why?

A. For the reasons I gave earlier. Once you have a tear of a disc that's a permanent injury. You cannot rectify or correct that problem. When a bone breaks it heals with bone cement called callous formation. Bone is the only structure that has the ability to repair itself. Disc which is fiber cartilage and meniscus which is cartilage they do not have the ability to repair themselves.

Q. What is prognosis?

A. Prognosis is what the future outcome holds for the patient.

Q. And by the way, when you said that these injuries were permanent, is that to a reasonable degree of medical certainty?

A. Yes, sir.

Q. What is the prognosis for Fatima Pareja?

A. She's left with a permanent current total disability. Since she has a permanent injury. She's going to require medical services, physical therapy, further diagnostic studies and surgeries for the rest of her life.

Q. And Doctor, did you prepare a future medical needs assessment of Fatima Pareja and their cost?

A. Yes, sir, I did.

Q. Do you have it with you at this time?

A. Yes, sir, I do.

Q. And it's in evidence as Plaintiff's 7?

A. Yes, sir.

Q. Okay. Would you please tell us what they are and what their costs are?

A. Yes. She's going to need to be seen by a physiatrist at least twelve times per year to assess her overall condition and New York State law requires a prescription given to patient by a doctor once a month to indicate why the patient needs more therapy and what the contraindications are and what precautions should be. So the patient needs to see a physiatrist 12 times a year, and the cost for each visit $100 per session. The patient needs to see an orthopedic surgeon at least of five times per year. The cost is $100 per session. Complete EMG's of her neck and back every three years, approximate cost is $1,500 for each EMG. The patient is going to need at least a minimum of 30 to 50 physical therapy sessions, some years less, some years more. There is no cure for this condition as there is no cure for arthritis and diabetes, just treatment. So the therapy is not going to cure. It will prevent weakness and improve function. And the cost for each physical therapy session for is $150 per session. The patient is going to need repeat MRI of her neck, back both knees. That's one, two, three, four MRIs. Each MRI is $900. That will be required over three years. Patient is going to need repeat arthroscopic surgery to either knee periodically. Each arthroscopic surgery is $5000. And after the surgery the patient will need physical therapy three to four months, and at frequency of three times per week and after she's had three arthroscopic surgeries to the knee the fourth one will not work. She will need a total knee replacement placement that will be sometime after she reached pass age 50. The course for total knee replacement is $15,000. Physical. Life span of total knee replacement plus or minus two years. Revision is another $15,000. The patient is going to need if her lower back pain continues to persist and doesn't improve she's already been seen by a spinal surgeon whose opined she will need back surgery. There is two types.

MR. RHODEN: Objection, your Honor. The doctor is talking about areas that's outside this field.

THE COURT: Sustained.

A. The patient will also need someone to assist her in the house vacuuming, shopping, cleaning, lifting, pulling, pushing things that she cannot do. That will be required at least 20 hours per week and the going rate for that service is between $15 to $20 per hour. Need xrays, neck, back, knees periodically every two to three years. She will need medication for pain and inflammation. Currently she's trying to avoid it, but she will eventually need it. The two best is Mobic. M-O-B-I-C and Celebrex, and she will need those twice a day. The cost for each pill is $3, so it will cost approximately $3,000 a year for these medications. And she's permanently and totally disabled for any type of gainful occupation.

Q. Doctor, in the course -- in the regular course of your duty as a rehabilitation specialist and physiatrist, do you have occasion to make evaluations as to whether or not a patient may need surgery?

A. Yes.

Q. And in the course of your practice is it within your field to refer a patient out for the purpose of laminectomy?

A. Yes, sir. Hundreds and perhaps of such referrals.

MR. ZOROWITZ: Then, your Honor, I would ask once again this doctor with respect to the issue of her needing a laminectomy in the future --

MR. RHODEN: Objection.

THE COURT: That's still sustained.

Q. Doctor, in cases of L5 $1 disc herniation please tell us the consequences to these injuries to other disc levels and how it will affect the patient?

A. The L5 S1 disc is the last disc in the body. The foundation. In the foundation of the human body is stability as is the foundation of a sky scraper. However, if your foundation is herniated, broken or loss common sense as you go higher and higher there would be more pressure on the disc before, and it's a higher chance that the disc above will take more of the pressure, more of the weight and then can become bulging or herniated down in the future.

Q. Doctor, during the course of your evaluations, did you determine any decrease signal in the nerve conduction from Fatima Paroja's spine to her right leg?

A. I found that and the EMG. The EMG that the other doctors found on right side on the date I performed the EMG on June 1, 2005 was mostly on the left side.

Q. What, if any mechanism might cause her to experience radiculopathy to the right side given all of her symtomology?

A. As I mentioned those chemicals inside the disc, once they're released they can spill over to both sides and cause irritation to the nerve roots on both sides. One day might be the left, one might be the right and one day both.

Q. And is this to a degree of medical certainty?

A. Yes, sir.

Q. Do you have an opinion also with reasonable degree of medical certainty as to the following. Can medical conditions be subject to regressions and exacerbations. In other words, may patients have good days and bad days?

A. Absolutely.

Q. Can a different doctor's exam or even the same doctor's exam of the patient vary from time to time?

MR. RHODEN: Objection. Leading.

THE COURT: Ask a direct question.

Q. What, if any, difference might be found in one doctor's examination of a patient from day to day?

A. Well, patient presents with different pictures from day to day. For example, if the weather is rainy or cold, snowing, humid, humidity and cold weather, laws of physic, cold extracts. Heats expands. So if the weather is cold you feel it in your joints more. And rain and humidity the barometer is more tension in muscle fibers and joints. If the patient just got physical therapy and gets examined a half hour later obviously you expect better findings. However, if the patient has had physical therapy in weeks, days or months and weather is bad you expect to find more abnormal findings. If the patient just walked to go to a doctor's office up and down three flights of stairs on the subways you can expect the knee to be more tender, more swelling. So it's a lot of different factors. Physical exams will always vary from day to day. That's why you have to examine the patient on more than one occasion.

Q. What, if any, differences might one doctor have over another with respect to bulges, herniations and --

THE COURT: Sustained. Ask him with regard to himself.

Q. Now, you have given certain opinions as to bulges, herniations and MRI interpretations, correct?

A. Yes, sir.

Q. What, if any, reasons might other doctors disagree with you?

MR. RHODEN: Same objection, your Honor.

THE COURT: Can you answer that question?

THE WITNESS: Yes, your Honor. As of today, 2006, the Medical Radiological Association does not have a uniform definition of what bulge protrusion or herniation --

THE COURT: Sustained as to that. That's stricken.

Q. In evaluating records where one doctor might give -- in evaluating where one doctor might disagree with another, how do you figure out whose right or wrong?

MR. RHODEN: Objection.

THE COURT: Sustained.

Q. In your practice, do you have circumstances where one doctor disagrees with another doctor while you're trying to evaluate, make a diagnosis?

MR. RHODEN: Objection.

THE COURT: Approach.

Ladies and gentlemen, I'm going to given you a quick five minute recess. Some of us may need to use the facility.

Please don't discuss the case among yourselves or with anyone else.

(Brief recess.)

(Open court.)

THE COURT: Mr. Zorowitz, anything else?

MR. ZOROWITZ: Yes, Judge.

Q. Doctor are epidural injections a form of surgery.

MR. RHODEN: Objection.

A. They're considered -- they're classified unsurgical codes, your Honor.

MR. RHODEN: Objection.

THE COURT: Overruled. If that's his testimony.

Q. Are they painful?

MR. RHODEN: Objection.

THE COURT: Overruled.

A. Absolutely.

Q. And during these procedures the patient suffers pain?

MR. RHODEN: Objection.

THE COURT: Sustained.

Q. Why can Ms. Pareja no longer work?

A. She has problems with her neck, her back, both her knees. Any job requires us to sit or stand. If she stands her knees will act up. If she's sitting also the neck, the knees on a continuous basis so would her lower back. So because of these problems that she has it's a very complex picture she can not sit or stand on a continuous basis for more than 45 minutes to an hour. If she does -- can she did do one day or two days? Can she do it 50 weeks out of the year on a continuous basis, no.

Q. So during the time that Ms. Pareja's sitting in court over the last week versus taking a job that would last a year, do you see a difference?

A. Well, she's going to pay the price. She sits here her back will get more stiff. Her knees will become more stiff. Hopefully she will be able to go home rest and/or go for therapy. Can she do this every single day for one year, two years, many years continuous, no, she cannot.

Q. Is that to a reasonable degree of medical certainty in your opinion?

A. Yes, sir.

Q. Okay. To a reasonable degree of medical certainty do you -- are the injuries that she sustained that you just testified to a permanent consequential loss of use of a body function system or member?

A. Yes, sir, they are.

Q. And what body function system or member is that?

A. Patient has sustained a permanent loss of use of the intervertebral disc in her neck and back. Patient as sustained a permanent also of use of the peripheral nerve system as confirmed by EMG's to her neck and lower back. She has sustained a permanent consequential limitation and loss of urine that articular joint, both sides, and torn meniscus, lateral and medial. A function of the meniscus that has been damaged and lost, and also the muscular system as confirmed by spasm and trigger points.

Q. And to a reasonable degree of medical certainty is permanent loss of the use of her lower back?

A. The condition to the disc, the tear of the disc in conjunction with the lumbar radiculopathy.

Q. And to a reasonable degree of medical certainty, do you have an opinion as to the mechanism of these injuries, the increased injury to her lower back. The new injury you described as well as the right knee?

A. You're referring to the traumatic event of 11/2000.

Q. I'm asking what -- Yes, I am?

A. The rotational forces that sustain -- that took place on that date, that injury, those areas?

Q. Yes?

A. Because one from the history. Two from the prior medical records. We know what was pre-existing, what was not pre-existing. Three. We know from the Emergency Room visit. She had blood in her urine. The kidney teas hit and contused, and from the physical exam O 14 findings right from the get go in the Emergency Room. The MRI results. The surgical results. Response to the therapy. Epidural injections, and the two arthroscopic surgeries to the knee. When you put the whole picture together then you see your answer.

Q. Do you perform IME's?

A. I do.

Q. What are IME's?

A. Independent Medical Examination which is when a particular facility refers a patient to another doctor in the same specialty and ask his or her opinion. And the IME must contain certain format. Must have a history. Must have a physical exam. Must have a real pertinent records. Must have diagnosis. Must have causal relationship, if any. Must have prognosis, and if there is any future medical needs or care.

Q. Doctor, did you have the opportunity to review an IME or in fact, two IME's from one Malcom Reid MD?

A. Yes, sir.

Q. And in your opinion were these -- was the IME complete?

A. No, sir. It had no diagnosis on the IME.

Q. Could you explain?

A. Yes. Dr. Reid reviewed all the pertinent medical records. He reviewed the operative findings. He reviewed the MRI findings, yet, he did not list them under his impression or diagnosis.

Q. And what, if anything --

A. It's incomplete.

Q. Did you have an opportunity to review a defense IME from a Barbara Freeman MD?

A. Yes.

Q. In reviewing that what, deficiencies did you find there?

A. She did list a diagnosis, but incomplete diagnosis. She calls it a cervical lumbar strain did not list the MRI findings. Did not list the EMG findings. Did not list all the surgery that was done. It was an incomplete diagnosis to both knees.

Q. And what, if anything, would such practice result in if it's not complete?

A. It doesn't show the whole picture. It shows a part of the picture not the whole.

Q. And finally, Doctor, did you review the IME report of defense's IME report from a Dr. Naunihal Sing. N-A-U-N-I-H-A-L. Last name. S-I-N-G, a neurologist?

A. Yes, sir.

Q. And when you looked at that, is that complete?

A. No, sir, it was not.

Q. Why not?

A. It was missing the full diagnosis.

Q. Can you explain?

MR. RHODEN: Objection.

THE COURT: That's been explained. Sustained.

Q. And what, if anything, makes such a report missing a full diagnosis defective?

A. Same answer.

MR. RHODEN: Objection.

THE COURT: Anything else, Mr. Zorowitz?

MR. ZOROWITZ: No, your Honor.

THE COURT: Mr. Rhoden.

MR. ZOROWITZ: Thank you for your time, Dr. Guy.

MR. RHODEN: Your Honor, may I have some time to review the notes, the charts of Dr. Guy.

THE COURT: We had a recess, Mr. Rhoden.

MR. RHODEN: The doctor had the charts with him. I could not review it at that time.

THE COURT) minutes. Let's go.

(Brief recess.)

(Open court.)

CROSS EXAMINATION

BY MR. RHODEN:

Q. Good afternoon, Dr. Guy.

A. Good afternoon.

Q. My name is Horace Rhoden, and I represent New York City Transit Authority. Dr. Guy, I'm just curious. I took a quick look at your very thick file that you brought here today as your chart. Doctor, where did you get this file from?

A. Which file?

Q. That is entered into evidence as Plaintiff's 17?

A. Well, some of those are my records. Some of them are review of other doctor's records.

Q. Where did you get it from, Dr. Guy?

A. Are you asking about the manila folder in your hand or are you asking about the other doctor's records?

Q. The records that are in this file that is Plaintiff's 17, where did you get it from?

A. The records that belong to me from my office. The records that pertain to other doctors that are organized I got them from Mr. Zorowitz's office.

Q. You got it from the lawyers, the lawyers sent you these records; isn't that correct?

A. The organized fashion, yes.

Q. Doctor, you gave testimony how it is important to have a complete --

THE COURT: Mr. Rhoden, lower your voice a little bit, all right, sir.

MR. RHODEN: Yes, your Honor.

Q. Doctor, you gave testimony how important it is to have a complete record to know the full picture. When did you get these records?

A. The patient brought me a set of record which was not in proper organized fashion. I had those records when I got the complete sat in an organized fashion. I got rid of the other ones because there were duplicates of what is in those records.

Q. When did you get these records from the attorney?

A. Can I have my chart back, I could answer your question.

Q. Certainly.

A. These complete set of records from -- obtained and received sometime in March or April of 2006. But, I had them --

Q. Thank you, Doctor.

A. I'm not at this point with high answer.

THE COURT: Doctor, one second. Let me just suggest to you as I have suggested to other witnesses on cross examination, only answer the question that's posed to you. If you don't understand a question you may say so and order obviously just answer the question that is posed, and I have no doubt that there will be redirect where you can set forth a more complete answer if you so desire. All right, sir. Just answer the question that's posed.

Q. So Dr. Guy, is it fair to say you have been seeing this plaintiff since July 2002; is that correct?

A. Yes, sir.

Q. And you have received her complete record from her attorneys on April 2006, some four years later; is that correct?

A. No, sir, that is not correct.

Q. Dr. Guy, in side your record -- inside here these records that has been received in evidence you have the plaintiff's income tax record?

A. I don't know if I do.

Q. Sir, you don't know what's in these records?

A. I only looked at medical record. I don't look at non medical records.

Q. You stated under sworn testimony when Mr. Zorowitz was asking you what you used these records for the treatment of the plaintiff, did you use these records for the treatment of the plaintiff?

A. The medical records, yes, sir, I did.

Q. Well, you didn't just say the medical record, you talked about all the records that were in this file. Do you use it for the treatment of the plaintiff?

A. This is the first time I'm learning there was income tax papers. If there was I did not review them.

Q. So you don't know what's inside this record; is that your testimony to this jury?

A. No, the medical records that's inside. It's already in my report.

Q. Well, if you know what medical records are in here how come -- why don't you know that there are income tax records inside this file?

A. Because I have no interest in non-medical records.

Q. Doctor, you didn't review these records, did you, Doctor?

A. I did. And right there in my report of May 2006, listed everyone of them one by one.

Q. Now, Dr. Guy, the first time you saw Ms. Pareja was in July 2002, correct?

A. Can I have my records back. If you're going to be asking about dates I'd like to look at my records.

Q. Certainly. You certainly may.

A. he first time I saw her was July 3, 2002, yes.

Q. 1 it was almost two years after the accident, correct?

A. Yes, sir.

Q. Now, Doctor, you made some diagnosis of some trigger points that you say that was on the plaintiff's neck and her lower back, correct?

A. Yes, sir.

Q. And is it fair to say this diagnosis was made some two years after the accident?

A. Obviously, because I saw her two years after the accident.

Q. Doctor, you also say you reviewed other medical doctors that saw her much earlier in time to the accident; is that correct?

A. Yes, sir.

Q. Now, these doctors didn't make any mention that Ms. Pareja had any trigger point problems in her neck or back, did they, Doctor?

A. Just give me a second. Let me just make sure. Yes, sir. Maria Ossman mentioned that there are trigger points present and the local points were chosen and the specific areas of pain to release the trigger points. Remove the fluid congestion. And initiate the healing of soft tissue and promote proper muscular and skeletal alignment.

Q. And when did Ms. Ossman make that diagnosis?

A. In her initial report. I'm looking for the date on here. She's from Prime Medical PC from Tremont Avenue. There is no date on her report.

Q. So you don't know, you can't say this was mae before your diagnosis, correct?

A. Obviously. She saw the patient before me.

Q. so from the records that you have, that you reviewed you can't say what any other doctors made this trigger point diagnosis before you did?

A. Wait. The story gets better. Prime Medical PC saw the patient on 12/15/00. They also found trigger points in the neck, the back. There is more. Would you like me to continue or is two enough?

Q. You may continue, Doctor?

A. It would be all day.

THE COURT: We are not going to be all day. Next question.

Q. Now, in your initial consultation with the plaintiff, you said that you took a history from her, correct?

A. Yes, sir.

Q. And a history is -- when you say you take the history what you mean by that is what the patient says to you; is that correct?

A. In part, yes. There is more to it than that.

Q. Okay. And you relied -- you said to make your ultimate diagnosis 70 percent comes from the history what the plaintiff --

A. Pertinent history, yes, sir.

Q. And you rely on what the patient says to you; is that correct?

A. Yes, sir.

Q. Now, if what the patient says to you is wrong, Doctor, could that then leave that your diagnosis can be wrong?

A. It depends. There are ways a physician can confirm what a patient is telling them if its truthful or not truthful or wrong.

Q. Now, Doctor, none -- when you initially saw Ms. Pareja on July 3, 2002, she told you that she was involved in an accident where the driver of a bus made a rapid u-turn; is that correct?

A. That's correct.

Q. And was that significant, Doctor, in making a determination as to the cause of her injury?

A. Whether the word rapid or not rapid, the fact that there was a some sort of a force that struck, that is important, and a rotational force that was on her body. The word rapid may or may not be important.

Q. Well, Doctor, whether it's rapid or not wouldn't that term the determine the type of force? If you have a certain amount of force. If it's not a fast motion then it would be less force?

A. It depends on a lot more factors. It depends on how she was sitting, was she sitting like this completely held in place or was she sitting like this not properly in place. So it depends on a lot of factors then what you pose to me.

Q. My question is, Doctor, is the word rapid important because it will denote the amount of force that the plaintiff will receive at the time?

A. The answer to your question it can be important, yes, sir.

Q. So earlier you're trying to say, well, rapid or not, that's not true, rapid is important?

A. It depends on a lot more factors, but the way you posed the question it can be important.

Q. Now, at the accident she sold you that she wasn't thrown out of her seat; is that correct?

A. Yes, sir.

Q. Now, she said -- also told you that she had injured her knee. Did she tell you how she came to injure her knee as a result?

A. That was not discussed.

Q. Wasn't that important, Doctor, to note how she injured her knee?

A. For my purposes and forming my diagnosis and treatment, no, sir?

Q. Dr. Guy, are you telling this jury you made a conclusion to a reasonable degree of medical certainty that all the problems you found for Ms. Pareja is as a result of being on that bus on 11/20/00, but now you're saying how she injured her knee on that bus was not important; is that what you're telling this jury?

A. I am saying to you for the purpose of diagnosis and treatment it is not important. Her diagnosis is already there. She had her surgery. It's already there. Now, from a purpose of forensic science you want to ask me it could be important. So a rotational force worked on her body. She got hit from the right side.

Q. Now, how do you know a rotational force worked on her body?

A. She told me she was sitting in a awkward position. She struck the right side of her body. She has a twisting injury to her knee, and she hit her head, neck, jaw and elbow, knee on both feet.

Q. See she hit her knee. She told you she hit her knee?

A. I believe she told me she twisted her knee.

Q. Did you write that in your report that she told you she twisted her knee? It's not in you report. You're talking from memory. Your testimony is now from memory; is that correct?

A. I'm talking from multiple times of discussing the case with her.

Q. My question -- I'm asking you. Your visit on July 3, 2002. I believe I made my parameters clear, July 3, 2002, did you write that in your report that it was twisted?

A. I did not.

Q. And she -- so what you're testifying to, what you just told the jury just now, are you saying is that from your memory or is that some notes that she told you, and you jotted down in your chart. This is from my recent memory of the patient when I saw her last just recently. I reviewed everything with her. There is a lot of stuff I reviewed with her. I reviewed with her the fact there was blood in the urine. I reviewed the fact there was blood in her stool. And I reviewed for myself exactly what happened again so I have a very God recollection of how it happened. If this is my most recent e valuation of the patient May 2006.

Q. So this is from May 2006. Is it fair to say this is from actually preparing to come to testify in court?

A. No. This is from confirming all the things that you have in your possession.

Q. And so you just so happen after four years of treating this patient it just so happened that you only now reviewed how the mechanism of how the accident occurred approximately a month before this case comes to trial?

A. No, every doctor has examined this patient has given the same opinion.

Q. I'm talking about you.

A. I reviewed other doctors that were there before me.

Q. Dr. Guy, listen, you just answer my question. We will make this go a lot faster, okay. I'm not asking you any question about any other doctors. I'm talking about you and what you did. That's what my question is. Now, is it fair to say you only learned the mechanism from your testimony is in what you're telling us. You only learned the mechanism of the injury on May 6th, I believe, May 6, 2006, a month before this case came to trial?

A. I'm not saying that. I'm saying I have no recollection of that from 2002, and it's not in my notes. I am saying I reconfirmed everything with her on my most recent evaluation of the patient on May 2006. Just to confirm what I have in my possession.

Q. And that's your memory comes from what you're testifying to the May 2006 conversation with Ms. Pareja; is that correct?

A. Yes, sir.

Q. And why would Ms. Pareja come to you? Did she come to your office -- was that conversation in your office?

A. Yes, sir, that's correct.

Q. And why did Ms. Pareja come to your office in May 2006?

A. She's still under my care. Part of her continued treatment as to what's going on. I'm the one that referred her to different doctors and were able to get different treatments done for her, and she comes back next month with different problems I might have something different for her.

Q. Doctor, how many times have you seen Ms. Pareja?

A. About six times.

Q. And the first time you saw her you just say was July 3, 2002, correct?

A. That's correct.

Q. And the second time was July 17, 2002; is that correct?

A. That's correct. Yes, sir.

Q. That's approximately two weeks after the incident, correct?

A. That's correct.

Q. And there was the third time you saw her?

A. 1/20/03.

Q. That was approximately six months after your initial visit -- after the last visit, correct?

A. I'm sorry.

Q. That was approximately six months after the last visit?

A. Yes, sir, that's correct.

Q. And when was the fourth time you saw her?

A. 5/6/05.

Q. That was approximately two and a half years after the last visit; is that correct?

A. Not two and a half years. It's from -- that's six months.

Q. Excuse r ?

A. From seven 7/17/02 to 1/20/03 is six months.

Q. And the next time, that's approximately two and a half years?

A. Yes.

Q. Why is there a gap in treatment from the last time until 2005?

A. Well, that's a good question for the patient and not for the doctor. We don't force patients to come back to us. They come back to us when they have a problem. She was under the care of multiple other doctors. She was getting physical therapy at a facility close to her house. Perhaps, she felt no need to come back and see me. Perhaps, everything was running along as should be.

Q. And then she returned to you in 2005; is that correct?

A. Yes, sir.

Q. Now, did you now that she had a workers' comp.. claim pending when you went to see her?

A. Yes, sir. And that's one of the reasons -- I'm looking in my notes. That's one of the reasons I was requesting authorization for EMG and certain diagnostic test which was not approved by carrier and when she same back to see me on 5/6/05, and her workman's compensation case was settled, and she did not need approval any longer. That's when she came back. That's when we had the EMG's done.

Q. Well, the case wasn't settled on 5/6/05?

A. No. I said when she came back to see me she informed me that the case had been settled and closed.

Q. Doctor, it was on May 16th when she informed you that the case was settled and closed?

A. I have a note in my chart, sorry.

Q. 5/16?

A. Yes.

Q. So when she returned to you she returned to you on May 6th the first time, 2005, isn't that correct? One second. Just one second.

A. No, sir. She returned to me Monday, May 16, 2005. That's when I did a re-evaluation and that's when I did an EMG.

Q. Didn't she also come on May 6. 2005, Doctor?

A. I believe it should have been May 9th. May 9th. My note indicates 5/6, but the billing indicates 5/9. I believe it was probably 5/9.

Q. So she returned to you on May, 9 2005. Isn't it true, Doctor, the reason why she returned to you two and a half years later is because she had documentation from you for a workers' compensation claim?

A. I don't think so. At that point the case was settled and closed.

Q. Doctor, the case wasn't settled until May 16th; isn't that correct, Doctor?

A. Well, that is not what I have in my records. It doesn't matter. She came back to me for continued treatments and evaluation. EMG's were requested very very -- from the very beginning.

Q. Doctor, let's get this clear. You learned that the Brooklyn comp... case was closed on May 16, 2005; isn't that correct?

A. No. My note of 5/6/05, which should be five 55/9/05, indicated workman's comp... case was settled and closed. That's what I have in my notes.

Q. Do you have your report, Doctor. Do you have your Hay 16, 2005 report?

A. There is a report. There is also a handwritten note of 5/6/05, which should be 5/9/05.

Q. You have a May 16, 2005 report with you?

A. I do.

Q. And doesn't it indicate in your May 16th '05 report, on that date patient informed you that the workers' comp... case was resolved?

A. She informed me on that date as well as on the prior date of 5/6/05.

Q. It doesn't indicate that in your report.

A. I'm sorry.

Q. It does not indicate that on your May 16, 2005 report?

MR. ZOROWITZ: Asked and answered.

THE COURT: Overruled.

A. It indicates on--

Q. I'm asking about your May 16, 2005 report, Doctor?

A. What is it that you're asking me?

Q. It simply indicates that she informed you regarding the workers' compensation case was resolved on May 16, 2005?

A. That is indicated on that report as well as my progress note on 5/6/05.

Q. Is it true, doctor that the reason why she -- withdrawn.

Now, Doctor, you also asked her, did you not, regarding whether she had on your initial visit on the July 2, 2002 visit, whether or not she had any other injury other than the November 20, 2000, accident?

A. Yes, sir.

Q. And what did she tell you on that date?

A. That she had a prior injury March 2000, when she was a passenger in a car. She injured her neck, back and left knee. She had left knee surgery. She also had HRI of the spine.

Q. Did she tell you, Doctor, that she had 2C injured her right knee-- during a prior injury?

A. According to my records of July they are 2002. It is not listed.

Q. Did she tell you that, Doctor? Would you have listed it if she had told you that she had injury?

A. Yes, sir.

Q. Did she tell you that she had injured her right knee in the prior accident?

A. Based on my records, no.

Q. Did she tell you that she had MRIs done on the right knee in the or accident?

A. No, she dig??ot. I came learn about it through past medical cecords. Which you received from the lawyers, right?

A. No, the rec?? she brought for the second time. I had my own set records, and it?? already in my report, and the record?? had was not p ?? organized. Mr. Zorowitz firm gave me ecords in proper organized fashion.

Q. Now, Doctor, y ?? stated in ?? direct examination of Mr. Zorowitz that you ne??o look at and review the whole picture and all pertin ?? records for the plaintiff. Wouldn't -- isn't it imp rtant, Doctor, for you to know when you're evaluating the plaintiff that she had a prior accident where she complained regarding her -- made complaints regarding her right knee and indeed had MRI?

A. It was normal.

Q. Doctor, isn't it important for you to know for you ?? evaluate the plaintiff that she had prior complair regarding her right knee, and that she had MRI done on her right knee? Was that important for you to know?

A. Yes, sir, but I came to know about it later on.

Q. And you did not know that?

A. On my first visit I did not know. On my subsequent visit I did come to know.

Q. When was the first tire you learned about that she prior right knee injury?

A. One second. I believe that was May 16, 2005.

Q. Was that in your report, Doctor?

A. There is a mention of that. I reviewed a lot of records. I reviewed Dr. Manuel's records. It's in his records. I also reviewed Dr. Neuman's records. It's in his records.

Q. You reviewed many --

A. It was in the records that I reviewed as listed in my report of May 16, 2005?

Q. Did you say that in your reports?

A. Not in those exact words.

Q. Are you testifying from memory that you knew in May 16, 2005, that she had a prior right knee injury; is that your memory or you should have known?

A. It's in the records. If you'd like I can pick it out exactly where it is for you.

Q. Doctor, my question to you is. I want to know what your testimony is. Are you saying from your memory that you remember that on May 16, 2005, you remember that you reviewed these other doctor's records and you remember that it says in their records that she had prior complaints to her right knee; is that your testimony to the jury?

A. That is not what I am saying. I am saying when I reviewed the records over and over again, especially last night, and the night before last, it's in all those records as listed here on my May 16, 2005.

Q. All right. I'm glad you reviewed them last night.

A. No, I reviewed it many times. I reviewed these records many times.

Q. Again, you reviewed it last night. Let's try to figure out, Doctor, when was it the first time, you know, you learned that she had a prior injury to her right knee where she made prior complaints and had prior MRI taken?

A. The answer to your question for the third time is on or about May 16, 2005.

Q. And my next question to you is does it indicate that in your May 16, 2005, report that you learned that she had a prior injury to the right knee and that she had prior MRI to her right knee?

A. Not in those exact words. It's mentioned.

Q. What record is used to let us know or let this jury and Court know that you knew of the prior injury to her right knee and the prior MRIs?

A. By way of reviewing other doctor's records as mentioned in my May 16, 2005 report.

Q. Where are you reading from?

A. From my May 16, 2005 report, page two, under conclusion, third paragraph.

Q. Now, Doctor, now under conclusion, if you want to make a conclusion as to or some diagnosis as to cause of this -- Ms. Pareja's injury isn't that important conclusion to put in your report, Doctor, that she had a prior injury. Isn't that important?

A. Not on this May 16, 2005 report. If you read the first page there is suppose to be an EMG report. of the upper extremity and updated progress report.

Q. Okay. So is it a good practice to list every single thing?

A. My final report is as thorough and as complete as I thought I could be, but on May 16, 2005, I was more as to a current operative update, progress current condition and some of the records I reviewed at that time.

Q. So Doctor, was it important, is that an important thing to list in your report that she had a prior injury to her right knee?

A. Should it be reported, yes. It should have been reported.

Q. And you didn't report it; is that correct?

A. I did not. I was more concerned with the EMG results.

Q. Now, is it now your testimony as you sit here today you remember that on May 16, 2005, that you became aware that she had a prior injury?

THE COURT: All right. We have covered they're. Let's explore something else now. Let's go.

Q. Doctor, is it listed anywhere in your report that you made that she had a prior injury to the right knee?

A. Yes. May 10, 2006 report, on page two under history. She informed me that on March 16, 2000, she was involved in a motor vehicle accident sustaining injuries to her neck, back and both knees as well. She had a prior arthroscopic surgery to her left knee. So on May 10, 2006, both patient told me and additional records were confirmed.

Q. So she told you on May 10, 2006, a month ago that she had a prior injury to her right knee; is that correct?

A. That is correct.

Q. And that's the first time it's listed in your report that you had -- that you became aware that she had a prior injury to her right knee?

A. That's the first time the patient told me and the records speak for itself.

Q. Okay. Now, Doctor, in order to make a evaluation, isn't it true that you need to have a good and complete picture of the plaintiff's --

A. I have been saying that for the past two hours.

Q. And your picture wasn't -- didn't become complete until a month ago before this trial started; isn't that correct?

A. And my picture speaks today what I have said I'm basing my diagnosis and prognosis based on my May 2006 report.

Q. Your picture did not become complete until a month ago just before this trial started; isn't that correct?

A. For argument sake let's say, yes. It was completed May 10th, but it now confirms my overall assessment of this patient.

Q. And Doctor, the records regarding her prior injury, did you review those records?

A. Yes, sir.

Q. Did she go to physical therapy prior regarding those prior injuries?

A. Yes, sir.

Q. Did you review those records?

A. I have them in my possession. I can tell you. She did receive some therapy. How much I don't know. Yes, she did receive some therapy for those injuries.

Q. Did you review those records?

A. Yes, I did. I have them in my possession.

Q. And where did she go to physical therapy?

A. Harvey Levitan MD. Walton Avenue in the Bronx.

Q. Is that for physical therapy or is that the doctor that saw her?

A. That's a physical therapy center. These bills are for physical therapy.

Q. And when was the first time you received those records from Dr. Harvey Levitan?

A. I believe these were received on or about April or May of 2006. That's when my report of May 10, 2006 was rendered.

Q. So Doctor, four years after you saw Ms. Pareja and going on six years after the accident you saw for the first time her prior records regarding -- her prior accident records; is that correct?

A. Yes, sir. And it confirms diagnosis and opinions I have given earlier this morning.

Q. Did Ms. Pareja when talking with her in her visit, did she tell you about any other things when you asked regarding any other injuries? Did she tell you about any other injuries?

A. Which refer to which accident?

Q. Any other injuries?

A. To my knowledge I asked her. She told me there is no other injuries. Now, I learn through records about another misprinted injury.

Q. She had a tubal ligation.

A. That was a wrong date in the record. That was reviewed, but she told me there was no other injuries. These are the only two accidents she had.

Q. When she had -- on July 2, 2003, when you asked her about the injuries she had she told you about the March 2000 car accident and the November 20th bus accident; is that correct?

A. Yes, sir.

Q. And she told you that there is no other injury that she had; is that correct?

A. Yes, sir.

Q. Doctor Guy, I want you to make assumptions. I want you to assume that there's been testimony in this court that the patient -- the plaintiff fell down some stairs on two occasions between November 20, 2000, the day of the accident and November 10, 2001, the date before the World Trade Center bombing.

MR. ZOROWITZ: Objection.

MR. RHODEN: September 10, 2001.

Q. Doctor, assuming testimony was given on that indication. Would that now change your opinion as to what caused the injuries that you found Ms. Pareja to have sustained?

A. No.

Q. Doctor, can answer that question in the format you have produced other than first show me the records?

A. Show me the proof then ask me the questions I will then be happy to answer your questions. Anything is possible. She fell. What did she injure? Did she fall because her knee buckled? Did she fall because there was less power going to the legs from disc protrusion in the back or disc radiculopathy in the back? What was the cause? You need to give me more information before I can answer your question.

Q. Doctor, assuming that there's been testimony given in this courtroom that the patient fell twice between the day of the accident and September 10, 2001. Would that change your conclusion that you gave in this courtroom to a reasonable degree of medical certainty? Would that change your conclusion whether or not the accident of November 20, 2001, caused the injuries that you said you found?

A. No, sir, because I have insufficient information. If you give me more information maybe I could answer your question.

Q. So your conclusion is not going to change no matter what?

A. From just a simple fall. Everybody falls. We have fallen when we are kids, being infants and toddlers. Does that mean we have a torn meniscus. You're giving me incomplete information and no one can answer your question. Sitting here with the way you phrased the question ??t's incomplete information.

Q. Were you aware that she -- Ms. Pareja had fallen twice between that time frame?

A. No, sir, I was not aware.

Q. You were not aware of that?

A. No, sir.

Q. And is it now your testimony that assuming that that happened, that she fell twice, that it doesn't matter, you will sit here under the sworn oath and you will stick to your conclusion that to a reasonable degree of medical conclusion all the injuries that you found was caused solely from the accident of November 20, 2000?

A. Based on information that I have, based on the review of the records that I have, and I'm basing it on that. And yes, I am sticking to my opinion and conclusion. Unless I have proof otherwise, I'm sticking to my opinion.

Q. So the fact that she may have fallen twice after this incident means nothing to you?

A. No, because your comment means nothing to me. You have absolutely provided me with no proof as to what happened; what was the mechanism; what were the physical exams, findings, if there were any xrays, MRIs done after that fall, if it was a basic simple non important fall.

Q. My comment --

THE COURT: All right, Mr. Rhoden, you have explored that. Next question.

Q. Doctor, have you ever given testimony on behalf of the Law Office of Omrani & Taub before?

A. I may have done so on two separate occasions in my 17 years as a physician.

Q. And you know the Law Office of Omrani & Taub?

A. That's correct.

Q. And you knew that Ms. Pareja came to your office that she had a lawsuit ongoing; isn't that correct?

A. That she had a law suit. It may have been settled. I knew that.

Q. You knew she had a law suit ongoing?

A. Yes.

Q. You knew she had a workers' compensation 151 claim ongoing; is that correct?

A. That's correct.

Q. You ever give testimony on behalf of the Law Firm Block & O'Toole?

A. Yes, sir.

Q. And how many times did you give testimony?

A. I'd say about --I can't give an exact number, under a dozen times. Could be less, could be more.

Q. And the past -- this year, Doctor, how many times have you given testimony where the Law Firm of Omrani & Taub was represented to the plaintiff?

A. This past year?

Q. Yes?

A. To the best of my recollection, I don't think any.

Q. How about last year, Doctor?

A. I'm not sure about last year. All together in my 17th year career as a physician, perhaps, twice in years.

Q. And does the Law Firm Omrani & Taub rarely refer plaintiff's to your office?

A. No, sir.

Q. Do they ever?

A. Most of the patients that come to me come through other parts or through other directions. It's possible to have done so. It's possible. I'm not sure.

Q. Doctor, you currently have any other patients besides Ms. Pareja that is being represented by the Law Firm of Omrani & Taub?

MR. ZOROWITZ: Objection.

A. I don't know.

Q. You don't know, Doctor?

A. I don't know.

Q. Do you have any other patients, Doctor, that's being represented by the law firm of Block & O'Toole?

A. I do not know.

Q. And you stated, Doctor -- how many times do you give testimony in court this year?

A. This year about six or seven times. Could be less, could be more.

Q. And last year, how many times have you testified in court?

A. I have testified on an average about 10 to 12 times per year. That's the average.

Q. And you said you earned $3,000 for each testimony; is that correct?

A. For half day. Yes, sir.

Q. For half day. So if you spend a day it's then $6,000?

A. Yes, sir.

Q. And do you regularly spend a day giving testimony for a day?

A. No, unless I have long winded defense attorneys.

Q. Tu che, Doctor.

THE COURT: We are going to break at this time. We are going to break for lunch, and we will be back here around 2:15 or thereabouts.

Again, we will a full afternoon. So we will see you at that time.

Please don't discuss the case among yourselves or with anyone else. Have a good lunch.

(Jury exits.)

THE COURT: I cannot go by doctor's schedule because we will never finish. You cannot do bits and pieces. We have already stopped Dr. Neuman's testimony. I can't do this piecemeal. You're asking too much of the jurors. You're asking them to not follow this case.

I'm sorry, Doctor, but I told them yesterday to advise you that if we weren't done with you this the morning you'd be back in the afternoon. All right, sir. You were to be informed.

THE WITNESS: That didn't happen, Judge.

LUNCHEON RECESS.

AFTERNOON SESSION.

THE COURT: Doctor, would you resume the 22; stand, please.

(Whereupon, the witness, Dr. Ali Guy, resumes the witness stand, having previously been duly sworn, testified as follows:

COURT OFFICER: Jury entering. All rise.

THE COURT: Okay. Ladies and gentlemen have a seat.

Good afternoon, Dr. Guy. Good afternoon, sir.

CROSS EXAMINATION

BY MR. RHODEN:

Q. Dr. Guy, before we broke for lunch recess, we were talking about the amount of time that you testified in court. And I believe you said that you testified approximately 12 to 14 times per year?

A. I said I testify on the average between ten to 12 times per year, some years more, some years less, but that's the approximate average.

Q. For the Law Firm of Block and O'Toole?

A. I said I testified approximately about a dozen times. It could be more. It to could be less.

Q. And Block & O'Toole is also the attorneys of record at one point for Ms. Pareja, are you aware of that?

A. I'm not.

Q. But you're aware that Omrani & Taub --

THE COURT: Mr. Rhoden, let's move along. We have got a lot to cover in very little time, so let's move it along.

Q. And you're paid $3,000 --

THE COURT: We've got that already. Let's explore what has not been covered.

Q. Doctor, in this case did you also have to review records to prepare for your testimony today?

A. Review records. Yes, sir.

Q. And you charge for the reviewing of records?

A. Yes, sir.

Q. And what do you charge?

A. About $500 for reviewing records.

Q. Is that a one time thing or each time you get records you charge?

A. That's a one time thing.

Q. One time fee.

And Doctor, you testified that you saw the plaintiff a number of times, and also, you made reports regarding a visit to the -- your visit with the plaintiff; is that correct?

A. No, I rendered a report. My first visit I rendered a report for each of the EMGs that I did, and I did a narrative report based on my May 2006 after I had all the complete records.

Q. And when you did these reports, Doctor, did you charge for the reports?

A. For the last one, yes. For the 2/8/06 report, no. For the June 1, '05 report, no.

THE COURT: All right. Doctor, take a moment and look and then just tell us you what you charged for, all right. Take a moment to review that.

THE WITNESS: I charge for the May 16, '05 report. And for the May 10, '06 report.

Q. And these reports that you charged for did you send these reports to the attorney's office?

A. If they requested it, yes, sir.

Q. You said if they requested it?

A. Yes, sir.

Q. So why do you charge for some reports and not charge for others?

A. Depends who wants it. If Mr. Omrani and Taub's firm requested this report, and if they paid for it, and they sent a HIPPA Release, yes, they get the report.

Q. How much do you charge for the report?

A. $500 per narrative report.

Q. $500?

A. Yes, sir.

Q. So Doctor, is it fair to say you only do a report if they request the report; is that correct?

A. Narrative report is done if, one, patient request it. Two, somebody else request it with the patient's permission. Three, if the patient's lawyer request it or the -- with the patient's report and a HIPPA release

Q. Did Ms. Pareja request a report?

A. To my knowledge, no.

Q. So each time a report was requested from you it was done by the lawyer?

A. In this case?

Q. That's what I'm speaking about in this case?

A. Only two reports were requested by Mr. Omrani and Taub's firm.

Q. Doctor, you gave me one, two, three, four reports?

A. I said only two were paid for. The other two there was no fee.

Q. Okay. And the 5/10/06, that was a fee, correct?

A. I believe I told you that before. I would be happy to say it again. May 10, 2006, and it was another May '05.

Q. May 16, '05?

A. That is correct.

Q. And the June 1st '05, that narrative report you didn't charge a fee?

A. That is correct.

MR. ZOROWITZ: Asked and answered.

THE COURT: Mr. Rhoden, please. We don't have much time. Let's just pay attention, all right. We've going over the same questions and answers at nauseum.

Q. Did the firm Omrani and Taub, did they request a report for the June 1st '05?

THE COURT: Sustained.

Q. Is it fair to say, Doctor, that the May 10, 2006 report, and the May 16, 2005 report, that was prepared in anticipation of litigation?

A. Possible litigation, yes.

Q. Well, you knew that when a lawyer request a report that that's what they want it for; isn't that correct Dr, guy?

MR. ZOROWITZ; Objection.

THE COURT: Overruled. Do you know?

A. No. The case could be settled. So when you say litigation you assume that it's going to go to trial. Maybe it won't go to trial, so I don't know if it's going to go to trial or not.

Q. Litigation doesn't necessarily mean trial, Doctor. Litigation maybe legal work?

MR. ZOROWITZ: Objection.

THE COURT: Sustained.

Q. You knew that when this -- it was requested for by the lawyer it was legal work?

MR. ZOROWITZ: Asked and answered.

THE COURT: Yes, sustained.

Q. And the office visit, you say Ms. Pareja visited your office approximately six times; is that correct?

A. Yes, sir.

Q. Do you charge for the office visits?

A. Yes, sir.

Q. How much did you charge?

A. When it was workman's comp.. it was billed according to workman's comp.. fee schedule, and when it was not it was billed according to the Medicare fee schedule.

Q. Okay. So, my understanding, Ms. Pareja didn't pay you for any of the office visits; is that correct?

MR. ZOROWITZ: Objection.

THE COURT: Overruled.

A. No. Ms. Pareja did not pay. It was covered by a third party.

Q. Okay. Either Workers' Comp. or Medicare; is that correct?

A. Yes, sir.

Q. And how much was the office visit, by the way?

A. Total of $2,062.08.

Q. And Doctor, what percentage of your salary do you receive from testifying in court, preparing reports for attorneys in a year, what percentage?

A. A very small percentage of my total salary.

Q. Of your income. Doctor, how much do you make approximately in a year?

A. If you could do the math. I testify on average 10 to 12 times per year.

THE COURT: Doctor, what is the percentage and how much would that be? Give me an answer, all right.?

THE WITNESS" About $50,000.

Q. About $50,000 per year?

A. Yes, sir.

Q. That's including testifying and reports that you do for the attorneys?

A. The reports I say maybe I would be guessing. I don't want to guess. I'm not sure.

Q. It would be close to $50,000, more than $50,000?

A. I have know way of knowing. I would be guessing. I don't know.

Q. And of your practice, Doctor, that you now have, how many-- on average how many patients do you now have currently?

A. In my Grammercy Park office I have about approximately three to five hundred active patients, and I have a lot of old inactive patients.

Q. And of the three to five patients that you now have, how many of those patients have litigation matters that are --

A. Can't tell you. Not a hundred percent sure.

Q. Can you approximate, give some idea?

A. If you want me to take a guess, maybe 20 percent.

Q. All right, Doctor, I'm going to shift topics.

During your direct examination you said that you -- you reviewed the Emergency Room records and the EMS report; is that correct?

A. Yes, sir.

Q. And when was the first time that you reviewed those records?

A. I cannot tell you when the first time was because I had records before these organized records in the past, but it definitely came to my attention right before my May '06 narrative report.

Q. Right before your May '06?

A. I said, I don't know exactly when, but I definitely had them before my May 10, 2006 report.

Q. And that's the best you can do is give before the May 10th, that's when you reviewed these Emergency Room records?

A. Yes.

Q. Did you think, Doctor, it was important for you to review the Emergency Room records and the EMS records?

MR. ZOROWITZ: Objection.

THE COURT: Sustained. We have gone through this before, Mr. Rhoden. Next question, all right.

Q. In your direct testimony you were talking about the procedures that an EMS used, and indicated when they come to a scene they want to treat the most important injury; is that correct?

A. Yes, sir.

Q. And however, in the EMS record it doesn't say what the EMS thought or found was the most important injury; is that correct?

A. Obviously not.

Q. In fact, in the EMS record what it says is what the plaintiff told. hat complaints was made from the plaintiff to the EMS, is that.

MR. ZOROWITZ: Objection. Competence to testify.

THE COURT: That is overruled.

A. That is correct.

Q. In the EMS record it says the plaintiff complained of low back pain?

A. Yes.

Q. The patient complained of right elbow pain; isn't that correct?

A. Let me just refresh my memory, I'm not sure. Yes, sir, that's correct.

Q. And nowhere in the EMS record does it indicate that the plaintiff made complaints of right knee pains is that correct?

A. That is correct.

Q. Okay. Doctor, now you have a -- you have diagnosed the plaintiff that she sustained a torn medial meniscus and lateral meniscus as a result of this; accident; is that correct?

A. Yes, sir.

Q. Is that a painful injury?

A. Is it a painful jury?

Q. Yes?

A. Initially it may not be painful. In fact, in the beginning you may not pick it up. As I explained earlier the full inflammation takes between three days to ten, eight days to manifest itself. So some people can have pain immediately. Some people can have pain a day, a week or a month later or less or more.

Q. Doctor, is it your testimony to this jury that if you injure your meniscus, medial and lateral meniscus from a trauma, that you won't feel immediately pain?

A. You may feel it immediately. Sometimes you feel it later on. In this case in the Emergency Room records there was mention of pain in both knees. Not in the EMS records, but in the doctor's evaluation there was mention of pain in both knees.

Q. Doctor, just please answer my question, okay. I just want to follow what you're saying, so does the Court and the jury.

Is it your testimony to the jury that when someone injured, ripped the meniscus and ripped the medial meniscus and ripped the lateral meniscus due to trauma, due to impact that they may not feel the pain immediately; is that your testimony.

MR. ZOROWITZ: Asked and answered.

THE COURT: Sustained.

Q. Did you find it odd, Doctor, when you viewed the EMS record that there was no mention of the right knee injury in the EMS record?

A. No, because that was found in the Emergency Room records.

Q. And did Ms. Pareja ever tell you whether or not she immediately following the accident, whether or not she had pain in the right knee?

A. She told me she had pain in her right knee.

Q. Immediately?

A. I don't know if it was --I asked that question immediately. That's not an important question to answer immediately. She had pain. She had problem and when she came to me she still had pain in the knee.

Q. My question to you is this. Does Ms. Pareja tell you that whether or not she had pain in the right knee immediately following the accident?

A. I answered your question.

MR. ZOROWITZ: Asked and answered.

THE COURT: Just answer that question whether?

A. That was never asked. I never asked her that question the way you phrased the question. It's unimportant to me two years after I see her.

Q. So she never told you whether she had pain immediately; is that correct, you don't know?

A. This was never discussed. That was never asked. The records indicate she had pain within 24 hours when she went to hospital Emergency Room.

Q. So Doctor, you don't know whether or not Ms. Pareja had pain immediately following the accident, pain to the right knee?

A. The way you phrase that question I can't answer your question. That was never asked of her.

Q. Doctor, I notice you didn't give a diagnosis of an ACL tear. Is it your opinion that Ms. Pareja did not suffer a tear to the ACL as a result of the November 20, 2000 accident?

A. I leave that to the orthopedic expert who did the arthroscopic surgery to comment on that.

Q. Doctor, is it your opinion that the Ms. Pareja did not suffer a tear to the ACL as a result of the November 20, 2000 accident?

A. No, that is not my opinion. Again, I'm not going to leave that opinion to Dr. Neuman who did the arthroscopic surgery. I'm not going to comment on that.

Q. Doctor, you made comment --

THE COURT: Doctor, just one second. Have a seat. There is an question before you, sir, I want you to anser the question, all right. State the question, please.

Q. Is it your opinion, Doctor, that Ms. Pareja did not tear the ACL as a result of the November 20, 2000 accident?

A. With reference to that question, I'm not sure.

Q. You're not sure?

A. I'm not sure.

Q. So she may not have torn the ACL?

A. That's what not sure means.

MR. ZOROWITZ: Objection, Judge.

Q. Okay. Now, let's -- in the ER records, Doctor, you stated on direct examination that there was blood found in Ms. Pareja's urine; is that correct?

A. Yes, sir, that is correct.

Q. Now, Doctor, there could be many reasons why one has blood in their urine; isn't that correct?

A. That is correct.

Q. And there is, did the Emergency Room record give a reason why she had blood in her urine?

A. No, they did not give a reason.

Q. So your testimony on direct this morning when you're about a kidney injury, that's just your opinion some two years later; isn't that correct?

A. That is my opinion based on the history and full evaluation of the records.

Q. So there is no indication in the medical records that you reviewed that she had ever had a kidney injury; isn't that correct?

A. I'm sorry.

Q. There is no medical records that would indicate that Ms. Pareja ever had an injury to the kidney as a result of this accident?

A. Based on the way you phrase that question, that is correct.

Q. Now, Doctor, the Emergency Room record also showed that she -- Ms. Pareja was treated in the hospital, correct?

A. Yes, sir.

Q. And her neck was examined; is that correct?

A. Yes, sir.

Q. And be side some degenerative changes that were found she was found to be pretty normal?

A. I don't know what you mean by pretty normal. She was one day after accident she was in the first 24 hours of traumatic event. There was tenderness palpated at significant area C6 and 7 were later proved to be... Where there was found to be L5 S1 disc pathology and L5 radiculopathy. I don't know what you mean pretty normal.

Q. You gave us a lesson earlier this morning regarding the various regions of the neck?

A. You're talking about the where there is a number that means your lower back?

Q. I'm asking you --my specific question was to the neck, was it not, Doctor?

A. Yes, sir.

Q. And I mention the neck, and I carried -

A. I went an extra sentence.

Q. If you want to get out of here, Doctor, you just answer my question I will try and be quirk. Doctor, a xray was taken of Ms. Pareja's neck?

A. That's correct.

Q. And the xray showed that the result that it was -- withdrawn.

The results of the xray to her neck, Doctor, isn't it true that it shows mild degenerative changes within the neck?

A. Yes, sir.

Q. And shows osteophyte formation, Doctor?

A. Yes, sir.

Q. Doctor, how long does it take to have osteophyte formation?

A. Years. That's part of the normal natural aging process.

Q. So when you gave us this -- your demonstration earlier, and you talk about osteophyte formation, if on the day of the accident she had osteophyte formation, Doctor, to a reasonable degree of medical certainty; isn't it true that the osteophyte formation couldn't possibly have been from the accident of 111/20/00?

A. That is correct.

Q. And Doctor, she was -- xray was also done on her right knee; isn't that correct?

A. Yes, sir.

Q. And xray shows that there were no fractures or dislocations; is that correct?

A. That's right, correct.

Q. And there was no problem with the bone or soft tissue of the right knee; isn't that correct?

A. That is correct as per xray, yes.

Q. And this impression, the hospital impression that this was a normal right knee?

A. Right knee xray. Not normal right knee xray.

Q. And Doctor, subsequently when Ms. Pareja was discharged she was given certain instructions; isn't that correct?

A. Yes, sir.

Q. And she was given Motrin, told to take Motrin; is that correct?

A. Yes, 600 milligrams.

Q. Well, do you know if she went and get those Motrin -- do you know if she took the Motrin?

A. I don't know. She's taken stronger medications than that.

Q. Doctor, I'm at November 20, 2000, all right. I'm not now six years after the accident. On that time, Doctor, she wasn't given any codeine; is that correct?

A. No, sir.

Q. She wasn't given any type of strong prescription pain medication; isn't that correct?

A. From the hospital Emergency Room, that is correct.

Q. Doctor, isn't that indicative of the fact that the emergency treating physician that treat her right away didn't give her any strong prescription pain medication; isn't that indicative that she did not suffer a rupture to her meniscus of the knee?

A. The way you phrase the question that question cannot be answered with a yes or no.

Q. Doctor, did you have an opportunity to review her pharmacy records?

A. Pharmacy records.?

Q. Yes, sir. That's not a thing that a physician does. You didn't review her pharmacy records?

A. No.

Q. Her lawyers didn't send you a copy of pharmacy records?

A. I never requested to see any patient's pharmacy records.

Q. I'm asking did her lawyers send you a copy of her pharmacy records.

MR. ZOROWITZ: Objection. Asked and answered.

A. No, sir.

Q. Doctor, would you find -- is it surprising to find out that between November 20, 2000, the time of the accident to November 6, 2001, that Ms. Pareja didn't take any type of prescription pain medication?

A. Am I surprised?

Q. Yes?

A. No. Many patients like to tough it out. They don't like the side effects of medicine. No, I'm not surprised.

Q. The fact that Ms. Pareja never take any type of prescription pain medication within a year after this accident, Doctor, isn't that indicative that she did not suffer a rupture of the meniscus in her knee?

Q. Yes, sir. That's not a thing that a physician does. You didn't review her pharmacy records?

A. No.

Q. Her lawyers didn't send you a copy of pharmacy records?

A. I never requested to see any patient's pharmacy records.

Q. I'm asking did her lawyers send you a copy of her pharmacy records.

MR. ZOROWITZ: Objection. Asked and answered.

A. No, sir.

Q. Doctor, would you find -- is it surprising to find out that between November 20, 2000, the time of the accident to November 6, 2001, that Ms. Pareja didn't take any type of prescription pain medication?

A. Am I surprised?

Q. Yes?

A. No. Many patients like to tough it out. They don't like the side effects of medicine. No, I'm not surprised.

Q. The fact that Ms. Pareja never take any type of prescription pain medication within a year after this accident, Doctor, isn't that indicative that she did not suffer a rupture of the meniscus in her knee?

A. Absolutely not.

Q. Doctor, did you have an opportunity to review the MRI films in this case?

A. Yes, sir.

Q. Now, did you review the films themselves, Doctor or did you review the report from the films?

A. I reviewed both the films and the report.

Q. Doctor, I want to call your attention to the radiological films of plaintiff's neck. Isn't it true, Doctor, that the plaintiff had MRI done on her neck on April 17, 2000 before the accident?

A. Yes, sir.

Q. Okay. And isn't it true that those MRI films, though prior films, show that she had disc bulges in the cervical spine from C2 C3 going all the way down to C5 66?

A. Yes, sir.

Q. Now, Doctor, you gave us this morning -- I don't want to touch your thing here. I don't want to mess it up or break it. But you gave us a demonstration this morning talking about what a disc bulge is, and you said it's a tear within the nucleus?

A. Partial tear.

Q. Partial tear. And you said that once the disc is torn that it cannot repair itself, that it's permanent; isn't that correct?

A. Yes, sir.

Q. So isn't it fair to say, Doctor, that Ms. Pareja had a permanent injury in her neck before the November 20, 2000 accident?

A. Yes, sir.

Q. I want to call your attention, Doctor, to MRI of the lumbar spine?

A. Yes, sir.

Q. Isn't it true, Doctor, that on April 24, 2000, before this accident, Ms. Pareja had MRI done on her lumbar spine?

A. Yes, sir.

Q. And isn't it true, Doctor, that those MRI shows that she has bulging disc in the L5 S1 level?

A. I already mentioned that. That's correct.

Q. And these disc, Doctor, was with set effacement; is that correct?

A. Yes.

Q. And Ms. Pareja had MRI of the lumbar spine on January 4, 2001, after the accident; is that correct?

A. Yes, sir.

Q. And that also shows bulging disc with a L5 S1; isn't that correct?

A. I believe it's a protrusion. One second. Let me just check. Yes, that shows a bulge-- the one after shows the protrusion.

Q. January 4, 20017

A. That's correct.

Q. So the MRI that was done approximately two months after the accident was almost identical to the MRI that was done five, six months before the accident; is that correct?

A. Yes, sir, that is correct.

Q. Doctor, was no change to the disc in the lumbar spine subsequent immediately following the accident; is that correct?

A. That is correct.

Q. And Doctor, isn't it true that she had a third MRI done October 12, 2003, approximately three years after the accident; isn't that true?

A. That is correct, yes.

Q. And on that MRI three years after the accident then it showed she disc protrusion in the L5 S1 level; isn't that correct?

A. Yes, sir, that's correct.

Q. Isn't it true, Doctor, that from a reasonable degree of medical certainty that --withdrawn.

You testified this morning on direct examination before the difference between disc bulge and disc protrusion?

A. Yes.

Q. And you said a disc protrusion was full tear?

A. Yes.

Q. Is it then, Doctor, since on January 2001 she only had the disc bulge which was shown prior to, Doctor, to a reasonable degree of medical certainty? Isn't it true that the disc protrusion that was shown three years after the accident was not caused by the accident of November 20, 2000?

A. No, sir, that is not my opinion nor my assessment.

Q. Doctor, Ms. Pareja also had MRI done on the right knee; is that correct?

A. When? Before or after what date?

Q. Well, she had on May 1, 2000, isn't that correct?

A. One second. Yes, sir.

Q. Okay. And that was done by a radiologist, Doctor Steven Proofer, correct?

A. Yes. It was read by Dr. Steven Proofer.

Q. And as per Dr. Proofer it demonstrated the plaintiff had an intrameniscal abnormality within that right knee; isn't that correct, Doctor?

A. Yes. It was part of the normal natural ageing process, but it was not a tear.

Q. And also, Doctor, it also indicate that she had a joint infusion, correct?

A. Yes.

Q. Can you till the --

THE COURT: Wait until the question is asked because you see my court reporter she's very good at what she does. She still has not mastered the skill of taking down two people speaking at the same time. Finish your question, please.

Q. Can you tell the jury what a joint effusion is?

A. Yes. Joint effusion is a collection of water inside the knee joint. It can come from normal natural aging process. It can come from wear and tear. It can come from a traumatic event as well.

Q. And also noted in that MRI by Dr. Proofer that there was a possible tear to the ACL; isn't that correct?

A. More or less, that's correct.

Q. And he recommended that further evaluation should have been done on the plaintiff's right knee; isn't that correct?

A. That's correct.

Q. Did you see any records recording those further evaluations, Doctor?

A. It says orthopedic correlation. Yes, there was an orthopedic correlation. That was Doctor Manoele.

Q. Doctor, Dr. Manoele didn't see the Ms. Pareja till February 2001, almost a year after this MRI was done; isn't that corret?

A. Let me see who the orthopedist was. I don't know. I just want to check. The orthopedist was Dr. Cohen and he did the see the patient before that accident. He did perform arthroscopic surgery on the patient on 5/2/00, so there was orthopedic correlation.

Q. Doctor, that was to the left knee?

A. Orthopedist examines both knees.

Q. Doctor, that was to the left knee; is that correct?

A. The surgery was to the left knee. The correlation was done to both knees.

Q. And Doctor, there was examination -- excuse me, MRI on the right knee done on January 18, 2001; is that correct?

A. Yes, sir.

Q. And on that MRI film as per Dr. Steven Brownstein who read the MRI, indicated that there was a joint effusion; is that correct?

A. Give me a second. Yes, sir, that is correct.

Q. And he also indicated that the cruciate ligament means ACL and PCL, those were intact?

A. That's correct. That's what it says.

Q. And that was done on January 18, 2001, after the accident; is that correct?

A. That's correct.

Q. And for the first time -- well, well withdrawn. And MRI film also showed that there was a tear to the medial meniscus on that date; is that correct?

A. Yes, sir.

Q. And MRI on right knee was conducted on April 3, 2005; is that correct?

A. Sounds correct. I'm just trying to bring it up from my records. I can't find it right now, but go ahead, ask me a question.

Q. And on that record -- Doctor, you want to look at mine?

THE COURT: Just ask a question.

Q. It shows that there was a joint effusion also in that right knee?

A. If I don't have the report in front of me how am I going to answer you.

Q. Well, since it's in evidence, I will just read it. I will just read it out, Doctor, since it's in evidence, and if it refreshes your recollection then it refreshes your recollection. Findings. Minimal joint effusion is noted. Does that sound correct, Doctor?

A. Could be, correct. Yes, sir.

Q. And the cruciate ligament and lateral ligaments are intact, sounds correct, Doctor?

A. Sounds correct.

Q. And cruciate ligament, that's ACL and PCL; is that correct?

A. That is correct.

Q. Now, Dr. Guy, now you had the opportunity yourself to examine Ms. Pareja, correct?

A. Yes, sir.

Q. And on July 3, 2000, when she first reported to you she made complaints of lower back pain radiating down to the right leg; is that correct?

A. No. Low back pain radiating to the bilateral buttocks area and down the right leg with numbness and tingling in the right foot.

Q. Right right. She made complaints of pain with lower back pain radiating down to the right leg?

A. Yes.

Q. Among other things?

A. Yes, sir.

Q. I'm not going to ask you everything she complained about, Doctor, I'm just asking you specifically. And then on May 16, 2005, she reported to you and she made complaints of lower back pain radiating down to both legs on this occasion; is that correct?

A. May 10th or May 16.

Q. May 16, 2005?

THE COURT: Is that in evidence, counsel?

MR. RHODEN: Yes.

Q. Answer the question. It's in evidence, Doctor?

A. Yes, I am trying to find it, your Honor.

Q. It's in evidence. We have it.

A. Yes, that's correct. Down both lower extremities.

Q. Right. And then on June 1, 2005, then this time she comes in and she makes complaint of lower back pain this time radiating down the left leg?

A. Yes, sir. That's correct.

Q. Now, when you conduct a physical examination on the plaintiff on your first visit, July 3, 2002, is it fair to say you only got the range of motion for her knees; is that correct?

A. I don't know what you mean only range of motion for the knees. What do you mean by range of motion only for the knees?

Q. Well, did you get the range of motions that she had regarding her neck?

A. It's right there in the report. I mentioned it this morning.

Q. And what was the range of motion for her neck?

A. One half normal, and the back is one half normal. I already mentioned that.

Q. What does that mean one half normal?

A. Flexion for neck is zero to 60 degrees. One half normal is zero to 30 degrees.

Q. Are you saying, Doctor, she could only move her neck like halfway?

A. That's what I mean. Yes, sir.

Q. Doctor, and flexion is what, is this way?

A. That's lateral flexion. Forward flexion is this way. Extension is this way, left and right. Lateral flexion is this way. Left and right lateral rotation is this way.

Q. And you said she could only flex 30 degrees?

MR. ZOROWITZ: Objection. Asked and answered.

THE COURT: One last time.

A. Forward flexion; that's correct.

Q. And when you say flexion, you're examining me, Doctor, and you're telling me to flex my neck, to pull my chin toward my chest?

A. That's correct.

Q. Can you tell me when I will reach 30 degrees, Doctor?

A. Let me get closer to you.

THE COURT: No, no. Doctor, why don't you demonstrate what 30 degrees is; all right. You demonstrate where this is.

THE WITNESS: Sixty degrees, 30 degrees is up to here.

Q. She couldn't bend her neck; is that correct?

A. To match normal range of motion.

Q. And her lower back, Doctor, what was the range of motion on her lower back?

A. Again, it was one half normal.

Q. And what does that mean, one half normal?

A. I think one half is pretty obvious. If you would like I could demonstrate.

Q. Tell us what normal is and what forward flexion is zero to 90 degrees?

A. One half is zero to 45 degrees. Backward extension zero to 30 degrees. One half would be zero to 15 degrees. Left and right lateral flexion. Left and right lateral rotation normal to zero to 30. One half would be zero to 15 degrees.

Q. So flexion on the neck is when you bend forward and you said her flexion was 45 degrees?

A. That's correct? She could only flex this far.

Q. Tell me when to stop.

A. Right there.

Q. She could only have done this?

A. Yes, sir.

Q. And Doctor, you know this isn't true because as she bends she tells you that I can't go any further; is that correct?

A. I tried to push her a little bit further to see if I could push it further. I record what ever she cannot do.

Q. The point is the result of the test-- how you know she could only go 45 by her saying, ouch, I'm in pain?

A. I try to push a little bit further to see if I can go further. If I cannot that is what I record.

Q. You could not push her pass 40 degrees?

A. Without hurting her, that is correct.

Q. How do you know you're hurting her?

A. You feel resistance.

Q. How do you know you're hurting her is because she says ouch, I'm in pain, I'm hurting; is that how you know?

A. How you know is because you feel resistance. as I explained to you earlier this morning when a muscle gets injured a muscle goes into spasm the fibers shorten. Once the fibers shorten you're able to push the muscle. The lasticity, flexibility has been loss.

Q. Couldn't the resistance be coming from the patient who is not allowing her back to go down?

A. Anything is possible, but after you have done this 20 years you know what is right, what is not correct. So based on my experience and based on the findings she was giving a normal effort.

Q. And you said 15 degrees lateral rotation is it like this direction; is that what you meant?

A. This is 15 degrees.

MR. ZOROWITZ: Asked and answered.

Q. Show me on my body approximately?

A. I will show you on my body. This is 15 degrees.

Q. Hold that for the jurors.

So that's all she could have moved in the office?

A. That is correct, yes.

Q. And you talked about -- you also examined her gait. What is a gait, Doctor?

A. The way her -- the way the person walks.

Q. And what was her gait?

A. It was slow and talgic. She walked with a limp.

Q. And she walked slow. Sort of like she walks around the courtroom here today?

A. I didn't see a full gait pattern. I wasn't paying attention to her gait.

Q. You were out with her in the hallway?

A. She was sitting.

Q. Doctor, I'm going to go into all your reports, but let's go to the very last report you made, May 10, 2006, almost six years after the accident?

A. Okay.

Q. Now Doctor, did you have an opportunity to do an examination of the plaintiff on that date?

A. Yes, sir.

Q. And her -- did you do a range of motion regarding her neck?

A. It's right there in the report. Yes, sir.

Q. And what was the range of motion?

A. The lateral flexion was zero to 20 degrees normal.

Q. So Doctor, is it fair to say after six years of treatment her flexion -- she lost flexion in her neck. It's less than what you found back in July 2002?

A. No, sir. The other ranges of motion improved flexion. Forward flexion improved to normal. Backward extension improved to normal. The only two things that's left abnormal was lateral flexion from side to side and lateral rotation from side to side. Those were the only two that remained one half normal. So there was improvement of the other two ranges of motion.

Q. I'm sorry, Doctor, what was the normal range of motion for flexion in the neck?

MR. ZOROWITZ: Asked and answered.

THE COURT: Mr. Rhoden, please. Let's try to move this along, all right. If you got it down once. Next question.

MR. RHODEN: Judge, I'm certainly not clear, and I think the jury may not be clear regarding the last examination and first examination. Your Honor, I'm just trying to make it clear.

THE COURT: Ask the question from what you have here, all right.

Q. Doctor, is it true when you examined her on May 10, 2006, you found that her lateral flexion was between zero to 20 degrees?

A. Yes, sir.

Q. Which was less than what you found on July 3rd. You found her flexion was twenty, zero to third degrees?

A. Lateral flexion once again is zero to 45 degrees. I said her lateral flexion the first time everything was one half normal. This time everything was better except for lateral flexion and lateral rotation which remain approximately one half normal.

Q. And on this examination, on this date, flexion on her back was also 45 degrees; is that correct?

A. That remains one half normal.

Q. So that remains the same?

A. Yes, sir.

Q. And her right knee, you had full range of motion in her right knee, Doctor?

A. Yes, sir.

Q. And how about her gate, Doctor, her ability to walk?

A. Slow and still and talgic.

Q. Doctor, is it your opinion, medical opinion that Ms. Pareja is unable to work as a result of the November 20, 2000 accident?

A. Yes, sir. It's not only my opinion it's the opinion of every doctor who has--

Q. I only want you opinion?

A. My opinion is yes.

Q. Doctor, did Ms. Pareja tell you that she returned to work after a week after the accident, she returned to work to a full regular duty, did she tell you this?

A. I don't recall. She may have. I have no recollection of it nor have any notations in my records.

Q. So it's not in your records that Ms. Pareja returned to work?

THE COURT: May we have that question answered.

Next question, Mr. Rhoden.

Q. And did you know, Doctor that Ms. -- you know what Ms. Pareja did for a living?

A. Yes.

Q. What does she do?

A. Medical office cleaning. She cleaned medical offices. Did -- are you aware that she returned to

Q. Are you aware, Doctor, that Ms. Pareja has to clean three separate medical facilities?

MR. ZOROWITZ: Objection.

THE COURT: Were you aware of what she did, Doctor?

A. Other than what she told me. The extent of it, no.

Q. So you didn't know that she had to clean three separate --

THE COURT; He just said, no.

Q. Are you aware that in order to get to her facilities that she had to climb stairs to take the subway?

A. That was not discussed, but I'm not surprised.

Q. If you know that she had when she leave one facility to the next she has to take the bus to get to these facilities?

A. That was not discussed. I'm not surprised.

Q. And you again -- you weren't aware that for months she performed --

THE COURT: Asked and answered.

Q. Now that you're aware of it is it still your medical opinion that Ms. Pareja is unable to work as a result of the November 20, 2000 accident?

A. As of today, yes, sir, it is my opinion she's permanently and totally disabled as a result of the November 20, 2000 accident.

Q. Doctor, is it your job, isn't it correct to -- as you testify this morning to try and get a patient back to their normal regular function; is that correct?

A. If that can be possible and safely, yes.

Q. Now, Doctor, when a patient leaves your office and gone about their normal day to day, obviously you can't be with them; is that correct?

A. That is correct.

Q. Doctor, did the attorneys for Ms. Pareja, did they show you a video tape of Ms. Pareja going about her normal daily activities? 181 A. No, sir.

Q. You didn't see that video tape, Doctor?

A. No, sir.

Q. Doctor, I want you to make some assumptions that there is a video tape of Ms. Pareja from February 20, 2006 to approximately March 10, 2006. I want you to assume that that video tape shows Ms. Pareja walking in a fast brisk manner. Would that change your opinion, Doctor, as to whether Ms. Pareja is disabled?

A. No, for very good reasons. If you like I could tell you what they are.

Q. Doctor, I want you to assume that there are video tapes that show Ms. Pareja entering an automobile without any difficulty. Would that change your opinion?

MR. ZOROWITZ: Objection as to form of that question.

THE COURT: Overruled.

Q. Would that change your opinion as to whether Ms. Pareja is able to bend for more than 45 degrees?

A. First of all, I have not seen that video. I cannot answer your question the way you phrased it, but if she did bend pass 45 degrees, perhaps, she could do it on some days. Some days she cannot. I already mentioned she is subject to good days and bad days and the examination can vary from day to day.

Q. But it really didn't vary a whole lot when from the time you first examined he, at least her flexion of the body of her back, didn't vary any from the time you first examined her from July 3, 2002 to May 10, 2006, did it, Doctor?

A. It sure did. By 50 percent the other changes of motion became completely normal as asked and answered on multiple occasions.

Q. I said, Doctor --

A. The flexion did not improve.

Q. Doctor, is the term malingerer, is that a term that's used in the medical profession?

A. It does not apply to this patient. That, sir, is not a malingerer.

Q. You understand the term malingerer. Can you tell a malingerer from a non-malingerer?

A. That is a patient that does not have a bonafide injury. That does not have a bonafide diagnosis. Is trying to make something out of nothing.

Q. And Doctor, in essence -- Doctor, is a patient -- your trained as a doctor to look for this in patients, people who are making something out of nothing in an attempt to fake their injuries?

A. Yes. And also one of the hallmarks of a person who is not a malingerer is a person that submits to pain injections and painful surgeries and painful needles, EMG's. That's a sign against a malingerer.

MR. RHODEN: Move to strike.

THE COURT: No, denied. Next question.

Q. You're trained to look for someone who is a malingerer, who is making something out of nothing. Isn't one of the factors to consider if someone is a malingerer or not is whether or not they have any financial interest in the outcome of their physical examination?

A. That plus all the other things I mentioned earlier.

Q. And you knew, Doctor, when Ms. Pareja came to you she had a Workers' Compensation claim going against her employer?

A. I'm sorry.

Q. You knew when Ms. Pareja came to you she had a Workers' Compensation claim going against her employer?

A. Workers' Compensation claim you get nothing.

THE COURT: Doctor, please.

A. Yes, there was a Workers' Comp. claim, yes.

Q. And you knew when she came to you that she also had a lawsuit, a claim against the New York City Transit Authority; isn't that correct?

A. That is correct, yes.

MR. RHODEN: I'm going to move to strike that part of the doctor's testimony with regard to the value of the Workers' Comp. claim.

THE COURT: That's stricken, ladies and gentlemen. You disregard that.

M. RHODEN: Court's indulgence, your Honor.

Thank you very much. We have no further questions.

THE COURT: Ladies and gentlemen, I'm going to give you a quick five minutes. Use the facilities. You can it along with me. Do not discuss the case amongst yourselves.

(Brief recess.)

(Open court.)

COURT OFFICER: Jury entering.

THE COURT: All right, ladies and gentlemen, have a seat.

Any redirect?

MR. ZOROWITZ: Yes, your Honor.

THE COURT: Go ahead.

MR. ZOROWITZ: Thank you.

REDIRECT EXAMINATION

BY MR. ZOROWITZ:

Q. Doctor, is it unusual for lawyers to provide you with organized records of doctors that may have been seen during the course of her treatment over a period of five, six years?

A. No, sir.

Q. And would you charge additionally for organizing these records themselves if they weren't organized by our firm?

A. If I had to spend time reviewing and organizing them, yes.

Q. And is it unusual for a patient to arrive at two, two and a half year gap from having seen a patient from one day to another day?

A. Is it unusual?

Q. Yes?

A. I'm sorry, what was your question?

Q. Is it -- withdrawn.

Let me give you a hypothetical, if I may. Assume that the testimony here was that Ms. Pareja was seated facing to your right is the windshield of the bus, and she was seated forward on her seat, legs together, and angled toward the front windshield toward the right. Would that change your opinion as to the mechanism of cause of the tear to her knee?

A. No, sir.

Q. And assume that the testimony here was that she never fell out of her seat, but rather smashing into a pole and a partition.

THE COURT: All right. That's beyond the scope of cross. Next question.

MR. ZOROWITZ: If I may?

THE COURT: That's beyond cross. Next question.

Q. One moment. Is it unusual to see a patient six times after a period of time that you described on cross examination, every six months to evaluate a patient?

A. Not in this case because she had other treating doctors as well and she was receiving therapy elsewhere.

Q. So during the time that you were not seeing her she was being regularly treated and had physical therapy and follow-up with other doctors, correct?

A. Yes, sir.

Q. When you began to treat Ms. Pareja did you know that you were going to be called here to testify?

A. No.

Q. Now, is there a difference between evaluating a patient for the purpose of diagnosing them and evaluating a file and the patient's history to come up with a medical opinion to a reasonable degree of medical certainty about what caused the injuries?

A. I don't understand the question.

Q. Is there a difference -- I will rephrase it.

THE COURT: Between IME and treating is that your question, the difference between an evaluation as an IME or as a treating; is that your question?

MR. ZOROWITZ: Yes, that is my question.

A. Yes, there is difference.

Q. What's the difference?

A. When you do an IME you have to do a comprehensive evaluation. You have to have all of the records because if you don't have all the records you're missing part of the picture, and if you don't list all the patient's diagnosis then you have an incomplete picture. And if you have an incomplete picture you're going to give a wrong opinion. So as a treating physician you don't have to deal with the legalities. You want to treat the patient, get them to a point, make them better, stable and guide them as to what treatment option should be. Where as IME does not treat the patient. They have no liability to the patient. They have no liability to the standards of care because they're not considered the patient's treating doctor. They could say what ever they want. They're not going to be held liable. If I say the wrong things I will be held liable.

Q. Is slipping down a set of stairs after tearing the meniscus and tearing ACL inconsistent?

A. No.

Q. Why?

A. Because the leg buckles. If you have a pinched nerve in your lower back the support that goes down your leg is diminished, and you have a torn meniscus in the right knee medial lateral ACL the leg will feel week. The leg may buckle from time to time and you can fall.

Q. Assume that Ms. Pareja as you now know had an accident on March 16th of 2000, which she injured her neck. Does that change -- does your opinion in any way as to what caused the injuries or exacerbation of injury to her lower back in her right knee?

A. The fact that she had a prior problem, the fact that I have access to those prior medical records, I know which came first the chicken or egg. I know what was pre-existing. It takes the guesswork out.

Q. Now, you have reviewed the medical records of the prior accident on March 16 of 2000; is that correct?

A. Yes, sir.

Q. And is there any indication that when she first went to the ER and she first went to the hospital she complained of right knee pain?

A. With reference to this accident?

Q. With reference to the March 16, 2000 accident?

A. No.

Q. Did she ever have any physical therapy according to the records that you reviewed for her right knee as a result of the March 16, 2000 accident?

A. No, sir.

Q. Now, you have heard Mr. Rhoden refer to -- use the word injury. Injury or traumatic injury. Is there a difference between a condition and a traumatic injury?

A. Yes, sir.

Q. What is that difference?

A. If you have a normal natural aging arthritis that's a condition. If you have trauma to the neck that's a traumatic event. It's different than a condition. If you have a disc herniation or disc bulge caused by a trauma is different than having osteofites along the size of vertebral which is part of the normal natural ageing arthritis.

Q. Once you've had an arthroscopy on your left knee, do you favor your right knee for a period of time after awhile?

A. That's right. Consequential compensatory mechanism.

Q. Would it be unusual to complain of right knee pain as a result?

MR. RHODEN: Objection. Leading, your Honor.

A. It is not unusual.

Q. And when Mr. Rhoden uses -- would it be fair to say that a person who is complaining of pain in her right knee as a result of favoring that knee while her left knee heals is more of a complaint of pain rather than a injury.

MR. RHODEN: Objection. Leading.

THE COURT: Sustained.

Q. How would you differentiate, if you can, a complaint of pain on a patient who has been favoring their right knee after left knee arthroscopy as opposed to determining whether it's from an injury.

MR. RHODEN: Objection.

A. May I answer, Judge.

If you have a history that there was no injury to the right knee, patient has no complaints of the right knee whatsoever, there was an injury to the left knee, the patient has surgery to the left knee, the right knee begins to have pain after the surgery to left knee, that is called a compensatory mechanism which is not as a result of an injury. It's a result of the patient trying to unload the left side by overloading the right side. That's a temporary compensatory mechanism.

Q. And what, if anything, was the cause of the back condition that required her to receive the surgical procedure of epidural injections?

A. That was caused by the L5 S1 prior pre-existing bulge that went to a protrusion that got worst and became painful that required more aggressive treatment.

Q. And why did it get worst?

A. Because of a subsequent accident.

Q. Is the accident of November 20, 2000 a competent producing cause of that particular increased injury or new injury?

A. Yes, sir.

Q. Is that to a reasonable degree of medical certainty?

A. Yes, sir.

Q. Now, after the -- by the way, is discectomy done under anesthesia?

A. Yes, sir.

Q. In your opinion, as a treating physician and after reviewing all of these medical records for the purpose of coming here today, do you have an opinion as to whether her injuries of March 16th have resolved themselves prior to November 20th of 2000?

A. Based on the history, yes, they did resolve themselves.

Q. And when you say based on the history, could you explain what that history is upon which you base that opinion?

A. She was basically asymptomatic. She was able to continue doing her cleaning work as she was. She was able to continuously go up and downstairs, ride the elevator, take the train, take the bus and this accident made it worst and caused new injuries.

Q. And is -- are those new injuries cause a competent producing cause of the November 20, 2000 accident to a reasonable degree of medical certainty?

A. Yes, sir.

Q. Okay. Now, assuming that she is a medical office cleaner, you're familiar with medical office cleaning, are you not?

A. Yes.

Q. And you're familiar with what kind of work and activities they perform?

A. Yes.

Q. You stated earlier that she could no longer work. Can you explain what movements she's no longer able to do as a result of her permanent disability?

A. Well, she cannot do repetitive bending. She could do it once, twice, but not repetitive bending on day-to-day basis. She cannot sit or stand on a continuous basis. She could do it one day, two days, three days. She cannot do it every single day, 350 days out of 365.

Q. Is it your opinion to a reasonable degree of medical certainty that these are no longer functions that she's able to perform as a result of the accident of November 20th of 2000?

THE COURT: We have had this before next question. Limit to cross.

MR. ZOROWITZ: Yes, Judge.

Q. How many times did Ms. Pareja see doctors at Prime Medical after -- before seeing you?

A. Multiple times. I can't give you the exact number.

Q. Doctor, over what period of years?

THE COURT: Is that in the records?

THE WITNESS: It's in.

THE COURT: The record will speak for itself.

Q. Would you be able to tell us the total charges for Ms. Pareja under your care?

A. Yes.

THE COURT: We had that already. Next question.

Q. Mr. Rhoden mentioned that Wokers' compensation and Medicaid or Medicare paid for her procedure?

THE COURT: Next question. We had that as well.

Q. If there is a judgment in this case and compensation given will --

MR. RHODEN: Objection.

THE COURT: Let me hear the question.

Q. Will this be what's called a lien?

THE COURT: Sustained. Actually, on second thought I will allow that question with regard to this, Doctor.

THE COURT: With regard to this, Doctor Judge.

A. Yes, there will be a lien.

THE COURT: Just with regard to your services.

THE WITNESS: Yes, yes, yes.

Q. So with respect to your services if there is compensation for medical care already rendered she won't see a dime of that will she - -that all goes to you?

THE COURT: Sustained.

Q. Is there a lien from you, Doctor, for your payments?

A. For the small amount of it, not all of it.

Q. Is blood in the urine consistent with a trauma such as she suffered on November 20th of 2000?

A. Yes, it can be.

Q. Mr. Rhoden has mentioned xrays and he's mentioned osteofites. As per an xray what, if any, difficulty is there in diagnosing tissue by xray?

A. Xray is a test for bone. It's not a test for torn meniscus. It will never appear on an xray. That's why we do MRI and arthroscopy.

Q. Is it fair to say xrays taken at the hospital wouldn't have shown the injury that she 14 sustained that we are discussing here?

THE COURT: Next question. He just said that.

Q. You testified under cross examination that various MRIs taking in periods of time of her lower spine showed no change in the computer generated image, the MRI from one MRI to the next? Do you recall that?

A. I recall that question.

Q. How do you reconcile that testimony with Ms. Pareja's continued complaints of pain and radiolocator after her accident of November 20th of 2000?

A. Very simple answer. All radio clinical correlation suggested. Which means an xray or in my report don't tell the whole picture. You clinically correlate which means the patient history. She has persistent spasm. Persistent trigger points, persistent range of motion deficit and periodic difficulties in walking that shows that's different from one bulge to the next. That on the MRI stays the same, but clinically is significantly different.

Q. Can a radiologist make a diagnosis of that significance to a reasonable degree of medical certainty without also examining the patient, and all the relevant history?

A. No.

Q. Now, can effusion or water in the knee come from favoring one knee over the over?

A. It can. It's called over use syndrome.

Q. Why would a radiologist write on the report that ACL that there is effusion in the joint and that the ACL is intact.

MR. RHODEN: Objection.

THE COURT: Sustained.

Q. You recall testifying for Mr. Rhoden that he asked you if a radiologist had written on these reports joint effusion and ACL intact?

A. I recall that, yes, sir.

Q. How do you reconcile that with Ms. Pareja's condition?

MR. RHODEN: Objection.

A. You do an arthroscopy to confirm that belief.

Q. Assume that a patient comes in one day and complains about pain and comes in another day -- withdrawn.

Assume that a patient comes to you on one day with pain in her left leg, and then on another day comes in and complains about pain in her right leg. Assume also that that patient has abnormal spinal condition. Would that be an unusual situation?

A. Absolutely not.

Q. Why not?

A. That's usually not the unusual thing.

Q. Why?

A. You have remission, exacerbations. The clinical pictures change from one side to the other. Maybe on Monday the other side hurts more. She's going to try to unload that side and put all the pressure on right side. The next day Tuesday that side is going to hurt. Now, she's going to try to unload that side again and favor and unload the other side. It goes back and forth.

Q. Assume that this jury has seen video tape taken by defendant's investigator's of Ms. Pareja walking briskly over a period of 25 to 30 seconds, does that surprise you?

A. No, sir.

Q. Why not?

A. She could do it.

Q. Can someone with Ms. Pareja's disability get into and out of a car?

A. Absolutely. Can get in and out of a bus. They can do it. If they do it over a period of time they will pay the price.

Q. Would it surprise you that Ms. Pareja has a disabled license plate on her automobile?

A. No, sir.

Q. Why not?

A. Because I know how it was obtained. I don't know if I'm allowed to mention it, Judge.

THE COURT: Doctor, just does it surprise you?

THE WITNESS: No.

Q. Why does it not surprise you?

MR. RHODEN: Objection.

THE COURT: Sustained. Next question.

Q. What is the benefit of having a disabled license?

THE COURT: Sustained. Next question. Limit to cross.

Q. You could assume that this jury heard testimony that Ms. Pareja got into the driver's seat of her automobile and had an individual lean over her?

THE COURT: Beyond the scope. Next question.

Q. Would it surprise you that she can't adjust her own seat.

THE COURT: Beyond the scope of cross.

Mr. Zorowitz, are you done? You're limited to cross.

MR. ZOROWITZ: One moment, your Honor.

THE COURT: We are taking the time that we have left before we have to conclude for the day.

MR. ZOROWITZ: Yes, your Honor. One moment, I believe, I'm done. I would just like one more moment. I thank you for your time. Thank you, sir, very mucho.

THE COURT: Any recross limited to redirect?

MR. RHODEN: Briefly.

THE COURT: Very briefly.

RECROSS EXAMINATION

BY MR. RHODEN:

Q. Dr. Guy, am I to understand that you have a lien against this case?

A. I don't know. For whatever balance that's unpaid from the Medicaid co-payments, yes.

Q. So therefore, Doctor, you have a financial interest in the outcome of this trial; isn't that true?

A. No, sir, because the patient will be responsible for it regardless of the outcome of this trial.

MR. RHODEN: Thank you, your Honor. No further questions. Thank you very much. You may step down.

(Witness excused.)

THE COURT: All right. Ladies and gentlemen, I think we did it. We got our full day in today. I thank you for your patience today. You have did your service today. We can anticipate a full day as well tomorrow. So rest up. Have a good night sleep. Eat well tomorrow morning, and don't forget your caffeine.

Please, again, do not discuss the case. 9:45.

(Jury exits.)

THE COURT: Gentlemen, we have a very exhausted list of witnesses still remaining, most of them as I see it are either doctors or experts. When I say that I want the doctor experts on and concluded that day I mean it. Because if we start taking them and breaking up their testimony it will be very difficult for the jurors to follow along. So when I push you and say that you have asked the same questions not once or twice but three times or it's beyond the scope there is a reason that I'm doing it. I do not want to lengthen this trial more than necessary or cause anyone to spend more time to have the same expert on the stand. So please cooperate with me when I say please do not ask the same questions at nauseum. I know you're in the moment, and you may lose sight of it, but the jury is trying to be patient and bear with you. So when you ask the question the upteenth time it's very difficult. All right, gentlemen, so please keep track of your questions and answers and we need to try to move this along.

Now, tomorrow who do we have tomorrow? Doctor Neuman is here tomorrow afternoon; is that correct.

MR. ZOROWITZ: That's correct.

THE COURT: And we have tomorrow on your case, Mr. Zorowitz. We still have Ms. Ferguson is she scheduled for tomorrow morning and Ms. Barrera. Are we going to finish with the plaintiff tomorrow morning. I'd like to finish her. Why do we finish with the plaintiff tomorrow morning? I think we were doing cross.

MR. RHODEN: That's correct.

THE COURT: We will finish the plaintiff and then we will take Ms. Ferguson next. I don't anticipate the plaintiff should be long tomorrow since we are just doing the remainder of cross. Any redirect and any recross we will take Ms. Ferguson next. And then if we have time we will take Ms. Barrera. If we don't have time for her tomorrow morning we are taking the doctor in the afternoon. If there is time for Ms. Barrera in the afternoon then we will take her then. All right. We still have a possible witness from the Transit Authority for Friday.

MR. ZOROWITZ: Also, if I decide-- if I like tentatively keep available because it's the only other time other than today the economist. He is available Friday afternoon and that's it. Other than that I will not have -- he was here today. I will discuss --

THE COURT: That's Friday. All right, as you gentlemen know, as I have informed you both and as the jury is aware, we are not in session Monday. We are not in session July 4th which is Tuesday. This Friday what I'm suggesting is that we remember that this is going to be a long weekend. I don't know what plans the jurors may have for Friday. Obviously they recognize that they are on trial, but I suggest that you keep that in the back of your minds when we are here on Friday with regard to how much we will be able to accomplish on that day. So you're telling me the expert won't be available until the afternoon on Friday.

MR. ZOROWITZ: That is what he has told me without any question. I will talk to my partners about this again. That's not directed toward you. It's frustration with my office.

THE COURT: I have no problem. I'm here until five on Friday, but just bear in mind scheduling needs of all others involved in this case.

MR. ZOROWITZ: Yes, your Honor.

THE COURT: So have a good evening, and we will see you tomorrow morning, and we will hope to do as much as we possibly can tomorrow which means, Mr. Rhoden, you're going to reach out to your doctors tomorrow. So be reaching out to your doctors who were tentatively scheduled to begin tomorrow, so I assume that we won't conclude with your case, Mr. Zorowitz, until Friday.

MR. ZOROWITZ: Correct. So we will be flipping to defense case on Wednesday. So I would suggest Mr. Rhoden you start reaching out and making your scheduling -- your schedules, tightening them up between now and I guess, Friday. All right. Have a good afternoon.

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