A. Guy
#24877

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

ALPHONSO BURKE,

Plaintiff,

v.

SPARTANICS LTD. and its successor corporation, whose name is presently unknown to plaintiff,

Defendants.

----------X

SPARTANICS LTD.,

Third-Party Plaintiff,

v.

METAL ETCHING COMPANY,

Third-Party Defendant

----------X

CV 96-5059

United States Courthouse
Uniondale, New York

July 27, 1999
9:30 o'clock a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Plaintiff: LAW OFFICES OF
FREDERICK K. BREWINGTON
50 Clinton Street, Suite 501
Hempstead, NY 11550
By: FREDERICK K. BREWINGTON, ESQ.
WANDA L. SELINGER, ESQ.

(Continued.)

For the Defendants and Third-Party Plaintiff: LAW OFFICES OF VINCENT D. McNAMARA
1045 Oyster Bay Road
East Norwich, NY 11732
By: JAMES P. HAGGERTY, ESQ.

For the Third-Party Defendant: RYAN & BRENNAN LLP
131 Tulip Avenue
Floral Park, NY 11001
By: JOHN E. RYAN, ESQ.

Court Reporter: Owen M. Wicker, RPR
2 Uniondale Avenue
Uniondale, N.Y. 11553
(516) 292-6936

Proceedings recorded by mechanical stenography; transcript produced by computer transcription.

(Case called.)

THE COURT: Please put on the position with respect to the Social Security issue, and I'll rule on that in a moment.

With respect to the application of the admission of the Social Security decision of the Administrative Law Judge, Plaintiff's Exhibit 90, unless there is something further, I think it is probably admissible under 803(8)(c)

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

MR. BREWINGTON: Judge, I have a copy of Plaintiff's Exhibit 89, which is a copy of the bargaining agreement for your book.

THE COURT: Great. Okay.

We're bringing in the.

(Whereupon, the jury enters.)

THE COURT: We're ready to resume.

Mr. Brewington, your next witness.

MR. BREWINGTON: Yes, Your Honor. Dr. Ali Guy, G-u-y.

A L I G U Y , having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE WITNESS: My name is Dr. Ali Guy. Office address is 15 Jericho Turnpike, Jericho, New York 11753.

THE COURT: Please have a seat, sir, and there's a microphone there. Make sure you use it. All right?

THE WITNESS: Yes.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. BREWINGTON:

Q Doctor, you can pull that mike closer to you, please.

A Yes.

Q Sir, the title "doctor," what does that refer to?
A I'm sorry?
Q The title "doctor," what does that refer to?
A Physician.
Q Sir, are you an licensed physician?
A Yes, I am.
Q Where are you licensed, sir?
A New York State and Pennsylvania.
Q Are you licensed to practice medicine and surgery in New York State, sir?
A Yes, I am.
Q Could you tell us, sir, do you have any licenses, other than being a doctor?
A I have degrees other than being a physician.
Q Well, let's go to your educational background. What is your educational background?
A College. I went to Queens College.

Med School, went to the University of Northeast Dominican Republic, graduated in June of 1981. Thereafter, I did three separate residencies. The first one in the field of internal medicine and physical medicine and rehabilitation in New York City for a period of 18 months. And then I did one year of general surgery at Cabrini Medical Center, New York City. Then I did three years of physical medicine and rehabilitation at

Mount Sinai School of Medicine, and I'm board certified in the field of physical medicine and rehabilitation.

I'm the director of the Department of Rehabilitation at Maimonides in Brooklyn where my duties are to train the physical therapy students, physical therapists, physical assistants from Touro College, and to conduct teaching rounds and quality assurance rounds with the other doctors in my patient.

I see patients, consult with other doctors. Also I'm director of the neuromuscular clinic, and I'm also clinical director rotating through the hospital.

Q Sir, you indicated that you are board certified. What does that mean to be board certified?

A To be board certified in my specialty is the highest degree which you can attain in our level of certification.

Q What does that mean, sir?

A Physical rehabilitation, better known as physiatry. You have to build the following prerequisites: You have to have training in the field other than in the field of physical rehabilitation medicine, preferably in medicine and physical surgery, one year each. I met those physical requirements.

You have to pass a training program in physical rehabilitation, score 70 percent or higher in the oral part, and then sit-in boards, part one, it's an eight hour

written examination. Once you pass that then you have to be in private practice for a period of no less than 18 months, be sponsored by two other doctors that are already board certified that can vouch for your knowledge, integrity, work ability.

You then take your boards, part two. You fly to the Mayo Clinic in Minnesota, that is where the research is written. You are tested orally for a half day in orthopedics, neurology, interpretation of x-rays, CAT scans, MRIs, EMGs and other principles of physical medicine and rehabilitation. If you prove to these doctors that you're are up to par and they pass you, they give you a Diplomate of the American Academy of Physical Medicine and Rehabilitation.

Q Doctor, are you a member of any medical organizations?

A Yes.

Q Which ones?

A I'm a Diplomate and Fellow of the American Board of Physical Medicine and Rehabilitation. Member of the New York State Medical Society.

Q The field of physiatry, how is that different from neurology or orthopedics?

A This field is a medical specialty founded shortly after World War II. It's approximately 50 years old.

There's a great deal of overlap between what neurology and orthopedics do. In our field we try to stay away from surgical procedures. We don't do surgery. We try to avoid surgery.

We treat the body from the head to toe. We're the most holistic of all the medical specialties. We don't concentrate on the bone, we concentrate on the whole body; bone, muscle, neurological system, cardiac system, pulmonary system, the entire organs.

Our job is to rehabilitate an injured patient, take them from their preinjured state to their most, maximum medical improvement and we're also experts on the severity and impairment of trauma situations.

Q Does your treatment deal with injury?

A Yes.

Q How so?

A You rehabilitate where there is injury. Where there is injury there is trauma.

Our job is to bring the patient back to the optimum level of care prior to their preinjured state.

Q Doctor, with regard to your area of specialty, have you qualified as an expert in other cases and testified?

A Many times.

Q In what type of courts?

A Federal, State, Supreme Courts. Just about

everywhere in New York.

Q And, Doctor, could you tell us, please, were you retained to evaluate Alphonso Burke in this case?

A Yes.

Q And do you know that name, sir?

A Yes.

Q Did you have occasion to conduct an evaluation of Alphonso Burke?

A Yes.

Q And how many times did you evaluate him, sir?

A Twice.

Q And, sir, could you tell us prior to any evaluation of Alphonso Burke, did you have occasion to review any records and information relating to his conditions and his status?

A Yes.

Q What did you review, sir?

A I reviewed the medical records from the Nassau County Medical Center. I reviewed records from a prior treating physician, Dr. Butani, reviewed records from Dr. Paul, a report from Dr. Issac Cohen, Dr. Richard Park, Dr. Ira Kalina.

I reviewed records from Social Security, Administrative Law Judge Division. Those are the basic records I reviewed.

Q Sir, could you tell us with regard to your evaluation of Mr. Burke himself, where was that conducted?
A In my office on Jericho Turnpike.
Q Describe for the jury what it is to evaluate him, other than looking at the records.
A Talked to him, conducted an examination, formed an opinion as to causal relationship and as to prognosis and his future medical needs.
Q Based on that evaluation, did you formulate any opinions as to Mr. Burke's conditions, his status and his prognosis?
A Yes.
Q Doctor, do you feel you have sufficient information and documentation today to render opinions before this jury?
A I do.
Q Sir, can you tell us in the history you took from Mr. Burke, what did you find?
A That he was working on the job on January 23, 1996, working with a cutting machine and he was cutting some material, metal. And his right hand got caught in the metal and it was cut.

He woke up and he was taken to Nassau County Medical Center by helicopter and he had an amputation of his last four -- his second, third, fourth and fifth

digits which were successful. He had amputation of the second through fifth digits with successful reattachment of the third digit.

Q Now, sir, you indicated that he went to the Nassau County Medical Center. Did you review those records?

A I did.

Q In reviewing those records, sir, did you find anything that was remarkable with regard to the treatment he received there?

A Yes.

Q Could you explain that to the jury with regard to his diagnosis and prognosis?

A Yes.

First of all, there's a lab result that showed he lost a lot of blood. On January 28, 1996, there's a hemoglobin and hematocrit count of him which shows it was 12.4 grams per deciliter. Normally it's 13.5 to 17.5. This indicates that he bled quite a lot. His hematocrit was 37.4; it's normally 31 to 52 percent. So 37.4 is pretty low for a 29 year-old man.

It was repeated the next day. The hemoglobin was the same. Hematocrit is still low, 34.5.

Another thing that was remarkable was that when he was at bedside, when they reattached his finger, his finger was very swollen, conjested. They placed these

medical leeches which sucks blood from the finger. It's a therapeutic procedure to eat debris and excess blood. Apparently the leeches let go after a short time. This indicates there was no blood supply to the finger. As a result, the patient lost the finger.

And also the patient had numerous revisions done, and he had replantations of the third digit and amputation of the distal second, fourth and fifth digits.

Q Now, Doctor, in your evaluation of Mr. Burke, can you just tell us what it is you actually did physically, as far as your physical examination of him?

A I examined his hand. I checked for touch. I checked for range of motion, for sensation. The use of his hand, grasp power, motor power, dexterity.

Q And, Doctor, based on that what were some of your findings?

A In the sensor aspect of his right hand, the first digit everything was intact.

Q The first being?

A The thumb. Everything was intact, normal. The third finger was status-post distal.

Q What does that mean?

A Status-post distal means the condition after. Distal means the furthermost from the hand.

So the tip was cut. The tip of the finger was

amputated.

The third digit was reattached.

Q And the third digit being the middle finger?

A However, the proximal and the distal aspects of the third digit was swollen with a marked reduction in range of motion.

Q What does a marked reduction in range of motion mean in everyday terms, sir?

A The patient cannot fully bend the finger. When you reattach tendons and fingers, the tendons become sclerosed and fibrotic. When they become fibrotic, they lose their elasticity. When they lose their elasticity, you have very little, if any, range of motion.

The surgeon tries to provide some support and some cosmetic appearance for the patient's hand, but function at best is minimal. That's what happened with the third finger.

And the fourth and fifth digits --

Q What about the fourth and fifth?

A Also had amputation of the tips of both fingers.

And sensation was markedly diminished to pin prick and touch, the last four fingers.

Q What does pin prick and touch refer to?

A Sensation. To see if the patient can feel properly.

Q With regard to Mr. Burke, what were your findings?

A It was diminished. He had lack of sensation to the last four fingers.
Q Doctor, could you tell us, please, sensation. How important is that to a person in terms of doing manual dexterity type of work?
A Without proper sensation, you cannot have proper fine dexterity and fine manipulation. If you don't feel something, you cannot properly manipulate your fingers. If you have damage to the nerve endings of your feet from peripheral neuropathy, once you put your foot down you don't feel sensation properly.

Same thing with your hands. If you have no sensation, you cannot feel properly and you have no proper dexterity of the hand.

Q Doctor, in your evaluation of Mr. Burke, did you have occasion to have before you any reports concerning his psychological status?
A Yes.
Q And how does that relate to any evaluation that you do of a patient?
A Basically he's got posttraumatic stress syndrome and --

MR. RYAN: Objection, Your Honor.

THE COURT: Sustained at this point.

Do you want to approach on this now?

MR. BREWINGTON: Perhaps I can clean it up right here now.

THE COURT: I'll allow you to do that.

BY MR. BREWINGTON:

Q Doctor, in the documents that you referred to prior to doing your evaluation and coming up with your opinions and diagnosis, was there any aspect of those documents which raised concerns for you about Mr. Burke's psychological status?

MR. RYAN: I will object to this.

MR. HAGGERTY: Objection.

THE COURT: All right, please approach on this.

(Side bar.)

MR. RYAN: The objection is essentially on the grounds of competence. This witness is not trained and has not professed any expertise in the area of the psychiatric field. He will have a psychiatric person come in tomorrow.

MR. BREWINGTON: Absolutely.

MR. RYAN: And if that testimony isn't in yet, I don't want him putting it in. I don't want him opining such as psychological disorders such as posttraumatic stress.

MR. BREWINGTON: It's in the decision of the Social Security benefits people. But he does deal with

both the physical and in evaluating his status.

MR. RYAN: If you will ask him what he relied on, that's okay. But he just gave an opinion. He said this man has posttraumatic stress disorder. I don't think he's competent to do that.

MR. BREWINGTON: I'll go back and say that.

(End side bar.)

THE COURT: The objection is sustained.

BY MR. BREWINGTON:

Q Dr. Guy, were there any diagnoses of Mr. Burke's psychological status that you relied on in conducting your full evaluation?

A Yes.

Q What such diagnosis?

A Posttraumatic stress syndrome.

Q Now is that your diagnosis or someone else's?

A That's both my diagnosis and also Dr. Ronald Persaud's diagnosis, a board certified psychiatrist.

Q Sir, I'll ask you to take a look at Plaintiff's Exhibit 90 in evidence which is a Social Security Administration decision. I'll ask you if you ever have seen that document before?

A Yes.

Q Sir, in looking at that document, can you tell us, are you familiar with such a document?

A Yes. I come across them in my practice many, many times.

Q How are you involved with Social Security Administration matters in your practice?

A Many times other physicians refer patients to me, especially at the hospital, for the purposes of disability and impairment evaluation and the filling out of special disability forms. At Maimonides we have an understanding amongst all the doctors, all disability and impairment evaluation comes to my department and many of them are seen by me.

In my normal practice I get referrals from many different physicians to evaluate patients for the purpose of disability.

Q In your practice and as a person that has worked in this particular area, what value or weight a decision by the Social Security Administration has with regard to any opinions that you render?

MR. HAGGERTY: Objection.

MR. RYAN: Objection.

THE COURT: Sustained.

BY MR. BREWINGTON:

Q Doctor, in evaluating Mr. Burke and in rendering your decisions, did you consider any portions of the decision of the federal government?

A Yes.
Q What did you consider?
A The final decision by the administrative law judge that found the patient to be totally disabled for any type of gainful occupation after a careful review of all the past medical records.
Q Doctor, are those some of the same records that you reviewed?
A Yes.
Q Could you tell us, please, sir -- and I'm going to ask you, sir, you made a reference to Mr. Burke injuring his hand; is that correct?
A Yes.
Q Sir, I would like you, if you would, to please assume that this -- that the machine that Mr. Burke cut his hand on --

MR. BREWINGTON: Judge, I have to approach and I apologize about this.

THE COURT: Sure.

(Side bar.)

MR. BREWINGTON: Judge, there's an offer of proof. I will offer that Mr. Willits will testify that the poundage of pressure created by this blade coming down is several thousand pounds, and that we're getting into causal relationship with this doctor with that

relationship. I want to make that offer of proof.

It's in his deposition and I offer that he will not change his testimony concerning that. Obviously he's not here yet and is not testifying about that, but I want to put this before the jury.

MR. RYAN: I agree with the numbers, and I haven't looked at his deposition transcript. But when you say you are offering this for casual relationship, I don't think that there is any issue that this man cut this man's meeting hand.

MR. BREWINGTON: I don't think there is any issue either, but I've been up to the Second Circuit on other occasions when this was raised and if I don't put in all the issues I get burned in the end.

THE COURT: Amputation is one of the few personal injuries you don't even need an expert for.

MR. RYAN: To be honest with you, I don't know what Mr. Haggerty's is, but I'm prepared to stipulate to the fact that on January 23, 1996 his fingers were cut by the blade of this machine. It's an undisputed fact.

MR. HAGGERTY: It was never denied.

MR. BREWINGTON: Then when we get a charge we don't have to deal with the issue of causation.

THE COURT: You do.

MR. BREWINGTON: Then I'll go forward and

continue with my case.

MR. RYAN: Wait a minute. There's legal cause of causation. You are talking about cause as a factual matter of the injury. Look, I think it is a nonissue, that it is just cumulative. All the other testimony is in. I mean, I would object to it as being prejudicial from this witness to talk about the magnitude of force where everybody knows what happened here. It's an undisputed issue.

THE COURT: I don't know if it has anything to do with the type of pain that one might feel or not.

MR. BREWINGTON: Well, I'm going to ask that next. I'll ask about what that cutting force does to bone.

THE COURT: Okay.

MR. RYAN: Sure, fine.

THE COURT: I'll permit you to do that. Your objection is overruled.

MR. RYAN: Judge, there's no objection.

THE COURT: Potential.

(End side bar.)

BY MR. BREWINGTON:

Q Sir, I'm going to place up on the easel a picture or blowup actually of a portion of this machine.

Doctor, can you see this from there?

A Yes.
Q I would like you to assume this is the back portion of the machine in which Mr. Burke injured his hand, and I would like you to also assume that this machine has a blade which is connected to this ram which is the manila color or off whitish colored item and the blade is located here.

I would like you to also assume that the blade has a cutting process in which it comes downward to meet a lower blade, thus creating a shearing effect. Can you assume those facts?
A Yes.
Q I would also like you to assume when that blade comes down, sir, that the blade exerts several thousand pounds of pressure as it comes down to meet the bottom blade. Can you do that, sir?
A Yes.
Q And, sir, in your opinion, with regard to the injuries that Mr. Burke suffered, as to whether or not if his fingers were caught in there, that could be a cause of his fingers being severed as they were?
A Yes.
Q Assuming those same facts, sir, would that type of shearing force, can you please explain to us, if you can tell us, what type of an effect that can have on bone?

A It will cut through bone like butter.
Q When you say it will cut through bone like butter, do you know the difference between a clean cut and a ragged cut?
A Yes.
Q What type of cut would take place, sir?
A A ragged cut because you would be cutting through the soft tissues, bones, ligaments and blood vessels.
Q Sir, can you describe -- withdrawn.
You've seen Mr. Burke's hands -- withdrawn.
When was the last time you examined Mr. Burke?
A June 22, 1999.
Q Prior to that, sir, when did you examine him?
A April 10, 1998.
Q When you examined him in June, can you tell us what your findings were?
A The right hand was very sweaty, his sensation was diminished to pin prick and touch. It was diminished by one grade.
Q What does that mean, by one grade?
A Muscle power is weak.
Q Did you issue a second report after doing this evaluation in June?
A No, because there was no change in his condition.
Q Sir, I will show you a photo which is in evidence as

Plaintiff's Exhibit 74-H-1, and I'll ask you to take a look at that and you are welcome to step to the board if you are prepared to, sir.

You made reference to the third digit being swollen. Can you point that out to the jury and what you were referring to, please.

Would you like a pointer?

A I have a pointer.

This part was swollen and this part is swollen.

Q What are you pointing to, sir?

A The distal interphalangeal joint known as DIP, and the proximal interphalangeal joint known as PIP.

Q And, sir, the attachment there or that finger which is attached there, you indicated that it did not have full range of motion. Can you describe for the jury what you recall?

A This range of motion was markedly diminished and this range of motion was markedly diminished (indicating.) And as you can see from the surgery it is quite obvious. You have a surgical suture marked presence here and muscles are reattached to soft tissues. You would lose a good range of motion from this additional attachment here and here (indicating.)

Q Thank you, Doctor.

A You're welcome.

Q Doctor, can you tell us, please, an injury such as this, have you seen amputations similar to this in your practice in the past?

A Many times.

Q And, sir, could you tell us what experts you've had with hand injuries such as this?

A I've seen many of these types of injuries.

Q Sir, with regard to this type of injury, could you explain to the jury the types of pain and sensation that is caused by this type of injury?

A Yes. Most commonly patients complain of what is known as phantom pain and phantom sensation.

MR. RYAN: Objection.

THE COURT: Overruled.

A A phantom sensation means the patients feel the finger is still attached, but obviously as you can see there is no distal finger attached. That is called phantom sensation, or the false sensation that that body part exists.

Phantom pain is they feel pain in the part of the finger that is missing. This is some psychological sequela of these types of injuries as well as above-the-knee amputations as well as below-the-knee amputations.

MR. RYAN: I would like to come up, Your Honor.

THE COURT: Come up.

(Side bar.)

MR. RYAN: My recollection of Mr. Burke's testimony was when Mr. Brewington asked him or tried to ask him about phantom pain, that he didn't have. That he only thing he described his feeling was that the bone, the bone was trying to get from out of the skin. In fact, he couldn't establish this -- I think he tried to use the word phantom pain and you sustained the objection. So there is no basis on his testimony for this doctor to be talking about this type of pain. That's objection number one.

Number two, he's now also getting into psychiatry again.

THE COURT: With respect to the first part of your objection, it's my understanding he included that in his report, did he not, with respect to phantom pain so he has a basis for it.

MR. RYAN: In his report, even though this witness testified that he did not.

THE COURT: I don't know if the witness specifically said he didn't have phantom pain. The question wasn't put to him.

MR. RYAN: You sustained the objection and we went on to something else.

THE COURT: But he gave statements with respect to pain, on the other hand, that his hands always hurt him so that definition may be absorbed in that definition of phantom pain.

MR. RYAN: He described feelings that never existed, and I don't remember the witness ever describing it.

MR. BREWINGTON: Based on the evaluation of the patient, and I must tell you it's all throughout every medical record we have. I know you looked at it but whether or not he's basing it based on his evaluation what he read, the phantom pain is something which is part of his diagnosis.

THE COURT: Yes.

MR. RYAN: And the second part of it, the psychiatry.

THE COURT: The psychiatric evaluation is part and parcel of what this witness does. I mean, he's a physical medicine and rehabilitation expert.

MR. RYAN: Unquestionably, dealing with the body and parts of the body, not dealing with emotions. He did not say he had any training in --

THE COURT: I think he had been asked that, yes, but it's my understanding that he does have that type of expertise as to the nature of the work he does. Anyone's

recovery from a physical impairment is coupled with his mental state.

MR. RYAN: Unquestionably. But, Your Honor, he can't opine about conditions with respect to depression and conditions such as posttraumatic stress disorder. Mental conditions that will require, I think, expertise, this man doesn't require training? Any doctor any day can make a diagnosis of posttraumatic stress disorder. You don't have to be a psychiatrist to do that.

MR. RYAN: I would submit to you it is outside his field of expertise and that's my objection.

THE COURT: I'm going to allow him to testify on that basis.

Your objection is overruled.

(End side bar.)

BY MR. BREWINGTON:

Q Doctor, would you just explain to us, please, what training you have and experience you have which allows you to treat the psychological aspects of a patient's needs?

A As part of my training and as part of taking my boards we have a whole chapter in the textbooks relating to psychological sequela. Such as reactive psychiatry, reactive depression and posttraumatic stress syndrome which follows a serious injury. In our boards we're required to know both in the written and oral as well.

Q Doctor, based on that training and based on your background, do you feel qualified to discuss the other diagnoses which were provided by other doctors as well as your own evaluation concerning Mr. Burke's psychological and psychiatric status?

MR. RYAN: Objection.

MR. HAGGERTY: Objection.

THE COURT: Your objection is overruled.

BY MR. BREWINGTON:

Q Sir, you were making reference to the different types of pain, such as a trauma to the hand, the amputation that Mr. Burke suffered would cause.

Could you continue and just tell us, other than phantom pain, what other pain there may be, or the circumstances that Mr. Burke would be faced with?

A I discussed phantom pain. I discussed phantom sensation. Also the discussion told me about burning pain. Burning pain is the hallmark of a concern called reflex sympathetic dystrophy.

MR. HAGGERTY: Objection.

THE COURT: Your objection is overruled.

BY MR. BREWINGTON:

Q When you say hallmark, at this time was Mr. Burke suffering from reflex -- help me.

A Reflex sympathetic dystrophy, known as RSD.

MR. RYAN: I object.

THE COURT: Please approach.

(Side bar.)

THE COURT: According to his report, he was at a high risk for reflex sympathetic dystrophy. He doesn't say in his report that he actually suffers from it.

MR. RYAN: I thought he just did.

THE COURT: That's why I called you up here.

MR. BREWINGTON: He said that is one of the hallmarks and that's why he's in the high risk. In the report he says -- why do you say he's in a high risk?

MR. RYAN: This man is not a neurologist. I know he treats people that are injured. I submit he's not in a position to give a diagnosis of RSD either. It's not his field. It's simply not his field.

Secondly, he has never so diagnosed him.

MR. BREWINGTON: That's not right.

THE COURT: He's only indicated that he's at high risk which would go to future medical costs --

MR. BREWINGTON: And treatment.

THE COURT: And treatment.

MR. RYAN: Or something that he may never have.

THE COURT: He just indicates a certain propensity for it. The same as he could indicate that he's liable to have further amputations of certain

digits.

MR. RYAN: Judge, I hear what you are saying. It's just that I don't want to keep coming up here. My general view is here, and I don't mean to be flippant, Dr. Guy is becoming the Paul Glasgow of medicine.

MR. BREWINGTON: I object. Mr. Glasgow --

MR. RYAN: That is competence. He's testifying in fields that are beyond his capability. He's saying that he had a chapter in his book in medical school and that qualifies him as an expert.

MR. BREWINGTON: They are part of his boards and he sees these things on a regular basis.

MR. RYAN: I could see these things on a regular basis and I couldn't testify.

And the last point, I don't think you've asked him within a reasonably degree of medical certainty, this and that, you're just asking him.

MR. BREWINGTON: Absolutely I will be asking.

MR. RYAN: Well, my objections are noted. I don't want to come up more times.

THE COURT: As to the RSD, he seems to indicate in his initial response to that, he diagnosed him as to that. That's why I called you up here realizing that he will not testify to that and hopefully that will take care of your objection.

MR. RYAN: Thank you.

(End side bar.)

THE COURT: The objection is overruled.

BY MR. BREWINGTON:

Q Sir, I'll rephrase the question.

You don't diagnosis Mr. Burke with RSD at the present time, do you?

A That is correct.

Q When you are referring to RSD and you said there was a hallmark sign, what were you referring to?

A The signs and symptoms of RSD are as follows: Burning pain, temperature changes, comparing one side to the other. If it was very, very cold or very, very warm, compared to the injured side to the non-injured side, and massive swelling or contractures of the hand, depending on what stage it is in.

RSD doesn't happen overnight. It takes months and sometimes years to fully set in. And when I first saw the patient on April 10, 1998, he had some of the early signs. When I saw him on June 22nd, he had the hallmark, the burning pain and the sweatiness of the hands. That means it's already in the process of being formed.

MR. HAGGERTY: Not my objection, Your Honor. There was never a report provided with respect to the most recent exam.

THE COURT: All right.

MR. HAGGERTY: I'll just leave it as an objection.

THE COURT: Your objection is noted, but it's overruled.

BY MR. BREWINGTON:

Q Now, sir --

THE COURT: I'm sorry, as to the most recent exam.

MR. HAGGERTY: Most recent exam.

THE COURT: Come up here.

(Side bar.)

THE COURT: The report that was provided counsel was an April 1998 report. That is not his most recent exam. He has had one subsequent and that is what was given to him in terms of the hallmark.

MR. RYAN: Yes. And in terms of Mr. Brewington's question that he did not prepare a report from the second report because there was no change in diagnosis, but apparently there was. He just said it.

MR. BREWINGTON: No, he's not diagnosing this man with RSD.

THE COURT: I'll strike that.

(End side bar.)

THE COURT: You are to disregard the last answer

with respect to RSD being present at the last exam of the plaintiff.

BY MR. BREWINGTON:

Q Doctor, do you consider Mr. Burke a person in a high risk category concerning RSD?

A Yes, it's in my report of April 10, 1998.

Q And, sir, why is that?

A When you have -- first of all, if I may be allowed to briefly explain what RSD is, I may explain the answer better.

Q Please do.

A RSD is a condition that sets in after a traumatic injury to the extremities, especially the hand and/or the foot. When you cut a part of the finger or the hand, there is nerve endings, there's blood supply, there is tendons and ligaments. When the sympathetic nervous system gets irritated, sends signals all the way up from the finger to the brain and the brain sends signals from the back of the brain down to the finger. To this date no one understands fully what happened at the brain level, but it is thought to be a lot of crisscross and misfiring and a lot of short-circuits from pain, noxious stimulus going to the brain and the brain responding.

So you have a short-circuit at the level of the thalamus of the brain where pain is perceived. As a

result, the pain sends signals back. That has an exaggerated response of the sympathetic nervous system which controls sweating, controls narrowing or dilation of the blood vessels.

If the blood vessels get dilated the area becomes engorged with blood or swollen. If the blood vessels become restricted, it becomes contracted and also the sympathetic nervous system controls sweating. If it's irritated you have increased sweating. So once this system gets irritated, this is what the body will do, trying to find a way to solve the problem.

As a result you have a short-circuit of a lot of different signals and this will continue and it gets progressively worse as time goes on, and trauma aggravates it, cold aggravates it, anything that irritates the finger aggravates it.

So this condition continues and you have a burning pain, and as this burning pain continues it spreads upward and it can affect the other side as well. It is a devastating injury, there is no cure for it.

MR. HAGGERTY: Objection, Your Honor.

MR. RYAN: Objection, Your Honor.

THE COURT: The jury will disregard that it's a devastating injury.

BY MR. BREWINGTON:

Q Sir, with regard to -- withdrawn.

I'll come back to that.

Sir, do you have an opinion within a reasonable degree of medical certainty as to the diagnosis concerning Mr. Burke's condition or diagnosis as to Mr. Burke?

A Yes.

Q And, Doctor, after your evaluation and after your evaluation of both Mr. Burke and the records and reports, what diagnosis can you render within a reasonable degree of medical certainty as to Mr. Burke's condition and his prognosis?

A Status-post multiple injuries to the right hand with amputation of the second, third, fourth fingers. Reattachment of the third digit successfully.

Unsuccessful reattachment of the fourth digit. Revision of prior amputation sites. Reactive anxiety depression and posttraumatic stress syndrome.

MR. HAGGERTY: Objection.

THE COURT: Your objection is overruled.

BY MR. BREWINGTON:

Q And, sir, could you please tell us with regard to Mr. Burke and any pain that he currently suffers, do you have an opinion within a reasonable degree of medical certainty as to whether that will continue or cease?

A This will continue.

Q And, sir, why do you believe that?
A Because I believe that the RSD is setting in and it's gradually getting progressively worse.
MR. HAGGERTY: Objection.
MR. RYAN: Objection.
THE COURT: The jury is instructed to disregard this issue with respect to RSD setting in.
MR. BREWINGTON: Yes.
BY MR. BREWINGTON:
Q Sir, without telling us the actual final diagnosis, what conditions are setting in?
Do you understand?
A RSD is setting in.
MR. HAGGERTY: Objection.
THE COURT: The jury is once again instructed to disregard that.
MR. BREWINGTON: That's fine.
BY MR. BREWINGTON:
Q Sir, could you tell us with regard to Mr. Burke, do you have an opinion within a reasonable degree of medical certainty as to his ability to perform precision pinch of objects?
A Yes, I do have an opinion.
Q What is that opinion, Doctor?
A He cannot do it for many reasons.

Q Why?
A First of all, he has diminished in his hands and fingers, diminished dexterity in his hands and fingers. He doesn't have the full distal portion of the second, third and fourth and fifth digits. He has the distal portion of the third digit which at best is not functioning properly. It's the tips of the fingers that controls dexterity and full feeling. Without these distal tips of the fingers, your sensation and the ability to feel and have fine dexterity is significantly limited.

So because of these reasons that is significantly limited.

Also, if you injure these areas it causes more of an irritation than the average person because these areas have already been previously scarred, fibrosed and traumatized before. So they are more vulnerable to recurrent injuries.

Q Doctor, that condition, the conditions of the fingers you've just related to, does that mean that Mr. Burke can't hold a pin in his right hand?
A No, he can hold a pen but what he does with it is what remains to be seen. If you ask he can write with a pen, perhaps for a very short time and not very well. He cannot continue that task on a very long basis and with proper dexterity.

Q Doctor, I would like you to assume that more than three years after Mr. Burke's injury, Mr. Burke is able to use a yard rake with his left hand being on the lower part of the rake and his right hand being at the upper part of the rake. Can you assume those facts?
A Yes.
Q I'd also like you to assume --
MR. RYAN: Objection. Assuming facts not in evidence yet.
THE COURT: Your objection is overruled.
This is subject to connection. If this doesn't come into evidence, you will totally disregard it.
BY MR. BREWINGTON:
Q I would also like you to assume, Doctor, that Mr. Burke is able to utilize that rake in such a way that he was able to rake a bald surface using the rake to gather cigarette butts. Can you assume those facts?
A Yes.
Q Does that change your opinion at all with regard to Mr. Burke's conditions and his prognosis?
A No.
Q Why not, sir?
A Because what you just described to me is a very basic compensatory mechanism. When a person has a hand that is partially damaged or traumatized, what they can do is hold

something partially with that hand to control it. But the firm grip comes with the other hand, that's why you are holding it from below. That's where the most power and dexterity is, right here, and it's just for support. The tip of the broom stick or whatever he's holding in his hand is being supported partially. You don't need a firm grip or dexterity because it is coming from this hand.

THE COURT: The hand being?

THE WITNESS: The left hand. The right hand is just providing some support, leaning on it.

BY MR. BREWINGTON:

Q Sir, in your opinion, a person using a rake with his left hand and not being able to hold it as you indicated with his right hand, what type of weight could be borne on that rake at the bottom?

A The full weight.

Q And, sir, what type of weight could the rake actually pull in terms of the motion of pulling?

A Just basically gliding through a rough surface, clean area, and not pulling grass. To pull grass you need much more power and you need both hands. So just cleaning a clean surface.

Q Now, sir, do you have an opinion, Doctor, -- withdrawn.

Sir, as a physician, are you allowed to perform

IMEs or independent medical examinations for your own patients?

A It's highly unethical and abhorred in the field for a very good reason.

MR. HAGGERTY: Objection.

THE COURT: Overruled.

BY MR. BREWINGTON:

Q What's the very good reason?

A At one point once you conduct an examination, then if the case goes to the legal arena, you would be testifying against your own patient.

Q Sir, could you step up to that photograph again, please.

A Yes.

Q With regard to the injuries that are depicted in the photograph, and I think that's 74-C-1 or 74-H-1 --

A Yes.

Q With regard to the injuries to the second, fourth and fifth digit -- and could you point to those, please, Doctor?

A Second, fourth and fifth (indicating.)

Q How involved are those digits in the holding process or the process which we commonly talk about in terms of using our hands to manipulate material and matter?

A For rough holding, you can hold. But for dexterity,

to manipulate, like cloth material or sheetrock or sheet metal, you need the tips of your fingers for fine dexterity and for fine feeling. If you don't have the tips, you lack that fine sensation and that fine feeling and you lose dexterity.

Q I'll ask you if you agree or disagree with the following information that is part of Plaintiff's Exhibit 90, sir.

And I'll ask you to take a seat, please.

MR. BREWINGTON: Reading from Plaintiff's Exhibit 90, the decision of the Social Security Administration.

MR. RYAN: Objection. This is cumulative.

THE COURT: Let's just have the question and I'll rule further on this.

MR. BREWINGTON: Do you know what, Judge, this is in evidence and the jury will get a chance to see it.

BY MR. BREWINGTON:

Q Sir, within a reasonable degree of medical certainty, can you tell the jury whether or not in your opinion Mr. Burke's current condition will change?

A I don't want to get myself in trouble because I can't talk about RSD. His condition will change in a sense as time goes on he will develop contractures and fibrosis of a tendon. A tendon that is reattached as time goes on

gets scarred. Once it gets scarred, it gets narrowed, loses its elasticity. One it loses its elasticity, its length it will be pulled from here (indicating.)

Q From here being where?

A From the palm.

The tendons begin here. Once the tendons become fibrosed and contracted the fingers will come down like this and you will have a clawing deformity, like so (indicating.)

Q How susceptible is Mr. Burke to arthritic changes within the hand?

MR. HAGGERTY: Objection.

MR. RYAN: Objection.

MR. HAGGERTY: May we approach?

THE COURT: Yes, come up.

(Side bar.)

THE COURT: Do you have that in his report?

MR. BREWINGTON: No.

THE COURT: I don't think so.

MR. BREWINGTON: It deals with antiinflammatory medication. I'm trying to get to the medication and why it is justified. Why he suggests that. In order for the jury to understand that, they have to understand what the conditions are.

MR. RYAN: He has not disclosed that condition.

I'm also up here to object particularly and ask that this clawing deformity testimony be stricken. That is nowhere in here.

THE COURT: Well, he does mention in there the elasticity of the tendons.

MR. BREWINGTON: Yes.

THE COURT: Although he doesn't give a specific name. I'm sure you can bring that out on cross-examination but it's not in his report.

MR. RYAN: I'm sorry, I didn't mean to speak over the Court.

He does not anywhere talk about a deformity in the future of that nature and he now has testified very specifically about it. Elasticity, yeah, that's one thing, but to say a deformity, that's something a little different and I object to it and ask that it be stricken as not being disclosed within the confines of this report and no supplement report was ever issued.

MR. BREWINGTON: Judge, this goes directly to his opinion as to what would be needed for this individual. The reference -- the reason why he gives his opinion as to what would be needed in the future is based on exactly what he's testifying to. It's no surprise. They've had doctors evaluate him.

MR. RYAN: I have no problem saying everything he

is talking about regarding medicines he will need. For me to infer from that -- he suffered his hand injury and will need medication. That's what I read it to say. Not that his hand will continue to ultimately lead into a claw. That's a lot different than this report.

MR. BREWINGTON: Then I'll ask him what he meant by aggressive measures to be taken which includes special stellate ganglion nerve blocks and why that is necessary.

MR. RYAN: Well, Judge, I respect counsel's efforts here, that is the very paragraph you've already ruled on, that's on the RSD which he has not diagnosed and you've not let him diagnose.

THE COURT: I certainly did not let him diagnose it. I did not leave out of that the fact that he can say it's possible or not possible, but the potential that he's at high risk. I did not exclude that. I said he's not allowed to testify as to his having RSD as a result of him examining him. He can't change his diagnosis because as you pointed out, Mr. Ryan, he's already testified there was no change between the two examinations and didn't render a second report as a result of that.

MR. RYAN: And he's saying here "if something changes," which he has not been allowed to talk about, then they have to do all of these things to prevent RSD. So I don't think --

THE COURT: Not to prevent it but to arrest it. Does he say the word prevent, but to treat it?

MR. RYAN: I guess I'm confused then. He's not allowed to talk about --

THE COURT: He's not allowed to say he's presently examined the plaintiff and the plaintiff has RSD.

MR. RYAN: Right.

THE COURT: He's permitted to say in the future there is this high risk for him to have -- there is a risk of having these revision surgeries done or the other items that he's maintained.

MR. RYAN: All right. But he has said very specifically that his hands will go through a certain process and deform and claw.

THE COURT: The clawing wasn't in there, but --

MR. BREWINGTON: Judge.

MR. RYAN: It's not in there.

MR. BREWINGTON: Judge, I think there is sufficient information.

THE COURT: There's certainly nothing about arthritis in there and you don't use the term clawing --

MR. RYAN: Or deformity.

MR. BREWINGTON: That's not clawing.

MR. RYAN: He said deformity. He is saying a lot

more than what he said in his report.

THE COURT: But you can handle that on cross-examination.

MR. RYAN: If I may reemphasize. No, I don't want to do that. I made my objection.

THE COURT: We'll move on.

(End side bar.)

THE COURT: The objection with respect to how susceptible the plaintiff is to arthritic conditions changing in his hand is sustained. Ignore the question.

MR. HAGGERTY: The other portion of the objection, the clawing.

THE COURT: No.

BY MR. BREWINGTON:

Q Doctor, do you have an opinion within a reasonable degree of medical certainty as to whether or not the injuries that Mr. Burke has suffered to his hand are permanent in nature?

A Yes, I do have an opinion. And the answer is yes, it is permanent.

Q And, sir, do you have an opinion within a reasonable degree of medical certainty if this patient, that being Mr. Burke, will require psychotherapy treatment?

A Yes, he will.

Q And could you tell us, Doctor, why and to what degree

he will require that?

MR. HAGGERTY: Note my objection, Your Honor, to the psychotherapy.

THE COURT: Yes. On that issue, he's relying on other reports, correct?

BY MR. BREWINGTON:

Q Doctor, are you relying on other reports concerning psychotherapy?

A No, I'm relying on my own training and my own knowledge of this patient's condition and future needs.

MR. HAGGERTY: I renew my objection, Your Honor.

THE COURT: Ladies and gentlemen, I'm going to make my ruling.

Why don't we take a break. It's almost 3:15. I'll see you back here at 3:30.

All right.

(Whereupon, the jury exits.)

(Out of the presence of the jury.)

THE COURT: So we can straighten this out with respect to the doctor testifying about psychiatric and psychological aspects of this.

He has said --

MR. HAGGERTY: May he step out?

THE COURT: Yes. If you will step out for a minute, Doctor.

MR. HAGGERTY: After you make the ruling, may we look at his files to save some time?

THE COURT: Yes.

He has indicated that he relied upon the examination of the plaintiff and the various records and reports that were submitted to him. So based on that, I allowed him to go forward on posttraumatic stress syndrome disorder. I did not allow him to go forward with respect to the RSD, as I stated before, because he didn't diagnose it in his report.

With respect to the arthritis, he didn't mention anything in here that I can see, reading his report, to indicate that arthritis was present.

He does mention to some extent the particulars that might lead one to believe there might be a problem with I guess ligaments, but perhaps I should revisit the issue of the clawing deformity.

Where specifically in his report does he say, Mr. Brewington, that would lead the defendants to believe that a clawing injury or this clawing deformity was present or would be present?

Why don't you folks sit down for a minute.

MR. BREWINGTON: I'm taking a look right now, Judge.

(Pause in proceedings.)

MR. BREWINGTON: Judge, he refers to periodic physical therapy on an as-needed basis for the rest of his life and I would also like to speak with him concerning his concern that he raises about nerve damage, carpal tunnel or ulnar nerve neuropathy setting in. I would like to speak to him about that.

THE COURT: He does have that in his report. He does have these types of therapy which would be needed to assess whether or not there's nerve damage, carpal tunnel or ulnar nerve neuropathy.

MR. RYAN: Your Honor, again, this report as I read it says there are certain things he found, particularly the amputation assessment.

THE COURT: Right.

MR. RYAN: Then he talks about things he may need if things were to develop and what the costs of that would be.

THE COURT: Right.

MR. RYAN: That's another thing.

What is being done here, though, he's taking another step and affirmatively stating, for example, that this man will develop this clawing injury and that's not in the report.

THE COURT: It isn't in the report. I took another look at it and I thought there was more about the

pulling and the ligaments but it is not in the report.

MR. BREWINGTON: Judge, I would like to speak with him to get a better understanding as to his concern about bony demineralization osteophyma.

THE COURT: I saw that.

MR. BREWINGTON: I need to talk to him about that.

MR. RYAN: I know he can talk to him, that's obviously fine. But in the same content, you have to keep an eye on it and the course would be to keep an eye on it. That's a lot different than to say he will be deformed and will developing clawing.

THE COURT: I'll strike the clawing deformity and, Mr. Brewington, you can try to reestablish it as to bony demineralization and osteophyma but it's not there now and I don't want to misinform the jury. I'll tell the jury to disregard that part at this point, okay?

MR. BREWINGTON: Yes, Judge.

(Whereupon, a recess was taken.)

(Whereupon, the jury enters.)

THE COURT: I instruct you as follows: That you are to disregard at this point any testimony relating to the clawing deformity.

Please proceed.

MR. BREWINGTON: Thank you.

BY MR. BREWINGTON:
Q Sir, you said you relied in part on the Social Security Administration decision?
A Yes.
Q Why?
A The Social Security disability determination is a federal determination and is the highest ruling on land.
MR. RYAN: Objection.
THE COURT: Don't give us legal conclusions. Tell us why you relied on it.
BY MR. BREWINGTON:
Q From a medical standpoint.
A From a medical perspective it's the highest criteria, using the most difficult standards to evaluate a total disability, using the highest standards.
Q Sir, in your evaluation of Mr. Burke, do you have opinions as to what he will need for his future care from a medical standpoint?
A Yes.
Q Can you relate, Doctor, that to the jury and tell us why for each aspect for the future care you state what you state?
A First of all, he has a permanent injury. Because he has a permanent injury and he has pain, he will be required to see a doctor from time to time for pain

management, usually in the form of narcotics. That requires an examination. You cannot just prescribe narcotics from a physical examination. He will require psychotherapy approximately 20 to 30 sessions per year and the average cost is $175 per a 45 minute session. He will need physical therapy sessions on a permanent -- on an ongoing basis 20 to 30 sessions at $100 a session.

Q What is the physical therapy for?

A To maintain his hands in good mobility, prevent stiffness, prevent disuse atrophy, disuse osteoporosis and spasm.

Q Those sessions, what do they cost per session?

A Approximately $100 per session.

Q Doctor, could you tell us, please, what else will be required for Mr. Burke as a person that has an amputation such as he has?

A The patient has diminished sensation to all the tips of his last four fingers. You need an EMG test to check the nerves to see what nerves are damaged and to what extent. That will cost approximately $1,200. That should be repeated one to two years to reassess the nerves. If something is damaged, the nerves, something may need to be performed. That's the EMG.

Then he will need periodic x-rays of his hands to see if there is any arthritis or disuse osteoporosis

setting in, every one to two years, the average cost is $100 approximately for the x-rays.

Then he will require pain medications. The approximate cost is approximately $1,000 per year for Vicodin extra strength and other antiinflammatory medication.

Q When you say antiinflammatory medications, why those type of medications, Doctor?

A Because you don't want to addict a patient to narcotics. You want to use other nonnarcotic medication and the best are the nonsteroidal family because they don't have addictive properties.

Q Doctor, the x-rays you referred to, what is the purpose of the x-rays and what are you looking for?

A You are looking for disuse osteophyma if you don't use the hand because it hurts, as a result the muscles will atrophy, it will become smaller and as a result the bones will become demineralized, and the minerals will come out.

You know what that is, after a women reaches menopause the bones become less and less and it becomes atrophied. The same thing happens with males. The areas weakens, the tendons, bones become demineralized, less calcium occurs in the bone and is susceptible to fractures and injuries. The x-rays determine if that sets in. If

it sets in there are medications that can be prescribed to the patient to prevent that.

Q What is osteophyma?

A Lack of calcium inside the bones.

Q Doctor, with regard to the concern for the possibility of the condition of RSD, and we understand you have not diagnosed that, what is the form of treatment, Doctor, and have you made that part of your diagnosis?

MR. HAGGERTY: Note my objection, Your Honor.

THE COURT: Your objection is noted and overruled.

A The treatment for RSD is a series of nerve blocks called stellate ganglion nerve blocks. High up in the neck is a gland central, and by blocking that you send less nerves from the arm to the brain. That hopefully will be reduced. You do a series of those nerve blocks, three. If the patient shows gradual improvement of each one, you may do 20 in a three-month period.

Q How much do those nerve blocks cost?

A Approximately $600. They must be done by an anesthesiologist in a hospital setting or outpatient setting because the patient may go into cardiac arrest.

Q Sir, how did you become to be involved in this case?

A You referred the patient to me.

Q And, sir, with regard to my referral of Mr. Burke to

you, was there anything or any information that was provided to you that you relied on in making your diagnosis?

A Well, I did get a lot of correspondence from you, but with all due respect, I don't rely on attorneys' letters to make my diagnosis.

Q And is there something wrong with my letter?

A No. No. No. I don't rely on legal documents to make medical diagnoses.

Q Why is that, sir?

A Because you are not a physician. I'm not allowed to rely on your records to formulate an opinion or as part of past medical records. A legal document is not considered as part of past medical records.

Q Doctor, the opinions which you've rendered here concerning Mr. Burke's injuries being permanent in nature, that is within a reasonable degree of medical certainty?

A Yes.

Q And your opinions with regard to his future need from a medical standpoint, that being in terms of medication and treatment, is that also within a reasonable degree of medical certainty?

A Yes.

Q Doctor, as far as Mr. Burke's -- withdrawn.

MR. BREWINGTON: No further questions for this

witness at this time, Judge.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MR. HAGGERTY:

Q Good afternoon, Dr. Guy.

A Good afternoon.

Q We've never met, have we?

A We met -- you said no, but you look familiar.

Q Other than two seconds out in the hallway.

A Yes. I believe not.

Q You're being compensated for being here today, aren't you?

A Yes, I am.

Q What are you being paid?

A For cancelling my patients and being here my fee is $3,000 for half a day of testimony, $1,000 for pretrial preparation to review all the past records and to discuss the medical aspects of the case with Mr. Brewington. So a total of $4,000.

Q Has Mr. Brewington referred you patients other than Mr. Burke?

A I believe a total of two or three in the past ten years.

Q Am I correct, you did not treat Mr. Burke?

A I did not.
Q You were retained by Mr. Brewington to render an opinion with regard to his condition, prognosis and diagnosis; is that correct?
A Correct.
Q When Mr. Burke retained you, do you recall that time?
A I have my notes. It was April 10, 1998.
Q Was it by telephone?
A No, in person.
Q I'm sorry.
A He came in person.
Q He came in person?
A Yes.
Q In your file I put a yellow sticky on a letter.
A Is this it?
Q Yes.
THE COURT: During the break, ladies and gentlemen, the counsel was allowed to review the file of Dr. Guy's in order to save some time.
BY MR. HAGGERTY:
Q When did you see the patient?
A On April 10, 1998, first time in consultation.
Q Prior to April 10, 1998, had you had any communication with Mr. Brewington?
A I believe so.

Q At any point, did Mr. Brewington indicate what he was going to intend to prove at this lawsuit?

MR. BREWINGTON: Objection.

THE COURT: Sustained.

BY MR. HAGGERTY:

Q This is the letter that you received, isn't it?

A This is one of many, yes.

Q It's dated March 27, 1998?

A Yes.

Q In the first paragraph Mr. Brewington writes to you "it is our hope to show that our client --"

MR. BREWINGTON: Objection, Judge.

THE COURT: Sustained.

BY MR. HAGGERTY:

Q I'd ask you to take a look at the letter, the first paragraph, the third sentence (handing.)

A Yes.

Q Does that indicate what Mr. Brewington hoped to prove in this case?

MR. BREWINGTON: Objection.

THE COURT: Sustained.

BY MR. HAGGERTY:

Q At any point before that letter was received, did you have any communication with Mr. Brewington with regard to this case?

A I may have.
Q Do you have any records to reflect that?
A No.
Q Do you recall receiving that letter?
A Yes.
MR. HAGGERTY: May I have it back for one second, please?
THE WITNESS: (Handing.)
BY MR. HAGGERTY:
Q Were you ever told that before seeing the plaintiff in April, that Mr. Burke's injuries were permanent?
A That was known by the Social Security evaluation, way before the patient came to me.
Q You had a copy of that before that?
A When the patient came, yes.
Q How about before the patient came to you?
A I had the records when the patient came. Shortly before or at the same time the patient came.
Q How about when you received that letter that is in front of you?
MR. BREWINGTON: How about an objection -- I'm sorry.
THE COURT: Your objection is sustained.
BY MR. HAGGERTY:
Q When that letter was received, did it indicate to you

that there was going to be a claim that the injuries were permanent?
A Yes.
Q And Mr. Brewington offered that letter?
A Yes.
Q Now, the report you issued, was that prepared for the purposes of exchanging it in this lawsuit?
A That was for the purposes of rendering my opinion as to how I saw the injuries and how I see his prognosis. It concurs with all the past medical records I have in my possession.
Q You knew there was a lawsuit pending?
A There might be a lawsuit pending.
Q And you used it in connection with this lawsuit?
A Whenever you generate a report, that's always a possibility.
Q You've testified many times before, haven't you?
A That's correct.
Q And would it be fair to say that 99 percent of the time you testify is on behalf of the plaintiff?
A I testify with respect to my patients; you would call them plaintiffs.
Q But Mr. Burke was not your patient?
A No, in this case he was not my patient.
Q Now, you told us that you did residencies in internal

medicine, general surgery and physical medicine; is that correct?

A That's correct.

Q Did you ever do any type of residency in neurology?

A No.

Q Did you ever do any type of residency in psychology?

A No.

Q Psychiatry?

A No.

Q Orthopedics?

A No. I did rotations but not residencies.

Q What would the rotations consist of?

A When I was doing my residency in general surgery I spent two months in the orthopedics department and spent two months in the emergency room handing all the orthopedic fractures that would come through. Every third night I would scrub in on surgical cases that were being operated on past 5 or 6 p.m. Then I did my residency in physical medicine and during the rotation I would be asked to assist on hip replacements as part of my training. And periodically once a week we had combined orthopedic clinical where we would see a patient with a physiatrist and orthopedic combined, to put two specialists together to come up with a more appropriate treatment plan for the patient.

Q I don't know if I heard you, but was there a rotation in neurology?
A Yes, in internal medicine. When I was doing my residency in internal medicine, every internal medicine residency requires rotation in neurology. I did three months of neurology a rotation.
Q How about psychology or psychiatry?
A There is no rotation in psychology. Psychology is a Ph.D. and there's not an MD program in psychiatry.
Q I may have heard this wrong, but as far as psychology -- which is it?
A Psychiatry is an MD. Psychology is a Ph.D., they are not a medical person. They don't carry an MD degree.
Q You were asked a question about your background in psychiatry, and I think the answer you gave was you read it in a chapter in a book studying for an exam?
A No.
MR. BREWINGTON: Objection. Mischaracterization.
THE COURT: No. You can answer the question and I'll give him an opportunity to explain.
A What I said was as part of my training we receive special training in psychiatry and the psychological aspects of traumatic injuries. And we're required to know about it and we get tested on it. We're required to know about reactive anxiety, reactive depression, posttraumatic

stress syndromes, the medications used for these conditions, their side effects and if there are drug interactions with other medications, we are required to know it. We treat these patients and we get tested on our boards, both parts one and part two.

Q You are not a psychiatrist?

A I'm not a psychiatrist.

Q Now, your fee for testifying in this case, have you actually been paid?

A Yes.

Q Do you have the bill that you've generated in the past? They have all been paid?

A Yes.

Q This isn't a type of case where you are working off a lien?

A No.

MR. BREWINGTON: Objection, Judge, and I ask for a curative instruction.

THE COURT: The jury is instructed to disregard the question and the answer has been struck.

BY MR. HAGGERTY:

Q Prior to testifying here today, did you talk to Mr. Brewington?

A This afternoon, no.

Q How about yesterday?

A Yes. Last night on the phone.
Q What was the nature of that conversation?
A The medical context of the patient's injuries.
Q Did he in fact tell you that there was video surveillance of the plaintiff raking?
A He did, yes.
Q What specifically did he tell you as far as the raking?
A Very briefly, he told me that a patient is on film raking something on the ground, taking cigarette butts off concrete with his left hand and with his right hand holding the upper end of the broom stick, and does that contradict the patient's diagnosis? I said, absolutely not, for the reasons I explained earlier in court today.
Q And you were prepared to give that testimony?
A It's a common sense question with a common sense answer. You don't need preparation for that question or its answer.
Q You never saw the video?
A I did not.
Q Other than the raking, you haven't seen what else he was doing in that video?
A No.
Q Now, you haven't seen the type of -- withdrawn.
You haven't seen how he actually held the rake,

have you?
A No.
Q You haven't seen the way his hands were placed on the rake, have you?
A I haven't seen any video surveillance at all.
Q As far as you know, is Mr. Burke currently on any type of pain medication?
A He was. Currently, I'm not sure.
Q When was that?
A I said in the past he was. Currently, I'm not sure.
Q Has plaintiff undergone any psychotherapy treatments that you're aware?
A I believe he was. At the present, I'm not sure.
Q My question is as of the present, are you aware?
A At the present, I'm not sure.
Q Do you know if the plaintiff is presently undergoing periodic medical supervision on a monthly basis?
A On a monthly basis, no, because of financial reasons but he's seeing Dr. Butani from time to time and he goes to her for therapy from time to time. That's my understanding.
Q Do you know if he's undergoing periodic EMG studies? Yes or no?
A I'm not aware of it.
Q Do you know presently if he's undergoing any physical

therapy?

Yes or no?

A At the present time, I'm not aware of it. But in the past he has been.

Q Now, in your report -- withdrawn.

You reviewed the records of Dr. Richard Park?

A I believe so.

Q Did Dr. Park indicate a loss of the use of the right hand?

A I have to review it. If you have his records to save time --

Q I'm taking it from your report. If you want to refer to page 2 of your report, the top paragraph. . .

A (Perusing.) According to my notes he found the patient to be 4 percent -- that might be 40 percent loss of use of the right hand.

Q You put 4 percent?

A That's what it said.

Q Is it your opinion that plaintiff can never work again?

A He can work but he cannot maintain a full-time job for many reasons. For psychiatric reasons, for the hand problem. He cannot do any type of manual work because he is right hand dominance and the hand for dexterity.

Q The bottom line is he can work --

A He cannot work on a full-time basis. If you ask me if he can work a half-hour here and there, yes. He can watch a monitor, to watch the screen but to use his hands, he cannot work. And to sit still with this much pain and this much anxiety and vest on a continuous basis, he cannot. That has been already proven and determined by a higher decision-making body.

MR. HAGGERTY: Note my objection.

THE COURT: Disregard a higher decision-making body.

BY MR. HAGGERTY:

Q In your report don't you indicate that Mr. Burke sustained a permanent and total disability for any type of job which requires the use of his right hand?

A That's what I have, yes.

Q So from that I would gather that if Mr. Burke finds a job where he doesn't have to use his right hand he would be able to work?

A Being able to concentrate, clearly, lucidly and being able to form on a seven and-a-half hour basis. That's the other part of the equation. That's the part he cannot do.

Q But at the bare minimum he can do it?

MR. BREWINGTON: Objection.

THE COURT: Overruled.

BY MR. HAGGERTY:

Q I didn't hear the answer.
A There are part-time jobs, but if it's working with his hands, he cannot do it at all. If it requires a job that doesn't require the use of his hands, it requires him to be lucid, to think clearly, be on no medications for anxiety, depression, to have a clear sensorium. That's the part he cannot do.
Q Are you telling me people on medications don't work?
A Depends on which medication. If you have a person or a central nervous system acting drug that alters your sensorium.
Q Are there no medications that allow Mr. Burke out there?
A All the psychotropic drugs work essentially the same, especially the narcotics. Again, they have opiates which cloud the sensorium, so they don't allow you to think clearly, and also if a person has a constant throbbing, burning pain in their hand, they can't sit still and do any kind of work. Anything bothers them.
Q Mr. Guy --
MR. BREWINGTON: Objection.
THE COURT: Dr. Guy.
MR. HAGGERTY: I apologize.
BY MR. HAGGERTY:
Q Are you telling me that patients that are being

treated for psychological problems that are on medication don't work?

A No, that's not what I'm saying at all. Many patients that have psychological problems work. Some of them are doctors. They work.

Q Some of them are lawyers?

A Some of them are lawyers, yes.

MR. BREWINGTON: A lot of them are.

MR. HAGGERTY: A lot of them are lawyers.

MR. RYAN: Let's leave it at that.

THE COURT: Taking the Fifth Amendment here.

A But in this particular case, this is a very complicated picture. The patient lost four digits, the distal parts, with reattachment of the tip of the third digit.

This is not a soft tissue injury. This is a very serious injury. Everything bothers him. The patient has flashbacks and everything bothers him.

MR. RYAN: Objection.

THE COURT: Sustained as to flashbacks.

MR. RYAN: I object to the voluntary answers.

THE COURT: Your objection is sustained.

Please ask a question.

BY MR. HAGGERTY:

Q I know the injury that Mr. Burke suffered and I don't

mean to lessen it or whatever the proper term would be, but he didn't lose his arms or legs. There are jobs out there for somebody in Mr. Burke's situation on a part-time basis at the very bare minimum?

MR. BREWINGTON: Objection.

THE COURT: Your objection is continued as to the second question also.

MR. BREWINGTON: Yes.

THE COURT: It's sustained.

BY MR. HAGGERTY:

Q At the very least there are jobs out there for someone like Mr. Burke who sustained this type of injury to his right hand?

MR. BREWINGTON: Objection. Beyond the scope of his knowledge. He's not a vocational rehab. We have somebody.

MR. HAGGERTY: He indicated an opinion on this issue, Your Honor.

THE COURT: Yes, your objection is overruled on that basis.

MR. BREWINGTON: Fine.

A If you are asking me can this person work, the answer is yes. If you are asking me can he hold a job --

Q Go ahead. I'll give you the courtesy.

A -- Can he hold the job and do it on a continuous

basis, even though on a part-time basis which is defined at four hours minimum, my opinion is he cannot maintain that job on a four hour basis. And if you want to know the reasons I'll be happy to give you the reasons.

Q I'm sure Mr. Brewington will be able to go through that with you.

A Fine.

Q You've heard of the Americans With Disability Act?

A Yes.

Q And generally tell the jury what that is.

MR. BREWINGTON: Objection.

THE COURT: Sustained.

BY MR. HAGGERTY:

Q Doesn't the Americans With Disability Act require employers to make reasonable accommodations for their employees?

MR. BREWINGTON: Objection.

THE COURT: Sustained.

Q You've heard of VESID. Have you ever referred patients to VESID?

A No, because he's not a VESID candidate. If you would like to know why, I'll explain it to you.

MR. HAGGERTY: Go ahead. Because if I don't ask, somebody else will.

THE COURT: Please, let's not have colloquy.

A First of all, VESID looks at --

THE COURT: What does VESID stand for?

THE WITNESS: Vocational rehabilitation and retraining.

A This office finds the people that have a disability, jobs that they can do but it's done with certain requirements and prerequisites. They look to their doctors as to what they can or cannot do. If they can do it they will do it. One of their first requirements are they have a clear sensorium, think clearly, not on any central acting medications that sedates or alters their ability to think properly.

Next, they look at their level of stress. If stress bothers them at the very minimal, they cannot keep that job. For instance, if you give this patient a job as a toll-taker at a tollbooth and somebody honks his horn, he can shoot him.

MR. RYAN: Objection.

THE COURT: Disregard the last portion with respect to the patient as a toll-taker.

BY MR. HAGGERTY:

Q The bottom line is this plaintiff cannot work?

MR. BREWINGTON: Objection. Argumentative.

MR. HAGGERTY: I have no further questions.

THE COURT: Sustained.

MR. RYAN: May I inquire, Your Honor?

THE COURT: Yes.

(Continued.)

CROSS-EXAMINATION

BY MR. RYAN:

Q Dr. Guy, good afternoon.

A Good afternoon.

Q My name is John Ryan. I represent Metal Etching in this case.

You and I have never spoken in this case as far as you know?

A I don't believe so.

Q Briefly by way of background, you went to college in Flushing, Queens?

A Queens College, yes.

Q And you left the country and got your medical degree?

A Yes.

Q And then you came back and did your internship?

A Residency.

Q Residency back in this country?

A Yes.

Q Okay.

And you've rendered a report in this matter and you've testified about it as to various conclusions you've made and projections you've made as to what's going to happen in the future to Mr. Burke; is that correct?

A That's correct.

Q And in making that report and in giving that

testimony, sir, you relied on information that was given to you?

A I relied on the history, my examination and past medical records that were provided, yes.

Q Let go to the last one.

Among the medical records that you relied on, sir, were the records that were generated when Mr. Burke was brought to the Nassau County Medical Center by helicopter, correct?

A Yes.

Q And did you get those records from Mr. Brewington or somewhere else?

A I believe I obtained them through Mr. Brewington.

Q Well, sir, did you review those records before you came to a conclusion regarding Mr. Burke?

A I reviewed those records before I generated my report of April 10, 1998.

Q And did you review any of the admitting notes that were taken at the hospital approximately one hour after Mr. Burke was involved in this accident?

A I reviewed the records that I have in my possession that I believe is part of it.

Q You think you did.

A I think I did, yes.

Q And did you review the notes that were taken

regarding social history?

MR. BREWINGTON: Objection, Judge.

Unfortunately, may we approach?

THE COURT: Yes.

(Side bar.)

MR. BREWINGTON: Judge, this is an objection that goes to, I think, where Mr. Ryan is getting into the question of Mr. Burke's --

THE COURT: Use of drugs.

MR. BREWINGTON: Use of drugs, marijuana.

THE COURT: This witness certainly got into the clear sensorium and did open the door somewhat. He went into the factors as to why he can't go to VESID, the factors as to why this is a permanent injury and he cannot even maintain a part-time job or maintain any job; that he has to be on this pain-type medication.

MR. RYAN: And that he will need psychiatric treatment for the rest of his life, 30 times a year, and I submit whether he considered any of this.

MR. BREWINGTON: I'll object to the same reasons I objected in the past.

THE COURT: It's certainly admissible with respect to future damages. I can instruct the jury that they may disregard any of this with respect to the happening of the accident.

MR. RYAN: I've already been through that and I understand that.

THE COURT: Yes.

MR. BREWINGTON: Obviously if the Court will give an instruction, we'd want it, but without waiving any objection. I believe this is prejudicial; that the impact in terms of its probative aspects as to --

THE COURT: Well, you are referring to the Nassau County Medical Center.

MR. RYAN: He said he relied on these records. And I'll tell you this too. In his file he has Dr. Persuad's report which goes through in chapter and verse the history of this man and why he was like coming into this accident, mental state, the things he was involved in and the things afterwards, and leads to a conclusion that he's chronically, clinically depressed.

THE COURT: There is a big difference as to what is indicated in a hospital report as to marijuana and cocaine usage and to what is indicated in Dr. Persuad's report. I think he basically distinguishes the cocaine use and the marijuana. He lessens it, is my recollection of Dr. Persuad as compared to the hospital record.

MR. RYAN: It may be so, but can't I find out whether this man read this part of the record?

THE COURT: Yes.

MR. HAGGERTY: How does he lessen it? Dr. Persuad says it is increased.

THE COURT: In terms of the happening of the accident.

MR. HAGGERTY: But beyond that having been asked --

THE COURT: Now I'm letting it in for another purpose.

MR. RYAN: I'm going to ask him whether any of these precursors would effect his mental state. If a person is doing these things over a period of years it has an effect, whether he's medicated on and has a propensity for abuse, whether he can give that testimony and is inclined to such addiction.

THE COURT: It will not be given to show that he's a bad person. It will be very narrowly structured in terms of his medical conditions in damages.

MR. BREWINGTON: Once we go in this area it will be very hard to keep it reigned in. It's a dangerous area, Judge, and I would object. Particularly in the situation in Mr. Burke relating that information to the people in the hospital is truthful, and if indeed the claim here is that this will be used against him with regard to this treatment, his diagnosis, his evaluation, I think it's backwards.

MR. RYAN: Wait a minute. I've already been told I can't put this in evidence for the reasons stated. I want to know whether he relied on this, this record, and then he will say yes or no. I'll show it to him and ask him to read it. From there he will definitely ask him about Dr. Persuad's report.

MR. BREWINGTON: Dr. Persuad.

MR. RYAN: That's in his file. This report I don't see in his file. I see some selective bits from the medical records and I want to know how much of it he got and where. I mean --

THE COURT: You can ask him with respect to that, but if it comes out that you are not asking him to read it aloud --

MR. RYAN: I will not ask him to read it aloud.

THE COURT: As to Dr. Persuad, that is a different suggestion, and I'll think about it when the time occurs.

(End side bar.)

THE COURT: Yes.

MR. RYAN: Your Honor, I would like to show the witness a page from the medical records of the Nassau County Medical Center.

BY MR. RYAN:

Q Doctor, would you take a look at that page, and in

particular take a look where I placed a paper clip and read that and I'll ask you a question.

Read it to yourself.

A (Perusing.) Okay.

Q Have you ever seen that document before in connection with your review of this matter?

A No.

Q Is it fair to say, sir, you did not review the entire record from the Nassau County Medical Center in this case?

A No, I don't look at social history and I'm looking for medical diagnosis and treatments rendered.

Q Let me ask you about that. Is social history relevant to your conclusions regarding a person's future mental state?

A In some cases yes, and in some cases no.

Q How about in this case?

A That's past or present? What are you asking me?

Q Past mental history -- past social history, I'm sorry, as affecting his past future mental treatment --

MR. RYAN: I'll withdraw the question, Your Honor.

MR. BREWINGTON: Objection.

THE COURT: Yes.

BY MR. RYAN:

Q Let's move on to another document and I think you

have this one in your file.

Would you take a look at Dr. Persuad's report that you have in your file there from April of 1998.

There's two reports. I just want to make sure you have the right one. It's probably way at the bottom is where I saw it.

A (Perusing.) Yes, I have it.

Q Okay.

Now, it's a lengthy report.

I would like you to turn to the section that begins "relevant past history."

A What page are you on?

Q 7.

A Okay.

Q Now, you told us, did you not, sir, that you reviewed this report and relied on it in coming to your conclusions in support of your testimony today?

A Yes.

Q Okay.

Now, am I correct, among other things, it relates the problems that Mr. Burke had before this accident ever occurred, correct?

A Yes.

Q And it talks about problems that he had in dealing with people, particularly while he was going through

school, correct?
A Yes.
Q And it talks about him being thrown out of school for fighting, correct?
MR. BREWINGTON: Objection, Judge.
THE COURT: Sustained.
BY MR. RYAN:
Q Well, did you review that history of his school activities?
A I read this approximately two years ago. If you ask me if I remember everything I've read in a 12 or 13 page report that was generated with two other reports that length, I can't tell you I remember everything I read.
Q Go to page 8. And I would like you to read the bottom of page 8.
A (Perusing.) Okay.
Q You finished that whole paragraph?
A Yes.
Q Now, do you remember reading any of that before you rendered your opinions and in giving your testimony?
A This doesn't change my opinion.
Q My question is, do you remember reading it?
A I read it. Do I remember all those fine details? I don't know if I remember them.
Q Well, is it relevant to your conclusions that you've

given us today that Mr. Burke had smoked marijuana daily before this accident?

MR. BREWINGTON: Objection.

THE COURT: Sustained.

BY MR. RYAN:

Q Do you think someone who smokes marijuana daily, that would have an effect on their mental condition?

MR. BREWINGTON: Objection.

THE COURT: Overruled.

A We have a surgeon that used to smoke marijuana daily when he was in college. He graduated with honors.

Q Did he keep smoking after he started working on people?

A No, he stopped.

Q Now, do you think it would be relevant to someone's mental condition that they inhaled cocaine every other weekend?

MR. BREWINGTON: Objection.

THE COURT: Sustained.

BY MR. RYAN:

Q In arriving at your conclusions, sir, did you consider whether drug use involving cocaine was relevant to Mr. Burke's mental condition?

A His mental condition seemed fine to me, he's alert, oriented to time and place and he was lucid when I

interviewed him on the two occasions.

If you use cocaine periodically, can it cause some damage? Yes. Does it always cause damage? No. It depends how frequently you use it and to what extent you would use it.

Q Would you consider ingesting cocaine every other weekend over a period of years to be of a type of frequency that would have an effect on you?

MR. BREWINGTON: Objection.

THE COURT: Mr. Ryan, come up for one moment and I'll explain the basis for my ruling.

(Side bar.)

THE COURT: Mr. Ryan, it doesn't say every other weekend. He said he used cocaine usually on weekends. I don't know where you got that from.

MR. RYAN: That was from the other report. I don't know why I used that.

THE COURT: Sustained.

MR. RYAN: I'm sorry, I merged the two.

THE COURT: So there is no regularity or pattern to the cocaine use, other than it occurred on weekends.

MR. RYAN: Okay.

THE COURT: And he says in there that he stopped using the marijuana between 25 and 26. And that's why when you said you indicated that he smoked marijuana on a

daily basis up until the time of the accident, that was inaccurate.

MR. RYAN: He said he virtually stopped smoking (perusing.)

MR. BREWINGTON: It says three or four occasions.

MR. RYAN: I don't want to go back over the whole stuff, but I go back to that other record and I think it is very relevant. But I'll continue in another direction, and I'm withdrawing it.

MR. BREWINGTON: Judge, the harm is already done. The concern I have is that we have this sitting in front of the jury in the form Mr. Ryan has left it and now he'll leave it.

The other concern I have is this issue of the medical record, the medical record and the information contained in it, we do not have the person who actually wrote that down and what his interpretation was.

MR. RYAN: I can probably bring her in.

MR. BREWINGTON: Go ahead.

MR. RYAN: But I've already been told I can't introduce it so. . .

MR. BREWINGTON: Then all right.

THE COURT: Unless you want me to hear you further on that.

MR. BREWINGTON: No.

THE COURT: Okay. Let's go forward.

(End side bar.)

THE COURT: The objection is sustained.

BY MR. RYAN:

Q Now, sir, after this accident, were you aware that Mr. Burke began to drink alcohol heavily?

MR. BREWINGTON: Objection.

THE COURT: Overruled.

A Yes.

Q And that consumption of alcohol, would that affect someone's mental state?

A When they are drinking it, yes.

Q Could that make someone depressed?

A It can.

Q Can that have an effect in terms of it interacting with someone taking medications they may or may not be taking?

A It can.

Q It's your opinion that Mr. Burke is going to need psychiatric treatment?

A Yes.

Q And he's going to need that 30 times a year for the rest of his life?

A That's correct.

Q And he's never going to get better?

A That is not for me to decide if he will get better. His condition is permanent. When you have a permanent condition, do your four fingers come back? No.

Q Doctor, I would ask, if you would, I'm asking you about his mental state.

MR. BREWINGTON: Objection.

THE COURT: Sir, concentrate on the question. The question refers to mental state.

THE WITNESS: Yes, Your Honor.

BY MR. RYAN:

Q I'll ask it again.

You say he's going to need treatment for his mental state --

A Posttraumatic.

Q -- For the rest of his life and he will never get better again no matter what treatments are administered to him in terms of psychiatric care. That's your opinion?

A My opinion is he will have good and bad periods and he will need those treatments when he has bad periods on an as-needed basis.

Q So, in your opinion, he will never get passed this mentally?

A Based on my experience these patients never recover 100 percent. Is it possible? It should have happened within the first two years, because the major improvement

happens within the first year.
Q Was Mr. Burke seeing a psychiatrist on a regular basis for the year following this accident?
A On a regular basis I can't tell you, but he was seeing a psychologist, yes.
Q How long was he seeing him for?
A My recollection is he saw Dr. Persuad for some time.
Q He saw Dr. Persuad how many times?
A I don't know how many times.
Q Isn't it true that he saw Dr. Persuad because Dr. Persuad will come in and testify in this case tomorrow and not because he was treating Mr. Burke?
A I have no idea. You ask Dr. Persuad.
Q No, I won't. You said --
THE COURT: Please, let's stop the colloquy. Disregard "you asked Dr. Persuad."
BY MR. RYAN:
Q I just want to understand some of the termination you used -- withdrawn.
There are people who specialize in hands surgery; is that correct?
A Yes.
Q And people who specialize in injuries to the hand?
A Yes.
Q You do hand surgery?

A Hands rehabilitation is one of the doctors that specialize in treating hand injuries.
Q Do you do hand surgery?
A No, I don't believe that was the question.
Q I think it was.
A If that was the question, I apologize. I'm not a hands surgeon.
Q Let's go on.
But you are familiar with the parts of the hand?
A Yes.
Q And you told us what parts of the hand were involved here, correct?
A Yes.
Q I just want to get the semantics of this right.
You have coming out of the wrist certain structures, bone structures called metacarpals?
A Yes.
Q And then attached to them you have what?
A Tendons, ligaments, bone, nerve, muscles.
Q You have the proximal phalangeal joints?
A Proximal interphalangeal joint.
Q That goes up to the first part of the finger?
A Yes.
Q Then the middle phalangeal joint, going to the middle part?

A Yes.
Q Then the distal which is the tip?
A That's correct.
Q So proximal, which means closest to you. Middle is middle. And distal is farthest away from you, correct?
A Yes.
Q In this case you've told us that Mr. Burke, his thumb wasn't involved at all?
A That's correct.
Q The thumb is fine you said?
A That's correct.
Q And then on the index finger, it was just this distal joint (indicating)?
A That's correct.
Q And then on the middle finger it was cut where?
A It was cut proximally -- and that's the third finger you are talking about, right?
Q Yes.
A It was cut proximally and reattached.
Q That would be about here, proximally?
A Yes.
Q And that one was reattached you said successfully?
A Successfully, with decreased range of motion.
Q And we had the middle finger and that again was proximally?

A The fourth finger.
Q The ring finger, yes.
A Yes.
Q And the pinky finger was again distally at the point here (indicating); is that correct?
A That's correct.
Q Now, does he have no sensation or reduced sensation?
A Reduced sensation.
Q And he can use this hand, his right hand, correct?
A He could use it to some degree.
Q Okay.
Did you determine any kinds of degree of usage?
A No, but I can tell you if you like.
Q Well, was it 50 percent or 40 percent?
A It depends. He can use his hand but for fine dexterity is markedly diminished.
Q How about for general use?
A What do you call general use? Brush his teeth, comb his hair.
Q What is fine dexterity?
A Comb his hair --
Q What is fine dexterity?
A Fine dexterity means manipulating fabrics, counting money, holding objects together, doing manual work, going back to metal cutting. That he cannot do. This kind of

work he cannot do.
Q I want to ask you that. In your opinion he could not pick up a sheet of metal with his two hands?
A First of all --
Q Yes or no?
A He can pick it up but can't cut it. There is a lot of twists to it.
Q Is there some other kind of dexterity other than diminished dexterity?
A Diminished dexterity.
Q I'm not clear, I'm sorry. Is there some other definition that you use in your field other than fine dexterity?
A No, I'm referring to fine dexterity.
Q What is the percentage, if you can, that you've seen in other cases? What is the percentage loss of use here?
A Approximately 50 percent.
Q 50 percent?
A Yes.
Q You talked a little bit about relying on this Social Security finding. Am I correct, sir, you did not yourself participate in the hearings before the Social Security in this case?
A No.
Q But you have participated in Social Security hearings

for other patients?
A Not at hearings. Disability evaluations by way of an examination and report. Not to actually go to a hearing. The report goes to a hearing, not myself.
Q And you do that for patients?
A Yes.
Q Are you at all familiar with what happens when your report arrives at the hearing?
A Generally you have somebody that reviews the report, a general intake person or investigator. They have certain criteria they go by. If they feel that their criteria is not met, they ask the patient to provide additional supplemental reports. If they feel it is still insufficient, they turn them down. They have a right to an appeal or a hearing.
Q And they go to a hearing as in this case and there's an administrative law judge --
A He has all the reports and makes the determination based on the disability law's regulations and he makes his final ruling.
Q At these hearings, it's not like a trial like this, is it?
MR. BREWINGTON: Objection, Judge.
THE COURT: Sustained.
BY MR. RYAN:

Q Is there anybody opposing? Are there other lawyers opposing someone who is seeking these benefits?

MR. BREWINGTON: Objection.

THE COURT: Overruled. I'll allow it.

A No, there's no lawyer opposing. It's just the administrative law judge that makes his final determination based on the medical records.

Q Now, you talked about reduced mobility, loss of elasticity over time; am I correct?

A Yes.

Q Are there not exercises that can be done that will strengthen the hand and prevent that from reoccurring?

A They will do that to some degree.

Q And these exercises, can a person do that at home or do they have to go to some office and do them?

A Exercises, they can do them on their own. There are other things they cannot do on their own.

MR. RYAN: I just want to get one other thing clear.

BY MR. RYAN:

Q Are you saying in your opinion that while Mr. Burke physically might be able to keep a job, it's his mental situation that is precluding him from working on a full-time basis?

A It's a combination of the two.

Q So am I correct that the physical alone will not prevent him from working?
A That will prevent him from most jobs.
Q Will prevent him from using his right hand for fine dexterity?
A That's correct.
MR. RYAN: I have no further questions.
Thank you, Your Honor.
THE COURT: All right.

REDIRECT EXAMINATION
BY MR. BREWINGTON:
Q Sir, do you agree with this statement: "Claimant does not have the residual functional capacity to perform sustained work on a regular basis at even a simple, unskilled sedentary level"?
A I agree.
Q And, sir, with regard to the last area that -- the next to the last area that Mr. Ryan asked you about, he asked about the loss of elasticity. Do you remember him asking you that question?
A Yes.
Q What happens over time with regard to elasticity, even though exercises are done?
A Eventually the tendons go into shortening position.

When a tendon is shortened from fibrosis -- doesn't happen overnight, takes months to years. Once they go into a fibrosis state the tendons become shortened and the fingers become shortened and the range of motion diminishes and this is what happened.

Q Does that happen even though exercises are prescribed?

A Exercises slow down this process, they do not halt this process.

Q Sir, you received your degree, your medical degree from where?

A The University of Northeast Dominican Republic.

Q Anything wrong with your medical degree?

MR. HAGGERTY: Objection.

MR. RYAN: Objection.

THE COURT: Sustained.

BY MR. BREWINGTON:

Q Sir, has your medical degree prevented you from practicing medicine as a full diplomat?

A No, I've gone to the finest universities in the country.

Q Sir, whether or not Mr. -- withdrawn.

In your answers to Mr. Ryan, you indicated that there was going to be a need for monitoring of Mr. Burke with regard to his different medical needs?