SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CIVIL TERM: PART 32

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ANGEL RUIZ and JENNIFER MYERS,

Plaintiffs,

- against -

Index No.
20494/10

MARIO PUGLIANO,

Defendant.

JURY TRIAL

----------X

SUPREME COURTHOUSE
125-01 Queens Boulevard
Kew Gardens, New York
June 11, 2013

B E F O R E : HONORABLE RUDOLPH GRECO,
J U S T I C E

(TRIAL EXCERPT)

JENNIFER ROSENBLATT
Senior Court Reporter

MR. FICARA: Yes, your Honor. The Defense calls Edmond Provder.

MR. DALLI: Can we have a sidebar?

THE COURT: Come up.

(Whereupon, a sidebar conference was held)

(open court)

THE COURT OFFICER: Remain standing, face the clerk. Raise your right hand.

THE CLERK: Do you swear or affirm the testimony you give will be the truth and nothing but the truth so help you?

THE WITNESS: I do.

THE COURT: Mr. Provder, okay, you have done this before?

THE WITNESS: I have.

THE COURT: You know the drill as we say. Go ahead, please.

DIRECT EXAMINATION

BY MR. FICARA:

Q Good afternoon, Mr. Provder. We have -- today is the first day we met?

A Correct.

Q We have spoken?

A We have.

Q And can you tell the jurors, sorry, what you do for a living?

A I am a rehabilitation counselor.

Q What does that mean?

A Rehabilitation counselor is an individual who has been educated and trained to work with people that have a variety of different disabilities or handicaps. These could be physical disabilities, mental disabilities, cognitive, and what we do is look at how these disabilities impact a person's ability to work and their ability to earn money. If we believe they are employable, we try to locate jobs they can do given their capabilities.

Q Sir, can you tell us your educational background?

A I have a Bachelor's Degree in Rehabilitation Counseling from Pennsylvania State University, Master's Degree in Rehabilitation Counseling from Pennsylvania State University. After receiving my Master's degree, I continued with my education in rehabilitation counseling, attending the Rehabilitation Counselor's Doctorate Program at New York University. I completed 42 credits required towards the doctorate with leaving the University with my dissertation to be completed.

Q What have you done since getting your education as a Vocational Rehabilitation Counselor?

A To give a snapshot, I have been doing this 40 years. I

started out in '73, after receiving my Master's degree, at the Federation of Handicapped in New York City. I was involved in a program dealing with people that were seriously injured called Higher Horizons or Homebound. And at the Federation I was involved in performing the four basic services of rehabilitation counselors. These are individual and group counseling assisting the clients in adjusting to their disability, as well as counseling them as to the most feasible and vocational goals, basically what they could do.

I administered a battery of vocational tests performing what's known as vocational evaluations to people to see what they can and cannot do given their capabilities. Thirdly, I performed work adjustments, which means I prepare people for employment. And lastly I provide job placement services, which means that I locate a job the client would do given their best capabilities. I did that for a year and a half and became employed at Mount Sinai Hospital Department of Rehabilitation Medicine in New York City.

At Mount Sinai, I supervised their vocational facility which consists of sheltered workshop programs and vocational testing and evaluation program. At Mount Sinai, I supervised five professional staff members and served as liaison counselor between Mount Sinai Rehab Program and the State Vocational Rehab Program at Mount Sinai. I did basically the same type of job functions; counselor, vocational testing and

evaluation, work adjustments, job placement service.

At Mount Sinai I worked with a population of people that have physical disabilities, as well as population of people that have psychiatric disabilities. I was at Mount Sinai since, from '74 through '78 and again in '79 to '80. Since '78, I have had my own company called Occupation Assessment Services which provides direct rehabilitation services to individuals that are injured. I work with populations of people who have injured their backs, their legs, their arms, people who have been in wheelchairs, people who lost limbs, people that have been brain injured. I work with children all of the way up to seniors, and we provide vocational services, as well as what's called case management or life care planning services to them.

That brings us up to date.

THE COURT: When did that start, Occupation Assessment Services?

THE WITNESS: Seventy-eight, your Honor.

Q And, sir, it's apparent you have testified before?

A Yes.

Q And have you testified on both behalf of plaintiffs and defendants?

A Yes, sir.

Q This is the first time we have interacted; correct?

A Yes.

Q And do you have any -- do you belong to any

associations or belong to any groups or have any affiliations with any --

A I am a member of the International Association of Rehabilitation Professionals in the private sector for which is an organization for individuals that do private rehabilitation counseling services. I am also a member of a group called Resna, R-E-S-N-A, which deals with rehabilitation engineering techniques for people that have become disabled.

Q You're being paid for your time here today, sir?

A Yes, sir.

MR. FICARA: Just, Judge, at this time I move to qualify Mr. Provder as an expert in vocational rehab.

THE COURT: Have you been qualified in the New York Courts as an expert before?

THE WITNESS: Yes.

THE COURT: How many times?

THE WITNESS: Probably at least one to 200 times.

THE COURT: Do you recognize --

MR. DALLI: I recognize Mr. Provder as a qualified expert, Judge.

THE COURT: You're an expert now.

Q Mr. Provder, at some point were you retained by our office to do a vocational evaluation of Angel Ruiz?

A Yes, sir.

Q Do you recall when that was?

A Yes. I evaluated him on April the 4th of 2013 in my office in New York City.

Q And at the time that you did the evaluation, I am assuming Mr. Ruiz was there?

A Yes.

Q Was anybody else there?

A Yes, there was. A representative from the plaintiff's firm was there.

Q Okay. And what was the purpose -- what was the evaluation for?

A Purpose of the evaluation was to assess Mr. Ruiz's employability and earning capacity. Basically what he could do given his limitations and what he could earn in the local labor market.

Q What did that evaluation actually consist of?

A Well, the vocational assessment consists of four parts. The first part involves a review of various records that were forwarded to me there.

Q Do you recall what those records were?

A Yes, sir. I had hospital records. I had consultative reports. I had reports from treating physicians. I had physical therapy reports. I had wage information and I had Mr. Ruiz's deposition.

Q And after you -- did you review the records before the exam?

A They were actually reviewed twice. First before and secondly when I did my report.

Q And at the time that Mr. Ruiz appeared at your office for an exam, what exactly did you do?

A Yes, I actually did two things. The first thing I did was interview him, obtain background information regarding his age, his education, his past work experience and his medical condition. Then I administered a battery of vocational tests to see what he could or could not do. After he left, which the evaluation took two hours, I then went back, reviewed the information I had obtained, looked at the test results and scored the tests and formulated an opinion as the type of work Mr. Ruiz could perform and what he could earn in our New York City labor market.

Q Do you recall, when you interviewed him, what you learned about his background specifically, and education?

A Yes, Mr. Ruiz, when I saw him in April, was 47 years of age. He indicated his date of birth was November the 2nd of '55. He was born in Puerto Rico, coming to the mainland of the United States in '56. He reported that he was single. He had stated that he came to the interview and it took him 40 minutes by subway and by bus. I then inquired as to his educational background and he stated that he had attended up to the 12th grade here in New York at Thomas Jefferson High School. He reported that he had a regular driver's license, and he noted to

me that he had contacted the State Vocation Rehab Program recently and was awaiting to be approved for services by them.

Q Did he tell you what specifically, with regards to the vocation rehab services, that he had contacted?

A He had contacted what is called Acces-VR, which is a state agency that used to be known as V.E.S.I.D, V-E-S-I-D. That's the State Vocation Rehab Program that is mandated to provide vocational rehab services to people that have been injured.

Q And is there a certain criteria that one needs or is required to gain access to that program?

A Yes. Your condition must be stable and you must have the capability to perform what we call sedentary physical demands. It means that you have to be able to perform work that requires at least you working in at least a seated position and be able to lift up to ten pounds.

Q And as part of your evaluation, do you also refer to any outside sources for jobs that are available to persons with Mr. Ruiz's background and education?

A Yes, well, I actually use two sources. The first source is a document called the Dictionary of Occupational Titles. That is published by the United States Department of Labor and that dictionary contains approximately 13,000 jobs that exist in the labor market and it contains the requirements of those jobs, and the, not only the education requirements, but

the physical requirements and training requirements required of those jobs.

The second thing I use is wage information, again, from the United States Department of Labor and the Department of Census, which details the average wage for various occupations in the United States broken up into what we call metropolitan statistical areas. New York City being one of them. And I use the wage information obtained from that source because the Department of Labor contacts many, many employers throughout the area and there is such a large sample size that that data is extremely reliable. We call it the Gold, G-O-L-D, standard of wage information.

I also note that document also, which is updated yearly, contains the number of jobs that exist in the New York City area for each of those occupations.

Q When you did your interview of Mr. Ruiz, did you make an assessment as to the type of jobs that he had been employed in before the accident?

A Yes, sir.

Q And did you determine the type of demand that that job entailed?

A Yes.

Q What were they?

A He stated he had been employed for several years as a light truck driver and his particular job involved doing

deliveries and unloading restaurant equipment, such as refrigerators, stoves and microwaves. He had to use a hand truck or pallet truck in order to unload the equipment; and the job would be considered semi-skilled work, as it took him approximately two months to learn the job. He stated he drove from New York to New Jersey, Connecticut, Upstate, New York. He would make anywhere from ten to 29 stops to places such as schools, restaurants and distributors. And this job is described in the Dictionary of Occupation Titles on page 918 and is given the code number 906-683-022.

Prior work was as a liquor delivery driver for Bacardi in Syosset from 2003 to 2005, and he worked in a package company from 2004 to 2006 where he packaged, boxed the food such as canned goods and placing them on a pallet. That job involved lifting 40 to 100 pounds.

Q And would that be the type of job that a high school education would be enough to do?

A Yes.

MR. DALLI: Objection.

THE COURT: Let's not lead.

Q Did you, at some point during the course of your interview with him, determine how much he was earning as a truck driver --

A Yes, he stated that --

Q -- from his employer at the time of the accident?

A He reported that he was earning approximately $525 per week.

Q And during the course of that examination and your interview, did he make any complaints relative to his physical --

MR. DALLI: Objection.

THE COURT: What is the --

MR. DALLI: Sidebar.

(Whereupon, a sidebar conference was held)

(open court)

Q Sir, after you did your intake and you reviewed the records, your interview with Mr. Ruiz, what was the next thing that you did?

A I administered a battery of vocational tests to find out what Mr. Ruiz could or could not do given his impairment.

Q What did the tests consist of?

A Various tests that measured capability, measured his dexterity, coordination, his inspection abilities, clerical abilities, and his tests were compared to people that were working in the city because I wanted to see if he could work competitively in certain occupations.

Q What did you use in conducting these tests?

A I don't understand the question.

Q What methodology did you use?

A The methodology was Mr. Ruiz, the representative from

the attorney's office and myself were the only two -- three people in the room. I observed him throughout the testing. I compared his scores to people that were working in the industry, what is called industrial norms. So I wanted to see whether he could work at a rate that would be acceptable to an employer.

Q What were the specific tests that he did?

A I created a chart that may help the jury understand the testing I did. It's right there.

MR. FICARA: Can we mark this as Defendant's C.

(Whereupon, Defendant's Exhibit C was marked for ID)

MR. DALLI: May I see it?

Q This is a blow up, sir, of the chart that you prepared based upon the tests that you had given Mr. Ruiz that day?

A Yes, sir.

MR. FICARA: And at this point I move that into evidence.

MR. DALLI: Objection.

THE COURT: What is the objection?

MR. DALLI: Sidebar, please.

(Whereupon, a sidebar conference was held)

(open court)

MR. DALLI: Can I have a ruling?

THE COURT: The objection is sustained.

Q All right, can you tell the jury what the tests were that you used, that you did?

A Yes.

Q Can you tell the jury what the tests were that you used to --

A Yes.

THE COURT: Do you need to point them out?

A I can verbally describe them.

THE COURT: Put them out for the jurors. You can put it right here. That's a good spot.

MR. DALLI: Your Honor, sidebar.

(Whereupon, a sidebar conference was held)

(open court)

THE COURT: Take it down. Let's take it down. Let's move on from there. Objection sustained.

Q Mr. Provder, what was the first test you did?

A First is called the Purdue Pegboard Test. It's a test developed by the Psychology Department at Purdue University, and that test measures a person's ability to use their hands quickly and accurately. I measured test -- measured four different parts.

The first part involves using the right hand. And on that section Mr. Ruiz scored below average. The second part involves using the left hand, and his score was above average on that particular section of the test. The third part is a test that involves using both hands together, and that he scored average. And the last part is, last part is a four-part

assembly where he had to pick up small items and perform a four-part assembly alternately using his hands. This test is performed in a seated position, and his test scores were compared to people that were male industrial applicants, norm group.

THE COURT: What was the outcome?

THE WITNESS: He scored below average on the right hand, above average on the left hand, average on the both hands section and average in the four-part assembly section.

THE COURT: The fourth part assembly section was average?

THE WITNESS: Yes, sir.

A The next part was the Vocational Aptitude Battery Form Perception test. This is a test of his ability to look at various pictures. He has to select the alternative picture in the booklet that looks the same. It's a visual inspection test. It's done in a seated position. His score was average compared to the competitively employed norm group, and he reported experiencing pain in his right hand when he did this particular test.

The next test was the Employee Aptitude Survey Verbal Comprehension Test. This is basically a definition test where he is given one word and he is given four alternative words. He has to select the word or the alternative that means most closely to the first word presented to him.

THE COURT: Good old multiple choice.

A His score was below average and he reported having difficulties reading the test. The next test was the Employee Aptitude Survey Visual Speed & Accuracy Test. His score was below average compared to the general productive male population norm group. On this test he did not work in a steady manner and reported experiencing right wrist pain.

The next test was the Employee Aptitude Survey Manual Speed & Accuracy Test. This is a test of his ability to use his hands quickly and accurately. It involves placing dots with the pencil in circles throughout the test. His score was below average compared to the general productive male population norm group. He alternately used his right and left hand to perform this test and reported experiencing pain in his right wrist, discomfort in the right wrist. That test, that was the results of the testing that I gave him.

Q And after you did those tests, sir, did you form a conclusion and as to evaluation whether or not there was any vocational issues or whether or not there was -- he could be trained in some manner based on the test?

MR. DALLI: Objection.

THE COURT: Your objection is the leading?

MR. DALLI: And the form.

Q Did you reach a conclusion based upon the tests?

A Yes, I did. I reached a number of opinions.

Q And what were those opinions?

MR. DALLI: For clarification, for the tests you just testified to, is that what your conclusions are based upon?

THE WITNESS: Everything; the interview, the review of the records, the observation I made, the test results, my experience.

THE COURT: I have a quick question. One second, counsel. Sorry to interrupt.

Mr. Provder, you said you administered ten tests?

THE WITNESS: No, I didn't say I administered ten. I administered one, two, three, four, five tests.

THE COURT: Okay. Thank you.

Q Before we get into that, you mentioned that the plaintiff can do sedentary work.

A Yes.

Q Were there other types of job classifications?

A Yes, there are. Again, I created a chart that would help us. If I could --

THE COURT: Just tell us.

Q The categories of the United States Department of Labor classifies every one of your jobs using a five-point physical demand scale. The least exertional work is called sedentary, which, as laypeople call, a sitting down type of job. It's done basically in a seated position and involves lifting up to ten

pounds.

Second number of work is called light work. That's work that usually is done in a sitting or standing position. The person has to be able to lift up to anywhere from ten to 20 pounds.

The next level of work is what we call medium work. Another standing or walking job, involves lifting of anywhere from 20 to 50 pounds.

Next level of work is heavy work. It involves lifting of anywhere from 50 to 100 pounds, and that's done in a standing position. And the most arduous work is called very heavy work that's done in a standing or walking position. It involves frequent lifting up to 100 pounds and over. Those are the categories.

Q Mr. Provder, based upon your intake, interview, review of the medical records and your testing of the plaintiff, did you come to an opinion based upon a reasonable degree of certainty within the field of rehabilitation counseling and employability as to whether or not the plaintiff was employed, is employable, and if so, what his earning capacity would be based upon that?

A Yes. It was my opinion he could do work that involved least exertional, sedentary or light type of work activity. I felt he was capable of doing such work as an assembler, packaging and filing machine operator, industrial truck

operator, which is what is known as a forklift operator, dispatcher, school bus driver, route sales driver, painting, coating and decorating worker, which is done in a seated position, machine feeder and offbearer, cutter and hand trimmer in the garment industry, a visual inspector and cleaner of vehicles and equipment. And these jobs pay anywhere from $24,200 to $41,120 per year over his work life.

Q That's a base of that salary range?

A That salary range is based as indicated in the United States Department of Labor Occupation Employment Survey in the New York City area. And the latest one was May of 2012.

Q Mr. Provder, based upon your interview and examining of the plaintiff and the tests, do you believe, do you have an opinion based -- do you have an opinion as to whether or not Mr. Ruiz is a candidate for vocational rehab training?

A Yes. He was involved in the vocational rehab process when I met him and I did everything and would encourage him to continue with that program. They could provide either retraining or they could provide what they call selective job placement to try to assist him in obtaining employment.

MR. FICARA: Thank you, sir.

THE COURT: Cross. Come up.

(Whereupon, a sidebar conference was held)

(open court)

THE COURT: The Court will recess until two

o'clock. Mr. Provder, I direct you to come back at 2:00 o'clock to finish your testimony.

THE COURT OFFICER: Okay, jurors, step out.

(Whereupon, The Jury exited the courtroom)

THE COURT: You can step down. Thank you. Mr. Provder, step down.

(Whereupon, trial was adjourned until 2:00)

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

THE COURT OFFICER: Ready for the jury, Judge?

THE COURT: Yes.

THE COURT OFFICER: Jury entering.

(Whereupon, The Jury entered the courtroom)

THE COURT: Welcome back, folks. Please be seated. We will continue. Let the record reflect both counsel are here and Mr. Provder, you're still under oath. Continue Mr. Dalli.

CROSS EXAMINATION

BY MR. DALLI:

Q Good afternoon. How are you?

A Good.

Q Okay, you mentioned in your direct testimony this morning V.E.S.I.D; right?

A Yes.

Q Does it have a different name?

A Acces-V.R.

Q It does the same thing though?

A Exactly the same.

Q You mentioned that when you got called into this case and met with Angel, he talked to you about the fact he was involved in that process?

A Yes, sir.

Q Did you review any documents in connection with his connection with V.E.S.I.D?

A No, sir.

Q As you sit here today, do you know where he is along that process?

A At the time I saw him, he was gathering his medical records in order to be involved in the process.

Q Okay, and it's true, is it not, in order to be accepted by VESID, you have to qualify?

A Not sure what you mean by qualify.

Q I couldn't go to V.E.S.I.D and say let me be in V.E.S.I.D; right?

A No.

Q So there are certain things that you need? For example, you have to have a disability of some sort?

A Yes.

Q So you don't dispute that Mr. Ruiz has a disability that qualifies him for V.E.S.I.D?

A True.

Q And when V.E.S.I.D, does it -- withdrawn.

V.E.S.I.D does a myriad of things; right?

A Yes.

Q One thing it doesn't do, it doesn't guarantee you a job?

A Does not.

Q They help you, right, try to maybe retrain you?

A Yes.

Q For people who can't go back to their given avocation?

A Given vocation.

Q Or vocation. They go back and maybe help them do something else?

A Yes.

Q Even though we know V.E.S.I.D doesn't guarantee anybody the job, there are some things about Mr. Ruiz's employment history that we know to be true; right?

For example, we know he had a job; right?

A Yes.

Q We know for sure that at the time of this accident, he had been working for a company by the name of Sam Tell since January of 2007; correct?

A True.

Q And in connection with that job, he was also entitled to union benefits? Were you aware of that?

A I was aware that he worked through a union.

Q So if I were to tell you that there is evidence in this case that he was entitled to union benefits pursuant to the contract between the union and his employer, you would have no reason to disagree?

A True.

Q If I were to tell you that he was entitled to health care coverage from his job, you would have no reason to dispute that?

A True.

Q That's for certain; right?

A Yes.

Q Okay, and if I were to tell you that he was entitled to employee sponsored contributions for pension plan as part of his union benefits, you don't dispute that; correct?

A No. Again, I never reviewed his union contract. That's actually not my area of expertise.

Q That's fine. So V.E.S.I.D, and, in fact, any other place he might go to to try to help him find a job certainly cannot give him a guarantee with respect to what he had?

Can we agree on that?

A Not sure what you mean by what he had.

Q I will ask it a different way. We know he had job benefits, health insurance, pension.

We know he had that?

A Yes.

Q So no matter what he does from this day forward, okay, nobody can guarantee to replace what he lost?

A No guarantees.

Q All right.

Now, the fact that -- by the way, you were called to this party kind of late; weren't you?

A Yes.

Q In fact, when did you get retained to be part of this case?

A I assume sometime in April of this year.

Q How did you get involved?

A I have -- my office was called to schedule an evaluation.

Q Do you have a file with you, by the way?

A Of course.

Q Can I see it?

A Sure.

Q You were called by the lawyers in this case; right?

A Yes.

Q Do you know who the defendant in this case is?

A No.

Q Do you have any idea who the defendant is?

A No.

Q Do you know his name?

A No, not relevant to me.

Q How was your office contacted? Are they sent a letter, phone call?

A I don't know. I don't handle that end of it.

Q Is there any correspondence in this file between any of the attorneys with respect to your retention in this case?

A Not that I know of. It may have been done by phone.

Q Okay, what about bills? There is no invoices in here, how come?

A The invoices are not contained in that file, or the invoice.

Q So the amount of money that you charge for your work in connection with this case is not in your file?

A The invoices are not in the file.

Q You're being paid for your time here today?

A I am.

Q And you were paid to, not only come here today, you were paid to review reports and issue a report; correct?

A I was paid for the evaluation. I was paid for my time today.

Q And how much were you paid for the evaluation?

A Forty-five hundred.

Q How much were you paid for the -- to come here today?

A Same amount, 4,500.

Q So 9,000 for the report, the evaluation and to come to Court today?

A Correct.

Q By the way, you were supposed to be here yesterday; right?

A Correct.

Q But you couldn't be here because were you testifying in New Jersey in a different case; right?

A Correct.

Q How much were you getting paid to testify yesterday morning?

A Same amount.

Q $4,500.

A For the day, yes, sir.

Q You scheduled a court appearance in New Jersey in the morning and also scheduled to be here in the afternoon in Queens?

Was that what you scheduled?

A Correct.

Q You thought you would be able to testify in New Jersey -- by the way, where in New Jersey?

A Essex County. Newark.

Q That's got to be what to drive from Essez County to here in the middle of the day?

A One hour and 15 minutes.

Q You thought you would be able to testify in New Jersey in the morning, collect your $4,500, and then come here and

collect your $4,500 here in the afternoon?

A That was what my schedule was.

Q So you met Mr. Ruiz two months ago; right?

A In April.

Q And you explained this morning, I think part of what you did is spend two hours with him; right?

A Yes, sir.

Q You did some tests?

A Yes.

Q The reason you did these tests is to determine whether or not he can get a certain type of job; right?

A Look at his skills and ability.

Q You're not a medical doctor; right?

A I am not.

Q So you can't tell this jury anything about how any of the injuries he has sustained affect his ability, for example, to ambulate?

A No, I am not a physician.

Q You can't tell this jury anything about how his injuries affect his ability to pick things up, put things down?

A No.

Q You can't tell this jury anything about whether his injuries prevent him from driving?

A Correct.

Q But yet in your report, I think you said this morning

that one of the jobs Mr. Ruiz could do is be a school bus driver?

A Yes.

Q Do you have children?

A Yes.

Q Would you want a man with a torn medial meniscus who hasn't driven in three and a half years driving your kids on a school bus?

A Again, I don't know the impact of his knee on his ability to function. I believe he told me he had a driver's license.

Q When you come and tell the jury he could be a school bus driver, you said to them, did you not, this morning that that's one of the jobs he could do?

A Yes. Of course.

Q You don't know anything about how his injuries that have been made crystal clear in this courtroom affect his ability to safely operate a bus and drive children from school and to home?

A He gave me a functional capacity assessment based on his own assessment of what he could do. Based on the assessment he gave me, he would be able to do that job. He told me he could drive. He told me he had the capability to do various functions, such as sitting, standing, walking, lifting, so on.

Q Where is that in your report?

A You have my file.

Q Where is that in your report?

A Let me have my file back.

Q Sure. I though you had a copy of the report. I have your report, too. So if you could just point out the place in the report.

A Page 15, he gave functional capacity, can sit for 30 minutes, stand for 30 minutes, walk ten to 20 minutes, lift and carry 15, 20 minutes.

Q Okay.

A He states he has not driven, as you said, he has not driven since the accident, but I gave a wide range of different types of occupations he could do and these are representative samples of occupations he is capable of doing.

Q Right now, Dr. Provder -- I am sorry, Mr. Provder, I am focusing on what you told the jury in terms of his ability to drive for a living. We will stay with that and go to other things.

A No problem.

Q So as you sit here now, doctor --

A Mr. Provder.

Q Sorry. It's automatic pilot. I know you're not a doctor.

A Okay.

Q As you sit here today, if I were to tell you we have

had testimony in this case from a medical doctor, a board certified physical medicine and rehabilitation doctor, who says that based on the injury Mr. Ruiz sustained to his right knee and lower back, he cannot drive for a living, would you -- do you want to change your opinion about whether he can be a bus driver?

A That would be the doctor's opinion. Based on that answer, then he couldn't be a school bus driver or light truck driver.

Q If we assume that the doctor's opinion is reasonable, did you want to change your opinion now?

A I just indicated that.

Q You changed your opinion about that. We will get into some other occupations you said he could do in a second.

A Okay.

Q Now, you're the owner of Occupational Assessment Services; correct?

A Yes, sir.

Q And that's a company that exists in the State of New York; right?

A Yes.

Q And you have, according to the website, an office in New Jersey?

A Yes, sir.

Q Florida?

A Yes.

Q Recently opened up in Texas; right?

A Correct.

Q Where else? Anywhere else?

A That's it.

Q Okay, and your main office is out in Lodi, New Jersey; right?

A Yes.

Q And Occupation Assessment Services doesn't treat patients, does it?

A It does.

Q It does?

A Yes.

Q Do you have a private practice where people just come in off the street and ask for you to give them assessments?

A Nobody comes in off the street. They're referred from a variety of different places.

Q Let's talk about where Occupational Assessment Services has made their money over the past -- how long in business?

A August of '81.

Q August of '81?

A Yes.

Q Would it be fair to say you have testified before in court, Mr. Provder?

A I have already testified to that.

Q If I were to say that you have testified more than 700 times, you wouldn't disagree with me, would you?

A That's an awful lot of times. I am not sure 700 is accurate.

Q Five hundred?

A I would say -- I would say probably three to 400.

Q Since '81?

A Well, I started testifying in '83.

Q '83, 400, that's your number?

A That would be an estimate.

Q How many times, if you remember, have you testified in Court? About how many times have you testified?

A No idea.

Q Many times; right?

A I am sure.

Q If I told you I had a bunch of transcripts of your prior testimony that says something other than 400, you wouldn't disagree with me, would you?

A It is what it is.

Q A lot more than 400; right?

A I am not sure it's a lot more than 400. That would be my estimate.

Q How much money have you made coming into Court and testifying about whether a plaintiff can work in a certain job or whether you're testifying for a defendant and say they can?

A I would say anywhere from four to six cases per month.

Q Four to six per month?

A It depends on a wide variety of different cases. They could be Social Security work cases, Worker's Comp. cases, personal injury cases.

Q How many cases are you involved in that don't involve litigation, coming into a courtroom of some type and testifying for money? How many cases do you do where that's the case?

A Not sure I understand your question.

Q I will rephrase it.

You talked about Social Security and you talked about other types of cases?

A Yes.

Q The point I am trying to make is, just about every dollar your company earns comes from litigation related services, is that not true?

A That's not true.

Q Well, you charged -- withdrawn.

How much money has O.A.S made from litigation services in the past five years, on average?

A I couldn't give you an estimate. I can try to give you a monthly figure. We probably, as I said, do four to six cases per month. Figure four of those are personal injury cases, average about $5,000. So we probably do 25, $30,000 worth of work per month.

Q When you say personal injury cases, that's what we are doing here; right?

A Correct.

Q So that's four or five cases a month. That's 4,500 back on the report?

A 4,500.

Q Plus coming into court for another $4,500 to testify?

A Yes.

Q Got a job for me. Withdrawn.

One of the things I am sure you do in your private practice, Mr. Provder, when somebody comes into your office and -- by the way, let's talk about your office for a second.

You have an office in New York; right, you said?

A Yes.

Q You don't -- it's not staffed?

A No, the only staff is New Jersey.

Q Then you have the Florida office?

A Yes.

Q But your Florida office is your personal private condominium that you use as a tax write off whenever you're down in Florida; isn't that true?

MR. FICARA: Objection, your Honor.

THE COURT: Sustained.

Q Do you have an office in Florida?

A I use the library in my condominium.

Q And when you go down to Florida, if you're not using it for business, it's a residence; correct?

MR. FICARA: Objection, your Honor.

THE COURT: I will allow it.

A Yes, it's a residence.

Q How about the office in Texas, any staff there?

A At the present time, the office I use in Texas, there is staff.

Q Okay, whenever somebody comes to one of the offices and you go to evaluate them, you ask them questions; right?

A Yes.

Q You do testing? You have them match pictures up, things like that?

A Yes.

Q And they match the picture up, is that like Yankee Stadium? I don't know if you're a baseball fan. They do the big boards that have Mariano Rivera on the first spot and then he is down at the ninth spot. They give something, $25 to Modells if they can match it. Is that the same thing?

You're not a baseball fan?

A I am a Yankee fan, but I don't recall what you're stating.

Q Imagine nine panels, and all of a sudden one turns and it's Mariano Rivera, the next one is Derek Jeter, the next Mark Texeira. They are all mixed.

What was behind number two or eight and nine, it's not like that?

A No.

Q What is it like?

A Every test I gave is standardized, which means it's been formed by various test publishers and there is norm groups that the client is or the evaluee (sic) is compared to. The vocation aptitude battery form perception test has them match various pictures of items that are used.

Q Are you matching two things of the same or two things related?

A No, they're all related in some manner. Different sizes and shapes.

Q Okay, that's one of the tests you gave to Mr. Ruiz; right?

A Yes, sir.

Q And when people come into your office and you do these tests and you ask them questions about the type of jobs they have done, their background, you expect them to be honest with you; right?

A Yes.

Q In fact, if they're not honest with you, the value of your results will be somewhat flawed?

A Well, it's one of the assumptions I make when I do my evaluation is that the person is being truthful.

Q And Mr. Ruiz, you made those assumptions with him; correct?

A Yes.

Q Now, honesty is important when you're doing your evaluation; right?

A Well, as I indicated, it's one of the assumptions I make, that the person is truthful.

Q But you haven't been truthful with the public about the type of business you run; isn't that true?

A I don't understand what you're asking.

Q Isn't it true, Mr. Provder, you had a website for a period of time where you called yourself the Nationwide Leader in Vocational Rehabilitation Services?

A That's true.

Q At some point you took that website down; right?

A I didn't take the website down. I took that phrase down.

Q Because when you made that representation where you bestowed upon yourself the title of the nationwide leader, you had no statistics or facts to back that up; isn't that true?

A No. I knew what my results of cases I had been involved in compared to other individuals that do what I do.

Q You're the judge and jury of who is the best vocational rehab therapist in the United States?

MR. FICARA: Objection.

THE COURT: I will allow it.

A My opinion.

Q What do you base your opinion on that you're the nationwide leader?

A I know other experts in this field. I know what their results are.

Q None of them are as good as you?

A I am one of the top ten people in the country.

Q You know why you're the top is because of all the big verdicts and defense verdicts and plaintiffs' verdicts that you boast about in your website?

A I don't know about the defense verdicts that are on the website. There are plaintiffs' verdicts on my website.

Q There's no success stories of how you took a person who couldn't work anymore, took them through a rehab process, and got them a job? That's not on your website, is it?

A It is not.

Q So you haven't bannered any of those stories; correct?

A I have not.

Q So you modified the website; right?

A Yes.

Q Do you know what it says now?

A I am not involved in that website. My office handles it, so I don't know.

MR. DALLI: Let's mark this for identification.

THE COURT OFFICER: Plaintiff's 12 marked for identification only.

(Whereupon, Plaintiff's Exhibit 12 was marked for ID)

Q Is that your website, Mr. Provder?

A Yes.

Q Let's take a look at some things on here. You changed the fact that you were the nationwide leader to among the nationwide leaders. So now you're just one of the leaders?

A Yes, I am, but people were questioning whether it is or isn't.

Q How many vocational rehab therapists are there in the country?

A Rehab counselors?

Q Yes.

A There are approximately 1,100 rehab counselors that work for the government, and probably 300 that do private practice.

Q You know them all?

A I know pretty much everybody.

Q All 1,100, every state?

A 1,100 people that work for the government, they only do Social Security disability work. They do not do personal injury work.

Q And how many are in New York?

A We have probably a half a dozen.

Q Half a dozen? Six in the State of New York?

A Probably. In the State of New York or New York City?

Q Let's go with the state.

A Probably 12 or 15.

Q How many are there in New York City?

A That practice in the New York City area, maybe five or six.

Q So certainly if the defendant wanted to hire a vocational rehab person, he could have chosen one from New York? They didn't have to go to New Jersey to find out?

MR. FICARA: Objection.

THE COURT: Sustained.

Q Let's take a look -- you will be exhibited on June 12 to 15, or that's tomorrow, at the Florida Justice Annual Convention; right?

A Yes.

Q You're going to be touting your nationwide leader among the nationwide leadership at conventions.

Who goes there, lawyers?

A Trial lawyers. Plaintiffs' lawyers.

Q Marketing yourself to come and make your $4,500; right?

MR. FICARA: Objection, your Honor.

THE COURT: Objection sustained. Come on. Let's move it along. Thank you.

Q All right, this morning, this morning you testified

about jobs you think Mr. Ruiz can do; right?

A Yes, sir.

Q We have already talked about the bus driver before.

Making this conclusion or coming to this conclusion, did you speak to anyone or even ask to speak to anyone at Mr. Ruiz's employer, Sam Tell?

A I did not.

Q When you talk about the available jobs, I think you talked about available jobs. You didn't give any numbers. But those aren't jobs that actually are open jobs? Those are the total number of jobs that exist in the area; correct?

A I didn't talk about anything about number of jobs. My testimony was the wages for those occupations.

Q Out of those jobs you talked about; assembler, and it was a whole list of them there, have you made any inquiry before coming to tell this jury that Mr. Ruiz can get one of those jobs as to whether there is even one of those jobs currently available?

A I did not.

Q So you don't even know if that job exists for him to apply for?

A I don't understand your question. You're using two different terms.

Q I will rephrase it.

Before telling the jury that Mr. Ruiz can find a job

in the particular area, whether it was packaging, inspecting, isn't it true that you did not do any research into whether there is an available position as we sit here today?

A True.

Q And you also said in your report that you reviewed some records, medical records; right?

A Yes.

Q You have no opinion about Mr. Ruiz's injury, how they affected his life or anything like that?

A I am not a physician.

Q So the answer is no?

A Correct.

Q Well, take a look at your report because this morning you mentioned that you reviewed records from a treating physician, a hospital record, but you didn't mention the first two doctors that you, or the first two doctor's reports you listed in your report as what you reviewed?

A Not sure I understand your question.

Q Turn to the page where you talk about the records that you reviewed. I believe on page 8.

A Page 5.

Q Page 8 of 20.

A Eight?

Q Yes, 8.

MR. DALLI: May I approach the witness? I want to

show him the page so we are both looking at the same thing. This page, Mr. Provder.

A No, page 5.

Q I have it as 8 on here. So page 5 for you.

A Okay.

Q Let's take a look at that.

Now, the first record, the first physician record you reviewed in connection with your records review in preparation for your opinion was with a Dr. Feuer; right?

A I don't know that's how you pronounce it.

Q It doesn't matter. Dr. F-E-U-E-R. That's the first record you listed as what you reviewed?

A Yes.

Q And it says IME, 2-21-12.

A Yes.

Q IME, that's an Independent Medical Exam?

A Correct.

Q That's a doctor hired by these defense lawyers to come in and testify about Mr. Ruiz's medical condition; correct?

A I assume he was a doctor hired by the defense.

Q Wasn't hired by me; right?

A I don't know.

Q It says here in your, where you list in your report, you list a conclusion of Dr. Feuer; right?

A Yes.

Q Okay, the second doctor that you list is a Dr. Toriello?

A Yes.

Q He is also a doctor that was hired by the defense to come in and testify about Mr. Ruiz's medical condition; correct?

A Yes.

Q So the treating doctors, are they on here?

A Yes, of course. We have Khakhar. I believe that's the person who -- that testified this morning.

Q Right. He is down at the bottom of the page; right?

A I am not sure what the relevance that it's at the bottom or the top.

Q Did you rely on the opinion of Dr. Feuer and Dr. Toriello in part in reaching your conclusion about Mr. Ruiz's ability to work?

A In part.

Q Now, you said that you did an assessment of Mr. Ruiz's mental capacity; right, mental function?

A Never stated that.

Q Let me go back. I will probably be inartful in the way I say it.

You checked his verbal comprehension; right?

A Yes, I gave him a test of verbal comprehension.

Q Was that a multiple choice test?

A Yes.

Q You said he scored below average on that?

A Yes.

Q Then you gave him a hand test to see his manual dexterity, things like that?

A Yes.

Q You said he was below average in that?

A No. On the manual speed and accuracy test, his score was below. On the Purdue Pegboard Test, his score was average to above average on most of the parts.

Q Then on the assembly test, you said he was average; right?

A Yes. That's part of the Purdue Pegboard Test.

Q You also said in your report -- you're aware that he went to high school, but he didn't graduate; correct?

A Correct.

Q Isn't it true in your report, one of the listings you put in there was clerical?

A One of the jobs I noted?

Q Yes. I believe you said he could work in the clerical field.

A No clerical jobs.

Q Take a look at page -- take a look at page, well, it's page 18.

A Eighteen?

Q Yes. Under rehabilitation plan.

A Okay, hold on. Sure.

Q Actually go up the same page, but go to the paragraph above the words job search in the middle of the page again.

A Yes.

Q Based -- I will read what you have in your report. It says here, Mr. Ruiz is able to use his skills as light truck driver to perform dispatch, clerical.

A Yes, I did, but I didn't include any clerical jobs. The jobs that I found after reviewing everything, I thought he was capable of doing, were those jobs I listed in my direct examination.

Q It says he is able to perform clerical.

A Yes, I have that there. That's correct. When I reviewed everything and listed my jobs, I did not include any clerical jobs.

Q We are taking clerical out of the picture?

A Yes. I never testified to clerical jobs.

Q We have two out, clerical and school bus; right? Are you taking out?

A I never had clerical to begin with. I didn't list any clerical jobs.

Q You didn't really list any jobs; did you?

A I did.

Q You listed activities more than you listed jobs; didn't you?

A I am totally confused.

Q Okay, I am sorry. Let me see if I can be a little bit more precise.

Let's go under your rehabilitation plan.

A Okay.

Q Same page. You say here that part of his plan should be to obtain or try to obtain a civil service job?

A Yes, that's an option.

Q Civil service, like jobs working in the court, like the officer over here?

A No, he would need a high school diploma.

Q Don't you need at least a high school diploma to work any civil service job in the State of New York?

A I wouldn't say.

Q How can he get a civil service job?

MR. FICARA: Objection.

THE COURT: I will let it go.

Q How can he?

A Not every job requires it. You don't need to have a high school diploma to be the maintenance man who cleans the bathrooms, for example. You don't need a high school diploma for that. There's nothing that prevents him from going back and getting his high school diploma. This is part of the rehab plan to see what things -- type of things he is capable of doing.

Q Sir, I am talking about what you have told the jury he

can do. And you said in your report he could get a job as a civil service worker. That requires an exam and it requires education, does it not?

MR. FICARA: Objection.

THE COURT: Asked and answered. He said that.

MR. DALLI: I will move on from that.

Q By the way, before you made these conclusions about Mr. Ruiz, did you make any effort to discuss his medical condition at all with any of the doctors, even who -- the ones hired by the defendant?

A No.

Q Don't you think it would have made sense, don't you think it would have been important to have ideas from a doctor as to what he is capable of doing vis-a-vis his injuries before reaching these conclusions?

A Yes, I already had that information. We have three reports in this case that deal with functional capacity and three doctors have rendered opinions as to the type of work and any restrictions he may have. We have Dr. Feuer's, Dr. Toriello and Dr. Khakhar who testified this morning.

Q Do you know what Dr. Khakhar testified to concerning his ability to work?

Are you aware of it?

A I didn't hear the first part.

Q Are you aware of what Dr. Khakhar, his treating

physician, told the jury this morning about his ability to work?

A No, I have his report dated October 22 of 2012 where he talks about his ability to return to work.

Q I am not talking about his ability to return to work in October of 2012. I am talking about his testimony today.

A No, sir.

Q Okay, and you say that the report of Dr. Feuer and Dr. Toriello say he can return to his previous employment?

A They say that he is able to return, engage in full active employment, as well as full activities. The other one states he is able to return to work, normal daily living activities without restrictions. Dr. Khakhar, in his report, states patient is unable to return to work as a truck driver, delivery person at this time.

Q Okay, I guess maybe we will hear from those other two doctors hired by the defense.

MR. FICARA: Objection.

THE COURT: Sustained. Come on. Let's go.

Q Let's talk about these jobs. We are getting to the nitty gritty here. Just look at your conclusion in your report, okay. In your report you listed -- page 19.

A Okay.

Q Under earning capacity, number one, you say it's your opinion based on vocational, as a vocational expert, that he can return to his prior work as a light truck driver; correct?

A Yes, sir.

Q So that's your opinion here to this jury he can go back to Sam Tell and get his old job back?

A That was not my opinion. He can return to light truck driver with limitations in lifting.

Q That's not what it says here.

A Light truck drivers are not usually defined -- as he was performing the job, he was performing the job more than a heavy, almost as a heavy truck driver, not a light truck driver.

Q You're saying he was not a light truck driver; is that what you're saying?

A Yes, he would be more of a heavy truck driver due to the amount of weight he had to lift and carry in his job.

Q Okay, and do you have any idea as to the types of weight he had to lift on any given day?

A Yes.

Q Whether he went up or down?

A What do you mean up, down?

Q Whether he had days where he lifted very little things and was delivering forks and knives versus delivering refrigerators?

A He had a heavy job. He had to lift very heavy objects. The job of a light truck driver doesn't involve that type of work, that lifting involved.

Q You have not done any research, there's nothing in this

20 or 30 page report that provides any information about specific places Mr. Ruiz could go to get this light truck driving; correct?

A No, I didn't do that. I didn't do that for any of the jobs.

Q So looking at your report here, you listed the number of jobs for given categories and then you listed a salary; right?

A Yes.

Q You got the number of jobs and salary out of those books you referenced earlier from the Department of Labor?

A Research done by the U.S. Department of Labor.

Q When you list the number of jobs, it says number of jobs in your report; right?

A Yes.

Q But that's not the number of available jobs?

A I have already testified to that. Those are the number of jobs that exist.

Q So where? Exist where?

A In the New York City area.

Q That would be the five boroughs?

A It would be.

Q So out of all of these job listings, assembler, for example, you said there are 20,140 assembler jobs?

A Yes.

Q You can't tell us anything about -- anything you did to see if there's one available for Mr. Ruiz?

A I already testified to that. I did not.

Q It would be the same thing for all of the jobs you listed?

A That's true.

Q Route sales driver, same thing; right?

A Again, I did not research any available, open jobs.

Q You talked about him being able to be a machine feeder or a cutter and hand trimmer.

A Yes.

Q Cutter and hand trimmer. What's a cutter?

A A cutter and hand trimmer is an individual who sits at a desk similar to yours in a garment industry and trims off and cuts the excess thread.

Q Next to that you list 1,610 jobs in the five boroughs?

A Correct.

Q Again, we don't know if Mr. Ruiz can get one of those jobs; correct?

A Yes.

Q We do know he had a job; correct?

A Correct.

Q Now, in this particular case, you have been hired by the defense, paid by them, and you're giving testimony that a gentleman with a torn medial meniscus with an education

something less than high school diploma can go back to work; correct?

A Yes.

Q Now, you have testified, have you not -- withdrawn.

Mr. Provder, you're aware of something called the Jury Verdict Reporter?

A Yes.

Q And isn't it true that for somebody willing to do the work can find transcripts of other cases where you have actually testified?

A Of course.

Q And isn't it true that in a case strikingly similar to Mr. Ruiz's case, a guy who, by the name of Hernandez, who had the same education, the same exact injury, you came to Court and said he can't work because of those injuries?

Do you remember that case?

A I don't remember the case, but every case is different and every circumstance is different.

Q Robert --

A Every evaluee (sic) is different.

Q Robert Hernandez versus Columbus Center, LLC, Supreme Court, New York County, which is Manhattan, just a couple of years ago, you don't remember that case?

A I do not.

Q Do you remember testifying in this case?

A I do not.

Q If I told you that I have a transcript where, what I just told you about a similar guy with similar injuries, you said he couldn't go back to work, would you have any reason to dispute it?

MR. FICARA: Objection.

THE COURT: What's the objection, counsel?

MR. FICARA: The objection is he is waving a document. We don't know what it is. He is testifying.

THE COURT: He can wave the flag if he wants.

MR. DALLI: I would like to mark it for identification.

MR. FICARA: It's not in evidence.

THE COURT: For identification.

THE COURT OFFICER: Plaintiff's 13 marked for identification only.

(Whereupon, Plaintiff's Exhibit 13 was marked for ID)

Q Take a look at that transcript, Mr. Provder.

A Do you want me to read the whole thing?

Q Just tell me --

MR. FICARA: Can I take a look?

MR. DALLI: I have a copy for you, counsel.

Q Take a look at that transcript and tell me, can you look at the first few pages.

Does it refresh your recollection about the

testimony or about that case? Again, it's Hernandez versus Columbus Center.

A We don't have a date on the testimony.

Q If I told you that's the Jury Verdict Reporter, that is as December of 2006, that's what you testified?

A In order for me to -- I would have to read every line on this to answer your question.

Q Can we agree, Mr. Provder, that you testified in the Hernandez case; right?

A It appears that I did, yes.

Q And --

A It doesn't say the case. No, I assume it's Hernandez.

MR. DALLI: Can I mark it for identification?

(Whereupon, Plaintiff's Exhibit 14 was marked for ID)

THE COURT: Plaintiff's 14 for identification. Show it to counsel. What is that, a cover sheet, for identification?

MR. DALLI: Its a synopsis of the case

THE COURT: That's from the Jury Verdict Reporter.

MR. FICARA: I object to this, your Honor. There is no foundation as to the authenticity of this document. It's not the Jury Verdict reporter.

MR. DALLI: I am not asking to admit it as evidence.

MR. FICARA: He represented to the Court it was

the Jury Verdict Reporter.

MR. DALLI: It is a Jury Verdict Reporter.

THE COURT: If you want an argument, we have park benches outside. No argument. Just tell me what your position is.

MR. FICARA: The Jury Verdict Reporter is different from what this document is. That's my objection.

THE COURT: Okay.

MR. FICARA: He represented this was the Jury Verdict Reporter.

THE COURT: Your objection is lack of foundation; right?

MR. FICARA: Yes, your Honor. Among other things.

THE COURT: Sustained.

Q Mr. Provder, look at the transcript. And in looking at this synopsis, does it help refresh your recollection about your testimony in this case?

A I would have to read every page and every line.

Q It's true if you answered to me that it did refresh your recollection, you know I can question you about it; right, and by answering no --

MR. FICARA: Objection, your Honor.

THE COURT: Come on. That's now colloquy. I don't need anymore.

Q How about the case of Chiavelli (phonetic) versus

County of Passaic, does that case refresh your recollection?

A I have no idea.

Q You just testified two months ago in that case.

Do you remember testifying on behalf of the plaintiff in this case?

A I don't recall.

Q So we can't use that.

Mr. Provder, we are in a competitive job market; aren't we?

A Yes.

Q And to be fair about this, Mr. Ruiz has some disadvantage in terms of applying for new jobs; wouldn't you agree with that?

A Yes.

Q And those disadvantages would include, putting his injuries aside, his level of education?

A Yes.

Q It could also include the fact that he has basically been doing the same type of work for a long time?

A He hasn't been doing the same type of work for a long time. He was a light truck driver for a number of years. He was a helper on a truck for a number of years. He did packaging for a number of years.

Q Are you telling this jury that there is a big difference between a regular guy who goes on trucks, lifts

stuff, unloads them as opposed to packing or working in the back of a truck? There's a big difference?

A When you say the person's been doing the same job, meaning they have been an attorney for 20 years, that's the same job.

Q Can you and I agree, for the most part, that for the last ten years, Mr. Ruiz has been working on a truck, whether he was driving and delivering, whether he is packing boxes and putting them on the truck, taking them off the truck; that's what he has has been doing; correct?

A Yes.

Q A guy like him, okay, are you telling this jury that he can walk into an office and get a job sitting at a desk working on computers?

A That was never my testimony here.

Q You mentioned clerical; didn't you?

A But I never named any clerical jobs. I named a bunch of jobs that he could perform within the functional capacity noted by the various physicians.

Q As far as whatever number of jobs there are available for all these categories you say he can get a job in one, we don't know whether the jobs are actually available?

Can we agree on that?

MR. FICARA: Asked and answered.

THE COURT: It is, but it's cross examination.

Let it go and --

Q And can you and I agree that Mr. Ruiz, for those jobs, is competing against a plethora, a lot of people looking for work, Mr. Provder?

MR. FICARA: Objection.

Q Is that true?

THE COURT: Objection sustained. Let's not get argumentative.

Q Are there lots of people looking for jobs today?

MR. FICARA: Objection.

THE COURT: Sustained.

A The question again, please.

Q Aren't his disabilities, which you acknowledge, a significant impediment to him getting any type of a job?

MR. FICARA: Objection.

THE COURT: I will allow it.

A They would.

MR. FICARA: Any type of job, your Honor?

MR. DALLI: He is about to answer the question.

MR. FICARA: I have an objection.

THE COURT: Okay, the objection is what?

MR. FICARA: The last part of his question, any type of job.

THE COURT: Do you have trouble answering that question?

THE WITNESS: No.

THE COURT: Let him then.

A He qualifies for all of the jobs which I noted given his functional capacity and his disability.

Q Well, you are not even aware what his true disability is because you said earlier in your testimony that you knew nothing about how his injuries have affected him.

You said that or are you changing your answer?

A I am not sure I understand what you're asking me.

Q We started off this cross examination with me asking you pretty early on whether you could tell the jury about how his knee injury and back injury are affecting his ability to do any type of work and you said you can't comment on that.

A That was not -- that wasn't the question asked of me because the question asked of me, if that was the question asked of me -- I am a vocational expert. Of course I study those things, and I am aware in those questions you asked, those are the tests, reasons I do testing; to assess how a person's impairments impact on his ability to work and what kind of work they can do, if anything.

Q You didn't do any tests with respect to how his right knee and low back affect his ability to work?

A I am not a physician.

Q So my question to you was, isn't it true that those two key components, what we have all been here about for the last

week, is not something you can comment on as to how it affects his ability to get a job?

A I am not sure I understand your question.

THE COURT: Mr. Provder, as to the right knee, you didn't testify -- you didn't test anything to do with his right knee?

THE WITNESS: I did not.

THE COURT: As to his lower back, you didn't test his ability to work with the lower back injury?

THE WITNESS: No.

Q Last question. If you take Mr. Ruiz versus a healthy man without the right knee injury and the back injury for the packaging job, the assembler job, the driver job or any other job, who gets the job?

MR. FICARA: Objection.

A Are you --

Q Who gets the job?

THE COURT: Sustained. It's speculative.

MR. DALLI: I am done.

THE COURT: Mr. Ficara.

(Whereupon, Senior Court Reporter, Jennifer Rosenblatt, was relieved by Senior Court Reporter, Claudia Berna.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CIVIL TERM: PART 32

- X

ANGEL RUIZ and JENNIFER MYERS,

Plaintiffs,

Index No. 20494/10

- against -

MARIO PUGLIANO,

Defendant.

(Excerpt of Trial testimony - Edmond Provder)

- X

Supreme Courthouse
25-10 Court Square
Long Island City, New York 11101
June 11, 2013

BEFORE:

HONORABLE RUDOLPH E. GRECO, JR.,
Justice of the Supreme Court
(and a jury.)

APPEARANCES:

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CLAUDIA N. BERNA
and JENNIFER ROSENBLATT
OFFICIAL COURT REPORTERS

(EXCERPT): (Whereupon, Claudia N. Berna, official court reporter, resumes recording testimony):

THE COURT: Mr. Ficara, 25 words or less. You proceed, come on.

REDIRECT EXAMINATION

BY MR. FICARA:

Q. Mr. Provder, it is not your job to place your -- the people that come to see you, correct?

A. It is unethical. We would be -- we'd have what is called dual relationship, meaning we would be a treating source and a consultant. You can't do that with these certified rehabs, counselor, ethics.

Q. It is your job to find out what jobs there are available that they can do?

A. Yes.

Q. And you listed that in your report, correct?

A. Yes.

Q. And you listed an assembler, packing and filing machine operator, industrial truck operator, a dispatcher, school bus driver, a route sales driver, painting, coding, decorating, working machine feeder and off-bearer cutting and trimmer, inspector and cleaner of equipment and vehicles?

A. Yes.

Q. You didn't put in there clerical?

A. No, I did not.

Q. Do you know what a GED is?

A. Yes, it is a test you prepare for, and if you pass it, you are able to get your equivalency, high school equivalency.

Q. That is an equivalent to a high school diploma?

A. It is.

Q. If I told you the plaintiff testified he got his GED, he would have -- would be the equivalency of a high school diploma?

A. Yes, sir.

Q. And you testified in a lot of these civil servant jobs, all you needed was a high school diploma?

A. Yes.

Q. You testified earlier on cross-examination that even if he was found to have some type of ability to do some type of job, there is no guarantee he would get a job?

A. Correct.

Q. You are not a guarantor.

A. No, I'm not.

Q. There would be no guarantee he would be for working for Samtell for another 20 years?

Mr. DALLI: Objection, speculation.

THE COURT: No, he can't answer that. Sustain that objection.

Q. Are there any guarantees in life?

Mr. DALLI: Objection.

THE COURT: Rhetorical. I tell you what's

guaranteed -- we are not going there.

Q. You said you testified 400 plus times, correct?

A. Yes, over 30 years.

Q. Over 30 years, and what would you say your percentage of testifying on behalf of plaintiffs who hired you as opposed to defendant hiring you?

A. At least 95 to 97 percent plaintiff.

MR. FICARA: Okay, I have no further questions. Thank you.

Mr. DALLI: Just briefly.

RECROSS EXAMINATION

BY MR. DALLI:

Q. Mr. Ficara's first question to you, was it your job to find out what jobs are available that he can do, that was the question, right?

A. Jobs he's capable of doing.

Q. You did nothing with respect to finding out whether there was even one job available for him?

A. I -- I did not, I did not look at any job openings.

Mr. DALLI: Thank you.

THE COURT: That's it. Anything else?

MR. FICARA: Yes -- no, no further questions.

MR. DALLI: I have a witness, Judge. Can I go out and get her?

THE COURT: Hold on a second. Off the record.

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

(Whereupon, the following took place in open court:)

THE COURT: Call the next witness. Who is the witness?

(Whereupon, this concludes excerpt of requested trial testimony.)

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CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

Claudia N. Berna

CLAUDIA N. BERNA
Senior Court Reporter

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