To: Kayla Dixon

From: D. Worthman

Re: transcripts

Dr. A. Merola WCB#G200 9180

WORKERS' COMPENSATION BOARD

STATE OF NEW YORK

---------- x

CHRISTOPHER DOMINO,

Claimant,

-against-

PERMASTEELISA NORTH AMERICA CO.,

Carrier.

WCB Case No.: G200 9180

Carrier Case No.: 005157000521WC01

D/A: 9/27/2017

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TELEPHONIC DEPOSITION of DR. ANDREW MEROLA, a Non-Party Witness, taken by the Parties, pursuant to Workers' Compensation Law & Rules of Testimony and Subpoena, held on May 11, 2018, at 2:30 p.m., before a Notary Public of the State of New York.

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Dr. A. Merola WCB#G200 9180

A P P E A R A N C E S:

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BY: JONATHAN SO, ESQ.

xxxxx

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D R. A N D R E W M E R O L A, having been first duly sworn before a Notary Public of the State of New York, was examined and testified as follows:

BY THE REPORTER:

Q. Please state your name for the record.

A. Dr. Andrew Merola.

Q. What is your address?

A. 567 1st Street, Brooklyn, New York 11215.

EXAMINATION BY

MR. GRAJALES:

Q. Good afternoon, Doctor. My name is Jose Grajales. I'm an attorney with Bangel, Cohen & Falconetti. We represent your patient, Christopher Domino, in a Workers' Compensation claim. I'm going to be asking you some questions regarding his care and treatment. I will start with some qualifying questions. If at any point you are unable to hear me or don't understand my question please let me know.

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Doctor, are you licensed to practice medicine in the state of New York?

A. Yes.

Q. Is your license to practice medicine in good standing?

A. Yes.

Q. Have you ever been subject to disciplinary action?

A. No.

Q. What medical school did you attend?

A. Howard University College of Medicine, graduated in 1990.

Q. Do you specialize?

A. I'm an orthopedic reconstructive spinal surgeon.

Q. Are you coded by the New York State Workers' Compensation Board?

A. Yes, and my letters are COS.

Q. Do you have any hospital affiliations?

A. I'm affiliated with Mount Sinai Hospital and New York Hospital.

MR. GRAJALES: Counselor, do you have any questions regarding the doctor's qualifications?

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EXAMINATION BY
MR. SO:

Q. Doctor, are you board certified in orthopedic surgery?
A. Yes, I am.
Q. Has any license for any jurisdiction you have been licensed in been the subject of any type of fine, censure, discipline, sanction, suspension, anything like that?
A. No.

MR. SO: We'll stipulate to the doctor's qualifications as coded. Thank you.

MR. GRAJALES: Thank you.

DIRECT EXAMINATION BY
MR. GRAJALES:

Q. Doctor, during your practice did you treat a patient by the name of Christopher Domino?
A. Yes.
Q. When was the first time that you saw the patient?

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A. November 20, 2017.
Q. Did you obtain a history at that time?
A. I did.
Q. What was the history, Doctor?
A. Patient was working as a glacier. He indicated to me that on September 27, 2017 he pulled out his right arm and sustained a twisting injury to his neck and back.
Q. During the initial visit did you perform a physical examination?
A. I did.
Q. What were the pertinent findings from that initial visit exam?
A. On that examination he had a positive Spurling's maneuver in his neck which caused neck spasm with pain going down into the hands and arms. He had sensory deficits in the fifth and sixth and to some extent the seventh roots of the arm and hand. He also had a spasm in his low back with only extendable to 10 degrees which reproduced pain going down into the leg.
Q. Were you able to arrive at a diagnosis?

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A. Yes. I was also able to look at some diagnostic studies at that time that he brought in of his neck and back that correlates those MRIs and the physical findings. The working diagnosis was a cervical and a lumbar radiculopathy.

Q. Was there a course of treatment undertaken?

A. Yes, I suggested that he refrain from work, he modify his activities to include no bending, no lifting, no twisting and no repetitive motion to the neck and back, that he go on the anti-inflammatory medicines and that he continues treatment with his other physicians, orthopedic, pain management and physical therapy.

Q. Doctor, you mentioned that there was a spasm of the low back. What would spasm be indicative of in terms of the chronicity or acuity of an injury?

A. Difficult to determine the chronicity or the acuity of the injury. It just tells me that there is an injury and that that injury is producing an uncontrolled

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reflective contraction of a muscle when examining that muscle or muscle group.

Q. How many times overall have you seen the patient?

A. Twice.

Q. The second occasion was when, Doctor?

A. March 27, 2018.

Q. Did you perform an examination at that time?

A. I did.

Q. Were there substantial differences or was it relatively the same from the first examination?

A. It was relatively the same, which is to say that he had persistent neck and back radiculopathy, cervical and lumbar radiculopathy, they essentially remained unchanged.

Q. Doctor, based on your examinations and the history obtained from the claimant and your review of the diagnostic testing, in your medical opinion with a reasonable degree of medical certainty is there causal relationship between your diagnosis and the

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accident?

A. Yes.

Q. Did you have an opinion as to the overall degree of disability as of the second examination?

A. He remained temporarily totally disabled.

Q. Had he had any surgeries up to this point?

A. Not that I'm aware of.

Q. Is he going to undergo surgery?

A. Right now I've been updated on his condition with his pain management physician, that's Dr. Perper. To my knowledge, he's presently pursuing pain management with epidural steroid injections. So from my perspective, which is surgery, I'm monitoring him. I don't have any surgery planned at this time. We're continuing to treat him conservatively in the hopes that conservative treatment will ameliorate some of these symptoms and make him better.

Q. How much more conservative treatment or how much more time before surgery is

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actively considered?

A. It depends on his response to the cervical epidural steroid injections, which I believe Dr. Perper has asked for.

MR. GRAJALES: I don't have anything further subject to redirect. Counselor?

CROSS-EXAMINATION BY

MR. SO:

Q. Hi, Doctor. If you need me to repeat a question or rephrase it in a different way just let me know. Okay?

A. Yes.

Q. Doctor, on the actual accident date where was the claimant?

A. As far as I know, he was working at the time of the accident.

Q. Do you know where he was in terms of his physical location, not so much as an address but his general surroundings when the accident happened?

A. I know he was working installing windows under the capacity of a glacier. He

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described to me that he was on what I put down and transcribed as a scaffold.

Q. Did he mention any specifics with respect to him pulling out his right arm, which is the way you phrased it?

A. Yeah, my understanding was this was an abrupt motion that occurred while he was working and that he pulled out the arm and from what I can understand having spoken to him twisted the neck and back. More than that, I don't know.

Q. Did he indicate when the pain with respect to his lumbar spine began?

A. As far as I know, after the accident but I don't know specifically when.

Q. Did you ask?

A. No, I just made a treatment recommendation based on his presentation to me and his physical findings.

Q. Doctor, did you have a chance to review any prior treatment records?

A. I have not seen any prior records, no.

Q. Doctor, assume it's true that the claimant treated with a Dr. DeMarco on

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October 12th of last year. I'm just going to read straight from the report here. It says, "The patient on 9/27/17 was a glacier working on a scaffold. He was holding on between the two panes of the glass and the scaffold went in the wrong direction and sustained a traction injury to the right shoulder, cervical spine and thoracic spine." Later on it says, "The patient has pain and dysfunction in the thoracic spine that radiates to the shoulder blades."

Is that consistent with what he reported to you?

A. Pretty much, yes.

Q. Did he report pain in the thoracic spine only when he spoke to you on the first date of treatment?

A. No.

Q. He didn't report any thoracic spine pain?

A. He said neck and back. I didn't appreciate any significant evidence of a thoracic radiculopathy.

Q. Did he specifically report any lumbar

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spine pain or he just states the back as a general term?

A. He said the back in general terms and the examination elucidated it as a lumbosacral radiculopathy.

Q. Did the claimant report anything else in terms of the specifics of the accident beyond what you have already stated?

A. No.

Q. Doctor, your opinion with respect to degree of disability, was that from all possible occupations or just from his prior occupation as a glacier?

A. All occupations.

Q. Doctor, can you tell us the basis of your opinion?

A. It's part of the treatment of the radiculopathy at this point to not have repetitive motion to the neck and back. Repetitive motion would be incurred during gainful, competitive employment.

Q. Do you feel that the claimant would be able to do a job that didn't require repetitive motion of the neck or back?

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A. I know of no such job.

Q. What about sedentary work, would the claimant be capable of doing that?

A. Not on a competitive, remunerative basis, no.

Q. Doctor, when the claimant presented to you last on March 27th was the claimant using any assistive device?

A. Not that I note on my record.

Q. Did the claimant need assistance to undress or to get onto the examination table?

A. No.

Q. Did the claimant report needing any assistance for activities of daily living?

A. No.

Q. Did you place any restrictions on the claimant's ability to take public transportation?

A. No.

Q. What about his ability to drive?

A. No restrictions placed, only to say that he could engage in activities as long as he could tolerate doing so.

Q. Did the claimant report any

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disturbance of bladder, bowel or sexual function?

A. No.

Q. Doctor, with respect to your fee, is this your first testimony of the day?

A. Yes.

MR. SO: I will turn you back over for questioning from the claimant's counsel. I may have some followup once he's done. Thank you.

THE WITNESS: Thank you.

REDIRECT EXAMINATION BY

MR. GRAJALES:

Q. Doctor, has any of opposing counsel's questions changed your mind with respect to degree of disability or causal relationship?

A. No.

MR. GRAJALES: I have nothing further subject to redirect.

(Continued on next page to include jurat.)

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MR. SO: Thanks, everybody. Have a great weekend.

THE WITNESS: Thank you, guys. Have a great weekend.

(CONCLUDED AT 2:45 PM)

DR. ANDREW MEROLA

Subscribed and Sworn to before me this day of 2018.

Notary Public

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C E R T I F I C A T E

I, STACY LOCKWOOD, hereby certify that the Deposition of DR. ANDREW MEROLA was held before me on the 11th day of May, 2018; that said witness was duly sworn before the commencement of his testimony; that the testimony was taken by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Deposition of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of May, 2018.

Stacy Lockwood

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Stacy Lockwood

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