

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CIVIL TERM: PART 26
2 - - - - - -X
3 SARABJEET S. BAJAJ, :
4 Plaintiff, :
5 - against - : INDEX NUMBER:
6 BRIAN W. RUFLE, NEW YORK CITY MTA BUS : 555/2015
COMPANY, : TRIAL
7 :
8 Defendants. :
9 - - - - - -X
Supreme Courthouse
88-11 Sutphin Boulevard
Jamaica, New York 11435
May 12, 2017
11 B E F O R E :
12 HONORABLE JOSEPH J. ESPOSITO,
Justice of the Supreme Court
13 (And a Jury)
14 A P P E A R A N C E S :
15 For the Plaintiff:
SUBIN & ASSOCIATES, LLP
16 150 Broadway, 23rd Floor
New York, New York 10038
17 BY: HERBERT SUBIN, ESQ.
18
For the Defendants:
19 CHESNEY & NICHOLAS, LLP
485 Underhill Boulevard
20 Syosset, New York 11791
BY: JOHN F. JANOWSKI, ESQ.
21
ALSO PRESENT:
22 JAMES P. CORTOPASSI, LITeGATION INC.
23
24 KAREN PERLMAN, RMR, CRR
ENYDE HUNTER-DOBIE
25 SENIOR COURT REPORTERS

1 all the way up.

2 THE COURT: Kathryn.

3 THE WITNESS: Good morning, Your Honor.

4 THE COURT: Good morning.

5 THE CLERK: Sir, you are reminded that you have
6 been previously sworn in and are still under oath. Please
7 state your name for the record.

8 THE WITNESS: Robert Pick, MD.

9 THE COURT: You may be seated, Doctor.

10 THE WITNESS: Thank you.

11 THE COURT: Mr. Subin, continue your
12 cross-examination.

13 FURTHER CROSS-EXAMINATION

14 BY MR. H. SUBIN:

15 Q. Good morning, Dr. Pick.

16 A. Good morning, sir.

17 Q. Dr. Pick, I think we ended off where you had admitted
18 that your testimony regarding the -- the measurements in your
19 first examination were consistent with the measurement of your
20 second examination, that was false testimony; is that correct?

21 A. Reversed, the second and first.

22 Q. Right. But that was false, right? That is what you
23 admitted to. I can read it to you. You have to say yes.

24 A. Yes.

25 THE COURT: You can't shake your head. You have

1 to answer.

2 THE WITNESS: Yes, Your Honor.

3 Q. And you told us yesterday that you did not proofread
4 either of these reports, correct?

5 A. I proof most of them.

6 Q. "These."

7 A. This one, I --

8 Q. You did not?

9 A. I did not.

10 Q. Okay. So somebody then sent this out, without you ever
11 reviewing it, correct?

12 A. Yes, sir.

13 Q. And they stamped your digital signature on the report,
14 correct?

15 A. Yes.

16 Q. Who's authorized to stamp your digital signature under
17 the penalties of perjury?

18 A. I leave my signature with the vendor.

19 Q. And with regard to that -- so basically, the people who
20 set up the report, they can -- they apparently have the capacity
21 to send your report out into the world with your sworn signature
22 without your reviewing it?

23 MR. JANOWSKI: Objection. Asked and answered.

24 THE COURT: No, no. Whether or not they have the
25 capacity, he can't answer that.

1 Q. Well, they did it in this case.

2 MR. JANOWSKI: Objection to colloquy.

3 THE COURT: Sustained.

4 Q. Now, I want to go through the rest of the report, okay?
5 You agree that the guy, Mr. Bajaj, had a foot drop?

6 A. Yes.

7 Q. And I'm looking now at the second -- the August -- I'm
8 sorry. Looking at the August -- the August report, which I'm
9 going to put up on the screen.

10 Let's start --

11 A. Can you turn it?

12 THE COURT: Do you want to stand up, Doctor, to
13 look at it?

14 MR. H. SUBIN: I'll -- I would move it so you can
15 see it.

16 THE COURT: If you need to stand up, you may.

17 THE WITNESS: Yes, Your Honor.

18 Q. So we can agree -- so I understand, you said yesterday
19 a foot drop comes from when somebody has nerve damage, right, in
20 their -- in their spine and goes down their leg?

21 A. Basically.

22 Q. And that would be consistent with what is called
23 peroneal neuropathy?

24 A. Yes.

25 Q. And generally what happens is they have a nerve injury

1 down there that stops them from having enough motor power to
2 lift their foot above neutral, right?

3 A. Usually it's a peroneal injury of the knee,
4 occasionally it's as high as the spine itself.

5 Q. What it does is that that injury stops the patient from
6 having enough motor power to lift the foot above neutral, right?

7 A. Yes.

8 Q. So we can agree then you can't have a normal push-off
9 gait in that set of circumstances, right?

10 A. Yes.

11 Q. So let's look at your observation.

12 When you say that there was -- when whoever signed this
13 report and sent it out said that there was no limp or antalgic
14 gait, that wasn't true, correct?

15 A. Probably correct.

16 Q. So then when we go down to the neurologic exam,
17 certainly where it says "motor strength in every range," that
18 would include his right-lower leg, correct?

19 A. Correct.

20 Q. That can't be 5/5, can it?

21 A. I'm sorry?

22 Q. You can't have full power with a dropped foot, can you?

23 A. That's correct.

24 Q. So that is actually also false and not correct. You
25 wouldn't have written that? You would not have written that?

1 A. If he had that. I don't recall specifics so I'm sorry.

2 Q. Okay. And he wouldn't -- you wouldn't anticipate that
3 he would have a normal reflex in his Achillis if he had a drop
4 foot, correct?

5 A. Probably.

6 Q. Right. Because that's also -- the same nerve gives
7 that -- that -- the reflex power when you hit it with a hammer
8 in the back of the Achillis?

9 A. Yes.

10 Q. So when you say that the -- all the reflexes were
11 2-plus bilaterally, that is not correct either?

12 A. Probably.

13 Q. Now, with regard to the lumbar spine, you say if a
14 claimant is able to walk on heels and toes, that is not possible
15 with a dropped foot, is it?

16 A. Probably not.

17 Q. It's not possible, Doctor, is it?

18 A. Again, I don't know the information so I can't answer
19 that for you.

20 Q. To walk on heels and toes you would have to be able to
21 do something like this?

22 A. Correct.

23 Q. And somebody with a dropped foot couldn't do something
24 like this, right?

25 A. We're talking about the ankle.

1 Q. You couldn't -- you couldn't dorsiflect --

2 A. Right.

3 Q. -- the foot in order to walk on your heels?

4 A. He could have a partial foot drop. So, again, I don't
5 have all of the information. I can't answer you fully.

6 Q. And this is definitely wrong, because on the right
7 ankle 2 plus -- if you turn the page we can go to reflex on the
8 right ankle 2 plus. It can't be 2 plus on the right ankle, can
9 it?

10 A. Probably not.

11 Q. And, again, you say the muscle strength in each range
12 is 5/5 and that's probably not true either?

13 A. Probably not.

14 MR. JANOWSKI: Objection to "probably." Objection
15 to form.

16 THE COURT: Sustained.

17 Well, if you don't object, I don't make a ruling.

18 MR. H. SUBIN: Okay.

19 Q. Now, and then the -- this examination of the right
20 ankle and foot, this is fully and totally wrong, probably none
21 of it is correct?

22 MR. JANOWSKI: Objection.

23 A. Probably -- probably not, sir.

24 Q. My understanding is the way this particular exam
25 worked, Mr. Bajaj filled out a form, you came into your office

1 for however long, probably five to ten minutes, for the physical
2 exam itself?

3 A. About 15, 20 minutes.

4 Q. Not from the time --

5 MR. JANOWSKI: Objection. Argue- -- he's
6 argumentative.

7 THE COURT: No. Overruled. He can go --

8 Q. From the time --

9 THE COURT: He's asking about something else about
10 the exam.

11 Q. You keep saying "from the time he entered the room."
12 From the time he entered the room you're also talking to him,
13 right?

14 A. Yes.

15 Q. I'm talking about when you're physically examining him,
16 you're moving him, you're touching him like you're alleging to
17 have done, that is probably 5 minutes of those 15?

18 A. Probably more, but yes.

19 Q. And then you give that -- you make a couple of notes on
20 that form, off it goes to the vendor, and now you never see it
21 again. Is that pretty much what happens?

22 A. Not that form, correct.

23 Q. What?

24 A. Not that form.

25 Q. That is the whole process, I haven't missed anything,

1 have I?

2 A. I get the report to review. I don't know what happened
3 here.

4 Q. Right. Not in this case.

5 Other than that, that's pretty much it, it's this
6 15-minute window for this person?

7 A. 15 to 20 minute.

8 Q. 15 to 20 window.

9 Nowhere in that 15 to 20 minutes did you actually
10 review any records, correct?

11 A. I may or may not. I don't recall.

12 Q. Let's go through what is in this report. This is what
13 is called "Review of Submitted Records," okay. And it lists
14 here -- I'm going to go to the next page.

15 A. Bear with me, sir.

16 Q. Take your time. I'm sorry.

17 MR. JANOWSKI: Which report is this?

18 MR. H. SUBIN: We're in August. August of '16.

19 MR. JANOWSKI: August 8th?

20 MR. H. SUBIN: Yes.

21 Q. Are you looking at something, Doctor?

22 A. I'm looking to see my copy. But it doesn't show it so
23 I will look at yours.

24 (Whereupon, Senior Court Reporter Karen Perlman
25 was replaced by Senior Court Reporter Enyde Hunter-Dobie.)

1 Q. So let's go back to this. This is the first page of
2 the record review, right?

3 A. Yes.

4 Q. Okay. And then there is the second page. Then there
5 was extensive review of records. Can we agree on that?

6 A. Yes.

7 Q. Actually, a third whole page, reviewing various records
8 from Mr. Bajaj's treatment?

9 A. Yes.

10 Q. And even a fourth whole page?

11 A. Yes.

12 Q. And part of a fifth page, yes?

13 A. Yes.

14 Q. You didn't review any of those records, correct?

15 A. I did.

16 Q. You reviewed those 50 records?

17 A. I looked at them, yes.

18 Q. In this 15 minute window?

19 A. Either then or thereafter.

20 Q. You just told us, sir, that the universe was 15 to 20
21 minutes. Now, and I asked you if that was it, and you said it
22 was.

23 It was, right? There was no other universe other than
24 that 20 minutes?

25 A. I don't agree with that.

1 Q. I don't want you to agree because --

2 MR. JANOWSKI: Argumentative. Objection.

3 THE COURT: Sustained.

4 Q. You swore to us under oath and told us the universe of
5 this encounter was 20 minutes, and that the report went off to
6 the vender, and that was it? You never saw it again or did
7 anything again?

8 A. The encounter is what we said.

9 Q. You said the notes went off to the vender, and you
10 never saw them again. You, also, said that --

11 And that was true when you said that, wasn't it?

12 A. Yes.

13 Q. There was no time or any opportunity where you had to
14 review any of these records, correct?

15 A. Okay.

16 Q. Okay. Who reviewed these 50 records and these four
17 pages required of this report?

18 A. It's prepared for the report.

19 Q. By someone?

20 A. I don't know.

21 Q. You don't know? Do you know if it's a medical
22 practitioner?

23 A. I do not know.

24 Q. My understanding is this. You examined him, I will
25 give you the 20 minutes, in this 20 minutes encounter, and you

1 put some stuff on a form. The form went off to an unknown
2 vender. They created a report that we can agree is
3 fundamentally false, right?

4 A. Yes.

5 MR. JANOWSKI: Objection to the characterization.

6 THE COURT: Sustained.

7 Q. That's not accurate?

8 MR. JANOWSKI: Same objection.

9 THE COURT: Overruled as to that.

10 Q. This report is not accurate, correct?

11 A. Not fully.

12 Q. Well, in a fundamental way, correct?

13 A. That's right.

14 MR. JANOWSKI: Objection.

15 THE COURT: Sustained.

16 Q. Let's go through the inaccuracies then. It's not
17 accurate that he can move his foot fully in dorsiflexion, right?

18 A. I can't answer that because I don't have all of the
19 information. He may have a partial footdrop.

20 Q. If he had a partial footdrop he couldn't move his foot
21 fully in dorsiflexion?

22 A. That's correct.

23 Q. So full muscle power? That's false?

24 A. Yes.

25 Q. Full flexion? That's false?

1 A. Yes.

2 MR. JANOWSKI: Objection to, "false." Inaccurate
3 maybe, but objection, your Honor.

4 MR. H. SUBIN: Why can't it be false?

5 THE COURT: This is cross-examination. Overruled.

6 THE WITNESS: I don't have all of the information,
7 so I can't answer you, sir.

8 Q. As a matter of fact, I want to ask you something else
9 for a second. You told us you met with Mr. Janowski on Sunday.
10 Where did that meeting occur?

11 A. My residence.

12 Q. How long was that meeting?

13 A. About an hour.

14 Q. Now, I assume when you met with Mr. Janowski, you had
15 no recollection of these encounters with Mr. Bajaj, right?

16 A. Yes.

17 Q. So the two of you sat down and reviewed these two
18 reports because that's the only thing that's left from your
19 encounters, correct?

20 A. Yes.

21 Q. And you reviewed all of these issues as you sat down
22 with Mr. Janowski in your house or your apartment regarding the
23 known values in the first neck exam?

24 A. I'm sorry?

25 Q. Did you, when you read the report -- and let's go

1 there. I want to go to the first report.

2 MR. JANOWSKI: Where are we, now?

3 MR. H. SUBIN: The very first report.

4 MR. JANOWSKI: March 7th?

5 MR. H. SUBIN: Yes.

6 Q. That's the first page, doctor?

7 A. Yes.

8 Q. Then there is a bit of a history. Second page is a
9 little bit of background, correct?

10 A. Yes.

11 Q. Then you start the physical exam. That's really --
12 that's a big part of your expertise is your physical exam,
13 right, doctor?

14 A. Yes.

15 Q. And the very first part of the physical exam is, that's
16 where the cervical spine exam is?

17 A. Yes.

18 Q. And any type of even reasonable cursory look at that
19 would show there's no values for lateral flexion, correct?

20 A. I agreed yesterday. Yes.

21 Q. And there is no mention of flexion or extension, right?

22 A. Yes.

23 Q. Did you have a conversation with Mr. Janowski regarding
24 these issues?

25 A. I don't recall.

1 Q. This was Sunday, sir?

2 This is a document that was purportedly sworn to by you
3 under the penalties of perjury where you were going to come in
4 and testify in controversy of a man who had over 20 surgical
5 procedures?

6 MR. JANOWSKI: Objection. Argumentative.

7 THE COURT: Sustained.

8 Q. You were going to come in here and give sworn testimony
9 in the --

10 MR. JANOWSKI: Same objection.

11 THE COURT: Same ruling.

12 Q. When you reviewed this, now, you told us you didn't
13 have the opportunity to review it before it went out. When you
14 reviewed it on Sunday, did you read that paragraph?

15 A. I may have looked at it.

16 Q. You're going to come in and testify under oath in a
17 lawsuit where somebody is claiming injuries, serious injuries --

18 MR. JANOWSKI: Asked and answered.

19 MR. H. SUBIN: I haven't finished the question.

20 THE COURT: Let him finish.

21 Q. Did you think it was important to at least carefully
22 review something you had no recollection of before you came and
23 give an opinion?

24 A. Yes.

25 MR. JANOWSKI: Objection.

1 THE COURT: Overruled.

2 He said, "yes."

3 Q. Did you?

4 A. I don't recall.

5 Q. Did you make a plan with Mr. Janowski that you were
6 going to bypass this first cervical spine exam and just say that
7 it was equivalent with the second exam to try and avoid this
8 problem?

9 MR. JANOWSKI: Objection.

10 THE COURT: Sustained. Making a plan.

11 Q. Let's go back, doctor.

12 Your diagnoses and impressions, you have no idea if
13 those are your diagnoses and impressions?

14 A. Why not?

15 Q. You don't remember the exam. You never proofread this.
16 You don't know if the information is correct. How could those
17 possibly be your diagnoses?

18 A. Why not?

19 Q. Because you would be making it?

20 A. I don't make anything up.

21 MR. JANOWSKI: Objection. Argumentative.

22 THE COURT: Sustained. He said he doesn't
23 remember.

24 Q. What you're saying here is, I don't remember the exam?
25 I didn't proofread the report? There are significant issues

1 that may or may not be correct? And you are still comfortable
2 saying that's your diagnoses and impression?

3 A. Yes.

4 Q. How about assuming the fact that he had a full drop
5 foot or partial drop foot? Does that impacts the fact that you
6 say that he should go back to full employment, including heavy
7 employment?

8 A. Again, I don't recall what the issues are, so I can't
9 answer your question.

10 Q. I'm asking you to assume that. You swore to us
11 yesterday he had a drop foot?

12 A. It was reported --

13 MR. JANOWSKI: Asked and answered.

14 THE WITNESS: It was reported as a footdrop, but I
15 don't remember the extent of the footdrop.

16 Q. Would you say he had zero orthopedic disability?

17 A. I can't answer. I don't know the extent of the
18 footdrop, so I can't answer your question.

19 Q. By the way, at the end -- you have done other reports
20 for the Transit Authority, correct?

21 A. Probably.

22 Q. And did you ever do a report on a Cecil Benito?

23 A. Don't recall.

24 MR. H. SUBIN: May I have that marked?

25 THE COURT: Have it marked, Christine.

1 (Whereupon, Dr. Pick's Report was marked as
2 Plaintiff's Exhibit-18 for identification, by the
3 Reporter.)

4 COURT OFFICER: So marked. This page, correct
5 Mr. Subin?

6 MR. H. SUBIN: Yes.

7 MR. JANOWSKI: May we approach, your Honor?

8 THE COURT: Yes.

9 (Whereupon, at this time there was a discussion
10 off the record, at the bench.)

11 Q. Do you see what's on there?

12 A. Yes, I see it.

13 Q. Your signature is on the back of that report?

14 A. Yes.

15 Q. And you did a report for the Transit Authority on a
16 Cecil Benito, Junior?

17 A. Yes.

18 Q. Okay. And were you aware of that yesterday?

19 A. I didn't know it was for the bus company. This was for
20 Aims Enterprises.

21 Q. Aims sends you work from the Transit Authority?

22 A. If you say so.

23 Q. Okay. And were you aware that yesterday we had a
24 radiologist, Dr. Marc Katzman, who also did work on the same
25 Cecil Benito, Junior?

1 A. I don't know.

2 Q. Do you work with Dr. Katzman in conjunction, in defense
3 of lawsuits?

4 A. No.

5 Q. Doctor, are you standing by your opinion that there is
6 no orthopedic disability of Mr. Bajaj?

7 A. Based on what was available to me, yes.

8 Q. What was available to you?

9 A. Whatever is in the reports.

10 MR. JANOWSKI: Objection, your Honor.

11 THE COURT: Sustained.

12 Q. What are you basing it on? What are you basing --

13 MR. JANOWSKI: Same objection.

14 Q. -- your opinion on?

15 THE COURT: He's standing by his opinion. Move on
16 to something else.

17 Q. At the very end of this report --

18 THE COURT: Which one?

19 Q. Both of them. We'll stay with yours?

20 A. My reports?

21 Q. Your reports.

22 A. All three reports? You just gave me one.

23 Q. Put that one away. We're done with that. That was on
24 your business relationship with Dr. Katzman?

25 MR. JANOWSKI: Objection to comments.

1 THE COURT: Sustained as to comments.

2 Q. There is a certification at the end of your report
3 there?

4 A. Yes.

5 MR. JANOWSKI: Which report is that?

6 MR. H. SUBIN: I'm sorry. August 8, 2016,
7 Sarabjeet Bajaj.

8 MR. JANOWSKI: March 7th.

9 MR. H. SUBIN: No, August 8th of '16.

10 Q. They are the same on both, right, doctor?

11 A. What is the same?

12 Q. The certification above your signature?

13 A. Yes.

14 Q. The certification that you have no professional or
15 financial conflict of interest with the claimant, provider,
16 facility or benefits plan in the above report, right?

17 A. Yes.

18 Q. Regarding the referring entity, insurance issuer or
19 group health plan that is the subject of review; the covered
20 person who's treatment is the subject of review, and the covered
21 person's authorized representative, if applicable, or any
22 officer, director, or management or employee of the insurance
23 issuer that's the subject of the review?

24 A. That's what it says, yes.

25 Q. What that's trying to say is --

1 MR. JANOWSKI: Objection.

2 THE COURT: Sustained as to what it is trying to
3 say.

4 Q. What that says is, you have no conflict of interest?
5 You haven't been involved in anyway, shape or form with anything
6 that's gone on up until these examinations of Mr. Bajaj?

7 A. Right.

8 Q. That's because it would be unethical for you to do
9 that?

10 A. Right.

11 MR. H. SUBIN: May I have this marked?

12 THE COURT: Christine.

13 (Whereupon, the No Fault Report was marked as
14 Plaintiff's Exhibit-19 for identification, by the
15 Reporter.)

16 COURT OFFICER: So marked.

17 MR. JANOWSKI: May I see this?

18 THE COURT: Of course.

19 How many pages, Christine? Do you know?

20 MR. H. SUBIN: About five pages.

21 COURT OFFICER: Five pages?

22 MR. H. SUBIN: Six.

23 MR. JANOWSKI: Six pages.

24 Q. Doctor, I'm showing you Plaintiff's Exhibit Number-19,
25 and I ask you to look at that. Is that your signature on the

1 back of that document?

2 A. Yes, sir.

3 Q. And that's a document that you purportedly prepared,
4 correct?

5 A. Correct.

6 Q. And that deals with Sarabjeet Bajaj, correct?

7 A. Correct.

8 Q. You did that when, doctor? When did you date that
9 report?

10 A. November 18, 2014.

11 Q. And you allegedly reviewed a whole host of records of
12 Mr. Bajaj, correct?

13 A. Yes.

14 Q. What records did you, allegedly, review in 2014 --

15 MR. JANOWSKI: Objection to form as to,
16 "allegedly."

17 THE COURT: Sustained as to form.

18 Q. What records did you swear that you reviewed in August
19 '14?

20 A. August '14, not this one.

21 Q. What's the date of this one, of the one I have just
22 handed you?

23 A. November 19th.

24 Q. November 19th or -- what you're holding which was done
25 in 2014?

1 A. November 14th of 2014. November 14, 2014.

2 Q. It's about eight months after this accident?

3 A. November 18th.

4 Q. November 18th of 2015?

5 A. 2014. November 18, 2014.

6 Q. That date, that's about eight months after this
7 incident, correct?

8 A. Approximately.

9 Q. And tell us what records you reviewed eight months
10 after this incident relating to this incident?

11 A. MedEast Post-Op Surgical, Mount Laurel, Jersey City.

12 Dr. Orin Atlas Orthopedic Surgeon --

13 THE COURT: Is this in evidence?

14 MR. H. SUBIN: I'm offering it.

15 THE COURT: Any objection?

16 MR. JANOWSKI: Yes, your Honor.

17 THE COURT: There is an objection?

18 MR. JANOWSKI: Yes.

19 THE COURT: Sustained. Prepared for litigation.

20 You can't read from it out loud. It's not in evidence.

21 Q. Can we agree you had a host of these medical records of
22 Mr. Bajaj?

23 A. Correct.

24 MR. JANOWSKI: Objection to form. "Host of."

25 Q. You had numerous records?

1 THE COURT: Sustained.

2 Q. How many records did you have?

3 THE COURT: Look at the report, doctor. How many
4 records did you have?

5 A. Looks like 23?

6 Q. You had 23 of Mr. Bajaj's records? You also had the
7 police report, correct?

8 MR. JANOWSKI: May we approach?

9 THE COURT: Yes.

10 (Whereupon, at this time a discussion was held off
11 the record, at the bench.)

12 THE COURT: Did you have a police report, also?

13 THE WITNESS: I'm looking, sir. Yes, 4-22-14.

14 Q. Right, okay. You did a little summary of the facts
15 surrounding this accident?

16 A. Which report?

17 Q. We're only talking about this November 2014 report that
18 you did prior to ever being hired by the defendant, where you
19 were involved with either the issuer or some of the people that
20 were involved with this accident?

21 A. Okay. Question, again, sir?

22 Q. On page three, under the heading, "Conclusion," you did
23 a summary of what happened, right?

24 A. Yes.

25 Q. And you just told us -- by the way you got, you didn't

1 do that voluntarily? You got paid for that work that you did
2 when you reviewed these papers?

3 A. Yes.

4 Q. You told us it would be unethical for you to be
5 financially involved in Mr. Bajaj's case before you did these
6 two examinations? We agree, now, that you're unethical?

7 A. I don't understand your question.

8 Q. Did it -- you just looked at your attestation saying
9 you swore you had no prior financial interest, which now we
10 learn is untrue, correct?

11 MR. JANOWSKI: Objection.

12 THE COURT: Overruled.

13 A. Semantically you're right.

14 Q. What is, "semantically"?

15 A. I don't see the relationship between this evaluation
16 and the two other evaluations.

17 Q. Isn't that addressed to an insurance issuer?

18 A. Yes.

19 Q. Isn't that your attestation?

20 MR. JANOWSKI: Objection as to the, "insurance
21 issuer."

22 THE COURT: Sustained as to that. That's struck.

23 Q. Isn't that what's in your attestation?

24 A. Yes, sir.

25 Q. So not only semantically, but factually, you were

1 unethetical, correct?

2 A. I'm unethetical.

3 MR. H. SUBIN: No further questions of this
4 witness.

5 THE COURT: Redirect?

6 MR. JANOWSKI: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. JANOWSKI:

9 Q. Doctor, you were cross-examined by --
10 The bottom line, doctor, is that you see hundreds of
11 patients?

12 A. Correct.

13 Q. You see hundreds of individuals where you perform an
14 evaluation, correct?

15 A. Yes.

16 Q. And is it fair to say that you have no independent
17 recollection of, other than what you may put into a report or
18 what you review, correct?

19 MR. H. SUBIN: Judge, this is not
20 cross-examination.

21 MR. JANOWSKI: Certainly is.

22 MR. H. SUBIN: You're cross-examining him, now?

23 THE COURT: Overruled.

24 You have any independent recollection of this
25 particular claimant?

1 THE WITNESS: No, your Honor.

2 Q. Sir, I'll point out Mr. Bajaj in the courtroom. Do you
3 have any independent recollection, other than what's in your
4 reports, as to examining Mr. Bajaj (indicating?)

5 A. No, sir.

6 Q. You would agree with me, we make mistakes sometimes?

7 MR. H. SUBIN: Objection.

8 THE COURT: Sustained.

9 Q. That's why there are erasers on pencils?

10 MR. H. SUBIN: Objection.

11 THE COURT: Sustained.

12 Q. Do any of the questions that Mr. Subin asked you effect
13 what you evaluated, in your two separate examinations, of
14 Mr. Bajaj?

15 A. No.

16 Q. Mr. Subin asked you a whole lot of questions about the
17 footdrop. Do you recall that?

18 A. Yes.

19 Q. Do you recall that at the point of the accident he
20 made, plaintiff made no complaints at all about any medical
21 problems that he had?

22 MR. H. SUBIN: Beyond the scope.

23 THE COURT: Sustained.

24 Q. In the records that you reviewed, sir, did you ever
25 learn that Mr. Bajaj claimed he was not or stated he was not

1 injured at the time of the accident?

2 MR. H. SUBIN: Objection. He never reviewed any
3 records.

4 THE COURT: Sustained.

5 Q. Do you know if Mr. Bajaj made any claim or made any
6 statement about refusing medical treatment at the point of the
7 accident?

8 MR. H. SUBIN: Objection.

9 THE COURT: Sustained.

10 Q. What, if anything, did you learn about any complaints
11 that he made?

12 MR. H. SUBIN: Objection. Beyond the scope.

13 THE COURT: Sustained.

14 Q. Did you learn, sir, that this footdrop that you found
15 happened after the surgeries, and not as a result of the
16 accident?

17 MR. H. SUBIN: Judge, objection.

18 THE COURT: Same ruling.

19 Q. What did you learn, if anything, about the --

20 MR. H. SUBIN: Objection.

21 MR. JANOWSKI: May I finish the question?

22 MR. H. SUBIN: I thought you did.

23 THE COURT: What did you learn, if anything?

24 Q. -- about the footdrop?

25 MR. H. SUBIN: Objection.

1 THE COURT: Overruled. If anything.

2 A. Just give me a minute, sir.

3 Q. Sure.

4 THE COURT: After which exam? Make a distinction.

5 MR. JANOWSKI: Either the first exam or the second
6 exam.

7 THE COURT: Did you learn anything about a
8 footdrop at the time of the first exam? Yes or no?

9 THE WITNESS: Not in the first exam.

10 THE COURT: What about the second one?

11 THE WITNESS: He mentioned he has an ankle brace
12 for the footdrop.

13 THE COURT: You learned about it at the time of
14 the second exam?

15 THE WITNESS: Yes.

16 Q. Had he had surgery at that point where you --

17 At your second exam, was that after he had the
18 surgeries?

19 MR. H. SUBIN: Objection.

20 THE COURT: Sustained.

21 Q. At what point in time did he develop this footdrop?

22 MR. H. SUBIN: Objection.

23 THE COURT: Sustained.

24 Q. Did he have -- were you able to conclude if he had a
25 footdrop right after the accident?

1 MR. H. SUBIN: Objection.

2 THE COURT: Sustained.

3 Q. You did two reviews, doctor, correct; two independent
4 medical examinations, correct?

5 A. Yes.

6 Q. Yes?

7 A. Yes.

8 Q. And at some point you found that there was either a
9 full or partial footdrop, correct?

10 A. He mentioned he had an ankle brace for a footdrop. The
11 issue was not pursued, so I can't answer you fully.

12 Q. Do any of the errors, as Mr. Subin likes to call them,
13 false --

14 MR. H. SUBIN: Objection.

15 THE COURT: Sustained as to what he likes to call
16 them.

17 Q. Any of the -- you have been asked questions, that these
18 reports were false? Is that accurate, or were they inaccuracies
19 in the report, or errors?

20 MR. H. SUBIN: Objection.

21 THE COURT: Let him finish the question.

22 Q. Did you prepare, deliberately, a false report?

23 A. I'm sorry. Did I what?

24 MR. H. SUBIN: Objection. He didn't prepare the
25 report.

1 THE COURT: Overruled.

2 Did you deliberately prepare a false report? When
3 I talk, you ignore Mr. Janowski. Did you intentionally
4 prepare a false report?

5 THE WITNESS: No, your Honor.

6 THE COURT: That's what he wants to know.

7 Q. You prepared a report for Cecil -- you were asked
8 questions about Cecil Benito, correct?

9 A. This morning.

10 Q. Yes?

11 A. Yes.

12 Q. Does that have anything to do with this case?

13 A. No.

14 Q. Let's assume that there has been testimony that the
15 footdrop came about after the surgery? Would you agree with
16 that assessment?

17 MR. H. SUBIN: Objection.

18 THE COURT: Sustained.

19 Q. Let's assume that there was no medical testimony in
20 this case that the footdrop occurred after the accident, until
21 there was an operation? Would you be in agreement with that?

22 MR. H. SUBIN: Objection.

23 THE COURT: I don't know how he could answer that.
24 Sustained.

25 Q. Now, sir, you were asked questions yesterday about the

1 fact that you have not been doing surgery for, approximately, 25
2 years. You recall that testimony?

3 A. 30 years, yes.

4 Q. 30. Does that in anyway effect your evaluation of a
5 patient who comes in to you for a medical examination?

6 A. No, sir.

7 Q. Do you still have an active -- do you still have a
8 private practice, an active private practice, where you see
9 patients?

10 MR. H. SUBIN: Objection.

11 THE COURT: Overruled.

12 A. Yes.

13 THE COURT: We know he does.

14 Q. And you're a medical doctor? You are a medical doctor,
15 currently, licensed to practice medicine in New York, correct?

16 A. Yes.

17 Q. Do your conclusions or your assessments, even though
18 you have admitted that there were errors in the report, do your
19 conclusions and are your assessments a fair and -- are they fair
20 in this case?

21 A. Yes.

22 Q. You were questioned about forms that are filled out
23 when a person comes to you for a medical examination. Do you
24 recall that testimony?

25 A. Yes.

1 Q. Is that what a doctor usually does?

2 MR. H. SUBIN: Objection.

3 THE COURT: Sustained as to, "what a doctor
4 usually does."

5 Q. Is that part of your practice? A patient has a form.
6 He fills it out, and then the doctor evaluates the case history?

7 THE COURT: When he does an IME?

8 MR. JANOWSKI: Yes.

9 THE COURT: Is that true?

10 A. Yes.

11 Q. That's part of your procedure? Is there anything out
12 of the ordinary about that?

13 A. No, sir.

14 Q. You were asked questions about medication. Withdrawn.

15 You were asked questions about ranges of motion that
16 you would normally take? You were asked questions about what
17 you would use to do range of motion testing? You recall that
18 testimony?

19 A. Yes.

20 Q. You indicated you would use a goniometer?

21 A. Yes.

22 Q. That's like a protractor?

23 MR. H. SUBIN: This is leading, objection.

24 THE COURT: Sustained as to the leading.

25 Q. Tell the jury what you would use to measure ranges of

1 motion?

2 A. Both visual and an instrument called a goniometer which
3 is something like a protractor that measures angles.

4 Q. When you say that you would, also, do visual
5 observations or assessments?

6 A. Assessments.

7 Q. What is that? Explain to the jury what that is?

8 A. It's just to correlate what the goniometer shows as far
9 as the measurement, if it agrees with what I see myself after
10 30/40 years of evaluating people.

11 Q. Now, this range of motion, can you tell whether the
12 person you're examining is intentionally limiting that range of
13 motion?

14 A. I can't answer that. There's limitations, but I don't
15 know if it's volitional or due to something else.

16 Q. But that depends? Your assessment -- you just
17 measure -- whether you measure that it's 45 degrees or 80
18 degrees or 120 degrees, that depends on what the patient does,
19 does it not?

20 MR. H. SUBIN: Judge, this is --

21 THE COURT: Didn't you tell us that yesterday,
22 that it's within his control to?

23 A. Yes, it's a volitional activity on the part of the
24 person that's being examined.

25 Q. It's subjective range of motion?

1 A. Correct.

2 MR. JANOWSKI: Thank you, doctor.

3 THE COURT: Recross?

4 MR. H. SUBIN: Yes.

5 RECROSS-EXAMINATION

6 BY MR. H. SUBIN:

7 Q. Do you still have the Benito report?

8 A. I do not. The court officer has it.

9 THE COURT: Christine, Mr. Subin is looking for
10 something.

11 MR. H. SUBIN: Do you have the Benito report?

12 Here it is.

13 Q. You talked about people having -- when people are
14 moving volitionally, you just talked about that one second ago?

15 A. Yes.

16 Q. If you think somebody is faking out or not trying hard,
17 you will put in the report that they have symptom magnification?

18 A. Most of the time, yes. Symptom magnification.

19 Q. You didn't in either of these two, but somebody,
20 whoever prepared these reports, did not put it in these reports?

21 A. It's not in there.

22 Q. So we can assume, since it's not in there, that it
23 wasn't done? There is no symptom magnification?

24 MR. JANOWSKI: Objection.

25 THE COURT: Sustained as to that. Sustained.

1 MR. H. SUBIN: Nothing else.

2 THE COURT: Mr. Janowski, that's all for now?

3 MR. JANOWSKI: Yes.

4 THE COURT: Any chance the doctor will get here
5 before one?

6 MR. JANOWSKI: She has patients up to close to
7 one.

8 THE COURT: I'm not going to hold the jury in
9 hopes of having a witness come before one. We'll continue
10 at two o'clock sharp.

11 MR. JANOWSKI: I'd say 2:15, 2:30 your Honor.

12 THE COURT: Let's gather at two o'clock.

13 Don't discuss the case. Enjoy your lunch.

14 COURT OFFICER: Please rise. Jury exiting.

15 (Whereupon, at this time the jury was excused. A
16 lunch recess was taken.)

17 THE CLERK: Case on trial continued.

18 THE COURT: Line up the jury.

19 COURT OFFICER: All rise. Jury entering.

20 (Whereupon, at this time the jury entered the
21 courtroom.)

22 THE CLERK: All parties stipulate to the presence
23 and proper seating of the jury?

24 THE COURT: Yes.

25 MR. H. SUBIN: Yes.

1 MR. JANOWSKI: Yes.

2 THE COURT: Call your final witness.

3 MR. JANOWSKI: Brian Ruffle and the MTA Bus company
4 call Dr. Marianna Golden.

5 THE COURT: Come stand next to me and face the
6 Clerk of the Court.

7 (Whereupon, at this time the witness took the
8 stand.)

9 D R. M A R I A N N A G O L D E N, called as a witness by and
10 on behalf of the Defense, after having been first duly sworn,
11 was examined and testified as follows:

12 THE CLERK: Please, have a seat.

13 In a loud clear voice, state your name.

14 THE WITNESS: Marianna Golden, M-A-R-I-A-N-N-A,
15 G-O-L-D-E-N.

16 THE CLERK: Please, state your business address.

17 THE WITNESS: Two Crosfield Avenue, West Nyack,
18 New York, 10994.

19 THE COURT: You may inquire.

20 DIRECT EXAMINATION

21 BY MR. JANOWSKI:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. In preparation for your testimony today, did we confer
25 at all?

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11 18	Dr. Pick's Report		
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