

COPY

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF QUEENS : CIVIL TERM : PART 42
 3 -----X
 4 LUCILLE MARTORELLA,

5 Plaintiff,

6 -against- Index No.: 14413/09

7 Inquest

8 150 CENTREVILLE HOLDING, LLC, TADCO
 9 CONSTRUCTION CORPORATION, 150 CENTREVILLE, LLC
 10 and 101-28 99TH REALTY CORP.,

11 Defendants.

12 -----X
 13 Supreme Courthouse
 14 88-11 Sutphin Boulevard
 15 Jamaica, New York 11435
 16 April 15, 2011

17 B E F O R E:

18 HONORABLE DENIS BUTLER,

19 Justice, Supreme Court

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

21 SCOTT BARON & ASSOCIATES, P.C.
 22 Attorney for Plaintiff
 23 159-49 Cross Bay Boulevard
 24 Howard Beach, New York 11414
 25 BY: W. BRADFORD BERNADT, ESQ., OF COUNSEL

SEAN T. WRIGHT, ESQ.
 Attorney for Defendant
 37-63 76th Street
 Jackson Heights, New York 11372

MARTYN, TOHER & MARTYN, ESQS.
 330 Old Country Road, Suite 211
 Mineola, New York 11501
 BY: CHRISTINA A. LEONARD, ESQ.

LYNDA A. ROSS, RPR,
 Senior Court Reporter

1 THE CLERK: Index 14413 of 2009, matter of Lucille
2 Martorella versus 150 Centreville Holding, LLC, Tadco
3 Construction Corporation, 150 Centreville, LLC and 101-28
4 99th Realty Corp.

5 Counsel, appearance.

6 MR. BERNADT: William Bradford Bernadt, of
7 counsel to Scott Baron & Associates; 159-49 Cross Bay
8 Boulevard Howard Beach, New York.

9 MR. WRIGHT: Sean Wright, of counsel for 150
10 Centreville, LLC; 37-63 76th Street Jackson Heights, New
11 York.

12 MS. LEONARD: Christina Leonard, 330 Old Country
13 Road, on behalf of defendant, 150 Centreville Holding, LLC
14 and 150 Centreville.

15 THE COURT: This matter is set down for an
16 inquest. It has a long, extensive history. There was a
17 default -- Mr. Wright, you started to recite some of the
18 history. You want to state it for the record?

19 MR. WRIGHT: The plaintiff -- sorry. How much of
20 it on the record?

21 THE COURT: It's on for an inquest against Tadco.
22 For what purpose are you appearing? You represent defendant
23 Centreville Holding. You are representing Tadco and 150?

24 MR. WRIGHT: Yes, 150 Centreville, LLC.

25 THE COURT: For what purpose are you appearing

1 today?

2 MR. WRIGHT: In order to cross-examine the
3 plaintiff and note any objections to the plaintiff's
4 evidence.

5 THE COURT: For the record, you are at least the
6 third defense attorney on this case before this Court.

7 The Court has conferenced and given many
8 opportunities to vacate the default. There was an agreement
9 that your client did not comply with the agreement; is that
10 correct?

11 MR. WRIGHT: Yes, there was a stipulation to
12 extend the time to answer, and it contained a provision
13 stating that my client would submit an answer that contained
14 no jurisdictional defenses, and in error, my client
15 submitted it.

16 THE COURT: I don't know if it was done in error.
17 There were multiple stipulations that orally -- which then
18 when we went to go on the record were amended at counsel
19 table. And then there were written stipulations; they were
20 specific terms and conditions that were conditions precedent
21 and were the sole or multiple reasons for plaintiff
22 entertaining such, and they have not complied. There has
23 been a history of agreements, and then when we are about to
24 sign off on the agreement, sometimes the client has left and
25 been unavailable. We wait. Sometimes he returned,

1 sometimes he has not.

2 I note that the client was called away on another
3 case, and we waited for him to come back moments ago today.
4 But today he has returned, but there were certain written
5 stipulations that were not complied with; certain conditions
6 precedent; to wit, that an answer be filed without
7 jurisdictional defenses. And the answer was filed with
8 jurisdictional defense, and therefore, properly rejected.
9 You acknowledge that, correct?

10 MR. WRIGHT: Yes.

11 THE COURT: And then he attempted to, even though
12 it's a corporation, he attempted to file certain orders to
13 show cause as a pro se even though he was instructed he
14 could not do it. He did this on multiple occasions and that
15 was denied by multiple judges, myself among them.

16 You explained to him the ramifications of such,
17 correct?

18 MR. WRIGHT: Yes. Appearing pro se for the
19 corporation.

20 THE COURT: Well, explain to him no more. I think
21 co-counsel tried to explain it to him. The Court has bent
22 over backwards to try to accommodate him, but there is a
23 default judgment outstanding, and there is a default
24 judgment on the issue of liability. So we have given you an
25 opportunity to make an offer and conferenced it to see if

1 you wanted to attempt to resolve it.

2 Ms. Leonard, you are still in the case. You are
3 here for observation.

4 You indicated you have no formal stating in the
5 inquest today?

6 MS. LEONARD: Correct.

7 THE COURT: And Mr. Wright, you indicated you
8 talked to your client about an offer, but it was a million
9 dollars shy of what the plaintiff was seeking?

10 MR. WRIGHT: I have not.

11 THE COURT: You were formally offering an offer of
12 2,000. They are at a million, and you were contemplating an
13 offer of \$2,000. I'm told it's not worth pursuing that, but
14 we had over a dozen conferences on this case. It's time to
15 proceed.

16 MR. BERNADT: Yes, and I have communicated what I
17 thought was an offer of \$2,000 to my client, and that was
18 unacceptable to her as well.

19 MR. WRIGHT: After the conference, I spoke to my
20 client, and he will offer \$3,500 to settle the case.

21 THE COURT: The demand is a million and the offer
22 is 3,500. Very well.

23 Mr. Wright, we advised you if you are at any time
24 going forward -- and your client has a history of leaving,
25 he left moments ago -- if he wants to leave, that's up to

1 him. With that being said, ready to proceed?

2 MR. BERNADT: Yes, we are, your Honor.

3 Pursuant to CPLR 4518, I offer the evidence of
4 Phelps Memorial Hospital, certified records of Phelps,
5 Exhibit A, certified medical records of Westchester Medical
6 Center as Exhibit B, and records of Sandra Carniciu, the
7 doctor from Phelps Memorial Hospital, records as Exhibit C.

8 THE COURT: Counsel, Exhibit A is Phelps Memorial
9 Hospital.

10 Those are the certified records?

11 MR. BERNADT: Yes. Westchester Medical Center is
12 Exhibit B, and records of Dr. Sandra, C-A-R-N-I-C-U, who is
13 the doctor from Phelps Memorial Hospital, in evidence
14 pursuant to CPLR 4518.

15 THE COURT: Exhibit A is Plaintiff's 1 and 2 and
16 3?

17 MR. BERNADT: Correct.

18 COURT OFFICER: Plaintiff's 1, 2 and 3 marked and
19 received in evidence.

20 (Whereupon, the documents were marked in evidence
21 as Plaintiff's Exhibit 1, 2 and 3.)

22 THE COURT: These are certified records.

23 Just for the record, I signed a subpoena this
24 morning. These have been in the record room. Mr. Bernadt,
25 you received them. They are all certified records from

1 Phelps Memorial Hospital, Westchester Medical Center, and
2 Dr. Sandra C-A-R-N-I-C-I-U.

3 MR. BERNADT: Your Honor, I received your order to
4 pick up the subpoenas and I have brought them up without any
5 alteration of the records. And I have been the only person
6 in possession of these records from the time I --

7 THE COURT: You unsealed them in open court. We
8 will admit the three of those, subject to connection, in
9 evidence.

10 Do you wish to proceed?

11 MR. WRIGHT: Note my objection on the ground that
12 the records weren't sealed by the plaintiff.

13 THE COURT: Well, I know your client left. You
14 may have left. They were in the record room -- what section
15 of the CPLR are you relying on?

16 MR. WRIGHT: I don't know the section.

17 THE COURT: All right. You can hand up a memo of
18 law before the end of the inquest if you think of it, but
19 counsel, you have to raise a reason for the objection. I'm
20 admitting it subject to connection. Do you hear that?

21 MR. WRIGHT: Yes.

22 THE COURT: Do you know what that means?

23 MR. WRIGHT: Yes.

24 THE COURT: Objection overruled.

25 MR. BERNADT: Sorry. I did not know you were not

1 finished at this time. I call the plaintiff to the stand,
2 Ms. Lucille Martorella.

3 (Whereupon the witness took the witness stand.)

4 THE COURT: Mr. Wright, are you aware that the
5 records were unsealed by the record room, that they opened
6 an envelope; are you aware of that?

7 MR. WRIGHT: Yes, sir.

8 THE COURT: And with that you want to withdraw the
9 objection or...

10 MR. WRIGHT: I will let the objection stand.

11 THE COURT: On what ground? What is the ground of
12 the objection?

13 MR. WRIGHT: The basis of the objection is that
14 the records were unsealed outside the presence of the Court.

15 THE COURT: Counsel, they were not unsealed
16 outside the presence of the Court. Are you aware of the
17 procedures in the record room? They were sent to the record
18 room, and they were unsealed by the clerk in the record
19 room.

20 MR. WRIGHT: Yes.

21 THE COURT: So therefore, they were not unsealed
22 outside. They were actually unsealed by the court
23 personnel. With that being said, do you wish to withdraw
24 the objection?

25 MR. WRIGHT: Yes, your Honor.

1 THE COURT: Very well. Please proceed.

2 THE CLERK: State your name for the record.

3 THE WITNESS: Lucille Martorella 95-25 150 Road
4 Ozone Park, New York.

5 DIRECT EXAMINATION

6 BY MR. BERNADT:

7 Q Ms. Martorella, how old are you?

8 A Sixty-eight.

9 Q And where do you reside?

10 A 95-25 158 Road, Ozone Park.

11 Q Here in the County of Queens?

12 A Yes.

13 Q What is your occupation?

14 A I'm retired.

15 Q What did you do before you were retired?

16 A I worked for JP Morgan/Chase.

17 Q What did you do with them in your capacity as an
18 employee of JP Morgan/Chase?

19 A I was -- at that time when I left, I was assistant
20 treasurer.

21 Q Speak up.

22 THE COURT: Ms. Martorella, there is a microphone
23 there.

24 Q Can you tell me in general what your job title, what
25 kind of duties you were required to do?

1 A At that particular time I was supervising about 50
2 people that worked for the bank in the credit department.

3 Q And how long, for how many years did you do that?

4 A I worked for the bank about 40 years.

5 Q And tell me about your educational background?

6 A Richmond Hill High School and graduated from Richmond
7 Hill High School.

8 Q When did you graduate?

9 A 1962.

10 Q Did you have other schooling beyond high school?

11 A No.

12 Q Were you involved in an accident on December 12, 2007?

13 A Yes.

14 Q Did that accident occur generally in the area around
15 where you live?

16 A Yes.

17 Q At that time of the accident, were you walking on a
18 sidewalk?

19 A Yes, I was.

20 Q And can you tell us how the accident happened?

21 A I was walking on the sidewalk. There was a -- the
22 street was broken, and I fell.

23 Q And where did your accident happen?

24 A Right around the corner from where I live, which is
25 150-20 Centreville Street.

1 Q And after you fell -- did you fall during the daytime
2 or at night?

3 A It was about 5:30.

4 THE COURT: A.m. or p.m.?

5 THE WITNESS: P.m.

6 Q Was there snow covering the ground?

7 A No.

8 Q When you fell forward -- when you fell, did you fall
9 forward, backward, to the side, to the left side, right side?

10 A Forward.

11 Q And what part of your body came in contact with the
12 ground as a result of your fall?

13 A The left side and part of the right side, but mostly
14 the left.

15 Q As you lay on the ground after this fall, can you
16 describe what you were feeling besides your body?

17 A Well, I realized I twisted my ankle. I banged my head
18 on the right side. I twisted my left ankle, and my arm was
19 bruised on the top part of it.

20 Q And as a result of -- how long did you stay on the
21 ground before you were able to get up?

22 A I was dazed for a few minutes. I finally got up and
23 got myself together and realized that I was hurt, but I lived
24 around the corner, so I proceeded to get home.

25 Q So you lived around the corner. Can you describe

1 approximately how many feet or blocks?

2 A It's about a half a block at that.

3 Q And you reached your home?

4 A Yes.

5 Q Did you walk the steps?

6 A Yes, with difficulty.

7 Q And you got inside of your house?

8 A Yes.

9 Q What did you do once you got in your house?

10 A My pants were torn, so I changed my clothes, put some
11 cream and stuff for the pain on my shoulder and for my ankle;
12 and my head was a little bruised, so I put a little medicine on
13 it; and I laid down because I was shaken by the fall.

14 Q What did you do for the rest of the evening?

15 A Believe it or not, I just rested because I was really
16 hurting.

17 Q At some point after this incident, you sought medical
18 attention, correct?

19 A Yes, I did.

20 Q How long a period of time after the accident between
21 the accident and when you actually sought your first medical
22 treatment from a doctor?

23 A Well, it was Christmas Eve when I saw them, went to the
24 hospital, so it was about ten days. But I saw periodically, day
25 by day, that I was starting to see some physical change in my

1 body.

2 THE COURT: Sorry. What is the date of the
3 accident?

4 MR. BERNADT: December 12.

5 THE WITNESS: 2007.

6 Q Between the accident, December 12 and December 24,
7 Christmas Eve, what were you experiencing day by day?

8 A I noticed that I was losing the feel and also the grip
9 of my hand and which way it would move.

10 I was trying to make it go to grab something, but I
11 couldn't force it to get whatever I needed or raise it; and my
12 leg started dragging a little bit, but every day it would get
13 progressively worse.

14 Q Was this happening on your left side or right side?

15 A My left side.

16 Q And were the same problems you were experiencing with
17 your leg happening on the left side or the right side?

18 A The left side.

19 Q And the same problems you were experiencing with your
20 left leg were happening with your left too?

21 A Yes.

22 Q Christmas Eve you went to visit relatives in
23 Westchester?

24 A Yes, they came to pick me up.

25 Q They drove you to Westchester?

1 A Yes.

2 Q What time did you leave your home in Ozone Park?

3 A Probably about 6:00 in the evening.

4 Q And what were your plans for Christmas Eve?

5 A To have dinner with my family.

6 Q Where were you going to have dinner, at a restaurant
7 or?

8 A At a restaurant.

9 Q And what happened once you got into the car and you
10 were driving up to Westchester?

11 A My sister saw when I was leaving I was not walking
12 right, and I couldn't walk down the stairs properly. My arm was
13 trembling, so she said, this is not you. I said, I bruised it,
14 but I noticed it was getting worse. When I met my other family
15 in Westchester, after looking at me, they said we should go to
16 the hospital. The bruise on your ankle and the arm, it looks
17 like it may be something more serious, so let's get it checked.
18 We ended up all going to the hospital.

19 Q Which hospital did you go to?

20 A Westchester Medical Hospital.

21 Q Was that the first hospital you went to?

22 A Yes -- no, Westchester was the first hospital.

23 Q Did you have to go to Phelps Medical Hospital?

24 A No.

25 Q Phelps Medical Hospital?

1 A That's the first hospital, yes, Phelps.

2 Q And that's located in Sleepy Hollow, New York?

3 A Yes.

4 Q And when you went to Phelps Medical Hospital, did you
5 tell them about your fall on the 12th?

6 A Yes, I did.

7 Q And did you tell them the problems that you were having
8 with walking and with your left arm?

9 A Yes, I did. They saw it also.

10 Q And what did they do at Phelps?

11 A The doctor said he noticed my left arm and my left leg
12 wasn't functioning as it should, so he ordered an MRI.

13 Q Other than the MRI, did he perform any physical tests
14 mainly asking you to do anything involving dexterity of your
15 left arm, right arm, or any other part of your body?

16 A He did. He asked me to lift my left arm or move it out
17 and up, and the same thing with my leg, but I was finding it
18 very difficult, and I couldn't do it.

19 Q Did he ask you to do anything else?

20 A My face was bleeding. He asked me to smile and try to
21 touch my nose with my left hand, and he could see I couldn't get
22 it to my face.

23 Q By the way, are you left-handed or right-handed?

24 A Right-handed.

25 Q Now, the doctor advised you that you need to have an

1 MRI?

2 A He said I had to have an MRI.

3 Q And did you, in fact, have an MRI at Phelps Memorial
4 Hospital Center?

5 A Yes, I did.

6 Q And were you ever advised of the results of that MRI?

7 A Yes, he came back to tell me that the result, I had an
8 intercranial bleed on the right side of my head, which affects
9 the left side of your body.

10 Q As a result of your hearing that news, how did that
11 make you feel?

12 A I was devastated because I didn't think at that time
13 that that was what was happening. I thought it was from the
14 bruise of the fall. But I realized the incapacity to use my arm
15 and leg was getting worse. So, you know, I assumed what he said
16 was true, but it was devastating.

17 Q And your family was with you?

18 A Yes.

19 Q Were they with you when you got the diagnosis?

20 A Yes.

21 Q Not a great way to spend Christmas Eve?

22 A No. I tell you, the doctor spoke to them first before
23 he came to me, and I was wondering why they were all crying.

24 Q Did they start you with the course of therapy or
25 treatment and give you medications?

1 A Yes.

2 Q Did they ever draw blood from you?

3 A Yes, they did. Before they started, they drew blood.

4 Q Did they give you an IV?

5 A Yes.

6 Q And did they give you a medicine in the IV to help
7 thicken the blood.

8 A Yes, first, an IV until they got back the MRI, and once
9 they did that, they gave me some kind of medication to thicken
10 the blood to stop the bleeding.

11 Q And when they give you medication, were you sitting in
12 a chair, lying down in a medical bed?

13 A I was still in the emergency room at Phelps Hospital.

14 Q Were you lying down or sitting up?

15 A Like a 45 degree angle. They didn't want me laying
16 flat.

17 Q How long did you stay at Phelps for?

18 A I would say maybe six hours or so, because they called
19 in a specialist, which was Dr. Carniciu.

20 Q And Dr. Carniciu ended up being a regular doctor that
21 you would go for follow-up?

22 A Yes, she was. She was a brain doctor. She worked on
23 everything for the brain.

24 Q And she was called in at Phelps Memorial Hospital?

25 A Yes.

1 Q So right from the beginning, you were her patient?

2 A Yes.

3 Q And did you have a conversation with her at Phelps
4 Memorial Hospital?

5 A Yes.

6 Q And did she advise you that you would have to be
7 transferred?

8 A Yes. She came to me and said she felt the blood was
9 extensive, and I should go to Westchester Medical. They were
10 more equipped to handle something with that magnitude.

11 Q And you agreed?

12 A Yes, of course.

13 Q And Dr. Carniciu, did Dr. Carniciu say anything else
14 with respect to your condition?

15 A No, she said it was severe, and they would help me
16 there, and after I came back to see her after.

17 Q And how were you transported from Phelps to Westchester
18 Medical Center?

19 A Like a hospital ambulance.

20 Q While you were being transported, I'm assuming you were
21 in the back of the ambulance?

22 A Yes.

23 Q And was the IV in you this entire time that you were on
24 your way from Phelps to Westchester Memorial?

25 A Yes, I also was on a monitor.

1 Q Do you know approximately what time you arrived at
2 Westchester Medical Center?

3 A No, I think -- I know it was after midnight. Maybe one
4 in the morning.

5 THE COURT: So you arrived there on Christmas Day?

6 THE WITNESS: Yes.

7 Q Now, as soon as you arrived to Westchester Medical
8 Center, were you seen by a doctor?

9 A Yes, I was. I was taken to intensive care at that
10 time, and I was seen by another doctor which ran other tests to
11 confirm.

12 Q I will get to that in a moment.

13 To your knowledge, was your chart transferred from
14 Phelps Medical Hospital to Westchester Medical Center?

15 A To my knowledge, yes.

16 Q And when you were taken to intensive care what was the
17 first thing they did for you?

18 A I was hooked up to different monitors, so I had a
19 one-on-one nurse to monitor me through the night. And a few
20 days after that I was put on seizure medicine because they said
21 sometimes that can be an effect of the brain damage.

22 Q You mentioned they did another MRI once you got to
23 Westchester Medical Center?

24 A Yes.

25 Q Did they do one MRI or more than one?

1 A I think it was one, but I know it encompassed a lot
2 with one MRI.

3 Q Do you know how long after you arrived at Westchester
4 Medical they put you in the MRI machine?

5 A I know it was quite quickly. I remember getting the
6 MRI before I got to the intensive care bed. When they brought
7 me, they set it up to have it done they wanted something to go
8 on medical records.

9 Q Can you describe the layout of your room? Were you
10 sharing a room with someone else?

11 A No. I was in one room with one nurse at that point.

12 Q And was your family waiting for you outside?

13 A Yes.

14 Q Were you able to see your family at all that evening?

15 A No, only one person could come in because they felt I
16 needed to rest at that time because they did medicate me.

17 Q Did they give you medication to cause you to become
18 sleepy?

19 A Yes, I was upset so.

20 Q What was the reason you were upset?

21 A I was losing the use of my left side.

22 Q You were scared?

23 A Definitely.

24 Q Did you advise the doctors at Westchester Medical
25 Center of any allergies that you may have had?

1 A Yes, but they realized that I was allergic to one of
2 the seizure medicines they give me, but I would not know that
3 because I never had anything like this before.

4 Q Did you advise them you were allergic to penicillin?

5 A Yes.

6 Q Did you tell them -- did they ask you about the reason
7 that you went to Phelps -- strike.

8 Did you tell the doctors at Westchester Medical Center
9 about your fall?

10 A Yes, I did.

11 Q And did any of the doctors advise you the reason for --
12 strike that.

13 What happened after -- what happened next, after
14 you were in intensive care that first evening you stayed
15 over the following day, Christmas Day?

16 A By Christmas Day, late Christmas Day, I was using the
17 use of my whole left side. They said it was happening
18 progressively. It was not something that just happened all at
19 once. And about the second day I could not use any of my left
20 side at all.

21 Q How would your condition progress from the day of the
22 accident up until the day that you went to Phelps Medical
23 Hospital? You said it got progressively worse?

24 A Day by day I would notice little things changing;
25 grabbing things, dropping things. I couldn't reach for

1 something. I tried to get out of bed and my leg wouldn't move.
2 Getting in and out of the shower, the tub, washing my face. I
3 couldn't get my hand -- to come up. Every day it got a little
4 bit worse. But since I injured my shoulder I thought that is
5 why I couldn't get my hand, I thought it was the shoulder.

6 Q And did any of the doctors at Phelps Memorial Hospital
7 or Westchester Medical Center advise you of the reason for this
8 intercranial bleeding?

9 A They said --

10 MR. WRIGHT: Objection.

11 THE COURT: What ground?

12 MR. WRIGHT: He is asking the plaintiff to testify
13 as to the doctor's opinion in this case.

14 THE COURT: That's not what I heard. Sustained as
15 to form. Rephrase.

16 Q What is your understanding as to the reason for your
17 intracranial hemorrhage from your own personal knowledge with
18 respect to your stay at Phelps and Westchester Medical Center?

19 A Well, they advised me that the fall, the thrust of the
20 fall or bang on the head when I fell resulted in this
21 hemorrhage.

22 Q When was the next time after December 25th, that
23 morning, that you saw your family again?

24 A It may have been a day or so. They would only -- since
25 it was intensive care, only one or two people could come in at

1 that time. I was not fully aware of what was happening around
2 me, to be honest with you, at that time.

3 Q How long did you stay at Westchester Medical Center?

4 A I was there six days.

5 Q During those entire six days, were you connected to any
6 of these machines using little electrodes to put on your head or
7 chest?

8 A They had me constantly hooked up to the monitors on my
9 head and chest.

10 Q And on a daily basis, would they take blood from you?

11 A Yes. I think it was three times a day drawing blood.

12 Q And would they check your blood pressure?

13 A Yes, same thing about three times a day.

14 Q Prior to this accident on the 12th of December, 2007,
15 had you ever had a history of excessive drinking or smoking?

16 A No. I don't smoke and only drink a little wine at
17 Christmas, like that.

18 Q Have you ever had any prior intracranial hemorrhage
19 before the accident?

20 A No, never.

21 Q After your six-day stay at Westchester Medical Center,
22 were you ever advised that it would be beneficial for you to go
23 to a rehab center?

24 A Yes, they told me it would be -- first, they wanted me
25 to stay at Westchester in the hospital for another week or so

1 for the rehab. Then the doctors decided it would take much
2 longer for the rehab. I went back to Phelps Hospital where they
3 had a complete rehab center there that it would be long-term.

4 Q And incidentally, did you have any relatives or someone
5 who worked for Phelps?

6 A Yes, my sister.

7 Q And what did your sister do for Phelps?

8 A She works in the medical records department.

9 Q Now, how long did you stay in rehab when you were just
10 at the center and not allowed to leave?

11 A I was at Phelps Hospital connected with the rehab for
12 about six weeks.

13 Q And can you tell us generally what they did for you on
14 a daily basis?

15 A Well, they not only monitored me as far as a hospital
16 patient, but three times a day I would go into a rehab room for
17 X amount of time and they would teach me how to learn to use my
18 left hand and left leg, and how to move get in and out of bed,
19 do things, because my left side was completely immobile.

20 Q This is vocational therapy, learning how to do your
21 daily activities?

22 A They would hook up some kind of sensors to your fingers
23 in your legs and the electric shot would pull the fingers to
24 help them move the leg.

25 Q Did there come a time when you were released from

1 Phelps on an inpatient basis, and then started going to Phelps
2 on an outpatient basis?

3 A Yes, before I went to Phelps on an outpatient, I was
4 sent to Kendell, which was a lesser hospital facility, but also
5 had the rehab on the premises. They didn't feel I was okay to
6 be totally on my own.

7 THE COURT: What was the name, K-E-N-D-E-L-L?

8 Q How long did you stay at Kendell?

9 A For about a month.

10 Q What did they do for you there on a daily basis?

11 A Same thing, but you are a little bit more on your own.
12 You can feed yourself. They monitor you with blood test, your
13 blood pressure and all of that three or four times a day.

14 Q How long did you stay at Kendell?

15 A About a month. I was there about three weeks to a
16 month. I left the beginning of March.

17 Q And that was on an inpatient basis?

18 A Yes.

19 Q Then you were released from Kendell after about a
20 month, and where did you go?

21 A I went to live with my sister in Westchester.

22 Q After you were released from Kendell, did you go back
23 to Phelps on an outpatient basis?

24 A Yes, I did about four months as an outpatient.

25 Q And what did they do for you during those four months?

1 like bad pains in the head or anything similar to what I had
2 before.

3 Q Did she ever give you, write you any prescription or
4 any medicines?

5 A No.

6 Q And for how long a period of time after you left
7 Westchester were you still on medications?

8 A Not at all. They took me off all of the medications
9 completely.

10 Q And you are currently not on any medications?

11 A No.

12 Q Are there things you can no longer do as a result of
13 the accident?

14 A Yes.

15 Q Tell us some of those things.

16 A Walk down the stairs properly, walk the stairs,
17 anything that you need to use two hands. My left arm is still
18 very weak. It feels like I have weights on my arm and leg every
19 day. It's a heaviness. And the inability to really do the
20 things you need to do -- shopping, carry things.

21 THE COURT: What?

22 THE WITNESS: Carrying anything, food, shopping,
23 getting a glass or drink, anything that involves two hands.
24 You don't realize it until you start to try to use it, and
25 it's a constant weakness and from the blood, the crystals on

1 the left side of my ear broke down. I developed since then
2 vertigo, which also doesn't help the balance of my body. I
3 had that since the stroke.

4 Q Are there some things you can do, but you did them with
5 difficulty? For example, you can tie your shoes but have
6 difficulty?

7 A Yes. Things you need two hands to do -- tie a bow,
8 washing, body, hair, face, everything is either one hand or very
9 difficult to use it.

10 Q Have you adjusted your clothing attire or your footwear
11 since the accident?

12 A Yes, I have to wear flat shoes from now on. I can no
13 longer wear heels.

14 Q Other than Christmas Eve and Christmas day, were there
15 any social functions with your family you were unable to attend
16 due to the accident?

17 A Well, there was birthday parties or dinners. I
18 couldn't attend them because I was in a wheelchair for a while,
19 and then it was the walker and then it was cane. I didn't feel
20 up to it, especially with the dizziness and vertigo. It was
21 severe.

22 THE COURT: How long were you in a wheelchair?

23 THE WITNESS: About a month I think I was in the
24 wheelchair, and then I went to a walker.

25 THE COURT: How long were you with the walker?

1 THE WITNESS: Maybe a month, also because I was
2 using the cane.

3 THE COURT: Do you presently use a cane?

4 THE WITNESS: No.

5 Q With respect to the cane, how long did you use the cane
6 for?

7 A I used the cane, I would say, for at least three or
8 four months after I got home.

9 Q You were given this cane by whom?

10 A Rehab gave me the cane.

11 Q When they gave you the cane, was it the type of cane
12 that has four prongs?

13 A The first one had four prongs.

14 Q Then eventually you moved up to a single prong cane?

15 A Yes.

16 Q Was there any period of time in which your family came
17 down to live with you in Ozone Park to help you with things?

18 A Yes, at the beginning my sister came down and my mother
19 would come down periodically to help me.

20 Q How would they help you?

21 A House cleaning, cooking, straighten things up, because
22 I had not been home for almost seven months, but they would have
23 come down and help me do different things; shopping, laundry.

24 Q Did you have to hire anyone to help you?

25 A No, I didn't.

1 Q You had your family?

2 A Yes.

3 Q Thank God for that.

4 A Yes, thank God.

5 MR. BERNADT: Your Honor, in keeping with your

6 time.

7 THE COURT: Counsel, whatever you need to make out

8 your case. It's up to you.

9 MR. WRIGHT: It's 12:45 for lunch purposes.

10 MR. BERNADT: I may have a few.

11 THE COURT: Go ahead. Go ahead.

12 MR. BERNADT: I would like to show the witness a
13 photograph. Can we have it marked as Plaintiff's 4 for
14 identification.

15 MR. WRIGHT: I have not seen the photographs. Off
16 the record.

17 (Discussion held off the record.)

18 THE COURT: Objection.

19 MR. WRIGHT: Yes.

20 THE COURT: Objection overruled.

21 What was the ground for the objection under the
22 Rules of Evidence?

23 MR. WRIGHT: Copies of some photographs here.

24 THE COURT: Counsel, are you aware that he didn't
25 try to put it in evidence yet? It's solely for

1 identification purposes.

2 MR. WRIGHT: Yes.

3 THE COURT: Reread the Rules of Evidence.

4 Overruled. For identification only please, we spoke to you
5 about, we talked about delaying things unnecessarily which
6 appears to be a tactic of your client. He wants to speak,
7 leaves in the middle of the proceedings. Tell him to sit
8 down if you want to talk to him. He didn't seek to
9 introduce it in evidence. It's for ID purposes only in
10 order with every case that has ever ruled on that.
11 Overruled.

12 COURT OFFICER: Plaintiff's 4 for identification
13 only.

14 (Whereupon, the photograph was marked for
15 identification as Plaintiff's Exhibit 4.)

16 THE COURT: Counsel, I remind you you are in
17 default. You have said you wanted to appear for
18 cross-examination. I gave you latitude, and you and your
19 client are abusing this. There is a time issue. I caution
20 you formally. You know what that means?

21 MR. WRIGHT: Yes.

22 Q I want you to take a look at the photograph, and I want
23 to ask you a question about the type of sidewalk that you fell
24 on, okay.

25 What was the material on the sidewalk, asphalt or

1 concrete or something else?

2 A Like a cement concrete.

3 Q Cement concrete?

4 A Yes.

5 MR. BERNADT: I have nothing further, your Honor.

6 THE COURT: That's for ID only.

7 Ms. Leonard, do you have any questions of the
8 witness?

9 MS. LEONARD: No, your Honor.

10 THE COURT: Mr. Wright, do you wish to inquire?

11 MR. WRIGHT: Yes, your Honor.

12 CROSS-EXAMINATION

13 BY MR. WRIGHT:

14 Q Ms. Martorella, you said the accident occurred on
15 December 12; was there anyone with you at that time the accident
16 occurred?

17 A No.

18 Q And did you walk straight home from the site of the
19 accident?

20 A Did I go home after? Yes.

21 Q Did you go anywhere else between the time of the
22 accident?

23 A No.

24 Q And approximately what time was it when you returned
25 home on December 12th?

1 A I fell about 5:30 p.m., So ten minutes. It's right
2 around the corner about a half a block.

3 Q And did you go out again, leave the house again that
4 evening?

5 A No.

6 Q Did you leave the house at all the next day?

7 A No.

8 THE COURT: Excuse me one second.

9 Q Did you leave the house at all on December 13, 2007?

10 A The next day, no, I did not.

11 Q Did you leave the house at all on December 14th?

12 A I couldn't tell you exactly, but I knew I was in the
13 house a couple of days, at least two or three days.

14 Q Do you remember the purpose you left the house for the
15 first time, you left the house after the accident?

16 A No, I don't remember.

17 Q How many times between December 12, 2007 and December
18 24, 2007 did you leave the home?

19 A I'm not sure. I mean, maybe a few times. A few times.

20 THE COURT: Where are we going with this? Can you
21 get there?

22 MR. WRIGHT: There is a substantial gap in time
23 between the --

24 THE COURT: Ask a question. Off the record.

25 (Discussion held off the record.)

1 THE COURT: On the record.

2 Counsel, wherever you are going, please get there.

3 Q When you left the house, do you drive a car?

4 A No, I do not.

5 THE COURT: Did you drive before?

6 THE WITNESS: No, I don't drive at all.

7 Q After your fall, did you have -- was there any visible
8 bleeding from anywhere on your head?

9 A No, not at all.

10 Q And was there any bruising on your head?

11 A No. On the side of my head, I had a scrape on the side
12 of my head, yes.

13 Q Did you have any knot or bump on your head?

14 A Only on the side where it hit the cement.

15 Q You said that you had a scrape there?

16 A Yes, it was scraped.

17 Q Was there any sort of swelling or bruising?

18 A No, not really.

19 Q And were you a party to another lawsuit where you were
20 represented by Scott Baron's office?

21 A I think maybe seven to ten years ago. I think I was at
22 some time, I think I had broken my ankle.

23 Q And you said you think you broke your ankle?

24 A I'm talking about the time I broke my ankle, maybe ten
25 years ago.

1 Q What were the nature of your injuries in that lawsuit
2 aside from a broken ankle?

3 A Nothing, the ankle was broken.

4 Q Which ankle?

5 A The left ankle. That's why I didn't think much when I
6 twisted it again, because it was the same side, the left side.

7 Q At that time of the accident on December 12, 2007, did
8 you have an ongoing health issue involving your left ankle?

9 A No. It was sore from when I fell. That's the only
10 thing I know. It was sore.

11 Q Are you still receiving any sort of -- any sort of
12 therapy in connection with your injuries from this accident?

13 A No, I, on a daily basis, myself, just continue to do
14 the things that they showed me at the hospital because I still
15 don't have the strength back, but I do it daily.

16 Q When was the last time you had therapy where you were
17 with a doctor, the physical therapist?

18 A That was when I left, maybe July or August of 2008.

19 THE COURT: July or August of 2008.

20 Q What was the reason for you discontinuing the physical
21 therapy?

22 A Because they had said at the rehab that there is only
23 so much they can do. After that period of time you have to
24 start doing things on your own.

25 Q Before December 12, 2007, did you have a regular

1 physician of your own?

2 A A general physician?

3 Q Yes, a doctor you regularly saw.

4 A Yes, general practitioner.

5 Q And approximately how long before December 12, 2007 was
6 the last time you saw that doctor?

7 MR. BERNADT: Objection.

8 THE COURT: Sustained. Outside the scope of
9 cross-examination.

10 Q Have you -- seen your regular doctor since December
11 12, 2007?

12 MR. BERNADT: Objection.

13 THE COURT: Sustained.

14 Q Have you since the therapy ended, have you seen any
15 improvement in the use of any of the affected body parts?

16 A Since?

17 Q Since the last time you did physical therapy, have you
18 seen improvement?

19 A Some, yes, of course. You have to realize I was not
20 able to use any part of my left side from the toes up to my
21 shoulders.

22 Q When was the first date that you noticed those
23 symptoms?

24 MR. BERNADT: Objection as to form.

25 THE COURT: Sustained.

1 Counsel, ask a proper question.

2 Q When was the first time after December 12, 2007 that
3 you had any difficulty using your left hand?

4 A I noticed it a few days, day by day I would see
5 different things that I couldn't do. It was progressive. Day
6 by day it was a small thing. I would not -- I couldn't reach
7 for the glass. I was dropping things. My leg was heavy. I
8 couldn't swing it over. I couldn't raise my arm. It was small
9 things. Every day it got worse even from the next day. Like I
10 told you, I was bruised on my shoulder. My knee was scraped.
11 My ankle was swollen. It was progressive, but then it got, I
12 couldn't hold anything.

13 Q Have you had any out-of-pocket expenses in connection
14 with these injuries?

15 A Back then, of course, I don't remember what they were,
16 but I know I submitted them.

17 Q You said you were retired, when did you retire?

18 A Believe it or not I was retiring the month after I had
19 the stroke. I just turned 65. I was in the hospital.

20 Q And that was?

21 A 2008, February. I was just retiring. I was in the
22 hospital.

23 Q Had you ever contemplated returning to work after the
24 accident?

25 A No, I was looking forward to retirement. I worked for

1 the bank for forty-something years.

2 THE COURT: Anything further, counsel?

3 MR. WRIGHT: No further questions.

4 THE COURT: Okay.

5 Counsel we will adjourn for lunch. I want to
6 review the medical records over the lunch hour. I will let
7 you make closing statements, and then if we don't need -- do
8 you have redirect?

9 MR. BERNADT: I will.

10 THE COURT: To the gentleman in the audience who
11 stood up, sit down.

12 MR. BERNADT: No redirect.

13 THE COURT: Off the record.

14 (Discussion held off the record.)

15 THE COURT: Counsel, no redirect.

16 Thank you, very much, Ms. Martorella. You are
17 excused.

18 To the gentleman in the audience, have him sit
19 down. We are not done. He keeps charging the well.

20 Counsel, we will reconvene after lunch. Make
21 closing statements if you want. Okay. Thank you, very
22 much.

23 (Whereupon, a luncheon recess was taken.)

24

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

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3

THE CLERK: Come to order.

4

MR. WRIGHT: I can't find him. I left a message.

5

THE COURT: Counsel, back on the record. As I had

6

told you earlier, due to budget cuts and various things

7

there are certain accommodations to consider. They have

8

asked us to adjourn promptly. It was close to 1:00, so we

9

adjourned for the lunch hour. I note that all we had was

10

closing statements, but there was a voluminous set of

11

medical records that the Court wanted to review. So we did

12

agree to adjourn for the lunch hour so that the parties

13

could make their respective closing statements.

14

I note that technically, it's an inquest so that

15

Mr. Bernadt obviously you are entitled to make a closing

16

statement.

17

Mr. Wright, whether you are or not is

18

questionable, but I see no harm in giving you latitude

19

because subject to the connection, and I think it could be

20

helpful to the Court, your comments, I will consider them.

21

We will allow you to make a statement subject to

22

connection. Is that satisfactory?

23

MR. WRIGHT: Thank you.

24

THE COURT: Off the record.

25

(Discussion held off the record.)

1 THE COURT: Counsel, Ms. Leonard indicated when we
2 adjourned for lunch at a couple of minutes to one, she
3 indicated that she was really just here for observational
4 purposes. I don't know if she did it on or off the record.

5 She asked the Court and counsel if she was
6 required to be back and in the presence of the attorneys.

7 The Court said it's up to you. She said, Judge,
8 unless anyone needs me back, I have something else to tend
9 to. Miss Leonard asked permission to leave. I don't think
10 any either of you objected.

11 MR. BERNADT: Correct.

12 MR. WRIGHT: Correct.

13 THE COURT: And she did not take part in the
14 inquest but was here for observational purposes. She was a
15 co-defendant and may relay to her client. With that said,
16 proceed to closing statement.

17 MR. BERNADT: Sure, I just wanted to put a
18 statement on the record.

19 First of all, I wanted to incorporate by reference
20 the summons and complaint that was filed as well as the
21 default judgment order that your Honor signed as exhibits in
22 evidence for the Court's recollection.

23 The default judgment order that she has signed
24 was on September, entered September 18, 2010, that called
25 for this inquest.

Martorella - Plaintiff - Cross

1 THE COURT: The date of entry was September 18th?

2 MR. BERNADT: Sorry, September 15, 2010. And it
3 was signed by your Honor on September 8, 2010. So I would
4 incorporate all of the previous pleadings as well as the
5 motion, the original motion for default judgment.

6 THE COURT: Off the record.

7 (Discussion held off the record.)

8 THE COURT: Back on the record.

9 MR. BERNADT: The statement I wanted to put on the
10 record after the Court concluded and in breaking for lunch
11 after the court reporter concluded, Mr. DeMartino who has
12 been present made reference to my client that can only be
13 seen as being directed to my client and threatened to -- and
14 I quote, refer this matter to the District Attorney's Office
15 for perjury. And my client overheard it. I overheard it.
16 And it was learned that it was being directed toward
17 Ms. Martorella. She became very distraught. I spoke with
18 her outside for approximately 15 to 20 minutes trying to
19 calm her down. She stated to me that she has never been
20 accused.

21 THE COURT: What is that gentleman's name?

22 MR. BERNADT: Mr. Frank DeMartino.

23 THE COURT: She was very upset?

24 MR. BERNADT: She was very upset about this.

25 THE COURT: Obviously, she doesn't think he's a

1 gentleman. I'm using that term.

2 MR. BERNADT: She was very upset about this at
3 this point. We research any and all rights as against
4 Mr. DeMartino to hold him personally libel for slander and
5 we are asking that Mr. Wright relay a cease and desist
6 request to Mr. DeMartino to have no further contact with
7 her. Since she lives right around the corner from
8 Mr. DeMartino's property, he may have reason to go there and
9 we would ask that no further contact be had with my client.

10 THE COURT: Mr. Wright.

11 MR. WRIGHT: Your Honor, my client did make a
12 statement to the effect that he was going to the DA's office
13 to file a charge for perjury. He made the statement to me
14 as he was leaving the courtroom after the Court had broken.

15 THE COURT: I will correct you. He didn't say
16 this as he was leaving. He stood up, that was the fourth
17 time he approached the well after the Court admonished him.
18 First and foremost, there is a history on this case. There
19 is a prior attorney who alleged that Mr. DeMartino
20 physically assaulted him. And I told you this in the back
21 and I told you to make sure he is on good behavior for his
22 own protection. So I was trying to protect you from him and
23 trying to protect him from himself. So, for the record, he
24 did not do that at the conclusion. First of all, when a
25 photo was shown to you, he got up out of the chair and

Martorella - Plaintiff - Cross

1 approached counsel table and we had to stop the proceedings.
2 This has been his MO for the case to delay things and
3 disrupt things.

4 We did ask him to retire to his seat and as I told
5 you before, we started be careful. He doesn't get up and
6 start charging the table as he has done with motion practice
7 earlier on with his multiple other attorneys. So I
8 cautioned you to talk to him and I might have used the term
9 tell him to be out on his best boy scout behavior. I
10 counted four times, first was the photo and three separate
11 times and he blurted out while we were on the record
12 district attorney.

13 Now, he had two other attorneys which I'm guessing
14 are on two other matters in the court today who came in. I
15 presume that meant he was being summoned to the district
16 attorney's office because you did tell me he is a defendant
17 on other cases on today. I did not inquire as to why this
18 Court has gone out of its way to bend over backward and be
19 fair to Mr. DeMartino. Counsel asked to speak to me
20 privately before we went on the record, so I told you in the
21 back to speak to him and I told you that I was not privy to
22 what happened in the hallway but that I would personally
23 tell him to cease and desist because they live in a close
24 proximity to each other.

25 Now, and I told you I will give you two minutes.

1 I think I was out a minute and a half later and
2 Mr. DeMartino has yet absconded from the proceedings.

3 Mr. Wright, you are his attorney. As an officer
4 of the Court, I'm charging you by the way, before we
5 started, we gave you time to call him. We gave you time to
6 go downstairs as I stated this morning, privately and on the
7 record, it has been his MO to get up during the proceedings,
8 leave and as we are wrapping up, come in and he wants to
9 make a full record again. We are not going to do that. But
10 I'm charging you because I told you to get control of your
11 client and to advise him to quietly sit and any rights he
12 wants to pursue, he can make a motion for anything. That's
13 why they have other courts or appellate divisions.

14 This Court has been nothing but fair to him, but I
15 don't understand what he is trying to do. I'm telling you
16 he is to personally stay away from her.

17 If counsel feels they need an order of protection
18 that's a Criminal Court remedy. That's up to you. But they
19 could be resulting in civil claims as a result of this.

20 I told you before we started that he has a history
21 of doing this that you are unaware of because his other
22 attorneys he had got into arguments with in the courtroom,
23 in the hallway and allegedly physically assaulted one
24 attorney in the office to the point where the attorney said
25 he was frightened of Mr. DeMartino. So we cautioned you. I

Martorella - Plaintiff - Cross

1 told you to have him seated, I would be out in two minutes
2 and I would properly admonish him. And Mr. DeMartino
3 responded by running out of the courtroom. We waited, gave
4 you time to go out, go downstairs. He absconded. You are
5 an officer of the Court. I'm charging you with being as
6 crystal clear as I'm being that Mr. DeMartino is to cease
7 and desist. She was an elderly woman who obviously was in
8 pain on the stand, whatever happened in the hallway, I'm not
9 privy to that, but is there anything else that needs to be
10 placed on the record regarding that?

11 MR. BERNADT: No, your Honor.

12 THE COURT: With that being said, Mr. Wright, you
13 are continuing for the record. He did not wait until
14 everyone was done. He disrupted the proceedings not once,
15 not twice, not three times, but four times and this is after
16 me telling you before and during that there is a history of
17 this occurring. Speak to him so that this does not occur.
18 This is the fifth time that he has absconded and now he has
19 walked in, Mr. DeMartino.

20 MR. DeMARTINO: Yes, sir.

21 THE COURT: Stand up.

22 MR. DeMARTINO: Yes, sir.

23 THE COURT: Whatever happened with Ms. Martorella,
24 you are to cease and desist from talking to her, do you
25 understand that?

Martorella - Plaintiff - Cross

1 MR. DeMARTINO: I never spoke to her.

2 THE COURT: Do you understand that?

3 MR. DeMARTINO: I never spoke to her.

4 THE COURT: Do you understand that?

5 MR. DeMARTINO: I understand I never spoke to her.

6 THE COURT: Do you understand that?

7 MR. DeMARTINO: I understand I have never spoke to
8 her.

9 THE COURT: Mr. Wright, you will handle this.

10 Mr. Wright, continue.

11 MR. WRIGHT: Your Honor, I didn't have anything
12 further to state before my closing statement.

13 THE COURT: For the record, Mr. DeMartino has been
14 admonished that if anything was said or if it was not, that
15 that something that counsel will deal with but one way or
16 another, he disrupted the proceedings and blurted things out
17 as well as having discussions with his other attorneys on
18 his other cases while the proceedings were going on. And he
19 is to cease and desist from speaking to Ms. Martorella. So
20 I told him twice and he wants to act like he has selective
21 hearing so Mr. DeMartino, I'm telling you again to cease and
22 desist.

23 MR. DeMARTINO: I'm telling you I never spoke to
24 Ms. Martorella and you are misrepresenting circumstances on
25 the record and I will be filing a complaint with the

Martorella - Plaintiff - Cross

1 Judicial Conduct Commission. Enough is enough with the
2 courtroom tactics.

3 THE COURT: Enough.

4 Do you have anything in closing?

5 MR. WRIGHT: I don't have anything to add.

6 THE COURT: Counsel?

7 MR. BERNADT: In the interest of brevity, I will
8 keep it short.

9 Ms. Martorella was a professional. She was
10 responsible for managing 50 employees at JP Morgan. She was
11 retired and on the day of this accident and before she had
12 this accident, I'm sure she enjoyed looking toward her
13 golden years spending time with family. I don't believe she
14 wanted to have this accident happen. And I don't believe
15 that she wanted to, on Christmas Eve of 2007, be spending it
16 at the Phelps Medical Center and then being told that she
17 had a brain bleed and being transferred to Westchester
18 Medical Center all on Christmas Eve; staying there for a
19 period of six days where they performed intensive care
20 treatment to her including blood thickening medicine to stop
21 the bleeding in her brain.

22 Your Honor, I think that an award for
23 Ms. Martorella's commencement with an injury in this case is
24 severe. I don't see an award of under a million dollars to
25 be adequate. I think that any award for this type of injury

1 should be at least a million and over. Thank you.

2 THE COURT: How are you arriving at those numbers?

3 MR. BERNADT: It's a combination of the time that
4 she spent in the hospital, in rehab, as well as her
5 socioeconomic status.

6 The fact she was a manager when she was employed,
7 before she was retired, she was in charge of fifty people
8 and in order to do that, it takes a certain level of
9 competence.

10 THE COURT: We have her testimony on that.

11 MR. BERNADT: Although she is no longer employed
12 because she is retired, that doesn't take away from her
13 level of functioning.

14 THE COURT: All right. We do have a document that
15 the Court will review handed up by plaintiff's counsel.
16 Defense counsel, I don't think we have any documentation
17 from you, correct?

18 MR. WRIGHT: That's right. We did not present any
19 evidence.

20 THE COURT: On agreement of counsel, we had
21 Plaintiff's 1, 2, 3 in evidence. Plaintiff's 4 was never
22 moved in evidence?

23 MR. BERNADT: Correct.

24 THE COURT: And there was an agreement of counsel
25 as to Plaintiff's 5 in evidence.

Martorella - Plaintiff - Cross

1 MR. BERNADT: Yes, your Honor.

2 THE COURT: And that is?

3 MR. BERNADT: The plaintiff's original default
4 judgment motion. That is the basis of the September 8th
5 decision which your Honor signed and which was entered.

6 THE COURT: And that's for purpose of the summons
7 and complaint affidavit of service?

8 MR. BERNADT: Correct, your Honor.

9 THE COURT: And counsel, the decision was dated
10 September 8, 2010, correct?

11 MR. BERNADT: Correct, and entered on September
12 15, 2010.

13 THE COURT: Mr. Wright, as to the date of entry,
14 is that what you have as well?

15 MR. WRIGHT: Yes.

16 THE COURT: Counsel, approach for a second.

17 (Whereupon, an off the record discussion takes
18 place at sidebar among the Court and Counsel.)

19 THE COURT: Counsel, the Court is going to reserve
20 decision, give due deliberations. Mr. Bernadt, you have
21 certain items they should be available for pick up possibly
22 in a week but certainly within two weeks or so. Maybe you
23 want to contact the clerk to see when they are available and
24 we will leave them with the clerk.

25 Mr. Wright, anything you have with the Court?

Martorella - Plaintiff - Cross

1 MR. WRIGHT: I wanted to make a closing statement.

2 THE COURT: I asked you, you said nothing further.

3 Defendant goes first and then plaintiff.

4 MR. WRIGHT: Sorry. I said nothing further until
5 my closing statement.

6 MR. WRIGHT: If I can make a closing statement?

7 MR. BERNADT: If he can limit it to three, five
8 minutes, I want to get out of here.

9 THE COURT: Mr. Wright, I didn't hear you say
10 that, if you are saying that, you said that as an officer of
11 the Court. Any objection?

12 MR. BERNADT: I believe he did say that he had
13 nothing further and typically the defendant goes first.

14 THE COURT: Mr. Wright, the defendant goes first
15 which is why I asked you if you had anything for the Court.

16 MR. WRIGHT: I apologize.

17 THE COURT: Go ahead.

18 MR. WRIGHT: The plaintiff noted on the record is
19 a retired woman and appears to be in fairly good health, has
20 not lost any earning capacity. Additionally, the injury
21 occurred as on the record, December 12. She first sought
22 medical attention on December 24 for stroke-type symptoms.
23 I have not had an opportunity to review the medical records.
24 However --

25 THE COURT: Mr. Wright, keep in mind it's an

1 inquest. You are appearing solely for the purposes, of --
2 solely for the purposes of cross-examination. I'm giving
3 you some latitude, but there were certain processes
4 litigated that may have been frustrating?

5 Certainly the Court gave you a full and fair
6 opportunity.

7 MR. WRIGHT: I want to make the final point. I
8 did not hear or see evidence sufficient to connect the
9 accident to the injuries alleged and I understand that the
10 Court has a medical record and is reviewing it. From what I
11 have seen, I have not seen evidence sufficient to connect
12 the accident to the injury.

13 THE COURT: Okay, anything further?

14 MR. WRIGHT: That's it.

15 THE COURT: Thank you, Mr. Wright.

16 MR. BERNADT: No, but rebuttal.

17 THE COURT: Do you care to respond?

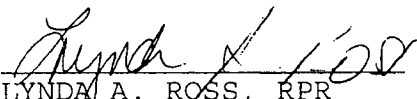
18 MR. BERNADT: Only to what he mentioned is that
19 first of all, the plaintiff already testified to the causal
20 relationship of the accident to the injury as was told to
21 her by her physicians. The defendant did not object to this
22 testimony. So as far as the causation element, the
23 causation element is there.

24 It is well documented in her medical records that
25 she had a fall approximately two weeks prior. As to the

1 issue related to the medical records, the medical records
2 were subpoenaed. They were on file at least as of February
3 15. He could have gone and looked at them himself. We
4 provided authorizations to the attorney of record. Shortly
5 after the default and before filing our notice of trial,
6 note of issue, notice of trial for an inquest, we provided
7 them to the attorney of record which was Michael Mulsa
8 (phonetic) at that time. I would be in violation of HIPAA
9 if I were to send him authorizations before properly
10 consenting to change attorney and notice of appearance had
11 been filed with the Court, which it was not. So at
12 that time we send authorizations to the defendant to give
13 the defendant every opportunity to be able to subpoena any
14 records they felt necessary or to
15 review any records they felt necessary before this trial.
16 Thank you.

17 THE COURT: Thank you, very much, gentlemen. Have
18 a pleasant afternoon. Decision reserved.

19 *****
20 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE
21 ORIGINAL MINUTES TAKEN OF THIS PROCEEDING.

21 
22 LYND A. ROSS, RPR
23 Senior Court Reporter
24
25