

Dr. Keats - Defendant - Direct

1 plaintiff. And now we will hear from a witness  
2 called by the defendant on its behalf.

3 So, Mr. Code, you may call your witness.

4 MR. CODE: Thank you, Your Honor.

5 Your Honor, the defense calls Philip  
6 Keats, M.D. to the stand.

7 D R. P H I L I P K E A T S, having  
8 been first duly sworn, was examined and testified  
9 as follows:

10 THE COURT OFFICER: State your name.

11 THE WITNESS: Philip Keats, M.D.

12 THE COURT OFFICER: Spell your last  
13 name.

14 THE WITNESS: K-E-A-T-S.

15 THE COURT OFFICER: And your place of  
16 business, sir.

17 THE WITNESS: 81 Mount Harmony Road,  
18 Bernardsville, New Jersey, 07924.

19 THE COURT: Counsel, you may inquire.

20 DIRECT EXAMINATION

21 BY MR. CODE:

22 Q Good afternoon, Doctor.

23 A Good afternoon.

24 Q Are you licensed to practice medicine in the  
25 State of New York?

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1 A Yes.

2 Q Please tell the jury your education, your  
3 qualifications and positions you have held and any  
4 certifications that you have?

5 A I graduated from Dartmouth College in 1965.  
6 I entered New Jersey School of Medicine in 1965 and  
7 transferred to Duke University in 1967.

8 I graduated from Duke University Medical  
9 School in 1969. I served as an intern for one year in  
10 general surgery and as an assistant resident in general  
11 surgery at Duke University Medical Center.

12 I then became an orthopedic surgical resident  
13 at Duke University Medical Center and its affiliated  
14 hospitals, and I spent four years in that position and  
15 finished in 1975.

16 Q Since then, just bring us up to date of  
17 approximately since 1975. Were you practicing medicine  
18 in New York City?

19 A In 1975, I entered the U.S. Army and served  
20 as an orthopedic surgeon for two years at Fort Bragg,  
21 North Carolina.

22 Upon discharge from the U.S. Army I entered  
23 the private practice of orthopedic surgery in  
24 Morristown, New Jersey and continued in that position  
25 until 2008.

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1 Q What happened in 2008?

2 A I retired.

3 Q For what reason did you retire?

4 A For personal reasons.

5 Q That's fine.

6 At some point, Doctor -- strike that.

7 Doctor, are you board certified in

8 orthopedics?

9 A Yes.

10 Q What does that mean?

11 A Board certification, at the time I was  
12 applying for that status, required first that I had  
13 completed an approved residency in orthopedic surgery,  
14 that I had successfully passed both a written and oral  
15 examination given by orthopedic surgeons who were  
16 considered experts in the field.

17 And it also required that I actually was in  
18 the practice of orthopedic surgery after my training for  
19 a minimum of one year before I was eligible to take the  
20 examinations.

21 Q Are you also a fellow of orthopedics?

22 A Well, I have the title as a fellow of the  
23 American Academy of Orthopedic Surgeons, which I joined  
24 once I became board certified.

25 Q Were you retained by my office to examine

1 Ms. Colon, the plaintiff in this case?

2 A Yes.

3 Q When was that?

4 A It was in July of 2007.

5 Q Do you have your file in front of you?

6 A Not at this time.

7 Q If you need to refer to your file at any  
8 time, please feel free to do so.

9 I am sorry. When did you -- when  
10 approximately were you retained by my office?

11 A In July of 2007.

12 Q That's about a year before you retired?

13 A Approximately.

14 Q Did you also review some records that were  
15 provided by my office?

16 A Yes.

17 Q What records did you review?

18 A I reviewed an emergency department record, I  
19 reviewed X-ray reports, I reviewed reports of  
20 orthopedic evaluations and treatment programs for  
21 several months following the date of injury.

22 Q Did you -- at some point you examined the  
23 plaintiff?

24 A Yes.

25 Q Where was this examination held?

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1 A It was held at 910 Grand Concourse.

2 Q What is there?

3 A There is an office there that I utilize to  
4 carry out examinations.

5 Q Tell the jury about your examinations and  
6 findings of that examination?

7 A Well, my examination included reviewing with  
8 Ms. Colon what had happened to her, and the treatment  
9 that she received. It included some discussion about  
10 her general health and medical condition, if any.

11 It also then involved examining Ms. Colon,  
12 which included observing her walk, included observing  
13 her walk on her heels and her toes, all of which she was  
14 able to do. There was no evidence of a limp at that  
15 time.

16 I asked her to demonstrate for me a squat  
17 down, which she carried out, but stated that her right  
18 ankle was hurting her during that maneuver.

19 I did observe her to be able to get on and off  
20 the examining table able, to go from the sitting  
21 position on the table to the lying position and then  
22 sitting back up.

23 I examined each of her knees and both knees  
24 had full range of motion. I examined each of her  
25 ankles. I found no evidence of swelling or any misshape

1 in appearance or deformity.

2 I measured the motion of her ankles. I used  
3 an instrument called a goniometer to assist me in  
4 determining the amount of motion. A goniometer is a  
5 device that measures degrees of movement from the  
6 resting position to the position of movement, whether  
7 that's up or down or side to side.

8 The ability to bring the foot down towards the  
9 floor, that's called flexion, was fifty degrees on the  
10 right and sixty degrees on the left.

11 The ability to put the foot and toes up  
12 towards the nose, which is called extension, was five  
13 degrees for both ankles. Twenty degrees is considered  
14 normal, but both ankles came up five degrees.

15 Eversion is the ability to tilt the foot to  
16 the outside, and typically, the normal movement is  
17 twenty degrees. And in this case Ms. Colon demonstrated  
18 ten degrees for both ankles.

19 Q That's for both ankles?

20 A Yes. And then the next motion is inversion,  
21 which is the movement of turning the foot almost as if  
22 you were going to turn it underneath so that the arch  
23 of the foot is sort of pointing towards the middle or  
24 even upwards. And normal is thirty degrees, and at  
25 this examination both ankles demonstrated twenty

1 degrees.

2 I also tested for a sign of instability, which  
3 is called the anterior draw sign, and that's a maneuver  
4 to test front to back stability of the ankle.

5 I also made measurements with a tape measure  
6 of the distance around each ankle at the level of the  
7 bony prominences, which we call malleoli, and they were  
8 equal. The measurements were equal in both ankles.

9 Q Is that significant?

10 A Yes, it is.

11 Q What is the significance of it?

12 A The significance is that there was no  
13 evidence of one ankle being bigger than the other,  
14 having swelling or some other condition that would  
15 cause it to be larger in circumference.

16 Q Similarly, one was wasn't smaller than the  
17 other?

18 A No. I measured the circumference. That's  
19 the distance around at the middle of each foot, and  
20 that was equal in both feet at nine and one quarter  
21 inches.

22 I measured the circumference of each calf.  
23 The right calf was thirteen and three-quarter inches and  
24 left calf was fourteen inches.

25 I also noted that there were surgical scars at

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1 the bases of both great toes, and Ms. Colon informed me  
2 that she had previous surgery for bunions on both feet.

3 That was the examination.

4 Q Did you see any evidence of swelling in  
5 either ankle on the day you examined her?

6 A No.

7 Q You said there was no limp that you observed?

8 A No.

9 Q If you know, did she have a cane with her  
10 that day, if you know?

11 A I didn't record that she had a cane with her.

12 Q If you were doing an orthopedic examination,  
13 is that something you would record, if you saw a cane?

14 A I would.

15 Q And do you have an opinion within a  
16 reasonable degree of orthopedic certainty, Doctor, as  
17 to whether or not Ms. Colon suffered a fracture to her  
18 ankle?

19 A Yes, I have an opinion.

20 Q What is that?

21 A My opinion is that she sustained what's  
22 called an avulsion fracture of her distal fibula which  
23 is the outside bone of the ankle.

24 Q On the right?

25 A Yes.

1 Q Tell the jury just for a moment what an  
2 avulsion fracture is?

3 A An avulsion means a small piece of bone has  
4 been pulled away from the main body of the bone. It's  
5 not a crack through the bone. It's not where the bone  
6 is broken or pulled apart. It's commonly seen with  
7 sprains which are ligament injuries.

8 Q Now, you were also asked to consider or to  
9 examine Ms. Colon, were you not, concerning a claim of  
10 components of R.S.D.; is that right?

11 A Yes.

12 Q The jury heard about R.S.D. this morning, but  
13 that's a neurological condition; is that correct?

14 A R.S.D. is a condition that involves  
15 neurologic components, but it's not solely a neurologic  
16 condition.

17 Q Do you have an opinion within a reasonable  
18 degree of orthopedic certainty as to whether or not  
19 Ms. Colon had any objective findings consistent with  
20 reflex sympathetic dystrophy?

21 A Yes.

22 Q What is that?

23 A My opinion is that she did not have evidence  
24 of reflex systemic dystrophy.

25 Q What do you base that on?

1           A     I basis it on the examination. I base it on  
2 the lack of findings that are consistent with R.S.D. or  
3 reflex sympathetic dystrophy.

4           Q     What are some of those components that you  
5 did not see?

6           A     I didn't see swelling. I didn't see limping.  
7 I didn't see a significant loss of range of motion. I  
8 didn't see evidence in the records that I reviewed of  
9 conditions that are consistent with reflex sympathetic  
10 dystrophy.

11                   The X-ray reports that I reviewed made no  
12 reference to a reflex sympathetic dystrophy condition.

13           Q     Are X-rays a good test to look for R.S.D.?

14           A     X-rays are a test. They are not the only  
15 test.

16           Q     You saw the reports of the X-rays plaintiff  
17 had in the months after her accident?

18           A     Yes.

19           Q     And did you see any indication in any of  
20 those reports that there was some indication of  
21 symptoms or components of R.S.D. in those X-ray  
22 reports?

23           A     No.

24           Q     Doctor, are you being paid for your time here  
25 today?

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1 A Yes.

2 Q How much are you being paid?

3 A Five thousand dollars.

4 Q Have you ever met me before?

5 A No.

6 Q As far as you recall, have you ever testified  
7 for my law firm before?

8 A No.

9 Q You have testified in court before or prior  
10 to today; have you not?

11 A Yes.

12 Q How often have you been testifying?

13 A I testified in matters such as this twelve to  
14 fifteen times a year.

15 Q How long have you been doing it?

16 A At that number since 2000.

17 Q What happened in 2000 or did you start doing  
18 this in 2000? Were you doing it before then?

19 A My practice evolved in the late 1990's to  
20 become more and more involved in doing examinations of  
21 individuals who had injuries or conditions, and that  
22 was when I began testifying at that rate of twelve to  
23 fifteen times a month. Before that I had testified --

24 THE COURT: A year?

25 THE WITNESS: Per year. I am sorry,

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1 Your Honor.

2 Before that I had testified occasionally  
3 primarily for my own patients who, as I said,  
4 occasionally their conditions involved me coming  
5 to court to testify on their behalf.

6 MR. CODE: Thank you, Doctor. No  
7 further questions.

8 MR. HARRIS: I just need a minute. If  
9 we can just take a recess to finish reviewing the  
10 chart.

11 I tried to get through it in the break  
12 and I didn't have enough time.

13 THE COURT: Okay, we will take a five  
14 minute break.

15 (Jury exiting.)

16 (Break held.)

17 THE COURT OFFICER: Jury entering.

18 THE COURT: Mr. Harris, you may  
19 cross-examine.

20 CROSS-EXAMINATION

21 BY MR. HARRIS:

22 Q Good afternoon, Doctor. My name is Seth  
23 Harris. I represent Mary Colon in this case.

24 And I don't think you and I have ever had the  
25 pleasure of meeting. Am I correct about that?

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1 A That's correct.

2 Q Now, just by the way, are you aware that  
3 Dr. Albert Grazivsa testified on behalf of the  
4 plaintiff here this the morning?

5 A Yes.

6 Q Do you know Dr. Grazivsa?

7 A No.

8 Q Up on East Tremont?

9 A No.

10 Q Your office, do you have an office in  
11 New York?

12 A At the present time, no.

13 Q Well, you examined Ms. Colon across the  
14 street from this courthouse, 910 Grand Concourse; is  
15 that right?

16 A Yes.

17 Q Let me ask you a question. Isn't that a  
18 residential building?

19 A It's both. It has medical offices and it  
20 has -- and it's residential.

21 Q Did you have a medical office in that  
22 building at that time?

23 A I utilized an office for examinations at that  
24 time.

25 Q Whose office did you utilize at that time to

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1 do the exam of Ms. Colon?

2 A I utilized the office of Dr. Todd Aortscan.

3 Q Todd Aortscan?

4 A Yes.

5 Q How do you know Dr. Aortscan?

6 A I know him because I have done examinations  
7 in his office for a number of years.

8 Q So, how does that work?

9 In other words, do you pay Dr. Aortscan some  
10 amount of money for the time period you use his  
11 examination room for exams?

12 A Rent. Yes, I pay him money, a monthly fee.  
13 I did pay him a monthly fee to utilize his office for  
14 examinations.

15 Q Just so I understand, how many days a week  
16 would you use his office for these types of exams?

17 A Twice a month.

18 Q Twice a month?

19 A Yes.

20 Q So, you would come from Morristown or  
21 Bernardsville, New Jersey -- you live in Bernardsville?

22 A I do.

23 Q From Bernardsville, New Jersey, to the branch  
24 across the from the courthouse twice a month rent --

25 A For those two days.

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1 Q And how many exams would you do in a given  
2 day when you would come in all the way from New Jersey?

3 A Twenty to twenty-five.

4 Q Twenty to twenty-five in a day is -- by the  
5 way, Bernardsville, New Jersey, that's not around the  
6 corner; is it? It's about an hour away, maybe an hour  
7 and a half?

8 A Depends on what time of day.

9 Q Traffic, could take you may be three hours  
10 right; Doctor?

11 A I hope not three.

12 Q In any event, you would come in, and what  
13 time would you get to the 910 Grand Concourse location  
14 on an average day?

15 A 9:00 A.M.

16 Q What time would you leave?

17 A Between 3:00 and 4:00.

18 Q So, would you take a lunch break?

19 A Well, not much.

20 Q So that would be six or seven hours that you  
21 would be there doing twenty to twenty-five exams in a  
22 given day; is that correct?

23 A That's correct.

24 Q So, how much time would that leave for each  
25 exam, approximately? Twenty-five exams in let's say

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1 six hours. Somebody help me out here. Math was not my  
2 skill, Doctor.

3 Would that be fifteen minutes an exam,  
4 Doctor?

5 A Well, if you did an average it would be that.  
6 Some exams would take longer and some would take less.

7 Q Now, when you do these exams, you then also  
8 dictate a report that's connected with the exam; is  
9 that correct?

10 A That's correct.

11 Q Do you dictate the report as you are doing  
12 the exam, right afterwards?

13 A I usually do it after the examinations based  
14 on the notes that I take during the exam and not right  
15 after. Some time in the next twenty-four hours.

16 Q You would take your notes from twenty-five  
17 exams home and then dictate all the reports?

18 A Yes.

19 Q Would you use a dictaphone or how would that  
20 work?

21 A I used a telephone dictation service.

22 Q And then you would dictate over the telephone  
23 to somebody that was taking down what you were saying?

24 A Transcriptionist.

25 Q And they would type up the report and send

1 them where?

2 A They would come to my office via E-mail.

3 Q Would you proofread them before they would go  
4 out?

5 A Yes.

6 Q Now, when you start an exam, do you note the  
7 time?

8 A No.

9 Q When you finish an exam, do you note the  
10 time?

11 A No.

12 Q So, if Ms. Colon told this jury  
13 hypothetically that your exam took all of five minutes,  
14 you would have no way of knowing whether or not that  
15 was true; am I correct?

16 A That's correct.

17 Q It's possible that she is correct, it took  
18 five minutes?

19 MR. CODE: Note my objection to what's  
20 possible.

21 THE COURT: The witness can answer the  
22 question?

23 A It's possible.

24 Q It's also possible it took fifteen minutes?

25 A It's possible that it -- it's possible.

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1 Q Do you have an independent recollection, as  
2 you sit here today, of Mary Colon?

3 A No, I don't.

4 Q Do you remember at all what she looked like  
5 at that time?

6 A No.

7 Q What her hair color was?

8 A No.

9 Q What she was wearing?

10 A No.

11 Q What kind of shoes she was wearing?

12 A No.

13 Q You didn't write down whether or not she was  
14 using a cane; right, in your report?

15 A No, I didn't make a statement about a cane.

16 Q So, when you say that she didn't have one  
17 that day, that's just from a belief that you have, it's  
18 not from an independent recollection of that specific  
19 exam; am I correct?

20 A It's not from an independent recollection.

21 Q Now, when you would do these exams, were they  
22 always for somebody that was a law firm that was  
23 defending a case such as this, a personal injury type  
24 of case?

25 A A number of them were personal injury cases

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1 for the -- they were for the defense, yes.

2 Q And you saw Ms. Colon on July 12th, 2007?

3 A Yes.

4 Q What time did you see her? What time of day?

5 A I don't know.

6 Q And again, you don't know what time the exam  
7 ended?

8 A No, I don't.

9 Q And did you bill Mr. Code's firm for this  
10 exam that you did of Ms. Colon for this case?

11 A No.

12 Q You didn't get paid for your examination and  
13 report?

14 A Yes, I did.

15 Q That's what I am asking.

16 A Yes, I did. I did submit a bill and I did  
17 get paid.

18 Q How much did you get paid for this exam?

19 A Between two hundred seventy-five dollars and  
20 three hundred and twenty-five dollars.

21 Q Somewhere in between that?

22 A That's the range.

23 Q How do you know that's the range?

24 A Because that's my recollection of what my  
25 billing amounts were for examinations. Not everybody

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1 paid the same amount.

2 Q So, different defense firms had different  
3 rates; is that correct?

4 A Yes.

5 Q Now, on your report, you have at the very top  
6 regarding Mary Colon, that's the plaintiff here, then  
7 you have something called C/N with a number. What does  
8 that mean?

9 THE COURT: Counsel, please approach.

10 (Whereupon, a discussion was held, off  
11 the record, at the bench, between the Court  
12 and Counsel.)

13 Q I am going to withdraw that question, Doctor.  
14 Now, just going back, the rate was between  
15 two seventy-five and three and a quarter?

16 A Yes.

17 Q The average would be, let's say, three  
18 hundred bucks?

19 A Yes.

20 Q So, if you did twenty to twenty-five, that  
21 would be again -- the math, that would be three  
22 thousand -- six thousand -- seventy-five hundred bucks  
23 for the day?

24 A That's correct.

25 Q Twice a month?

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1 A Yes.

2 Q Now, when you examined Ms. Colon, you found a  
3 diagnosis of no objective findings consistent with  
4 reflex sympathetic dystrophy; am I correct?

5 A Yes.

6 Q And can we agree there is no mention of  
7 reflex sympathetic dystrophy anywhere else in your  
8 two-page report?

9 A That is correct.

10 Q Now, we with also agree, Doctor, that at the  
11 time that you billed the approximately three hundred  
12 dollars to do this examination report that Ms. Colon  
13 says took you five minutes to do the exam, you knew  
14 that you had advanced the theory at that time of the  
15 defense that there was no reflex sympathetic dystrophy  
16 in this case, that you would then have the opportunity  
17 to come to this courtroom to make an additional five  
18 thousand dollars; am I correct?

19 MR. CODE: Objection. That's  
20 argumentative.

21 THE COURT: I will sustain the  
22 objection.

23 Q Well, Doctor, did you understand from  
24 Mr. Code that they were defending this claim of reflex  
25 sympathetic dystrophy?

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1 A Yes.

2 Q That's why you adjusted your findings; is  
3 that correct?

4 A Yes.

5 Q You knew if the case went to trial that you  
6 would have the opportunity to earn a fee for being here  
7 in court.

8 MR. CODE: Objection.

9 THE COURT: Sustained.

10 Q Doctor, you said that you no longer practice  
11 medicine; correct?

12 A That is correct.

13 Q You don't have any overhead staff; correct,  
14 you don't have any secretaries or people to run your  
15 office because it doesn't exist anymore; is that  
16 correct?

17 A That's correct.

18 Q When you get five thousand dollars for the  
19 day, that goes right into Dr. Keats' pocket; am I  
20 correct?

21 MR. CODE: Objection.

22 THE COURT: Sustained. Counsel, move

23 on.

24 Q Now, by the way, you did admit that she  
25 suffered an avulsion fracture to the ankle here;

1 correct?

2 A Yes.

3 Q And that was as a result of the accident on  
4 October 27th, 2005; correct?

5 A Yes.

6 Q By the way, you referenced the exam you did  
7 at the 910 Grand Concourse location as an independent  
8 orthopedic evaluation; correct?

9 A That's correct.

10 Q But you are being paid by the defense;  
11 correct?

12 A Yes.

13 Q So, why would you call it independent?

14 MR. CODE: Objection, Your Honor.

15 THE COURT: Sustained.

16 Q Well, in other words, you are working for one  
17 side; am I correct?

18 A No. I have been hired by one side. I'm not  
19 working for them.

20 Q It's a matter of semantics, I suppose,  
21 Doctor, but I think we can agree that there is nothing  
22 independent about the exam that you did; am I correct?

23 MR. CODE: Objection. Argumentative.

24 THE COURT: Well, the doctor can answer  
25 if he can.

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1           A     Well, independent to me means that I am not  
2     treating Ms. Colon. I have not seen her before, and I  
3     am giving an opinion as to my findings at the time of  
4     my exam, in addition to using those findings combined  
5     with the medical records that have been provided to me.  
6     Whether my opinion is-- my opinion is my opinion.

7                     The entity that hired me can decide how they  
8     wish to view it. So, that's how I would respond to your  
9     question.

10           Q     Thank you, Doctor.

11                     Now, you talked about various range of motion  
12     findings with a goni --

13           A     Goniometer.

14           Q     A goniometer. That's a device orthopedic  
15     doctors use to do measurements of the range of motion;  
16     correct?

17           A     Yes.

18           Q     In other words, in the ankle there are  
19     certain normal limits and you can determine whether the  
20     ankle can move to those normal limits or not; correct?

21           A     You can determine what the joint will go  
22     through as far as range of motion, based on the  
23     patient's allowance of those ranges.

24           Q     Well, did you do passive range of motion or  
25     active range of motion tests?

1           A     They were passive.

2           Q     So that you directed the patient to do  
3 certain maneuvers and then you would measure how far  
4 she would, say, flex her ankle?

5           A     That's correct.

6           Q     You didn't take your hand and push it?

7           A     I don't push it.

8           Q     But that is a permissible technique during an  
9 orthopedic exam; am I correct?

10          A     Which is permissible?

11          Q     Active range of motion testing. We see that  
12 all the time in reports.

13          A     You see it, but pushing it is not something  
14 that's considered appropriate.

15          Q     In any event, Doctor, you found that by the  
16 way you tested range of motion of her knees; correct?

17          A     Yes.

18          Q     And that exam, and you found that they were  
19 normal; correct?

20          A     Yes.

21          Q     The range of motion was normal?

22          A     Yes.

23          Q     And on eversion, you found that she can move  
24 the ankle this way; right? Eversion?

25          A     Other way.

1 Q I apologize. She can move it this way ten  
2 degrees?

3 A Yes.

4 Q Normal was twenty degrees?

5 A Yes.

6 Q So that would be, in other words, half of  
7 what she should be able to do; correct?

8 A Yes.

9 Q If twenty degrees is full amount, ten  
10 degrees, that's half?

11 A Yes.

12 Q So, if Dr. Grazivsa found that she lost fifty  
13 to sixty percent of her range of motion on eversion,  
14 you would agree with that based on your own findings;  
15 correct?

16 A I would agree that that's what was the  
17 findings that was similar to her uninjured ankle.

18 Q On extension, Doctor, you found five degrees.  
19 What's the extension maneuver? Show us with your hand  
20 please?

21 A If the foot is at right angle to the lower  
22 leg, then eversion is-- I am sorry. Extension is  
23 bringing the foot up towards the nose or bringing it up  
24 towards the knee.

25 Q And there you found she had five degrees?

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1 A That's correct.

2 Q And that normal was twenty degrees?

3 A That's correct.

4 Q So, on extension motion, she lost  
5 seventy-five percent of her normal range of motion for  
6 that; am I correct?

7 A That was the finding that was equal in both  
8 ankles, that's correct.

9 Q Now, did you use the measuring device for all  
10 these measurements?

11 A Yes.

12 Q And then also you say in your report that you  
13 eyeball it?

14 A Yes.

15 Q Why would you do both?

16 A You visually see the movement. You also have  
17 to use your eyeballs to read the degrees.

18 Q How many different -- between the knees and  
19 the ankles and this full orthopedic exam that you did,  
20 according to your testimony and your report, how many  
21 different measurements did you take approximately?

22 A Approximately twelve of range of motion.

23 Q And then you also measured the calf?

24 A Yes.

25 Q With a tape?

1 A Yes.

2 Q You were making notes about that?

3 A Yes.

4 Q How long did it take you or how long  
5 customarily would it take you to do those twelve  
6 measurements and those twelve range of motion  
7 measurements as well as the measurements, for example,  
8 of her calf and her ankle?

9 A I can't tell you how long it takes, the time  
10 that it takes to do those maneuvers.

11 Q Would it be fair to say it's at least five  
12 minutes to do that much measuring?

13 A At least, yes.

14 Q Maybe ten minutes?

15 A The exams are not necessarily based on time.  
16 They are based on the appropriate maneuvers and the  
17 experience of the individual carrying them out.

18 Q That's not my question, Doctor. I am just  
19 trying to find a time in terms of what you believe the  
20 amount of time you spent was to do those measurements  
21 in total.

22 Would it be fair to say that would take at  
23 least five or ten minutes or maybe longer, customarily?

24 A As I tried to explain, customarily, I don't  
25 get involved in time limits or constraints about doing

Dr. Keats - Defendant - Cross

1 maneuvers. So, I would say in answer, at least the  
2 five minutes that you indicated.

3 Q Now, by the way, the calf measured -- the  
4 right calf measured a quarter inch smaller than the  
5 left calf?

6 A Yes, it did.

7 Q Is that a sign of non-use for that calf,  
8 Doctor, where one calf is smaller than the other, not  
9 using it and regular walking activities every day?

10 A It's also could be due to the fact she was in  
11 an immobilizing device of one sort or another for a  
12 period of time and didn't regain her calf muscles to  
13 equal the other side.

14 Q You answered the question again with the word  
15 "also".

16 What I am asking you though, if you can  
17 answer my question, which is, can a smaller calf in one  
18 leg be evidence medically of lack of use of that  
19 extremity or leg?

20 A It can.

21 Q Thank you, Doctor.

22 Now, I believe you noted in your report that  
23 as part of the records that you reviewed, you reviewed  
24 the emergency room record from Montefiore?

25 A Yes.

1 Q And then you also reviewed three different  
2 reports from the orthopedic clinic from November 9th of  
3 '05, December 14th, '05, and January 11th, '06;  
4 correct?

5 A Yes.

6 MR. CODE: You didn't say X-ray report.

7 MR. HARRIS: No, I didn't.

8 MR. CODE: I apologize.

9 MR. HARRIS: I am referring to the  
10 orthopedic report, Mr. Code.

11 Q Now, in addition, you reviewed some of the  
12 X-ray reports?

13 A Yes.

14 Q Did you review the actual films themselves?

15 A No.

16 Q You told this jury earlier that with R.S.D.  
17 an X-ray can be used to help diagnose R.S.D.; is that  
18 correct?

19 A I said it was a way of determining R.S.D.,  
20 yes.

21 Q Now, X-rays are an examination of the bones;  
22 correct?

23 A Yes.

24 Q You folks use them to determine whether or  
25 not a bone is broken or not, most often; am I correct?

Dr. Keats - Defendant - Cross

1 A It's one of the reasons to do it, yes.

2 Q Well, the sympathetic nervous system, is that  
3 something that even shows up on an X-ray?

4 A The sympathetic nervous system does not show  
5 on an X-ray.

6 Q Now, you're telling this jury that there are  
7 no objective findings of R.S.D.; an X-ray is an  
8 objective finding; is that correct?

9 A Yes.

10 Q Yet, you don't even look at the films;  
11 correct?

12 A I didn't see the films, that's correct.

13 Q But you swore here to tell the truth and  
14 nothing but the truth; isn't that --

15 MR. CODE: Objection.

16 THE COURT: Sustained. No dramatics.

17 Q Doctor, didn't you, when you came in for your  
18 fee of five thousand dollars, agree when giving an  
19 opinion, that it would be based on all the evidence in  
20 the case, not just some of the evidence?

21 A I agreed that my opinion would be based on  
22 the information provided to me and my examination.

23 Q Did you ever call up Mr. Code and say,  
24 Mr. Code, I have to see those films or I am going to be  
25 embarrassed in court? Did you ever say anything like

1 that to him?

2 A No.

3 Q Now, in fact, from the materials you  
4 reviewed, the only note that mentions R.S.D. is the  
5 November 9th, '05, note from Dr. Tindell; is that  
6 correct?

7 A Yes, it's from-- well, there are two  
8 physicians' names on the report. One of them is  
9 Dr. Tindell.

10 Q That was two weeks later; correct?

11 A Yes.

12 Q Now, did you read that note before or after  
13 you did your exam of Ms. Colon?

14 A Before.

15 Q You're sure about that?

16 A I assume that it was provided to me at the  
17 time of the examination.

18 Q But you are not sure?

19 A No, I'm not sure.

20 Q You are not even sure if you read that note  
21 before or after your exam of Ms. Colon; correct?

22 A Not one hundred percent sure, no.

23 Q If Dr. Tindell found some evidence of R.S.D.  
24 just two weeks after this accident -- by the way, you  
25 have heard that R.S.D. is one of the worst known pains

1 known to mankind; is that true?

2 MR. CODE: Objection.

3 THE COURT: I am not going to let the  
4 doctor answer that.

5 Q Doctor, have you treated patients with  
6 R.S.D.?

7 A Yes.

8 Q You know that the pain is often horrific with  
9 that disorder; am I correct?

10 A Yes.

11 Q Now, would it have been helpful for you in  
12 terms of your own exam to have seen Dr. Tindell's note  
13 that he was considering R.S.D. as a possibility given  
14 the problems that she was having just two weeks later  
15 after the accident?

16 Would that have been helpful to have known at  
17 the time that you did your examination of Ms. Colon?

18 A Whether I had seen that report or not, it  
19 wouldn't have changed my evaluation or the -- what my  
20 opinion was regarding my evaluation.

21 Q Well, let me ask you this. What test or  
22 tests did you perform during your five to fifteen  
23 minute exam of Ms. Colon that would have determined  
24 whether or not she had reflex sympathetic dystrophy,  
25 Doctor?

1           A     There aren't tests to do that confirm or not  
2 confirm reflex systemic dystrophy as primarily made by  
3 observation and looking at the extremity that's  
4 involved.

5           Q     Well, did you test for hypersensitivity?

6           A     No, I didn't.

7           Q     What is hypersensitivity?

8           A     It's increased sensitivity to touch or the  
9 use of other instruments to determine sensation.

10          Q     Now, to do that one way, what a doctor could  
11 do is actually, just with your finger, you can lightly  
12 touch the skin in the area where the patient is  
13 complaining and determine their reaction to see whether  
14 they appear to be -- from your experience years in the  
15 field, about whether or not they are hypersensitive to  
16 that touch?

17          A     That's correct.

18          Q     That's a -- you can do it with a piece of  
19 tissue?

20          A     That's correct.

21          Q     You chose not to do that part of your exam;  
22 is that correct?

23          A     I chose not to do that maneuver, yes. It's a  
24 very simple --

25          Q     In fact, you chose not to do any maneuver to

1 determine whether or not, during a clinical exam where  
2 you spent five to fifteen minutes, checking to see  
3 whether or not she had any R.S.D. components; correct?

4 A You just said I did nothing to check for it?

5 Q Well, I am asking, was there anything in your  
6 report, your two-page report, that indicates you did  
7 any test at all to determine whether or not she had  
8 reflex sympathetic dystrophy or any components of  
9 reflex sympathetic dystrophy?

10 A Yes, there are maneuvers or tests if you want  
11 to call it that, that I carried out during my exam.

12 Q Did you do anything to determine whether or  
13 not the temperature between one ankle and the other was  
14 the same or different?

15 A Other than putting my hands on them, no.

16 Q Well, did you record anywhere in your report  
17 what -- whether the temperature of one ankle as  
18 compared with the other was the same or different?

19 A No, I didn't.

20 Q Well, if you-- so, it would be fair to say  
21 that they were different; correct, Doctor?

22 A It would be fair to say that I didn't make a  
23 statement regarding that.

24 Q Well, Doctor, if you are examining a patient to  
25 determine whether or not she has -- for the defense,

1 you know, R.S.D., you know temperature change is one of  
2 the significant changes of R.S.D.?

3 A Yes.

4 Q That's correct. You would want to record  
5 that in the report so that, again, everyone knows that  
6 you actually did that test? Like the jurors, they want  
7 to know that; right, Doctor?

8 A That's correct.

9 Q Now, what about the nails; with R.S.D.  
10 sometimes there is a change in the nail bed?

11 A Sometimes.

12 Q Did you record anywhere in your report  
13 whether or not you had observed a change in the nail  
14 beds?

15 A No.

16 Q I believe you had stated in the report that  
17 there was -- withdrawn.

18 I want you to assume Mr. Code, in his opening  
19 statement to this jury, told this jury that there was  
20 only one statement in all of the records about R.S.D.  
21 in connection with this patient; would you agree with  
22 that?

23 MR. CODE: Objection, Your Honor, to  
24 what I said. That's not evidence.

25 THE COURT: I will allow him to answer

1 if he can.

2 A Just repeat the question.

3 Q Sure. From the materials that you reviewed,  
4 the three orthopedic notes, including that 11/9/05  
5 note, which I pointed out to you, the emergency room  
6 record, the X-ray reports, would you agree with  
7 Mr. Code when he opened to this jury there was only one  
8 mention of R.S.D. in the entire record?

9 A I don't know if the entire record was given  
10 to me in the records that were given to me. That's the  
11 only mention.

12 Q Well, you met with Mr. Code before coming  
13 here and testifying; correct?

14 A Yes.

15 Q Did you have an opportunity to go over the  
16 case with him before you took the chair and swore to  
17 tell the whole truth?

18 A I met with him and he discussed with me about  
19 the case. I don't ask him for things that I don't know  
20 or haven't been shown.

21 Q Did you have the opportunity in preparing for  
22 trial to see the note of Dr. Culsak, which was  
23 previously established, a visit from 2006 or 2007,  
24 because of the age of the plaintiff, that he cites --  
25 because he doesn't date the report, did you happen to

1 see that report, sir?

2 A No, I didn't.

3 Q Now, Dr. Culsak indicates arguably 2006 or  
4 early '07, that she has indications for R.S.D.; is that  
5 correct?

6 A Yes.

7 Q Now, would that note have been helpful to  
8 have had before examining Mary Colon or at least before  
9 coming in here and telling this jury under oath that in  
10 your opinion she doesn't have R.S.D.?

11 A It wouldn't have changed my opinion.

12 Q Well, can we agree, at least, we have two  
13 doctors that are indicating far apart in time, one in  
14 2005, and then another doctor in 2006, that she has  
15 components of R.S.D.?

16 Did you hear my question?

17 A I heard it, but I am looking, trying to take  
18 in the entire report so I can answer your question  
19 appropriately.

20 This physician mentions the word R.S.D. as a  
21 possibility.

22 Q The second physician; correct?

23 A Yes, he is.

24 Q Did you know about the third doctor at  
25 Montefiore?

1 A No.

2 Q Dr. Geller?

3 A No.

4 Q Did you see his March 28th, '07, report?

5 A No.

6 Q When did you examine the plaintiff again,

7 July of --

8 A July 2007.

9 Q So, about three or four months before you  
10 examined the plaintiff. Had you ever seen that report  
11 from Dr. Geller at Montefiore Hospital?

12 A No.

13 Q Can we agree, Doctor, that these three  
14 doctors at Montefiore Hospital, the orthopedic clinic,  
15 have nothing to do with this litigation, as far as you  
16 know?

17 A That's correct.

18 Q They are truly independent; correct?

19 A That's correct.

20 Q And they -- Dr. Geller references R.S.D. as  
21 well; isn't that correct?

22 A Yes, he does.

23 Q And on that exam, which is now again  
24 approximately three to four months before you saw her,  
25 she came in with the assistance of a cane?

1 A Yes.

2 Q There is hyperpigmentation compared to the  
3 other side? That's a discoloration of the skin;  
4 correct, Doctor?

5 A Yes.

6 Q Isn't that also a sign of R.S.D.?

7 A Yes.

8 Q Did you make a note one way or the other  
9 about whether or not there was hyperpigmentation in  
10 your report?

11 A No, I didn't.

12 Q Here he notes she has many areas of  
13 sensitivity throughout the ankle, posterior leg and the  
14 foot. Well, that would indicate he did some  
15 neurological testing to determine that, like we  
16 discussed earlier?

17 A That's correct.

18 Q Now, if we take your office chart, Doctor,  
19 you have a sheet, a handwritten sheet that you use when  
20 you do these short exams across the street; correct?

21 A That's when I do those exams, yes.

22 Q And on this three-page sheet that you use to  
23 make notes, you have one section called orthopedic  
24 examination; right?

25 A That's correct.

1 Q And the other section, neurological  
2 examination. Tell the jury what notes you made for the  
3 neurological examination.

4 A I didn't make any notes.

5 Q That's because you didn't do a neurological  
6 examination; right?

7 A No, I didn't.

8 Q You told the jury she doesn't have R.S.D.?

9 A That's right?

10 MR. CODE: Objection to the histrionics.

11 THE COURT: It's cross-examination. I  
12 think I can give counsel leeway to do that much.

13 Q And then, Doctor, the other page I want you  
14 to turn to in the chart from Dr. Geller on March 28th,  
15 he states fifty-one year old female with exam  
16 consistent with complex regional pain syndrome slash  
17 reflex sympathetic dystrophy after ankle sprain in  
18 October 2005; correct?

19 A That's correct.

20 Q Dr. Geller, and then he starts her on  
21 Neurontin medication to treat R.S.D.?

22 A That's correct.

23 Q Don't you think it would have been fair for  
24 you to have at least had this note that was made three  
25 to four months before your own exam, before rendering

1 your report where you say there are no objective signs  
2 of R.S.D.?

3 Don't you think that would have been fair to  
4 the Court system and to this jury?

5 A No, I don't think it would be fair to the  
6 Court system and the jury. My opinion was based on my  
7 evaluation.

8 Q But you didn't do a neurological exam;  
9 correct?

10 A That's correct I didn't do a neurological  
11 exam.

12 Q By the way, Doctor, there is at least at  
13 Montefiore, there is an indication that she was getting  
14 physical therapy three times a week for eight weeks  
15 according to that note; correct?

16 A That's correct.

17 Q Thank you, Doctor.

18 THE COURT: Redirect, Mr. Code.

19 REDIRECT EXAMINATION

20 BY MR. CODE:

21 Q Doctor, those things, such as being  
22 hypersensitive to touch and claims of warmth and things  
23 like those, are subjective complaints; are they not, as  
24 opposed to objective complaints?

25 A Well, complaints are all subjective.

1 Q In other words, that's what the claimant, the  
2 patient is telling the doctor; right?

3 A Those things that you described, if the  
4 examinee is complaining of them, then they are  
5 subjective.

6 Q You were just shown several Montefiore  
7 orthopedic clinic notes that we didn't have when you  
8 examined the plaintiff. In any of those things that  
9 you just saw just now, that Mr. Harris showed you, do  
10 any of those doctors diagnose R.S.D.?

11 A They don't make it a definitive diagnosis.  
12 They talk about possible.

13 Q Possibility and components, words like that;  
14 right?

15 A Possible components of.

16 Q Is "possible" the same thing as "probable",  
17 Doctor?

18 A No.

19 Q So, you never saw an actual diagnosis within  
20 a reasonable degree of whatever medical certainty, in  
21 any of those records, did you, that this woman has a  
22 condition called R.S.D.?

23 A No, I didn't see a definitive statement.

24 MR. CODE: Thank you.

25 RE-CROSS EXAMINATION

1 BY MR. HARRIS:

2 Q Well, Doctor, what does the term "consistent  
3 with" mean? Again, I am referencing Dr. Geller's note  
4 of March 28th, C/W consistent with that finding.

5 What does that mean?

6 A It means that it's consistent with that  
7 condition. There are signs or symptoms or both that  
8 that particular doctor states or can be associated or  
9 consistent, the word is consistent with that diagnosis,  
10 with that condition.

11 Q And she was also started on the drug  
12 Neurontin which is used for R.S.D.; correct?

13 A Yes.

14 REDIRECT EXAMINATION

15 BY MR. CODE:

16 Q Neurontin is uses for other things as well?

17 A Yes.

18 Q Like inflammation?

19 A It's used by neurologists primarily for  
20 nerve-related pain conditions.

21 MR. CODE: Thank you.

22 MR. HARRIS: It's a narcotic; right  
23 Doctor?

24 THE WITNESS: Not that I am aware of.

25 MR. HARRIS: Thank you.