

1 and give you the case today. As I said I believe I
 2 instructed previously that we had taken one of the
 3 witnesses out-of-turn, plaintiff had not completed
 4 presenting his case on the question of damages and so at
 5 this time, plaintiff, you may call your next witness.

6 MR. WEBER: Plaintiff calls Dr. Louis Rose.

7 D R. L O U I S C. R O S E, called as a witness by
 8 Plaintiff, having been first duly sworn, testified as
 9 follows:

10 THE CLERK: State your name and address.

11 THE WITNESS: My name is Louis, L-O-U-I-S, C.
 12 Rose, R-O-S-E, my office address, 3058 East Tremont
 13 Avenue, Bronx, New York, 10461.

14 MR. MAIOLICA: May I inquire?

15 THE COURT: You may inquire, counsel.

16 MR. MAIOLICA: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. MAIOLICA

19 Q Good morning, Dr. Rose.

20 A Good morning.

21 Q Let me start by asking you are you licensed to
 22 practice medicine in the State of New York?

23 A I am.

24 Q And can you state for me your educational
 25 background?

1 A I have attended college, CW Post, graduated 1977
2 with a bachelors of science degree in biology. I had
3 applied for and was accepted to Rutgers Medical School that
4 I attended from 1977 through 1981, graduated with a medical
5 doctorate degree. At that point, I had applied to a
6 rotating surgical internship with the Cornell program to
7 which I was accepted and that was from 1981 through 1982.
8 At that point, I had applied for a residency specializing in
9 orthopedic surgery at New York Medical College to which I
10 was accepted. I attended that residency from 1982 through
11 1986. I having completed my residency I then applied for a
12 fellowship which is a subspecialty training within the field
13 of orthopedic surgery specializing in hand microvascular
14 reconstruction at New York Medical College. I was accepted
15 to the fellowship that I attended from 1986 through 1987.
16 Having completed my fellowship I was then invited to join
17 the department of orthopedic surgery at New York Medical
18 College which I did begin as a clinical instructor, was
19 promoted to assistant professor and ultimately was chief of
20 hand microvascular surgery at the medical school for a
21 period of approximately eight years. Following that tenure
22 as chief of hand surgery at the Medical College of Cornell I
23 came into the Bronx and purchased a hospital, and they were
24 looking for someone with an academic background to take over
25 as chief of the department of orthopedic surgery, which I

Dr. Rose - Plaintiff - Direct

1 have been over the last seven almost eight years at
2 Westchester Square Medical Center which is a Cornell
3 affiliate hospital, and I'm associate professor in the
4 department of orthopedic surgery at the Cornell Weill
5 Medical School.

6 Q Can you tell me if you have any specialty
7 appointments or hospital affiliations?

8 A Yes. I served for eight years as one of four
9 orthopedic surgeons attendant to the trauma team for the
10 president of the United States. Anytime the president was
11 here in New York one of the four of us had to be available
12 for immediate response. I am the chairman of the Committee
13 of Medical Education for the Jurist Institute for the judges
14 for the State of New York educating them in medical
15 seminars. I sit on the medical advisory board of the New
16 York State Athletic Commission as one of the commissioners
17 involved with safety of our -- at least in New York -- I am
18 appointed the New York City Police surgeon. I am the
19 orthopedic expert for ABC News for any stories that
20 originates on the east coast of the United States, that
21 story runs across my desk for accuracy prior to being aired.
22 I have been recipient of the New York City Liberty Award
23 which is the highest award given to a citizen in the State of
24 New York and that was for treatment of indigent patients in
25 the Bronx. I have been a recipient of the New York City

1 Senatorial Award and have been reciprocal or the New York
2 city council for proclamation.

3 Q Have you been in private practice as well?

4 A I am.

5 Q Can you tell us what your private practice consist
6 of?

7 A My private practice is a general private practice
8 with a emphasis on upper extremity surgery. I see
9 approximately 250 patients a week, and I perform
10 approximately 16 surgeries a week.

11 Q Have you ever testified on behalf my office before?

12 A I believe I had a patient who used your office once
13 before, yes.

14 Q And in the last 25 years, let's say, how often in
15 addition to that one time have you ever testified for my
16 office before?

17 A Never.

18 Q Are you being compensated? Are you being paid for
19 your time here today, doctor?

20 A Yes, I am.

21 Q And what rate?

22 A My fee is \$7,500.

23 Q Okay.

24 A I cancelled my office for the day.

25 Q Did you have to cancel patients that you were

Dr. Rose - Plaintiff - Direct

260

1 suppose to see today in order to be in court to testify?

2 A Yes.

3 Q And they all have to be rescheduled, correct?

4 A That is correct.

5 Q Can you tell me-- withdrawn.

6 At this point, your Honor, I would like to submit

7 Dr. Rose as an expert orthopedic surgeon.?

8 THE COURT: Any objection?

9 MR. CHENG: No objection.

10 THE COURT: No objection.

11 Q Doctor, can you tell me how you came to see Michael
12 Nutley?

13 A I believe he was referred by another police officer
14 who was a patient of mine.

15 Q Now are you still a hand surgeon for the NYPD?

16 A Yes.

17 Q And how many years or -- so we are clear have you
18 been affiliated with the NYPD?

19 A Approximately eight years.

20 Q Now is there a difference between posttraumatic
21 carpal tunnel syndrome and repetitive stress syndrome?

22 A Yes.

23 Q What is it?

24 A Post-traumatic induced carpal tunnel syndrome means
25 there is a specific event that injures the nerve on a

1 permanent basis as compared to a repetitive stress syndrome
2 where the nerve undergoes intermittent episodes of pressure
3 that decreases the blood flow and therefore causes the
4 patient to have symptoms of a nerve problems which are
5 transient. So that you will have numbness and tingling that
6 goes away based on position, and based on the use of a
7 client where posttraumatic induced carpal tunnel syndrome
8 did not go away with the use of a splint or position.

9 Q As part of your examination of Michael Nutley did
10 you review his medical records concerning this accident that
11 occurred on October 8 of 2005?

12 A I did.

13 Q And what did those medical records consist of? You
14 can feel free to refer to your chart at any time.

15 A They essentially consisted of the emergency room
16 record from Jamaica Hospital and then records from Dr.
17 Stein's office.

18 Q By the way have you ever performed any carpal tunnel
19 surgeries before?

20 A Yes, I have.

21 Q Approximately how many?

22 A I would say 15-1600, in that ball park.

23 Q Now when you first saw Michael Nutley what his
24 complaints to you?

25 A He basically had complaints of numbness and tingling

1 in his hand, sensation of a dead feeling about his hand and
2 decreased ability to grip. Those were his primary
3 complaints.

4 Q Did your office have a policy when seeing a patient
5 for the first time with regard to bringing medical records
6 with them?

7 A Yes.

8 Q What is that policy?

9 A Well, if the patient is being seen by myself and
10 follow-up to specific treatment, we would ask for any
11 medical records that would be pertinent to his problem.

12 Q Did Michael Nutley bring his medical records with
13 him to your office visit?

14 A He did.

15 Q Now in his medical history, or in your conversation
16 with Michael Nutley, did he ever indicate to you at any time
17 that he had ever had a job where he was involved in
18 repetitive use of his hands, for example, as a typist or at
19 a keyboard?

20 A No.

21 Q Did you exam Michael Nutley?

22 A I did.

23 Q Can you tell me what tests, if any, you administered
24 to Michael Nutley?

25 Actually -- let's withdraw that question.

1 I apologize, if I asked you this already, did I ask
2 you about his complaints?

3 A Yes.

4 Q I am sorry. Let me restate the question for the
5 record please. What tests, if any, did you administer to
6 Michael Nutley as a result of those complaints and having
7 reviewed his medical records?

8 A Well, essentially I examined his hand and just
9 observation you can see that there was a healed surgical
10 scar on the palm of his hand. His range of motion we
11 generally look at the wrist, dorsiflexion is when you lift
12 your hand up, palmer flexion is when you place your hand
13 downward all right, so palmer flexion (Indicating),
14 dorsiflexion should be approximately 80 degrees, his was
15 about 65; it was a little reduced. Palmer flexion should be
16 close to 90 degrees (Indicating,) his was also about 65, so
17 it was some what reduced. Then what you do you palpate the
18 hand, that is where you actually press on the hand, and he
19 had tenderness directly along the course of his medial nerve
20 where the surgery had been performed.

21 The next thing that we do in testing for a nerve is
22 what we call a Tinel. Tinel is where you gently tap along
23 the course of the nerve, and if the nerve has a hyper
24 sensitivity or has had an injury to it a patient will
25 perceive like an electrical sensation in their hand, it's

1 similar to what you feel when people say they hit their
2 funny bone, and their ulnar nerve goes into the fourth and
3 fifth finger and that is just consistent with the
4 hypersensitivity to the nerve which is consistent with
5 injury.

6 The next test that we do we perform is a test called
7 Phelan's test. Phelan's test is a test where you can put
8 your hand in this position (Indicating), a prayer position,
9 or in this position (Indicating), the effect is the same.
10 what it does is the median nerve sits in an area called the
11 carpal canal, it sits there with nine tendons, when we
12 change the position of our wrist the diameter of the arm
13 changes. So just by dropping the wrist down or lifting the
14 wrist up it puts a little more pressure on the nerve, and
15 what happens in an injured nerve is that the patient will
16 have the onset of numbness and tingling in a period of less
17 than 60 seconds, and his onset was at about five to ten
18 seconds.

19 His grip strength was tested, it was found -- it was
20 decreased about 20 percent. His grip strength was four over
21 five on the right as compared to the left which is five over
22 five, on the left, and sensation on this is called the
23 radial side of our hand, (Indicating,) this is the ulnar side
24 of our hand, so the radial three digits meaning your thumb,
25 index, and long finger are controlled by the median nerve.

1 So what we found is that there was decreased sensation on
2 the gross examination of the thumb, index, and long finger.

3 Q Now there are some medical records in evidence from
4 Manhasset Orthopedic Associates which is Dr. Stein's office
5 and you indicated you reviewed those records?

6 A I did.

7 Q On October 12, 2005 Dr. Stein's examination said
8 that Mr. Nutley complained of numbness and lots of
9 sensation, as well as weakness in his right hand, are those
10 complaints consistent with the history that Michael Nutley
11 gave you as to how this accident occurred?

12 A Yes.

13 Q There is an October 25, 2005 medical records from
14 Dr. Stein in evidence also and it too indicates a positive
15 Tinel test. Now, at that point Dr. Stein diagnosed Michael
16 Nutley with post-trauma carpal tunnel syndrome, do you agree
17 with that diagnosis based on the information you have before
18 you now?

19 A I do.

20 Q Okay. Now, did you as part of your medical records
21 review an EMG test?

22 A Yes.

23 Q Can you tell the jury what EMG stands for and how
24 the test is administered?

25 A EMG stands for electric myelography and what we do

1 we test -- you to see the nerve has two functions, it has a
2 function of enervative muscle, it has a function of
3 sensation, so what it is does is it tests nerve ability in
4 terms of either function to sensation and for motor
5 stimulation, and the way the test is administered is you
6 provide a little needle that electrical current is provided
7 there and then at a given distance you put another needle
8 along the course of the nerve, there is a micro-stimulation,
9 a mini volt that is created, it is shot through the nerve,
10 and then there is a machine that detects the speed of which
11 it has travelled that distance, so anything that shortens
12 anything that affects the speed, if the speed becomes
13 longer, in other words, a nerve is working slower tells you
14 that the nerve has been injured.

15 There is another thing you can look at that is
16 called the amplitude. In other words, if I put a big signal
17 there where only a small signal is received on the other
18 side that means that also the nerve is not functioning
19 normally and his EMG was positive for right side carpal
20 tunnel.

21 Q When you say "positive for right side carpal
22 tunnel", does that test help you determine whether or not
23 there was any nerve damage sustained to his right hand?

24 A Yes.

25 Q And what did that test tell you?

1 A It showed that there was nerve damage sustained to
2 the right-hand.

3 Q Is nerve damage at the location where he had it
4 generally permanent?

5 A Yes, it is.

6 Q Nerves don't regenerate, they don't regrow do they,
7 doctor?

8 A No. We have essentially three types of tissues in
9 our body. We have what we call stable tissue which is
10 tissue that never grows, we have labial tissue and tissue
11 which means, for instance, it is constantly turning over all
12 right, and then you have permanent tissue which never grows.

13 Q There was a medical report from Dr. Stein that is in
14 evidence dated November 22 of 2005, about six weeks after
15 this accident where Dr. Stein advises Mr. Nutley he should
16 expect persistent symptomatology because of the underlying
17 nerve damage, in your opinion reading that record is it your
18 opinion that Dr. Stein also saw permanent nerve damage as a
19 result of the EMG?

20 A Yes.

21 Q Now did you review the operative report?

22 A I did.

23 Q Tell me the course of treatment that Mr. Nutley
24 underwent, first, physical therapy, then the EMG diagnostic
25 tests, and then surgery, is that competent acceptable

1 medical practice as to how we get from point (A), the
2 injury, up to the surgery; do you understand my question?

3 A Yes, it is.

4 Q Isn't it true you start with the more conservative
5 treatment first, if the results aren't good you engage in
6 the operation, correct?

7 A That is correct.

8 Q Can you describe the operation that Mr. Nutley
9 underwent by Dr. Stein?

10 A Certainly. Essentially the patients are brought to
11 the operating room and we use a tourniquet. In the case of
12 Dr. Stein, he uses what is called a bier block which is a
13 way of anesthetizing the arm and the patient is given IV
14 sedation generally, and you will inject the arm with local
15 anesthesia, and you have two tourniquets up on the arm. You
16 alternate the tourniquets so his arm stays anesthetized. At
17 that point, the arm is prepared and dragged which means to
18 sterilize the skin to remove any bacteria and to place the
19 arm within a sterile field. You then draw out your incision
20 which is a mild palmer space incision, and at that point you
21 use a scalpel, open the skin, go down through the
22 subcutaneous tissue, and then you will run into a ligament
23 there. The ligament is called a transverse carpal ligament.
24 That is a ligament that defines the roof of the carpal
25 canal. You then incise that ligament and now you are

1 looking directly down on the median nerve all right, and
2 sometimes you will remove some of the lining around the
3 tendons and the nerve itself. At that point, when you use a
4 bier block, remember the arm only stays anesthetized as long
5 as the tourniquet is on, you close the incision and put a
6 compressive dressing on it, and then you would release the
7 tourniquet.

8 Q Now, doctor, another of Dr. Stein's medical records,
9 this one from December 30 of 2005 after the surgery, it says
10 that Michael Nutley complained of a burning sensation as
11 well as numbness in these three fingers, the thumb, the
12 index, and the middle fingers, are those types of complaints
13 consistent with the injury that Michael Nutley sustained
14 back in October of 2005?

15 A Yes, they are.

16 Q I want you to assume the following hypothetically
17 that a patient of the age -- same as as Michael Nutley who
18 was injured in the same way as Michael Nutley after the
19 surgery had complaints of sharp stabbing pain with tingling
20 and numbness, burning, and audible clicking sensation
21 grinding like bone on bone, numbness, and lots of sensation
22 in those three fingers, are those types of complaints
23 consistent with the injury that Michael Nutley suffered?

24 A Yes.

25 Q Now did he ask you your opinion with regard to

1 following up treatment?

2 A He did.

3 Q And what is your opinion with regard to follow-up in
4 your opinion?

5 A My opinion is that essentially the only other thing
6 that you can do here would be to re-explore the nerve
7 mechanisms. You would have to open it up again and try to
8 remove any evidence of scar tissue that may have formed on
9 the nerve because anytime you have surgery our body always
10 heals by the formation of scar tissue. There is no such
11 thing as not having scar tissue when you have surgery. The
12 problem with that in a nerve is that our nerves depend
13 heavily on what we call microvascular circulation which is
14 the tiniest of blood vessels that supplies nutrition to the
15 nerve, and they are on the surface of the nerve so that
16 everytime you explore a nerve and you have you know
17 obviously the potential for reformation of scar tissue you
18 have the potential for actually losing some of the blood
19 supply to the nerve and the problem becoming worse. So
20 unfortunately it is not something you recommended cavalierly
21 to go in and just explore as the symptoms progress and some
22 patients you might consider doing that in the future.

23 Q What is the likelihood of success once the original
24 surgery doesn't give him any relief? What is the likelihood
25 of success that a second surgery would help him?

1 A There is no guarantee whatsoever that the patient
2 will do well with a second surgery. It is the only medical
3 treatment that we have to offer but there is no guarantee
4 because of what I have outlined already. You are going to
5 form more scar tissue in some of those patients. Some
6 patients have some transient relief, some patients have
7 increased scar tissue formation, their symptoms are actually
8 worse so.

9 Q Now I noticed at your examination and in your report
10 you talk about a prior injury, an earlier injury he suffered
11 in 1994 to his right wrist, any relation to the injury he is
12 claiming in this accident?

13 A No, it was on the opposite side of the wrist. It
14 did not involve the median nerve whatsoever, no.

15 Q I want you to assume hypothetically that Mr. Nutley
16 testified that what he got was a bump on the outside of his
17 wrist from striking his hand on the table, does that have
18 anything to do with the numbness that he now feels in these
19 three fingers, his thumb, his index, and his middle finger?

20 A No.

21 Q Okay. Did you make any findings with regard to
22 Mr. Nutley's ability to perform his job as a police officer?

23 A Well, my concern would be obviously when you have
24 altered sensitivity in your dominant hand that can interfere
25 with your ability to respond in a critical situation as a

1 police officer. We would be concerned about his ability to
2 handle a weapon and so forth.

3 Q In your opinion, doctor, the accident of October 8
4 of 2005, is that the competent producing cause of the
5 patient's current complaints?

6 A Yes.

7 Q And are the opinions that you gave here today given
8 to a reasonably degree of medical certainty?

9 A They are.

10 Q Now one more thing, there is a record from Dr. Stein
11 from January of 2006, four to six weeks after the date of
12 Michael Nutley surgery, and it indicates that Mr. Nutley had
13 no more complaints on that day of numbness and tingling to
14 his right hand, does that mean his hand is all better?

15 A No. That is not an unusual finding actually because
16 for the reasons that I explained earlier. Scar tissue takes
17 time to form, it is not going to form overnight, and the
18 fact that you do a release and you take pressure off of the
19 nerve it is not unusual for patients to have relief of their
20 initial symptom and unfortunately their symptoms progress
21 and worsen.

22 Q Mr. Nutley testified that he has a loss of 70 to
23 80 percent of the feeling in these three fingers as a result
24 of this nerve damage that he sustained to his right-hand, is
25 that consistent with the type of injury that he sustained in

1 this accident?

2 A Yes, it is.

3 Q And what -- withdrawn.

4 what does he have to look forward to in the future
5 with regard to this numbness and loss of sensation in his
6 right hand assuming he is 38 years old now?

7 A Well, essentially, the numbness and tingling is not
8 going to go away. What happens is as we use our arms
9 normally patients can have the onset of further scar tissue
10 from the traumatic micro-traumatic events and daily living,
11 activities of daily living, you use your hand to push
12 against items and so forth. So his symptoms will be
13 persistent. They are aggravated by activities, and they
14 will be ongoing for the rest of his life.

15 Q And just so we are clear the last couple of answers
16 they are also given to a reasonable degree of medical
17 certainty?

18 A They are.

19 Q There was one more thing, just give me one second
20 please, oh, you testified that you have some experience with
21 the New York Police Department as being a hand surgeon for
22 them, correct?

23 A Yes.

24 Q Do you have any knowledge as to whether or not the
25 treatment that police officers undergo for any injury in the

1 line of duty has to be approved by the NYPD police surgeon?

2 A It does.

3 Q Was that done in this case?

4 A It was.

5 Q Now are you recommending that he undergo further
6 surgery?

7 A I think depending upon how his symptoms continue
8 that would be a consideration as long as you understand that
9 there is no guarantee that it is going to improve and there
10 is a possibility that it could be worse.

11 Q I understand that whenever surgery is involved there
12 is no guarantees, correct, but given the fact this is a
13 second surgery after a first failure is the likelihood of
14 success the same as the first, less likely, or more likely
15 to succeed in general?

16 A It is much less likely to succeed.

17 MR. MAIOLICA: Thank you, doctor, I have nothing
18 further for you.

19 THE COURT: Cross-examination.

20 MR. CHENG: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MR. CHENG:

23 Q Good morning, Dr. Rose.

24 A Good morning.

25 Q Dr. Rose, you are currently an active New York City

1 Police Department police surgeon?

2 A I am appointed New York City Police surgeon, yes.

3 Q Let me ask you, if a police officer came to you and
4 you determined he wasn't fit for duty but he actually said I
5 really need to get back to regular duty, I need the money,
6 would you approve him?

7 A I think it would depend upon the nature of his
8 injury.

9 Q So physically if he wasn't able to do the job you
10 would not approve him for regular duty?

11 A If he was absolutely physically incapable of doing
12 the job, no.

13 Q And why is that?

14 A Well, obviously you put your own life and the life
15 of other people in jeopardy based on the circumstances that
16 could arise.

17 Q So you could put -- that police officer could put
18 himself at risk?

19 A Certainly.

20 Q He could put other officers at risk?

21 A Yes, he can.

22 Q And put the public at risk?

23 A Absolutely.

24 Q Now after you examined Mr. Nutley did you take any
25 steps to have him taken off active duty?

1 A No.

2 Q Now you indicated you performed some tests on
3 Mr. Nutley, you explained the Tinel test where you get the
4 electric sensation, how would you determine when Mr. Nutley
5 got that sensation? Is that something he indicated to you
6 or is that something you felt?

7 A It is something that the patient would respond to
8 based on a specific maneuver that the examiner performs.

9 Q So you basically rely on the accuracy of the patient
10 to get that results for that test?

11 A Yes.

12 Q So you assume, he is telling us the truth, oh yeah,
13 now I feel the sensation?

14 A Well, it is a very specific thing, it is not as
15 though you feel the sensation, it is actually an electrical
16 sensation that the patient would feel.

17 Q But if the patient didn't indicate to you that he
18 felt it, you have no way of knowing?

19 A If he didn't indicate it, no.

20 Q Same with the Phelan's, you depend on Mr. Nutley to
21 tell you when he felt the sensation?

22 A Yes.

23 Q Now the EMG test that you reviewed when was that
24 done?

25 A Let's take a look. It was performed November 16,

1 2005.

2 Q And who ordered that EMG?

3 A I believe that was Dr. Stein who ordered the test,
4 yes.

5 Q And that was done by Dr. Stein basically that he can
6 confirm what he suspected with a carpal tunnel injury?

7 A Correct.

8 Q Now after your examination did you send Mr. Nutley
9 for any diagnostic tests?

10 A No.

11 Q So you didn't send him for an EMG?

12 A No.

13 Q Now, you indicated or you testified that it wasn't
14 unusual that after the surgery that the numbness and
15 tingling that Mr. Nutley felt would go away, that's because
16 it takes time for the scar tissue to build up that would
17 cause later symptoms, correct?

18 A That is correct.

19 Q Are you aware that Mr. Nutley -- well, he testified
20 in this courtroom that after his surgery his symptoms of
21 numbness and tingling never went away? Are you aware of
22 that?

23 A I think that's possible. I mean the bottom line is
24 that carpal tunnel syndrome is affective, the median nerve
25 is affected by the position of the wrist, it is affected by

1 scar tissue reformation, it is affected by activity, it is
2 affected by quite a few things, so I mean that is possible.

3 Q But that is not what is indicated in Dr. Stein's
4 record. Dr. Stein's record says his numbness and tingling
5 have completely disappeared approximately a month after the
6 surgery?

7 A As I said it is possible for him to have a
8 perception at that moment that he has no numbness or
9 tingling and then have recurrence of the numbness and
10 tingling this is not an unusual finding.

11 Q But that is not what Dr. Stein indicated. Dr. Stein
12 indicated he had no numbness and tingling?

13 A That is what he indicated, yes.

14 Q Did you ever contact Dr. Stein.

15 A No, I didn't.

16 Q Now did you review Dr. Stein's operative report?

17 A I did.

18 Q Did Dr. Stein's operative report indicate any nerve
19 damage that he observed?

20 A You don't generally observe nerve damage when a
21 microvascular supply is involved, that is not something that
22 the naked eye could see.

23 Q Wasn't it in your testimony that, if Mr. Nutley had
24 the second surgery, you could basically open his hand and
25 look at the nerves and determine if there was any damage?

1 A You can look at the scar tissue that is formed over
2 the surface of the nerve but how the microvascular supply
3 infiltrates into the nerve is not something you can see with
4 the naked eye.

5 Q How long would scar tissue take to build up in the
6 hand?

7 A It starts building up as soon as the blood and the
8 space starts to organize so that generally starts to happen
9 around ten to 14 days.

10 Q Now the scar tissue is something that you can
11 observe by just looking at his hand?

12 A You may be able to observe it, yes.

13 Q And so you observed that on Mr. Nutley's hand when
14 you looked at it?

15 A Well, he had some scarring in his palm superficially
16 from the incision.

17 Q I mean the scar tissue that you testified interferes
18 with the feeling in the hand, movement in the hand, that is
19 something you can just look at his hand and say, yes, is it
20 the scar tissue buildup, that is what is causing you to have
21 these sensations, the pain, things like that?

22 A You can't see his nerve right through the skin so it
23 would be impossible to see any scar tissue that is formed on
24 the nerve around his -- in his palm so you couldn't comment
25 on scar tissue in terms of visually seeing it, no.

1 Q Now, doctor, when did you examine Mr. Nutley?

2 A He was seen by myself on September 24 of '07.

3 Q And you only saw him that one time?

4 A Yes.

5 Q And you actually recommended that he have the
6 surgery, correct?

7 A I did.

8 Q And he hasn't had the surgery yet has he?

9 A He has not, no.

10 Q And has he ever -- he has never come back to see
11 you?

12 A He has not.

13 MR. CHENG: No further questions. Thank you.

14 THE COURT: Redirect.

15 MR. MAIOLICA: Redirect.

16 DIRECT EXAMINATION

17 BY MR. MAIOLICA

18 Q Doctor, when you administer these tests, the
19 Phelan's and the Tinel's test, do you ever tell the patient
20 to whom the tests are being administered what the results
21 are suppose to be, in other words, what positive signs are?

22 A No.

23 Q So, in other words, they don't know whether the test
24 is for numbness, or if they are suppose to feel electric
25 shock, or if they are suppose to feel pain, they don't know

1 any of those things do they?

2 A No, they don't.

3 Q But yet Mr. Nutley testified that the sensation he
4 felt during the Tinel's test is exactly that that is suppose
5 to be produced during a Tinel test if it is positive?

6 A That is correct.

7 Q With regard to the future surgery isn't true,
8 doctor, that you recommended future surgery but didn't you
9 tell him that there is a very high failure rate with this
10 type of surgery after the extended period of time that he
11 had waited to come see you?

12 A Yes.

13 MR. MAIOLICA: No further questions.

14 THE COURT: Recross.

15 MR. CHENG: No, your Honor.

16 THE COURT: Thank you, doctor, you may step down.

17 (Witness excused.)

18 THE COURT: Plaintiff you may call your next
19 witness.

20 MR. MAIOLICA: Plaintiff rests, your Honor.

21 THE COURT: Thank you.

22 We will take a five minute recess.

23 COURT OFFICER: Jurors, please rise and follow me.

24 (The jury is excused from the courtroom and the
25 following occurred:)