

1 THE COURT OFFICER: All rise. Jury entering.

2 (Whereupon, the jurors entered the courtroom and
3 were properly seated in the jury box.)

4 THE COURT: All right ladies and gentlemen,
5 welcome back. Have a seat. Sorry for the delay. We are
6 taking a witness out of turn. This witness is being called
7 by the defense.

8 Mr. Wilson, let's proceed.

9 MR. WILSON: Yes, your Honor.

10 The defense calls Dr. Herbert Sherry to the stand.

11 THE COURT OFFICER: Remain standing. Please raise
12 your right hand. Place your left hand only the bible.

13 (Whereupon, the witness complied.)

14 THE COURT OFFICER: Do you swear or affirm that
15 the testimony you are about to give will be the truth, the
16 whole truth and nothing but the truth?

17 THE WITNESS: I do.

18 THE COURT CLERK: You may have a seat.

19 H E R B E R T S. S H E R R Y, M. D., called by and on
20 behalf of the Defendant, having been first duly sworn, was
21 examined and testified as follows:

22 THE COURT OFFICER: In a loud and clear voice,
23 state your name and business address for the record please.

24 THE WITNESS: My name is Dr. Herbert Sherry,
25 S-H-E-R-R-Y. My office address is 995 Fifth Avenue,

1 New York, New York 10075.

2 THE COURT: Good afternoon, Dr. Sherry.

3 THE WITNESS: Good afternoon.

4 THE COURT: Sir, first I'm going to have to ask
5 you to speak much, much louder; all right? You need to
6 project your voice to the rear of the courtroom, the same
7 volume that I'm now projecting my voice.

8 If you do not understand the question, please say
9 so. If you cannot answer the question as posed, likewise,
10 say so. Please wait until the attorney concludes the
11 question before responding, and likewise, the attorney will
12 wait until you have concluded your response before
13 following up.

14 All right, so much, much louder. If need be, we
15 will give you the microphone so you could project your
16 voice by way of the microphone. All right, sir?

17 THE WITNESS: Yes.

18 THE COURT: You may inquire Mr. Wilson.

19 MR. WILSON: Thank you, your Honor.

20 DIRECT EXAMINATION

21 BY MR. WILSON:

22 Q. Good afternoon, Dr. Sherry.

23 A. Good afternoon.

24 Q. Doctor, when were you first contacted about this case?

25 A. In November of 2007.

Dr. Sherry - Defense Direct

1 Q. And Doctor, which office contacted you?

2 A. Um, the office of Leahey and Johnson.

3 Q. That's my office, right?

4 A. I assume so.

5 Q. All right. And have you and I ever discussed this
6 case, aside from about an hour ago?

7 A. No.

8 Q. Doctor, could you please tell our jury where you went
9 to school, from college onto the present?

10 THE COURT: All right. Let me just preface,
11 Doctor, please just give me the year, the institution, the
12 year of graduation and the degree inferred, and likewise,
13 whether there was subsequent medical experience,
14 institution, the position and the years at that particular
15 entity. All right, sir?

16 THE WITNESS: Yes.

17 A. I graduated from Brooklyn College in 1963 with a BS
18 degree. I graduated from the State University of New York,
19 Upstate Medical Center in Syracuse in 1967 with an M.D. degree.

20 I then came back to New York City and did my internship
21 at Mt. Sinai Hospital in Manhattan. Following that, I spent
22 three years on the Navajo Indian Reservation in the general
23 practice of medicine. I then came back to --

24 THE COURT: I'm sorry. Navajo Indian Reservation?

25 Where was that?

Dr. Sherry - Defense Direct

1 THE WITNESS: In Kayenta, K-A-Y-E-N-T-A, Arizona.

2 THE COURT: I'm sorry. What years was that, sir?

3 THE WITNESS: That was 1969 to 1971.

4 Q. Are you finished, Doctor?

5 A. No. Then I came back to New York City and did my
6 orthopedic residency at the Mt. Sinai School of Medicine in
7 Mt. Sinai Hospital in New York City, completing that in 1974. I
8 then stayed on in New York City.

9 Q. And, Doctor, are you a medical doctor?

10 A. Yes.

11 Q. Do you currently hold any licenses?

12 A. Yes.

13 Q. What licenses do you hold?

14 A. I hold a license to practice medicine in the State of
15 New York.

16 Q. And Doctor, are you board certified?

17 A. Yes.

18 Q. And in what discipline are you board certified?

19 A. I'm board certified in orthopedic surgery.

20 Q. Just briefly, Doctor, what does it mean to be --

21 THE COURT: One second. The year of the licensing
22 and certification?

23 MR. WILSON: I'm sorry.

24 THE WITNESS: The year of the licensing was 1968
25 and the certification of the board was 1976.

1 Q. And Doctor, just briefly, would you tell our jury what
2 it means to be board certified in orthopedics?

3 A. To be board certified in orthopedics means that you
4 have to finish an accredited residency in orthopedic surgery.
5 You then have to go ahead and practice. You then have to go
6 ahead and take a written examination and pass the written
7 examination. You then have to take an oral examination and pass
8 the oral examination, and then you are board certified in
9 orthopedic surgery. Then you are voted upon by your peers to be
10 a member of the American Academy of Orthopedic Surgery.

11 Q. And you are, in fact, board certified?

12 A. Yes.

13 Q. All right. And Doctor, have you, in your career,
14 performed surgery?

15 A. Yes.

16 Q. What kind of surgeries have you performed?

17 A. I performed whatever surgery was necessary on patients:
18 Feet, on the knees, arthroscopy, on fractures of the arm,
19 forearm, thigh, calf.

20 Um, I -- for the first 20 years of my practice, I was
21 the Chief of Orthopedic Oncology at Mt. Sinai Hospital where,
22 unfortunately, a lot of children have malignant bone tumors.
23 And I had to take care of a lot of children with malignant bone
24 tumors, as well as adults, um, fractured hips, fractured arms,
25 fractured neck, back and so on.

1 Q. And Doctor, do you currently have any hospital
2 affiliations?

3 A. Yes.

4 Q. Where do you have hospital affiliations currently?

5 A. I am currently professor of orthopedic surgery at
6 Mt. Sinai School of Medicine at Mt. Sinai Hospital, and I'm
7 currently the director of the musculoskeletal course for the
8 Mt. Sinai School of Medicine. And I'm director of medical
9 education for the orthopedic department in the Mt. Sinai School
10 of Medicine.

11 Q. Doctor, if I missed anything, are you currently
12 employed in any other manner related to medicine, presently?

13 A. No. That encompasses a lot of time.

14 Q. Okay. Doctor, have you ever testified before today?

15 A. Yes.

16 Q. All right. Approximately how many occasions do you
17 testify, either on a yearly basis or anyway you could describe
18 it?

19 A. When you first went into practice no one was interested
20 in your opinion. It seems that as you get older, more people
21 are interested in your opinion, and I testify somewhere around
22 six to eight times a year in the past ten years.

23 Q. And Doctor, is it primarily for plaintiffs, defendants
24 or anyway you could describe it?

25 A. It is both for plaintiffs and defendants.

1 Q. Okay. Doctor, in those other trials where you provided
2 testimony as an expert, was it in the field of orthopedics?

3 A. Yes.

4 Q. And Doctor, are you being paid for your time here today
5 at trial?

6 A. I believe so, yes.

7 Q. And how much do you expect to receive?

8 A. The office charges between 2,500 and \$5,000, depending
9 upon what has to be cancelled to get me to come to court.

10 Q. And Doctor, assume that it's my office that asked you
11 to look at this case, you are expecting to get paid from the
12 defendants, correct?

13 A. I assume so, yes.

14 Q. All right. Doctor, did there come a time when you
15 first met the plaintiff in this case, Roy Nelson, Jr?

16 A. Yes.

17 Q. Do you know when that first examination was?

18 A. Yes. The first time I saw Master Nelson was on
19 December 12, 2007.

20 Q. And Doctor, at that time, did you take a history from
21 Mr. Nelson -- Master Nelson?

22 A. Yes.

23 Q. What was the history that you received?

24 A. The patient was accompanied by his attorney and the
25 history was that the patient was injured on August 7th, 2007.

1 That he was hit by a projectile on the left leg. That he was
2 taken to Jacobi Hospital and he was admitted to Jacobi Hospital.

3 He was told that he had a fracture of his left tibia.
4 That he was, um, in the hospital for approximately three days.
5 Um, and then was treated after the hospital with a cast for
6 approximately six weeks. Um, he said that he did not have any
7 physical therapy, um, but that he did exercise on his own.

8 His past medical history stated that he had asthma, for
9 which he takes medication. He denied any prior history of
10 fracture or surgery. And at that time, he said that at the
11 present time he still has pain in his left leg. He states that
12 he was in the fifth grade and that he can't run in gym.

13 Q. Okay. That first examination, Doctor, was only four
14 months after the accident had occurred, correct?

15 A. That is correct.

16 Q. All right. Did you perform any tests on the Plaintiff
17 when you saw him that first time in December of 2007?

18 A. Yes. The patient had a complete orthopedic physical
19 examination that all of the second year medical students at
20 Mt. Sinai are taught to do on all patients, that they -- you see
21 for the first time. So the patient's neck, back, arms and legs
22 were examined.

23 Q. All right. Doctor, because the claims in this case
24 only involve the plaintiff's left lower leg, I would like you
25 to -- to the extent possible -- from the knee down on the left

1 side, concentrate your testimony; is that all right?

2 A. Yes.

3 Q. Okay. Did you do any testing in regard to the
4 Plaintiff's lower left leg when you first saw him in December of
5 2007?

6 A. Yes. Whenever you are dealing with children, you have
7 to compare one leg with the other leg to see what is normal for
8 the individual child.

9 The patient had normal range of motion, equal range of
10 motion of both hips. The Patrick test, which is a test for
11 arthritis of the hip, was negative on both sides.

12 The straight leg raising examination, which is a test
13 for a herniated disk in the back, or nerve damage to the lower
14 extremities, was negative on both sides.

15 He was able to straighten both knees and bend them to
16 140 degrees on both sides, which means that his motion was
17 excellent in both knees. When you stress the ligaments on the
18 knees, they were stable. That he had no fluid within the knee
19 joints themselves on either side. You tested him -- you did the
20 McMurray test, which is a test for a torn cartilage. He didn't
21 have any evidence of a torn cartilage.

22 You do the anterior drawer test, which is a test for
23 the cruciate ligaments, the two ligaments that crisscross in the
24 middle of the knee, and they were intact.

25 And you do an Apley testing, where you rub the tibial

1 or articular surface against the femur, looking for arthritis.
2 And there was no arthritis in his knees. Both ankles went up 20
3 degrees and went down 40 degrees.

4 His reflexes and the nerves in the lower extremities
5 were working normally. His sensation to pin prick was equal on
6 both sides and his reflexes were equal on both sides.

7 And then we -- then I took measurements of him. Both
8 thighs -- the right thigh measured 13-and-a-quarter inches and
9 the left thigh measured 13 inches. The right calf measured
10 ten-and-three-eighths inches and the left calf measured
11 ten-and-one-eighth inches. And the leg lengths were equal,
12 measuring 30-and-one-quarter inches.

13 So, that the patient, because of the injury to his left
14 leg, was favoring his left leg, he walked with a normal gait,
15 but he obviously was not using the muscles equally at that point
16 in time, so he had some decreased muscle mass on the left side
17 as compared with the right side.

18 Q. Doctor, aside from what you just told us about the
19 slight atrophy of his left calf, was there anything else that
20 you found during your first examination that was out of the
21 normal?

22 A. No. He had an excellent recovery at that point in
23 time. The fractures had clinically healed and that he had
24 regained his motion of his hips, knees and ankles, and
25 everything was functioning normally. He needed to exercise a

1 little bit more on the left side.

2 Q. And Doctor, did the plaintiff have to undergo surgery
3 due to this accident?

4 A. No, he did not need to undergo surgery.

5 Q. The plaintiff wore a cast for approximately how long?

6 A. Excuse me?

7 Q. How long did the plaintiff wear a cast for?

8 A. For approximately six to six and a half weeks.

9 Q. Doctor, in your opinion, was that the proper way to
10 treat this injury?

11 A. Yes. He received excellent treatment from Jacobi
12 Hospital and the doctors at Jacobi Hospital.

13 Q. At that point, four months after this accident, did the
14 plaintiff require any further treatment aside from doing some
15 more strengthening exercises?

16 A. No.

17 Q. Doctor, at that point did you have an opportunity to
18 observe the plaintiff's scar?

19 A. Yes.

20 Q. And what were the dimensions of the scar when you saw
21 him four months after?

22 A. I measured the scar and he had a two-inch laceration
23 which had healed over the left tibia, and that there was a mild
24 keloid formation.

25 Q. When you say "mild keloid formation," what does that

1 mean?

2 A. That means when the scar healed, it healed with some
3 excessive scar tissue.

4 Q. And Doctor, was there any functional limitation that
5 that scar presented to this plaintiff when you saw him four
6 months after the accident?

7 A. No.

8 Q. All right. Were there any activities or sports that he
9 could not do physically at the time you saw him in December of
10 2007?

11 A. You would not want him to participate in any violent
12 sports, at that point in time. Um, you would probably want to
13 wait six months following the accident before you allowed him to
14 play any kind of contact sport.

15 Q. So, like tackle football?

16 A. Yes.

17 Q. Okay. Was his bone healed at that point, four months
18 out?

19 A. Yes. Clinically, that bone was healed.

20 Q. All right. Doctor, did you form an opinion within a
21 reasonable degree of medical certainty as to the plaintiff's
22 clinical result as of December 12th, 2007?

23 A. That he had an excellent clinical result from his
24 fracture. The fracture was a nondisplaced. It had healed
25 uneventfully, which is one of the advantages of being ten-years

1 old; you heal well.

2 Q. Doctor, you used the word "nondisplaced." What does
3 that mean?

4 A. That means that when the x-rays were taken in Jacobi
5 Hospital, they did not see any significant deviation at the
6 fracture site. That it was a crack that is within the bone.

7 Q. Doctor, you've had an opportunity to see the x-rays
8 involving this plaintiff; is that correct?

9 A. Yes.

10 Q. And there's a shadow box right in front of you there.
11 Are there any x-rays here that you could show the jury that
12 would help explain the difference between a displaced and
13 nondisplaced fracture?

14 A. Yes.

15 MR. WILSON: May I approach the witness, your
16 Honor.

17 THE COURT: Let's get the shadow box out first.

18 MR. WILSON: I believe it's right in front of the
19 witness box.

20 (Whereupon, the witness stepped down from the
21 witness stand.)

22 MR. WILSON: Your Honor, may I come over here as
23 well so I could see what the Doctor says?

24 THE COURT: Mr. Harris, you could also move back
25 here.

1 Q. I didn't give you the x-rays. I'm sorry.

2 Doctor, can you just identify what film you are using
3 first so that we could identify it.

4 A. Yes. This is a film that is labeled Nelson, comma,
5 Roy. The date of the film is September 18th, 2007. So this is
6 six weeks after the accident of the patient.

7 Q. Doctor, I'm just asking you, jurors number one and two,
8 and the alternates, are having a hard time seeing you.

9 THE COURT: Let me -- why don't we do this. Just
10 center it in the middle. Come up a little bit closer.

11 Ladies and gentlemen on extreme ends, can you see
12 the shadow box?

13 SOME JURORS: Yes.

14 THE COURT: I'm just going to ask you, Doctor,
15 whichever film you use -- let's start numbering that 3A.

16 (Whereupon, the item previously referred to is
17 received and marked Plaintiff's Exhibit 3A in evidence.)

18 Q. Doctor, this is an x-ray of the plaintiff's leg several
19 weeks after the accident?

20 A. Six weeks after the accident. This is when they took
21 the cast off. There is no cast on this particular leg.

22 Q. And what are you showing us in this picture?

23 A. This is an x-ray of the patient's left leg. It is
24 labeled left. This is the patient's tibia. You could see a
25 little bit of remnant of where the fracture was. The fracture

1 shows healing. The cortex is intact up and down. The fracture
2 is nowhere near the growth plate on the top part of the tibia or
3 the bottom part of the tibia, and it looks excellent. In fact,
4 most physicians would say that there is no fracture that is
5 there. This is the AP view.

6 Q. Before we go too far. You said it shows the cortex up
7 and down. What is the cortex?

8 A. If you buy your dog a bone, the solid white part on the
9 outside is the cortex and then the marrow bone is in the middle
10 of that bone.

11 The cortex is the thick portion that maintains the
12 strength of the bone.

13 Q. And Doctor, you also mentioned something about a growth
14 plate. Tell us, what is a growth plate?

15 A. He is only ten years of age, so he is going to go ahead
16 and continue to grow, which is the advantage of being ten,
17 because as you grow, the bone gets longer. Our bones from grow
18 from either end, and there is a growth plate on the top portion
19 and on the bottom portion.

20 In the tibia, most of the growth comes from the top
21 portion, and the fracture is nowhere near the growth plate. You
22 always worry in a fracture in a child that it would interfere
23 with the growth plate and cause some growth plate disturbance,
24 but that is not the case here.

25 Q. Okay. Doctor, do you have any films from close in time

1 to the fracture so you could show the jury where the fracture
2 actually was?

3 A. Yes, but you should always show -- if you take an
4 x-ray, you should always take an x-ray in two planes, so you
5 need the AP and lateral views.

6 Q. So, first of all, before you say anything, I would like
7 to mark this as 3B. Doctor, before you say anything, the court
8 reporter will take care of that, and now I will stop talking.

9 (Whereupon, the item previously referred to is
10 received and marked Plaintiff's Exhibit 3B in evidence.)

11 Q. Doctor, can you just tell us the date of this film?

12 A. It is the same date, 9/18/2007.

13 Q. Okay.

14 A. Left leg. And this is the side-to-side view. Whenever
15 we take an x-ray, we always take it in two views, at least, so
16 that we get a more or less three-dimensional picture that is
17 involved.

18 You could see that the remnant of the fracture line in
19 this view, the cortex appears to be intact, but it shows that
20 the fracture does not go anywhere near the growth plates, above
21 and below, and the fracture is not displaced. There is no
22 angulation. There is no step off of the fracture.

23 Q. When you say "step off," what do you mean by that?

24 A. That if you break your bone and we put it back together
25 again, if we don't operate on it, you can go ahead and accept

1 some displacement of the bone -- certainly in young children
2 whose bones are going to remodel as time goes on -- and their
3 bones will enlarge in size and heal in a remodeled fashion.

4 Q. Doctor, at any point did this plaintiff's bone ever pop
5 through the skin?

6 A. No.

7 Q. It never moved out of place?

8 A. No.

9 Q. That second film you just showed us, you just wanted to
10 make sure the jury saw it from the two views, correct?

11 A. Yes.

12 Q. But it's basically the same time and it looks like the
13 fracture is healed by that time?

14 MR. HARRIS: Objection to --

15 THE COURT: Yes. Let's have direct --

16 MR. HARRIS: -- leading.

17 THE COURT: -- questions, Mr. Wilson.

18 MR. WILSON: I'm sorry, your Honor.

19 Q. Would you, if you don't mind, move onto a film closer
20 in time to the fracture, if there is one there.

21 A. The problem that we have is that there is no label on
22 this film, other than left leg and that it is his, but --

23 Q. Can you see the fracture in that film?

24 A. You could see the fracture in that film, but let me --
25 I would rather --

1 THE COURT: So these are all number three. We
2 have the Jacobi Hospital records, which are contemporaneous
3 with the admission.

4 MR. WILSON: He went back in September --

5 THE COURT: They are from?

6 MR. WILSON: From Jacobi.

7 A. This is a film of the patient, dated August 7th, 2007,
8 which is the date of the fracture.

9 Q. Before you say anything else, let the court reporter
10 mark that.

11 (Whereupon, the item previously referred to is
12 received and marked Plaintiff's Exhibit 3C in evidence.)

13 MR. HARRIS: Your Honor --

14 THE COURT: Approach.

15 (Whereupon, there is a discussion held off the
16 record, at the bench, among the Court, Mr. Harris and
17 Mr. Wilson.)

18 Q. All right. Doctor, if you would show our jury where
19 the fracture line is on that film?

20 A. This is August 7th, 2007. This is the lateral view --
21 the side to side-view -- and you could see the fracture line
22 within the marrow portion of the -- of the bone that is there
23 (indicating). They have a posterior splint on the patient.

24 THE COURT: Say that again.

25 THE WITNESS: Excuse me?

1 THE COURT: I didn't hear you?

2 THE WITNESS: They have a posterior splint. They
3 just put something back to protect the leg. This is the
4 lateral view where you could see the fracture lines
5 (indicating).

6 This is the AP view, the front to back view
7 (indicating).

8 THE COURT: Let's mark that one 3D. This is
9 something we have not seen before, correct?

10 THE WITNESS: Correct.

11 THE COURT: Let's mark that as 3D.

12 (Whereupon, the item previously referred to is
13 received and marked Plaintiff's Exhibit 3D in evidence.)

14 THE COURT OFFICER: Plaintiff's Exhibit 3D so
15 marked in evidence.

16 THE COURT: Same date, Doctor?

17 THE WITNESS: Same date. It's August 7th, 2007.
18 You could make out the splint that the patient has
19 (indicating). The bone, actually on the AP, looks intact.

20 You could go ahead and see the fracture line
21 (indicating), but you can't see it as well as you could see
22 it on the side-to-side view.

23 But there is no displacement. The cortex appears
24 to be intact. It does not affect the growth plates on
25 either side of the patient's tibia, the bone that has the

1 crack in it.

2 Q. Doctor, is there anything else about the films that you
3 need to explain further?

4 A. No.

5 MR. WILSON: You could have a seat.

6 (Whereupon, the witness stepped into the witness
7 stand.)

8 MR. WILSON: May I continue, your Honor?

9 THE COURT: Yes.

10 Q. Doctor, did there come a time that you actually got to
11 examine the plaintiff for a second time?

12 A. Yes.

13 Q. When was that?

14 A. That was on February 3rd of 2010. The patient was
15 12-years old at that point in time.

16 Q. And on that second occasion, did you perform an
17 examination?

18 A. Yes.

19 Q. And prior to performing that second examination, were
20 you given some of the plaintiff's medical records?

21 A. Yes.

22 Q. Who provided those records to you?

23 A. I believe your office.

24 Q. Okay. And Doctor, was there anything in those records
25 that you found significant?

1 A. That the radiologist described the relatively
2 nondisplaced fracture of the tibia. Um, that, um, the patient
3 was admitted to the hospital. Um, they had, rightly so, some
4 fear of the possibility of infection. They put him on
5 antibiotics. They kept him in the hospital for three days, um,
6 put the cast on afterwards and let him go home with the cast for
7 the six weeks. It was the correct treatment and the safe thing
8 to go ahead and to do.

9 Q. And Doctor, did you determine, by looking at those
10 medical records, whether the plaintiff actually ever developed
11 and infection in his leg?

12 A. There is no evidence that he ever developed an
13 infection in his leg.

14 Q. Okay. Doctor, when you saw the plaintiff for the
15 second time, did you, again, perform some of the same types of
16 tests you performed the first time you saw him?

17 A. Yes.

18 Q. Did you perform all of the same tests?

19 A. I only examined his lower extremities.

20 Q. Okay. Because we were only focused on the left lower
21 leg, correct?

22 A. Yes.

23 Q. When you did the examinations for the second time,
24 Doctor, can you tell us what the results of those tests were?

25 A. They showed that he had equal range of motion of both

1 hips. That the tests for abnormalities of the hip were normal.
2 That he was able to completely straighten and completely bend
3 his knees. That there was no fluid in the knee. That the knees
4 were stable. That the tests for a torn cartilage were, or torn
5 ligament within the knee, were negative. His ankles moved
6 equally well on both sides. Um, the nerves were functioning
7 normally.

8 Um, and that I then measured his thighs, and both
9 thighs measured 15-and-three-quarter inches, so they were equal
10 in the thigh. Both calves measured 11-and-three-quarter inches,
11 so that they were equal in the calf, and his leg lengths, now,
12 were 33-and-three-eighths inches, which means that he got
13 three-and-a-quarter inches more growth out of his legs than he
14 had when he was ten, which is what would be expected, and the
15 leg lengths were equal.

16 THE COURT: The ligaments?

17 THE WITNESS: The leg lengths.

18 THE COURT: Leg limbs?

19 MR. WILSON: Lengths.

20 THE WITNESS: Lengths.

21 Q. What is the medical significance, if any, for a 12-year
22 old child to have equal leg lengths?

23 A. Um, that the patient has no damage to any of the growth
24 plates. That all of the growth plates are growing and
25 functioning normally.

1 Q. Doctor, when you saw the plaintiff in December of 2007,
2 you told us earlier there was a slight atrophy in his left lower
3 leg; did you find any atrophy in the left lower leg when you saw
4 him in 2010?

5 A. No. He overcame the quarter-inch difference in the
6 circumference of his legs.

7 Q. Doctor, did you observe the plaintiff's gait, the way
8 he walked when you saw him the second time?

9 A. Yes, he walked with a normal gait the second time. He
10 also walked with a normal gait the first time.

11 Q. Okay. And did the plaintiff undergo any surgery from
12 the first time you had seen him to the second time you saw him?

13 A. No, he did not.

14 Q. In your review of the medical records, did you see that
15 any doctor or any other medical providers recommended that he
16 should undergo surgery?

17 A. I did not see any evidence of that.

18 Q. You told us earlier the plaintiff wore a cast for six
19 -- approximately six-and-a-half weeks. Was that the proper way
20 to treat this injury?

21 A. That was the proper way to treat this injury.

22 Q. Doctor, was any further treatment needed when you saw
23 the plaintiff in 2010?

24 A. No.

25 Q. Did you have a chance to observe the plaintiff's scar

1 in 2010?

2 A. Yes. I measured the scar and the scar measured
3 two-and-a-quarter inches in 2010. It had stretched a quarter of
4 an inch.

5 Q. Okay. Doctor, did you form an opinion within a
6 reasonable degree of medical certainty as to the plaintiff's
7 clinical result as of December 12th, 2007?

8 A. Yes.

9 Q. What was your opinion?

10 A. That the patient had an excellent clinical result
11 without any evidence of residuals from the nondisplaced fracture
12 that the patient sustained of his left tibia.

13 Q. Doctor, did you form an opinion within a reasonable
14 degree of medical certainty as to whether the plaintiff's left
15 leg fracture had healed?

16 A. Yes. Clinically it healed, and there was healing on
17 the films that they took in Jacobi Hospital.

18 Q. That was the films you showed earlier from September of
19 2007?

20 A. Yes.

21 Q. Okay. Doctor, did you form an opinion within a
22 reasonable degree of medical certainty as to whether the
23 plaintiff needed any further treatment for his left leg?

24 A. No -- I mean, yes, I formed an opinion. No, he did not
25 require.

1 Q. Okay. Doctor, what does it mean, in medical terms,
2 when you talk about residuals?

3 A. Residuals would be some angulation at the fracture
4 site. The fracture site didn't heal. That there was some
5 abnormality of the joints above and below the fracture site.
6 Um, and I did not find any evidence of any residuals. You know,
7 he healed like a ten-year old should heal.

8 Q. And Doctor, when you saw plaintiff in 2010, was he
9 capable, in your opinion, within a reasonable degree of medical
10 certainty, to perform all sports and all types of activities?

11 A. Yes. There would be no limitation of that, at age 12,
12 two years after the accident.

13 Q. And that's your opinion within a reasonable degree of
14 medical certainty?

15 A. Yes.

16 Q. And Doctor, based on the two appearances that you saw,
17 the two examinations that you did of the plaintiff, did you
18 determine, within a reasonable degree of medical certainty,
19 whether there was any residual disability due to this incident,
20 whatsoever?

21 A. I did not find any.

22 Q. You did not find any?

23 A. No.

24 Q. Doctor, thank you for your time.

25 MR. WILSON: No more questions, your Honor.

1 THE COURT: We will take a quick five minutes,
2 ladies and gentlemen. We will be right back.

3 Again, don't discuss the case amongst yourselves,
4 et cetera, et cetera, et cetera.

5 THE COURT OFFICER: All rise.

6 (Whereupon, the jurors exited the courtroom and
7 went into the jury room.)

8 THE COURT: Doctor, did you bring anything with
9 you? Please hand it over to plaintiff's counsel.

10 (Whereupon, a short recess was agreed upon and
11 taken by all parties.)

12 MR. HARRIS: I would like to have an opportunity
13 to look they shadow box and see the x-rays, because I
14 couldn't see them from there. I need to see which ones he
15 was looking at. I need to take a look at them closer up.

16 (Whereupon, Plaintiff's Exhibit 3E for
17 identification was marked during the short break.)

18 THE COURT OFFICER: Ready?

19 THE COURT: Yes.

20 THE COURT OFFICER: All rise, jury entering.

21 (Whereupon, the jurors entered the courtroom and
22 were properly seated in the jury box.)

23 THE COURT: All right. Ladies and gentlemen,
24 let's all have a seat.

25 Okay. Mr. Harris, you may inquire.

1 MR. HARRIS: Thank you, your Honor.

2 CROSS EXAMINATION

3 BY MR. HARRIS:

4 Q. Good afternoon, Doctor.

5 A. Good afternoon.

6 Q. You testified earlier about the frequency with which
7 you testify, to some extent. I just want to ask you, during the
8 past five years, could you tell us approximately how often
9 you've testified?

10 A. It's approximately six to eight times a year.

11 Q. And out of those six to eight times over the past five
12 years, could you tell us how many of those times did you testify
13 on behalf of people who were injured in accident as opposed to
14 those defendant claims?

15 A. I do not know the specifics, but I testified for both
16 plaintiffs and defendants.

17 Q. Is it a fact that you regularly perform physical
18 examinations predominantly on behalf of those defending personal
19 injuries?

20 A. I perform physical examinations when I am asked to, on
21 both the plaintiffs and defendants.

22 Q. Is it fair to say that you perform more physical
23 examinations on behalf of defendants?

24 A. It depends on the year and the time. I would not
25 dispute that.

1 Q. You would not dispute that, would you?

2 A. No.

3 Q. And, in fact, your office even has a form that it uses
4 to notify plaintiffs attorneys to -- when to come to your office
5 and when they have an appointment, and so forth, correct?

6 A. I know that the, um, the attorneys have to call up to
7 make an appointment, and then they get an appointment, if the
8 time is available.

9 MR. HARRIS: I would like to mark this as an
10 exhibit.

11 (Whereupon, the item referred to is received and
12 marked Plaintiff's Exhibit 4 for identification.)

13 THE COURT OFFICER: Plaintiff's Exhibit 4 so
14 marked for identification.

15 MR. HARRIS: Your Honor, I -- I'm sorry.

16 THE COURT: I'm sorry?

17 Q. Dr. Sherry, I show you, now, what has been marked as
18 Plaintiff's Exhibit 4 for identification, and I ask you if you
19 -- if I could just see it for a minute -- if you recognize this
20 as a form that is used by your office in January of 2010?

21 A. I do not know specifically, but I would assume so.

22 Q. Is that on your letterhead?

23 A. Yes.

24 MR. HARRIS: I offer it in evidence.

25 MR. WILSON: I'm not sure what the relevance is,

1 your Honor, but I will --

2 THE COURT: You know what, approach.

3 (Whereupon, the following is a discussion held at
4 the side bar among the Court, Mr. Harris and Mr. Wilson.)

5 THE COURT: What is the relevance of this? I take
6 it this is the appointment for the IME exam.

7 MR. HARRIS: Yes. I just feel it's fair for the
8 jury to know this is a doctor who, as a regular part of his
9 practice, is examining people involved in litigation, and
10 it's part of how he earns his living, and it's fair. It's
11 always just a routine type of question. It shows for the
12 client --

13 MR. WILSON: My objection is that the doctor
14 already said that he testifies for trials for legal cases.
15 This is part of the normal office keep where you schedule
16 appointments. What the relevance is of this to the
17 plaintiff's damages is beyond me.

18 MR. HARRIS: You could question him afterwards.

19 THE COURT: Let me say this, because we are
20 pressed for time for this particular witness. Let me just
21 do this: Frankly, why there isn't a charge on this, I
22 don't know, but I'm just going to briefly explain to the
23 jury that where the testimony bears on medical issues, or
24 issues beyond their abilities to comprehend, an expert is
25 permitted to testify in these cases where the plaintiff is

1 making a claim for personal injuries, and they will put
2 proof before the jury with regard to those medical injuries
3 by way of a treating doctor or an expert doctor, because
4 you have an expert doctor coming as well, correct?

5 MR. HARRIS: Yes.

6 THE COURT: Because I'm not going to belabor this
7 point. They are permitted to have an expert come in and
8 testify both for the plaintiff and for the defendant, so
9 that -- let's not belabor this point, because you do the
10 stick on your end he will do the stick on his end, so you
11 are even.

12 MR. HARRIS: I don't intend to really pursue this
13 in a big way.

14 THE COURT: We are pressed for time.

15 MR. HARRIS: It goes to credibility. I do want to
16 make this quick. All right.

17 (Whereupon, the following takes place in open
18 court in the presence of all parties and the sworn jurors
19 that are properly seated.)

20 THE COURT: All right. Ladies and gentlemen, just
21 for your edification, as I said to you earlier, you are the
22 judges of the facts; I am the judge of the law. And where
23 the matter before the jury delves on issues that are beyond
24 the jury and the Court's usual understanding, i.e., matters
25 of science or matters of medical treatment, et cetera, an

1 expert is permitted to testify with a view to explain, to
2 both the jury and the Court, those specific items that
3 would bear on the jury's function as the triers of facts.

4 So, when we are talking about medical issues and
5 experts, such as this doctor, and perhaps another doctor
6 who will be testifying before you, they are here to testify
7 to inform you of the medical issues so that you could
8 better evaluate the facts before you.

9 So these experts are not necessarily treating
10 doctors of the plaintiff in a given case, but they are,
11 nonetheless, here for the benefit of the jury to explain
12 the medical injuries and its significance to you with
13 regard to your judging the facts of this case.

14 So you will hear testimony from this witness with
15 regard to his evaluation and his expertise how it was that
16 he was contracted to be here to testify, and I have no
17 doubt when the plaintiff's expert comes in, you will also
18 hear with regard to when he was contracted to testify and
19 by whom and what the past testimony experience of that
20 particular expert may be with regard to how many times he
21 was called to testify in court, and by whom.

22 All right, ladies and gentlemen. That is the
23 purpose of the testimony of these particular witnesses. So
24 let's quickly go through that. Anything further?

25 MR. WILSON: No, your Honor. No objection.

1 MR. HARRIS: Thank you, your Honor.

2 May I just read to the jury the first sentence?

3 THE COURT: What is that letter about, Counsel --

4 I'm sorry, Doctor.

5 A. This, obviously, is a letter that is sent out by my
6 office for people who have called, you know, for an appointment,
7 and what they are supposed to do concerning the appointment.

8 Q. That's all.

9 MR. HARRIS: I will just read the first sentence.

10 "This letter is to confirm that your client/plaintiff" --
11 on a preprinted form, written in, "Nelson, Roy,"
12 handwritten, "has an appointment with our office on 2/3/10,
13 at 10:00 a.m." That's all.

14 Q. This a form that you use in your office, routinely,
15 because you do a significant number of examinations of people
16 who have been hurt in accidents on behalf -- predominantly of
17 those opposing claims brought by people who were hurt in
18 accidents; is that a fair statement?

19 A. No. I assume that that letter is sent to both
20 plaintiffs and defendants who call up and make an appointment
21 for, you know, for coming to the office. It is -- the
22 letterhead is on the stationary. The other thing must be a form
23 letter that they print out.

24 Q. But you agree that you do many more examinations on
25 behalf of those opposing claims of people who are injured than

1 you do on behalf of people who are bringing claims; true?

2 A. No. It depends on what I'm asked to go ahead and do.
3 It depends on the month and the year, and so on.

4 Q. And you are asked to do more physical examinations on
5 behalf of those opposing claims, in the past five years in
6 particular?

7 MR. WILSON: Your Honor, I'm just objecting to
8 asked and answered.

9 THE COURT: Yes. Sustained. Next question.
10 Let's explore another area.

11 MR. HARRIS: Okay.

12 Q. Doctor, I would like to show you another x-ray, which
13 has been marked as Plaintiff's Exhibit 3E.

14 MR. HARRIS: If we could just have the shadow box.

15 (Whereupon, the witness stepped down from the
16 witness stand.)

17 Q. Can you see this?

18 A. Yes.

19 Q. This x-ray appears not to have a date on it, correct?

20 A. It doesn't have a date or a name. It's unlabeled.

21 THE COURT: I'm sorry?

22 MR. HARRIS: It's unlabeled.

23 MR. WILSON: I will object.

24 MR. HARRIS: This x-ray is --

25 THE COURT: Side bar.

1 (Whereupon, the following is a discussion held in
2 the robing room among the Court, Mr. Harris and
3 Mr. Wilson.)

4 THE COURT: Can I see that.

5 MR. WILSON: The law requires every x-ray to have
6 on --

7 THE COURT: Hang on a second.

8 MR. HARRIS: This is a part of a hospital record
9 produced by subpoena, produced by the hospital as x-rays
10 taken of Roy Nelson, Jr. This is not an x-ray being
11 brought in from outside of a hospital pursuant to notice of
12 intent to introduce an x-ray. This is part of the
13 hospital's own record and they've certified it as such as
14 part of their records.

15 MR. WILSON: I agree to that.

16 MR. HARRIS: In addition, let me just say that the
17 doctor could look at the x-ray here and he could look at
18 some of the other x-rays. He could see it's of the same
19 bone and it's an additional view, clearly. And -- and it
20 obviously was taken during the plaintiff's course of
21 treatment at the hospital.

22 It's part of the hospital's record, which they
23 produced pursuant to the subpoena. So we know the time
24 frame has to be between 8/7 and 9/18 of '07, and the doctor
25 can comment, if he can, as to orthopedically whether it was

1 taken closer to 8/7 or 9/18.

2 THE COURT: I'll ask you to get the other items --

3 MR. HARRIS: X-rays?

4 THE COURT: Item number three back here for a
5 quick moment.

6 MR. HARRIS: Sure.

7 (Whereupon, there is a brief pause in the
8 proceedings.)

9 MR. HARRIS: Your Honor, I also brought with me --

10 THE COURT: Hold on one second.

11 MR. HARRIS: -- Exhibit 2, because this was in the
12 same envelope as the x-rays, and it's the x-ray reports
13 that go with the x-rays. Presumably, one of these reports
14 corresponds to this particular x-ray.

15 MR. WILSON: My only concern, your Honor, is that
16 the law requires every x-ray to have an imprint on it that
17 indicates who is the person whose x-ray it is, even if it's
18 part of a hospital record.

19 My further concern is that there is only one
20 little identification on this particular x-ray, and it
21 says, "user name: Laureano Sosa." And it says "print
22 date," and there is some numbers, "point
23 two-zero-one-nine-eight-nine-four," and the time, "11:39."
24 I have -- do you want to look at it?

25 MR. HARRIS: Yeah. I just want to take issue --

Dr. Sherry - Defense - Cross

1 MR. WILSON: There is nothing on this document to
2 indicate that is this plaintiff's record, and the other
3 x-rays absolutely have the proper imprint on them --

4 MR. HARRIS: I just want to --

5 MR. WILSON: -- where they have the name of the
6 patient and the other information that is required,
7 ten-years old, male, leg.

8 The only one that plaintiff's Counsel is pointing
9 to, the ones I've seen so far that does not have the proper
10 required imprint, I don't see how it can go into evidence.

11 MR. HARRIS: Just a couple of things. First of
12 all, I take issue about what you said it has to have all
13 that information, even if it's part of a hospital record.

14 Second of all, I want to just point out that the
15 user name that you just pointed out, Lorcana whatever --

16 MR. WILSON: Laureano.

17 MR. HARRIS: Is the same user name that is on the
18 same exhibits that you introduced in evidence.

19 MR. WILSON: I agree.

20 MR. HARRIS: So it's from the same set produced by
21 the hospital.

22 MR. WILSON: Well --

23 MR. HARRIS: And let me look at --

24 MR. WILSON: I think from the same hospital.

25 THE COURT: From the same person who --

1 MR. WILSON: At the hospital.

2 THE COURT: -- is doing the exam.

3 MR. HARRIS: And the hospital said and provided
4 reports with this saying that these are records of Roy
5 Nelson, and the doctor can see, and the jury would be able
6 to see, that this is of the same leg. It's another view.

7 So being that it's part of a hospital record and
8 that we have an approximate time frame and x-ray reports
9 here --

10 MR. WILSON: How many films?

11 THE COURT: That is the second one.

12 MR. WILSON: There are two films that we have here
13 out of this group of one, two, three, four, five -- I don't
14 know how many the total are.

15 THE COURT: It's five.

16 MR. HARRIS: This is something so small.

17 THE COURT: Counselor, let's cut this short. To
18 the extent that those -- I think there are two of them that
19 -- hold on a second. This is one. What do you have there?

20 MR. HARRIS: This is 3E which shows --

21 THE COURT: Hold on a second. 3E also doesn't
22 have the name -- this should not have been marked, this 3E.

23 MR. HARRIS: That was marked as 3E.

24 THE COURT: That should not have been marked 3E.

25 MR. HARRIS: We marked it during the break.

1 THE COURT: None of these two have the name of the
2 patient, relevant to the information that is required by
3 the CPLR for them to be received in evidence, so --

4 MR. HARRIS: Your Honor, as they are part of a
5 hospital record --

6 THE COURT: 3E -- Mr. Harris, I appreciate they
7 are part of a hospital record, but the fact of the matter
8 is when we are talking about x-rays, they do need to have
9 that further endorsement with regard to the name of the
10 patient, relevant information, the date that the films were
11 taken, the location where they were taken, and absent that
12 information being endorsed on the film itself, irrespective
13 of the fact that they came in with other films that have
14 been properly endorsed does not mean that they could be
15 received in evidence.

16 MR. HARRIS: Your Honor, may I ask that based on
17 the best evidence rule, the fact --

18 THE COURT: No, this is not best evidence rule,
19 Mr. Harris, so to the extent that 3E was marked and
20 received in evidence, that should not have been received in
21 evidence.

22 MR. WILSON: I agree, your Honor.

23 MR. HARRIS: Well, it wasn't --

24 MR. WILSON: It wasn't produced to the jury.

25 MR. HARRIS: The court reporter marked it. It was

1 marked as an exhibit when the jury was out.

2 THE COURT: This is what you were proffering as --

3 MR. HARRIS: It's an additional view.

4 THE COURT: So this is marked for identification.

5 MR. WILSON: There is no damage in terms of this
6 jury. They haven't seen this.

7 THE COURT: So that was and is marked as ID.

8 Mr. Harris, you made your record, but I'm not going to
9 allow the jury to consider these two films which do not
10 have the required information on them.

11 MR. HARRIS: Which two?

12 THE COURT: Let's continue.

13 MR. HARRIS: Just for the record, I was offering
14 only this one, the one marked as Plaintiff's Exhibit 3E,
15 and I have my exception.

16 THE COURT: That does not have the required
17 information, so 3E was not received in evidence and is just
18 marked for identification.

19 (Whereupon, the following takes place in open
20 court in the presence of all parties and the sworn jurors
21 that are properly seated.)

22 THE COURT: The objection is sustained.

23 CROSS EXAMINATION

24 BY MR. HARRIS: (Continued.)

25 Q. Doctor, I show you what --

1 THE COURT: Wait one second.

2 Q. I show you what has been marked by your attorney as
3 Exhibit 3B. Do you see that?

4 A. Yes.

5 Q. Again, can you tell us what view is this of the --

6 A. This is a lateral view of the left tibia and fibula.

7 Q. This is the view taken on September 18, 2007, correct?

8 A. Correct.

9 Q. And this is the date, based upon the medical records,
10 that ultimately the cast was removed, correct?

11 A. Correct.

12 Q. And do you see what I'm pointing to here that the
13 length of it from here all the way down to here (indicating),
14 and another line coming from here all the way down to there
15 (indicating), do you see those two lines?

16 A. Yes.

17 THE COURT: I think you are striking the view of
18 the jurors, Mr. Harris.

19 MR. HARRIS: I'm sorry. I will try to point from
20 here.

21 Q. Can you tell us, are those two lines fracture lines?

22 A. They are fracture lines.

23 Q. You could see them clearly here on September 18th, two
24 of them together, right?

25 A. Yes, within the marrow of the bone.

1 Q. And you do not disagree with the pediatric radiologist
2 who opined that this child sustained a spiral fracture, do you?

3 A. That is correct, that is the nature of the fracture.

4 Q. Thank you.

5 THE COURT: Are you done with the films?

6 MR. HARRIS: Yes, we are.

7 Q. And you do not disagree, Doctor, with the fact that
8 there were two separate fracture lines there, correct?

9 A. No, there is only one, you know, fracture line, and it
10 is spiral in nature. You see it in, you know, in the two
11 separate planes. In the same plane you see it. That's what a
12 spiral fracture is.

13 Q. Those two long parallel lines, was that one line you --
14 was that one line or two lines?

15 A. It is one line in continuity.

16 Q. I don't want to put this back up, but I will explore
17 this further later in the case.

18 In your report of February 22nd, 2010, that would be
19 the second report you did in this case?

20 A. Yes.

21 Q. You indicated that the Jacobi Medical Center record of
22 August 7th, 2007, reportedly showed two nondisplaced linear
23 oblique fracture lines through the mid tibial shaft; do you
24 disagree with that?

25 A. No, but the next sentence says the fracture is spiral

1 in nature, and that is what a spiral fracture is.

2 Q. No disagreement about the spiral part. I'm asking,
3 would you agree that it was two oblique fracture?

4 A. There are two lines. They are spiral in nature.

5 THE COURT: I'm sorry. Is your question -- I'm
6 trying to understand. Is your question to the effect that
7 there are two fractures on two separate bones?

8 MR. HARRIS: Same bone, two separate fracture
9 lines. Okay. We will move on.

10 Q. Now, Doctor, in your report of February 22nd, 2010,
11 relating to your examination of February 3rd, 2010, you
12 mentioned that the patient had a healed two and a quarter inch
13 laceration on the left leg, correct?

14 A. Yes.

15 Q. Do you make any mention in here as to the nature of the
16 healing, other than that it's healed?

17 A. No.

18 Q. Okay. And you don't dispute the fact that the patient
19 had a keloid scar, do you?

20 A. I described that initially in the first report.

21 Q. Initially in your first report. Did that keloid scar
22 disappear completely?

23 A. No.

24 Q. Okay. Doctor, would you agree that this was an opened
25 -- an open fracture?

1 A. Yes.

2 Q. Okay. A compound is also another word?

3 A. Compound is not a word that is used now because it's
4 too often confused, and the word open is what is correct.

5 Q. All right. Would you agree that an open -- that a
6 fracture is generally considered more serious if it's open than
7 if it's closed?

8 A. Yes. That is the reason for admitting him to the
9 hospital.

10 Q. And would you agree that the prognosis for an open
11 fracture is generally worse than for a closed fracture?

12 A. In general, yes.

13 Q. And when you have an open fracture, in addition to the
14 fracture or the break, or breaks in the bone, is there also
15 damage to soft tissues in the area of the fracture?

16 A. There is always some damage to the soft tissue.

17 Q. And that would include not just the skin on the
18 outside, what every one would see, but soft tissues inside,
19 inside the body and beneath the surface of the skin, correct?

20 A. Except in the tibia, where if you palpate your own
21 tibia, you have the skin directly on top of the bone, or the
22 with a small subcutaneous layer.

23 THE COURT: You need to speak up.

24 A. It's very superficial.

25 Q. But there are soft tissues beneath the skin that are

1 damaged when you have an open fracture, correct?

2 A. Yes.

3 Q. Now, when soft tissues are damaged, do they result --
4 does that result, often times, in scarring or scar tissue?

5 A. That's how soft tissue heals, with scar tissue.

6 Q. And would you agree that scar tissue is not as elastic
7 as normal tissue; is that a fair statement?

8 A. In that area, there is no elasticity to the soft
9 tissue.

10 Q. Internally, beneath the surface of the skin, if -- let
11 me just ask it again.

12 Soft tissues, when they heal with scarring, the scar
13 tissue is not as elastic as tissue that is not scar tissue,
14 generally speaking; is that correct?

15 A. Generally speaking, yes.

16 Q. Okay. Can you tell us what I and D represents --

17 A. Incision and drainage.

18 Q. -- in the hospital record? Is that part of the
19 treatment to prevent infection?

20 A. All open wounds should be cleaned, yes.

21 Q. Did you note, in the hospital record -- in fact, let me
22 just help you.

23 Let me ask you if you happen to recall, without pulling
24 out the record, did you note in the hospital record where it
25 indicated, on August 9th of 2007, where it talked about the

Dr. Sherry - Defense -- Redirect

1 injury and where it said --

2 THE COURT: I'm sorry. What was the date?

3 August --

4 MR. HARRIS: August 9th of 2007.

5 Q. Where it said laceration, "Three by one centimeter on
6 left lateral lower leg, deep; tendons and bone visualized." Did
you note that?

indicates that medical practitioners

the bone, correct?

if this

x-ray and he
on the

1 yet, you are saying it's one fracture?

2 A. If you have a spiral fracture, it's never perfectly
3 across so that you are going to see, on the individual lines
4 the, you know, the nature of the spiral fracture.

5 This is being the spiral fracture (indicating), so you
6 are going to see the two lines. That's how you make a the
7 diagnosis of the spiral fracture.

8 Q. Because you see the two lines on the x-ray, does that
9 mean there are two separate fractures?

10 A. No.

11 Q. It's just one fracture?

12 A. Yes.

13 MR. WILSON: I have nothing else.

14 THE COURT: Mr. Harris, anything on that question?

15 RE CROSS EXAMINATION

16 BY MR. HARRIS:

17 Q. But each of the lines demonstrates that there is a
18 breakage of the bone where those lines exist, correct?

19 A. It's a fracture, yes.

20 MR. HARRIS: Thank you.

21 THE COURT: All right. Thank you very much,
22 Dr. Sherry. You may step down. Watch yourself stepping
23 down.

24 (Whereupon, the witness stepped down from the
25 witness stand.)