1 THE COURT: Please do.
2 MR. HARRIS: We call Dr. Drew Stein to the stand.
3 THE COURT: Please step up.
4 THE CLERK: Raise your right hand.
5 Do you swear or affirm the testimony you are
6 about to give will be the truth, the whole truth and
7 nothing but the truth?
8 THE WITNESS: Yes.
9 D R E W S T E I N, having been called as a witness by and on
10 behalf of the Plaintiff, having first been duly sworn, was
11 examined and testified as follows:
12 THE CLERK: Have a seat, please.
13 MR. HARRIS: Your Honor, before we begin, may we
14 just approach briefly?
15 THE COURT: Let's swear him in first.
16 THE CLERK: Please state your full name for the
17 record.
18 THE WITNESS: Drew Stein.
19 THE CLERK: Spell it.
20 THE WITNESS: D-R-E-W, S-T-E-I-N.
21 THE CLERK: And your address.
22 THE WITNESS: 36 West 44th Street, Suite 401,
23 New York, New York 10036.
24 THE COURT: Thank you. Gentlemen, step up.
25 Doctor, just speak a little bit louder. I want

1 everybody to hear you.

2 THE WITNESS: Sure.

3 THE COURT: We have some buzzing from that

4 projector.

5 (An off-the-record discussion was held)

6 THE COURT: Okay, doctor, again, keep your voice

7 up. When you are ready, please begin, Mr. Harris.

8 MR. HARRIS: Thank you, Judge.

9 Good afternoon, folks. I am glad to finally

10 begin today.

11 DIRECT EXAMINATION

12 BY MR. HARRIS:

13 Q. Doctor, are you licensed to practice medicine within

14 the State of New York?

15 A. Yes.

16 Q. When were you so licensed?

17 A. 1996.

18 Q. Give us a brief synopsis of your educational

19 background.

20 A. So I went to college at Boston University. And then I

21 went to medical school at University of Pittsburgh. And then I

22 went to do an internship after medical school, one year at

23 Mount Sinai Hospital for Medicine and then one year at NYU for

24 general surgery. And then an orthopedic residency at the

25 Hospital for Joint Diseases. And then a fellowship in sports

1 medicine and arthroscopic surgery at University of Pennsylvania
2 in Philadelphia.
3 Q. Now, what is a fellowship, doctor?
4 A. A fellowship in orthopedic surgery is a one year,
5 extra year, that you can super specialize in something. So
6 some people specialize in pediatric orthopedics, some people
7 specialize in tumor, bone tumors, some joint replacements and I
8 did sports.
9 Q. Now, doctor, when you talk about the residency at
10 Hospital for Joint Disease and the fellowship in Pennsylvania,
11 in Philadelphia, any of those programs did they offer you any
12 training with regard to the hand and the wrist?
13 A. Yes.
14 Q. Tell us about that.
15 A. So every orthopedic residency you train in all the
16 subspecialties. So you do rotations on hand and wrist,
17 rotations on tumor, rotations in joint replacements. And then
18 you can finish orthopedic residency and just work as a general
19 orthopedist if you want and do a little bit of everything or
20 you can do a extra year and try to super specialize your
21 practice to what you desire.
22 THE COURT: Can you tell the jury what is
23 orthopedics?
24 THE WITNESS: Orthopedic surgery is people that
25 operate on bones and muscles and joints.

1 Q. Now, what about the fellowship, in that extra year
2 beyond what was required to become a doctor in orthopedic
3 surgery, did the extra year also include anything to do with
4 the hand and the wrist?
5 A. Well, all fellowships are different but all of the
6 sports fellowships in the country are designed so that you help
7 take care of a professional team. So I was in Philadelphia. I
8 took care of the Philadelphia Eagles with my mentor. I had
9 three mentors that year and one of them also specialized in
10 sports hand. So he did sports surgery of the knee and shoulder
11 and ankle and he was also a hand specialist. So we did get a
12 fair amount of hand training as well.
13 Q. Doctor, do you have any teaching appointments
14 currently?
15 THE COURT: Maybe I missed it. Did you ascertain
16 if he is board certified in orthopedics?
17 MR. HARRIS: I haven't done it yet, but I can go
18 to that right now.
19 Q. Why don't we adopt the judge's question first.
20 Are you board certified?
21 A. Yes.
22 Q. In what specialty?
23 A. Orthopedic surgery.
24 Q. What does it mean to be board certified?
25 A. So after your residency you have to take a written

1 exam and then you start work. And after about a year to a year
2 and a half you have to take an oral exam and the oral exam is
3 based on some of the surgeries that you did. That's why you
4 have to wait that period of time when you are working because
5 you have to submit a list of all of your surgeries and then
6 they pick some and they quiz you on it.
7 Q. What is your current hospital affiliations?
8 A. NYU Hospital for Joint Diseases.
9 Q. What is NYU Hospital for Joint Diseases known for?
10 A. Orthopedic surgery. It's a subspecialty hospital. So
11 there are some hospitals that just specialize in one area of
12 medicine.
13 Q. In other words, could you go to Joint Disease for a
14 cardiac condition, or a brain tumor, or anything like that?
15 A. No.
16 Q. Only for the area within orthopedics itself?
17 A. Correct.
18 Q. Do you teach at the Hospital for Joint Disease?
19 A. Yes.
20 Q. Can you explain your teaching functions in addition to
21 your regular practice that you do there?
22 A. So I am in private practice, but I have a teaching
23 affiliation with them. So when I operate every week, I get a
24 resident assigned to me and I am supposed to teach him that
25 day's events in the operating room.

1 THE COURT: So you have an academic appointment?
2 THE WITNESS: Correct.
3 THE COURT: Is that for NYU Medical School?
4 THE WITNESS: Correct.
5 THE COURT: What is it, whatever the title is?
6 Just tell us the title.
7 THE WITNESS: It's associate clinical professor.
8 Q. You have that title as well?
9 A. Yes.
10 Q. How frequently are you in the operating room typically
11 in a given week, doctor?
12 A. One to two days a week.
13 Q. Are there certain days of the week that are pretty
14 much earmarked for surgery on your schedule?
15 A. Every Monday and then some Thursday afternoons.
16 MR. HARRIS: At this time, Your Honor, I would
17 ask that the witness be qualified as an expert in the field
18 of orthopedic surgery.
19 THE COURT: Any voir dire? Any objection?
20 Anything, Mr. Buchman?
21 MR. BUCHMAN: No, Your Honor.
22 THE COURT: I am going to deem Dr. Stein to be
23 expert in the field of orthopedic surgery. Members of the
24 jury, again, Dr. Stein is an expert because this is an area
25 of science where the average person doesn't necessarily

1 have knowledge. Dr. Stein can render opinions about the
2 facts of this case or any hypotheticals that any attorney
3 might pose to him.
4 Again, he is here to assist you. You can accept
5 everything he tells you as being the gospel truth or if you
6 believe the facts are different from what he is going to
7 tell you, you can reject everything or you can pick and
8 choose. I will go over it in greater detail with you when
9 I charge you on the law. Let's continue.
10 MR. HARRIS: Sure.
11 Q. Doctor, did you and I have an opportunity to meet
12 prior to you taking the stand to go over this case?
13 A. Yes.
14 Q. When did those meetings take place?
15 A. Yesterday late afternoon and this morning.
16 Q. Generally speaking, what did we do during those
17 meetings?
18 A. We reviewed the chart that I had reviewed previously
19 to make sure that I recall all of my report.
20 Q. When did you create your initial report in this case?
21 A. 11/7/2013.
22 Q. So that would be?
23 THE COURT: About ten months ago.
24 Q. Ten months ago?
25 A. Correct.

1 Q. I assume you have done many reports and treated many
2 patients since that time.
3 A. Correct.
4 Q. How were you retained by my office initially back in
5 2013?
6 A. Well, what happens is somebody calls my office and
7 schedules an appointment with my secretary.
8 Q. Do you know what the general assignment was for you in
9 connection with this case?
10 A. These are called narrative exams. So you examine the
11 patient and you get a history from the patient. And then you
12 review all of the records and come to some conclusion.
13 THE COURT: And this exam was conducted in your
14 office on West 44th Street?
15 THE WITNESS: Correct.
16 Q. Did you also have an opportunity back at that time to
17 review the relevant X ray films in connection with this case?
18 A. Yes.
19 Q. By the way, have you testified before in court?
20 A. Yes.
21 Q. Approximately, how many times have you been to court
22 to testify over the years?
23 A. About ten.
24 Q. Ten total?
25 A. Yes.

1 Q. Have you done -- first of all, have you ever been to
2 court to testify on behalf of any clients where I was the
3 lawyer or one of my associates was the attorney?
4 A. No.
5 Q. This is the first time?
6 A. Yes.
7 Q. Have you done other work at my office's request for
8 other clients in terms of the narrative, the examination of the
9 report part? Have you done that before?
10 A. Yes, yes.
11 Q. What do you charge for reviewing all of the records,
12 the X rays, examine the patient and preparing the report?
13 A. We charge $300 an hour, approximately.
14 Q. Now, the West 44th Street address, where the office
15 is, are there -- I'm sorry, I hear everything going on. It is
16 kind of like my training, you know.
17 How many employees do you have in your office?
18 A. Four.
19 Q. When you are here, do you have any other doctors
20 working in your suite besides you?
21 A. I have one person that rents a room from me during the
22 week when I am not there.
23 Q. But he is not or she is not a partner with you in any
24 way?
25 A. No.

1 Q. So the four employees when you are here in court who
2 is paying those four employees?
3 A. Me.
4 Q. Did any patients have to be rescheduled or anything
5 for this afternoon?
6 A. Yes.
7 Q. What is your fee for your time away from your office
8 while you are still paying everybody at your office and you are
9 here in court all day today?
10 A. $7,000.
11 Q. Now, let's just move forward for a moment to the wrist
12 itself. And if you can just tell us generally, doctor, what
13 are the bones that comprise the wrist?
14 A. So the wrist is made up of two major bones. It would
15 be a little easier to show them on the X ray when the X ray is
16 up.
17 THE COURT: Maybe if it's easier, do you want the
18 doctor to come down to the well?
19 MR. HARRIS: In a moment. We will get to the
20 X rays in a moment.
21 THE COURT: I guess he is going to project the
22 X rays on the films. Then you can move around.
23 A. They are made up of two major bones called the radius
24 and the ulna and those bones meet the little bones in the wrist
25 called the carpal bones. And that forms the wrist joint.

1 Q. What about the nerves that run in that area, what are
2 the general nerves that run in the area?
3 A. So there's three major nerves that control the hand,
4 the median nerve, the radial nerve and the ulnar nerve. And
5 they are all equally important. The median nerve is the one
6 that's in the front where the radius is and that's important
7 when you have a wrist fracture.
8 Q. Okay, do X rays which we are about to look at, do they
9 typically show the nerves?
10 A. X ray only show bones.
11 Q. So with regard to the median nerve, what's the
12 significance of that particular nerve branch?
13 A. The median nerve mostly is important for the thumb and
14 the thumb to -- it's called opposition. Which means that you
15 can bring your thumb and touch all of your fingers. That is
16 different from primates or apes because apes can't oppose their
17 thumb and that's why they pick things up with their fingers
18 like that (indicating). But humans can oppose the thumb
19 because the median nerve controls those muscles.
20 Q. Why is the ability -- as human beings why is our
21 ability to use the thumb in that way so important?
22 A. It allows us for fine dexterity to do very small
23 movements and to handle small instruments.
24 Q. Doctor, how did Ms. Floyd on September 15, 2011, how
25 did she present to the doctors in the emergency room? What

1 were their general findings initially when they saw her from
2 your review of the records?
3 A. She had severe pain in her left wrist and she was
4 unable to move it, her hand or her wrist.
5 Q. Doctor, I want you to assume that Ms. Floyd testified
6 that after this accident her hand, her left hand, was, in
7 essence, dangling off of her arm, why would that be medically
8 speaking?
9 A. When you break a bone, she broke her wrist, her
10 radius, and when you break a bone near a joint, if you move
11 that joint, you are actually going to move the fracture site
12 and that hurts a lot obviously. So people that break bones
13 don't want to move any part of that body around there, that
14 fracture site.
15 Q. Let's take a look at the emergency room films now,
16 doctor, if we could. If you could just come to the location
17 here of the screen.
18 THE COURT: Yes, please step down.
19 (At this time, the witness stepped off the
20 witness stand and approached the exhibit)
21 THE COURT: Let the record reflect that the
22 doctor is in the well and Mr. Harris using a projector is
23 projecting or about to project pictures of X rays.
24 The X rays, are they part of the subpoenaed
25 records or the medical evidence or are these new pieces of

1 evidence?

2 MR. HARRIS: Well, they are on a separate CD.

3 They are part of the records, but I don't know if we

4 actually ever marked the CD formally. I don't know.

5 THE COURT: Mr. Buchman, what do you think we

6 should do?

7 MR. BUCHMAN: I will have no objection to it. If

8 you want for expedience, let's wait until we are done --

9 THE COURT: Okay, we will mark it appropriately

10 for evidence in case the jury wants to look at it later on

11 while they deliberate. I take it, this is inscribed with

12 the date and Ms. Floyd's name and so forth, am I correct?

13 Under 4532 A, that's inscribed properly with Ms. Floyd's

14 name, date and other pedigree information?

15 MR. HARRIS: Doctor, is that correct?

16 THE WITNESS: Yes.

17 THE COURT: What's the date again? I can't quite

18 see it from here. This was taken where, at the hospital

19 when she presented to them with the injury?

20 THE WITNESS: This is from --

21 THE COURT: What's the date?

22 THE WITNESS: 9/21/11.

23 THE COURT: So that's about six days after?

24 THE WITNESS: Six days after.

25 Q. So this would be taken on a subsequent clinic visit,

1 correct?

2 A. Correct.

3 Q. Let's use this film while it's up to show us, doctor.

4 A. So this is what the injury is about. This is what we

5 are talking about. This is one major bone called the radius.

6 This is the other major bone called the ulna. And all of these

7 little bones here are the carpal bones. This is the wrist

8 joint right here where the carpal bones meet the radius and the

9 ulna (indicating).

10 Q. Doctor, you were just pointing in the joint there.

11 You see how it's kind of a little fuzzy in that area?

12 A. Yes.

13 Q. Why would that be?

14 A. So the spaces between the bones are actually not

15 spaces. That's cartilage. And cartilage doesn't show up on

16 X rays.

17 THE COURT: Tell the jury what cartilage is as

18 opposed to bone.

19 THE WITNESS: Cartilage is if you have eaten

20 chicken, the white shiny stuff on the end of the chicken

21 bone, that's articular cartilage. That is what allows the

22 bones to glide without pain. Without that you will have

23 bone on bone and that's bone on bone arthritis and that's

24 what gives people pain. The cartilage protects the end of

25 the bone.

1 Q. Does this film demonstrate any issues with the
2 cartilage at that location?
3 A. No.
4 Q. What about the -- show us where the fracture itself
5 is.
6 A. You can see the nice long intact bone here. This bone
7 is nice and all of a sudden you see this crack right here. So
8 this is one big piece here and then this is the other piece
9 here. So it's a distal radius extra articular fracture which
10 means the crack didn't go into the joint (indicating).
11 Q. Let's go to the next film, doctor.
12 THE COURT: We are having some technical
13 difficulty. Do you want to help him operate the projector,
14 Mr. Wagner?
15 (Pause in the proceedings)
16 THE COURT: Okay, let's continue.
17 A. So when we take X rays, we take different views.
18 Straight on views, side views and then it's called oblique or
19 angle views. So that we can see, we can kind of imagine what
20 the fracture looks like in three dimensions instead of just a
21 flat screen, one dimension. So this is just another view, an
22 oblique viewing showing the fracture.
23 Q. Is that after the reduction was performed?
24 A. This is after the reduction was performed.
25 Q. How do we know that?

1 A. I only know that because I know what the fracture
2 looked like. It was much more displaced on other films.
3 Q. Let's try to find the other films first then, so we
4 can see.
5 A. Here's a side view of that same fracture where you can
6 see that little crack. See this white should lineup with that
7 white. You see how it's not lined up (indicating)?
8 Q. Again, that's after the reduction?
9 A. Yes. So here you can see this fracture is much more
10 displaced, when you look at this line to this line, how much
11 space there is (indicating).
12 Q. What's the date of that film you are pointing to,
13 doctor?
14 A. This is -- I can't read it. It's too blurry.
15 MR. BUCHMAN: I can't either.
16 A. Here's another shot. You can see how this line
17 doesn't lineup with this line here (indicating).
18 Q. Doctor, let's assume for the moment -- is it your
19 opinion, doctor, from the film we are looking at that this is
20 prereduction?
21 A. No. Sometimes what happens is that they have to
22 change the cast or they get an X ray after it's been casted and
23 what happens is you lose the reduction. The cast can't hold
24 the reduction and that's an indication for an operation. So if
25 the cast can hold you, then hopefully your body will just heal.

1 And then we take X rays every week to make sure the cast is
2 holding you because, don't forget, when you are in a cast what
3 happens is your muscles will shrink. It's called atrophy. And
4 then you get more wiggle room in the cast. Any wiggle room
5 will allow that fracture to move out of place. So we
6 constantly have to keep checking it until the fracture heals.
7 So this fracture has gotten more displaced.
8 Q. Now, just to redefine the word "reduction", doctor,
9 tell us again what is a reduction exactly.
10 A. A reduction means that the fracture has been perfectly
11 aligned so that your body can heal as the way it was.
12 Q. Well, if Ms. Floyd told the jury the other day that at
13 one point Dr. Pay had manually tried to set the wrist and then
14 continued with putting weights attached to her fingers, what
15 would that be for?
16 A. That means that it was a difficult reduction,
17 difficult to realign. And there are certain indicators that we
18 have in our minds that tell us which patients are going to more
19 likely go on to lose their reduction and need surgery and which
20 patients may not. The harder the reduction, the more likely it
21 is you may need an operation.
22 Q. So what kind of operation was indicated here for this
23 patient, Ms. Floyd.
24 A. So when the fracture is not aligned like you would
25 like it, you will do what's called an open reduction, internal

1 fixation. So instead of reducing it from the outside with your
2 hands, you open the skin and you actually touch the bones and
3 realign them and then you fix them there with plates and screws
4 so they can't move anymore.
5 Q. Can you pull up one of the films, doctor, to show the
6 plate and screws you are referring to?
7 A. So there you can see the straight on view with a metal
8 plate and seven screws realigning the fracture.
9 Q. Now, how long does a procedure like that take?
10 A. That can take anywhere from a half hour to an hour.
11 Q. Is the patient awake during that procedure?
12 A. No. Sometimes they are. It depends on the hospital
13 and the anesthesiologist.
14 Q. How do you put the screws in to the bone like that?
15 A. You use a drill, a typical drill that you get in
16 Sears. It's the same kind of thing and you put a drill hole in
17 bone like you would put a drill into a wall.
18 Q. Like a Black & Decker drill?
19 A. Yes.
20 Q. Is that something a patient typically wants to be
21 awake for, listening to screws going through the bone?
22 A. No.
23 THE COURT: Maybe I am jumping ahead but for the
24 benefit of the jury, when the procedure was performed on
25 Ms. Floyd, do the records show whether it was a general or

1 local in terms of the anesthesia?

2 THE WITNESS: I don't recall right now but

3 usually we do both because when you get the regional or

4 where they kind of just numb your whole arm, it's good

5 because your pain control last the whole day when you go

6 home.

7 Q. Now, doctor, did there come a point -- well, after

8 this surgery was done, can you explain from your review of the

9 records her general course of treatment, physical therapy,

10 things of that nature?

11 A. So usually you get splinted in the operating room

12 which is what she had. And then everyone has a different

13 postoperative protocol as to how long they get splinted and

14 when you start therapy. But eventually the splint comes off

15 after a few weeks and then you start therapy. But even while

16 the splint is on you should be doing therapy of your hand and

17 your fingers and not your wrist so that your fingers and hand

18 don't get too restricted and tight.

19 Q. If Ms. Floyd testified before the jury that she had

20 gone for physical therapy including a paraffin with hot wax and

21 using sand and having to pick up small objects like pennies,

22 why would somebody go through that type of therapy after a

23 surgery like this?

24 A. Because for two reasons. One is when you are

25 immobilized for that long, the muscles get very weak because

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1 you are not using them. So you have to restrengthen the
2 muscles. The other is when you do the surgery you have to cut
3 through certain muscles and push away certain tendons and that
4 causes damage and you need to rehabilitate those muscles.
5 Q. Now, at some point, doctor, there was a second surgery
6 to take the hardware out?
7 A. Correct.
8 Q. Tell us why that was done here.
9 A. So the reason to take the hardware out in people --
10 there's many different reasons but in her case it was because
11 the hardware was prominent which means it's sticking out a
12 little bit too much the way the surgeon would like it. And
13 what it does, then it rubs on certain things in the wrist that
14 can cause pain and other problems. So after the fracture is
15 healed usually we wait about nine months and then we will take
16 hardware out.
17 Q. Well, if we go to the second surgery for a second,
18 doctor, do they enter through the same site as the original one
19 or somewhere else?
20 A. So that's the downside about having the hardware
21 removed anywhere in the body is that obviously you go through
22 the same area and now there's scar tissue there. So you are at
23 increased risk of damaging something going through scar tissue
24 instead of normal healthy tissue.
25 Q. Why is there a risk of damaging something when you go

1 through scar tissue?

2 A. Because there's what's called adhesions. Everything

3 gets sticky to each other. Nothing glides normally anymore

4 after surgery. When things are sticking to each other and you

5 start dissecting through something, you can damage something

6 that's stuck to something else.

7 Q. After the second surgery were there any films here

8 that were after the second surgery?

9 A. I don't think so, no. Yes, this is one. You can

10 actually see the holes from the screws here.

11 Q. What's the significance of that picture, doctor?

12 A. Well, we always tell people after we remove hardware

13 to not do anything, any contact sports or any weight bearing

14 activities because those little holes are little stress risers

15 that could fracture. So you want to wait until those heal in

16 and that takes about two months.

17 Q. Any other plates here or X rays that you want to

18 review other than what we have already done before we sit down?

19 A. The only thing that we could show you real quick is

20 that this plate, this is from a side view, and the median nerve

21 runs right over that plate.

22 Q. Why is that significant, doctor, the median nerve runs

23 over the plate?

24 A. Well, if the doctor in his operative report said he

25 was removing the plate because it was prominent, then that

1 would worry me that it may have been also not only affecting
2 the tendons but also the nerve in the wrist.
3 Q. Thank you. I am going to ask that you retake the
4 stand.
5 (At this time, the witness resumed the witness
6 stand)
7 Q. Now, you have you reviewed the EMG studies in this
8 case, doctor?
9 A. Yes.
10 Q. The jury saw the other day the blowup of the EMG
11 report but if you can just explain the test generally and what
12 the purpose of the EMG is for.
13 A. EMG's are done by usually neurologists and it's done
14 with a little almost like acupuncture needles to measure the
15 traffic report of the nerve, where it slowed down or where it's
16 abnormal.
17 Q. And what were the findings here?
18 A. The findings were that she had a mild Carpal Tunnel
19 Syndrome.
20 Q. When they say in the impression of the report, doctor,
21 "left median nerve neuropathy", what does the term "neuropathy"
22 mean?
23 A. The nerve is diseased.
24 Q. Is that a nerve damage?
25 A. Nerve damage.

1 Q. What is the significance of having a nerve damage in
2 your wrist like that?
3 A. Well, like we said before, the median nerve is
4 important because it controls the thumb and patients that have
5 neuropathy or Carpal Tunnel Syndrome as it's called have
6 symptoms of numbness and tingling, or pain, or weakness even of
7 their hand.
8 Q. So what do you do for that? What can you do for that?
9 A. You can treat it with physical therapy. You can treat
10 it with a steroid injection. You can treat it with splinting
11 so that the wrist doesn't move so that the nerve can get less
12 irritated or you can do a surgery to open the tunnel for the
13 nerve. The nerve runs in a little tunnel and if you open the
14 tunnel, the nerve has more room to breathe and glide and that
15 usually will take the pressure off the nerve.
16 Q. Now, when you take the pressure off of the nerve,
17 doctor, does that mean that the nerve is going to heal back to
18 the way it was before?
19 A. Sometimes. The nerve is made up -- it's almost like
20 electric wire. It has the rubber on the outside called the
21 myelin and little copper wires on the inside are axons. It
22 depends how much of the nerve has been damaged and how long
23 it's been damaged.
24 Q. Well, doctor, if the EMG report in this case was
25 positive in April of 2012, we are now about two and a half

1 years past that point, do you have an opinion within a
2 reasonable degree of medical certainty as to whether following
3 a Carpal Tunnel procedure in this case for Ms. Floyd whether
4 that will allow the nerve to regenerate, so to speak? Do you
5 have an opinion?
6 A. Yes.
7 Q. What is your opinion?
8 A. That her symptoms are likely permanent at this point.
9 Q. Doctor, let's turn for a moment to your own
10 examination and findings. Can you tell us the examination that
11 you did physically of her, how long it took and what your
12 impressions were?
13 A. The exam takes about 20 minutes or so. We looked at
14 basic things. We looked at the incision. We looked at the
15 motion of the wrist, the strength of the hand, the sensation
16 and then we looked at what's called special tests. Special
17 tests are designed to elicit certain problems in every joint
18 based on which test you did.
19 Q. So what tests did you perform that day?
20 A. So for the wrist there's a bunch of special tests you
21 can do to look for certain things and some of the more common
22 ones are what's called the Tinel's test. The Tinel's test is
23 when you just tap on that nerve. And if the nerve is
24 irritated, it is going to send like electric shock into certain
25 fingers. Almost like a funny bone when you hit your elbow and

1 you get that funny bone, that's when the nerve is irritated,
2 that's what you feel.
3 Q. Did you perform the Tinel's test on Ms. Floyd on that
4 day?
5 A. Yes.
6 Q. What were the results?
7 A. It was positive.
8 Q. What other tests did you perform that day, grip
9 strength, anything like that?
10 A. So there's other tests also designed to look at the
11 nerve and one of them is called the compression test where you
12 actually just take your thumb and push really hard on the
13 tunnel and if the nerve is irritated, they will start to get
14 worsening symptoms of the nerve.
15 Q. Well, these are subjective tests, correct?
16 A. These are subjective tests, correct.
17 Q. In other words, you are relying on the patient to
18 report the answers in order for to you formulate your own
19 diagnosis there, correct?
20 A. Correct.
21 Q. What about the EMG study, is that subjective or
22 objective?
23 A. That's an objective test.
24 Q. In other words, it's not up to the patient to report
25 what they are feeling with an EMG test?

1 A. Correct.

2 Q. It's just up to the machine to tell us what the

3 results are, correct?

4 A. Right. In other words, a patient can't fake an EMG.

5 Q. By the way, when you examined Ms. Floyd, did you have

6 any impression at all that she was faking her symptomatology at

7 all?

8 A. No.

9 Q. Were your findings for the compression test and the

10 Tinel's test consistent with the EMG findings from back in

11 April of 2012?

12 A. No.

13 Q. How was it not consistent?

14 A. I would have guessed that it would be worse now. If

15 you did an EMG now, whatever it is, two years later, based on

16 her symptoms the EMG might be worse.

17 Q. If you do an EMG study today, your testimony is you

18 would expect it would have to be --

19 A. Moderate to severe.

20 Q. Why is that?

21 A. Because assuming she is telling the truth her symptoms

22 when we do their various tests were very severe.

23 Q. Now, you mentioned the scar and the jury saw her scar

24 the other day. What is the medical significance of her

25 particular scar; in other words, as it affects the median

1 nerve?

2 A. Well, her scar has what's called it's either a

3 hypertrophic or keloid which means certain people heal very

4 thick, mostly African Americans. And you see that when the

5 fraternity guys brand each other and they get those thick

6 almost tattoo like healing and it just shows that you are more

7 prone to lay down scar tissue. Like we talked about before,

8 that's why second surgeries are little more risky for anatomic

9 structure. So if you are more prone to lay down scar tissue in

10 that little place that you saw in front of the plate, then you

11 might be more at risk to compress whatever structures are

12 around there. The median nerve is one of them.

13 Q. Doctor, do you have an opinion within a reasonable

14 degree of medical certainty as to whether the injuries that

15 were causally related by this accident to Ms. Floyd including

16 but not limited to the fracture, the displaced fracture, the

17 two surgeries that she endured and the median nerve injury that

18 you herein described are permanent in nature?

19 A. Yes.

20 Q. What is your opinion, doctor?

21 A. That they are permanent.

22 Q. Why do you have that opinion?

23 A. Because it's been since 2011 of her injury, her last

24 surgery was 2012. It's been two years. And the likelihood is

25 after two years where you are is where you are. You are not

1 going to get much better after that.

2 Q. Do you have an opinion, doctor, as to whether

3 Ms. Floyd will develop any arthritis in the future?

4 A. Yes.

5 Q. What is your opinion?

6 A. She will develop arthritis in the future.

7 Q. Why is that when the cartilage didn't show any initial

8 damage on the X ray?

9 A. So even fractures that don't go through the joint can

10 cause what's called post traumatic arthritis which means after

11 the trauma you get arthritis and that's because of the force

12 behind the energy that it took to break that bone actually

13 damages the cartilage at the same time microscopically and it

14 takes years for that cartilage to sometimes be affected and die

15 and become arthritic.

16 Q. Well, doctor, she is 64 years old now. What do you

17 expect the condition of that cartilage to be in ten years from

18 now when she is 74 years old?

19 A. Worse.

20 Q. Is there anything that we can do in medicine today

21 that would cause that cartilage to regenerate?

22 A. There's lots of experimental things but nothing that's

23 standard of care given.

24 Q. Now, I want you to assume that Ms. Floyd has testified

25 that she still feels swollen around her left wrist or with a

1 tightness that feels like a handcuff, do you know what would
2 cause that?
3 A. If could be from one of two things or a combination of
4 things. One of them is that she is still very stiff. So that
5 could be the reason. The other is with nerve problems or nerve
6 pain, everyone describes them a little differently. So one
7 person can feel shooting pains, another person can feel
8 numbness and she might just feel a tightness right now.
9 Q. I want you to further assume, doctor, that she has
10 limited mobility. By the way, let me just withdraw that for a
11 moment and ask you, what were your range of motion findings in
12 your examination for her supination and pronation?
13 A. Her pronation was normal, 80 degrees. Her supination
14 was 60 degrees where normal is 80. Wrist extension which means
15 you bring your wrist up was 30 degrees where normal is 70. And
16 flexion where you bring your wrist down was 40 degrees where
17 normal is 80.
18 Q. With regard to the flexion and extension you said?
19 A. Extension.
20 Q. Flexion and extension, why are those limitations in
21 motion significant to the operation of somebody's hand and
22 wrist?
23 A. Well, if you can't position your wrist certain ways,
24 then it affects your grip strength. That's why instruments and
25 sporting equipment is designed a certain way, they give you

1 optimal grip strength. If you can't put your wrist in that
2 position, you are going to be weak.
3 Q. Are you able to quantify for us in terms of a
4 percentage what her permanent loss of use of motion is with
5 regard to her wrist when you put together all of the positive
6 findings that you found on that particular exam?
7 A. I would say at least 60 percent.
8 Q. And is it your opinion, doctor, that that loss of use
9 of 60 percent of her wrist mobility is permanent in nature?
10 A. Yes.
11 Q. I want you to assume that she still has
12 hypersensitivity of the thumb with tingling in the fingertips
13 as she described to the jury, what would that be from?
14 A. That's from the median neuropathy or the Carpal
15 Tunnel.
16 Q. What is your prognosis for her with regard to her
17 limited mobility and the tingling and numbness that she still
18 suffers from?
19 A. It's poor.
20 Q. Why is that, doctor?
21 A. The motion, there's really not anything you can do
22 about it at this point. So that is what it is. The only thing
23 you can try to do for the median nerve is do a Carpal Tunnel
24 release like we talked about. But even at this point after two
25 years the likelihood that it will change is very, very small,

1 if anything.

2 Q. Would you recommend that the -- I think in your report

3 I think you had mentioned something about a Carpal Tunnel

4 surgery. Is that something you would still recommend to try

5 for this patient or not?

6 A. Yeah. I mean, it's a small procedure. It takes most

7 hand surgeons 15 minutes to do. So the risk of it is low

8 compared to living with this and it's certainly worth a try if

9 she wanted to have another surgery.

10 Q. What is the cost of doing the Carpal Tunnel surgery on

11 average here in New York Hospital with the anesthesia and all

12 of the other billing that we see?

13 A. I would say $50,000.

14 Q. What about the physical therapy, would physical

15 therapy be required following such a surgery?

16 A. Yes.

17 Q. What typically would that cost following a Carpal

18 Tunnel release?

19 A. It depends how long she did it for obviously but if

20 she did it for a year, then it would be $10,000.

21 Q. Are there any other future treatments that you can

22 recommend or imagine for this patient at the current time?

23 A. I mean, if she develops severe post traumatic

24 arthritis down the road, then there are much bigger surgeries

25 you would have to do to the wrist to try to help that. That

1 would be things called like fusions.

2 MR. BUCHMAN: Objection, Your Honor.

3 THE COURT: What's the objection?

4 MR. BUCHMAN: It's not in his report. There is

5 no hint of this.

6 THE COURT: It's not in the report?

7 MR. BUCHMAN: No.

8 MR. HARRIS: Natural sequela, Your Honor, of the

9 injuries.

10 THE COURT: You are overruled. Let's move on.

11 MR. BUCHMAN: Note my exception.

12 THE COURT: Duly noted.

13 Q. Doctor, earlier you said it was your opinion that she

14 would develop arthritis in the future; is that correct?

15 A. Yes.

16 Q. How bad would the arthritis have to get to warrant a

17 wrist fusion?

18 A. She would have to be in severe pain constantly.

19 Q. What does a wrist fusion entail?

20 A. They actually put that plate that we saw. Instead of

21 the radius, it would cross the joint into the carpal bone so

22 that the wrist can't move anymore. It stays in one position.

23 Q. Why would you want the wrist not to be able to move at

24 all anymore, why would you want that in the case of arthritis?

25 A. When you have arthritis and you move the joint, it

1 hurts. So you are basically not moving the joint any more. It
2 won't hurt.
3 Q. What is the cost currently for wrist fusion? I
4 understand ten years from now it will be different than it is
5 today. What it is today?
6 MR. BUCHMAN: Objection.
7 THE COURT: What is the objection?
8 MR. BUCHMAN: Same objection.
9 THE COURT: Overruled. You can answer it,
10 doctor.
11 A. That would be more. It's a much bigger surgery. It
12 could take two hours instead of 15 minutes. So I would say
13 probably you are looking at $80,000.
14 Q. Doctor, I want you to further assume that Ms. Floyd
15 testified that she still has difficulty with small mechanical
16 movements with her hand including doing her hair, weight
17 bearing on her cane; in other words, she can't use her left
18 hand anymore for right knee pain -- let me stop for a second.
19 Would you typically if you had a right knee injury,
20 what hand would you put the cane in?
21 A. The left hand.
22 Q. She has testified that she can't use the cane in her
23 left hand anymore. She has to use the right hand and that's
24 caused her additional problems with her back and general
25 discomfort. In addition, that she has difficulty grasping

1 small objects as well as continued pain and tightness, numbness
2 and tingling in the hand, in the wrist, first of all, would
3 that be consistent, those complaints, with your diagnosis here?
4 A. Yes.
5 Q. What does the future hold for her, generally speaking,
6 in terms of the way she operates her daily life? What do you
7 see for her over the next five to 15 or 20 years?
8 A. Well, if the Carpal Tunnel Syndrome gets worse or if
9 the arthritis gets worse, she will deteriorate.
10 Q. Do you have an opinion, doctor, within a reasonable
11 degree of medical certainty that those conditions would become
12 worse over time?
13 A. Yes.
14 Q. What is your opinion?
15 A. That they likely will.
16 Q. And, doctor, is this her dominant hand, the left hand?
17 A. Her left hand I think was her dominant hand and now
18 she is more right hand dominant is what I believe to be the
19 case.
20 Q. Why do you believe that, doctor?
21 A. I believe I reviewed that in her deposition because
22 she told me she was right hand dominant but then when I read
23 her deposition she had said she was left hand dominant but now
24 she does most things with her right hand because she can't use
25 her left hand as much anymore.

1 Q. But she also indicated that she writes, hand-writes,
2 with her right hand?
3 A. Correct.
4 MR. HARRIS: No further questions.
5 THE COURT: Thank you.
6 MR. BUCHMAN: May I have two minutes?
7 THE COURT: I will ask the officer to escort the
8 jury to the jury room. We will take a short break while
9 you organize your notes. Let's take a short break. The
10 officer has stepped out. We will escort the jury out of
11 the room.
12 THE CLERK: All rise. Jury exiting.
13 (At this time, the jury left the courtroom)
14 THE COURT: Let the record reflect that the
15 jurors and alternates have now left the room and we will
16 take a very short break.
17 MR. BUCHMAN: Your Honor, can we ask the doctor
18 if he has any of his own records?
19 THE COURT: Do you have any notes, doctor, from
20 your examination?
21 THE WITNESS: I just have my report.
22 MR. BUCHMAN: The records you have are just the
23 treating records?
24 THE WITNESS: These are the records of treatment.
25 These are in evidence, right?

1 MR. HARRIS: Copies of those are, yes.
2 MR. BUCHMAN: I will go to the men's room and I
3 will be right back.
4 (RECESS TAKEN)
5 THE COURT: Can we get the jury?
6 MR. BUCHMAN: Yes.
7 MR. HARRIS: Judge, are you going to require or
8 not require a charge conference before Tuesday morning?
9 THE COURT: Well, assuming we can finish with the
10 doctor on time today and I can deal appropriately with any
11 motions anybody is going to make, I would like to do it
12 today. This way you know what we are going to have on
13 Tuesday, so you can prepare. It shouldn't take that long.
14 MR. HARRIS: I would think it would take three to
15 five minutes.
16 THE COURT: Exactly. I don't think there's any
17 dispute about it.
18 MR. HARRIS: For the record, Judge, when we
19 approached the bench earlier, it was agreed that I did not
20 have to elicit a causation opinion question as that is not
21 an issue for this portion of the trial.
22 MR. BUCHMAN: It's not an issue. My doctor was
23 not questioned on the issue of causation.
24 THE COURT: Not an issue.
25 COURT OFFICER: All rise. Jury entering.

1 (At this time, the jury entered the courtroom)
2 THE COURT: Okay, everybody, please be seated.
3 Mr. Buchman, you may begin your cross.
4 MR. BUCHMAN: Thank you, Your Honor.
5 CROSS EXAMINATION
6 BY MR. BUCHMAN:
7 Q. Doctor, I want to start with one of the last things
8 that were said. When you wrote your report back in November of
9 2013, you reviewed a bunch of documents, correct?
10 A. Correct.
11 Q. One of them was the deposition report or the
12 deposition?
13 A. Correct.
14 Q. You just told us here earlier that you realized that
15 when reading the deposition Ms. Floyd said she was left hand
16 dominant, correct?
17 A. Correct.
18 Q. But you put in your report right hand dominant,
19 correct?
20 A. Correct.
21 Q. So that's just a typo error, or a miscommunication, or
22 something else?
23 A. No, I wasn't sure because she said she wrote
24 right-handed. So that's why I left it right-handed.
25 Q. So you didn't write it here that, "She used to be

1 left-handed but now she is right-hand dominant because that's
2 what she told me", or anything like that?
3 A. Correct.
4 Q. Well, that would be something that would be
5 significant especially in a case, right? Because isn't it more
6 pronounced or more significant if her dominant hand is the one
7 that's injured?
8 A. Yes.
9 Q. But you still wrote "right"?
10 A. Correct.
11 Q. Now, you interestingly said that in the beginning --
12 let's go all the way back to the beginning -- you have done
13 rotations on wrists and hands but when you do your fellowship,
14 that's when you become more specialize or super specialized in
15 something, correct?
16 A. Correct.
17 Q. So you are a specialist or you are in sports medicine,
18 correct?
19 A. Correct.
20 Q. And if we went on your website, we would read what
21 that means?
22 A. Correct.
23 Q. It's injuries and surgeries to the shoulder and
24 different types of injury and surgeries to the shoulder, and
25 the hip, and the knee, and the ankle, correct?

1 A. Correct.
2 Q. And if we went on your website, we would even see a
3 picture of somebody which shows all the different parts of the
4 body that you do surgeries on, correct?
5 A. Correct.
6 Q. There is no mention on the website of hands and
7 wrists, is that correct?
8 A. Correct. I no longer do hand and wrist surgeries.
9 Q. And there is no mention of wrist or hand surgeries
10 anywhere on your website, correct?
11 A. I no longer do it.
12 Q. When is the last time you did one?
13 A. I did them when I first started practice. We have to
14 take call for five years. So from 2001 to like 2007,
15 approximately, we had to take call at the hospital which means
16 whatever trauma call comes into the emergency room you are
17 responsible for. So I did them back then but not since.
18 Q. And so if somebody did a fellowship in hand surgery,
19 they would be specialized or super specialized in hand surgery,
20 correct?
21 A. Correct.
22 Q. And if you were go to ask somebody --
23 Let's talk about shoulders. You do shoulder surgeries
24 but sometimes a patient will go for a second opinion?
25 A. Correct.

1 Q. They would go to an expert in the field. And you can
2 send them across town over to Columbia, to Lou Bigliani over at
3 Columbia, a world renowned shoulder specialist, correct?
4 A. Correct.
5 Q. You wouldn't send them to Lou Bigliani for a wrist,
6 would you?
7 A. No.
8 Q. Now, if you were going to get a second opinion
9 regarding a wrist, would you go to somebody who is a shoulder
10 specialist, a sports medicine specialist or someone who is a
11 hand and wrist surgeon?
12 A. For a second opinion in treatment I would send them to
13 a hand and wrist surgeon.
14 Q. So a hand and wrist surgeon is more specialized and
15 has more training in the wrist, correct?
16 A. Correct.
17 Q. Now, Dr. Nathan was here on Wednesday and he is a hand
18 surgeon. Do you know that?
19 A. No.
20 Q. Let's assume for this question that Dr. Nathan is a
21 hand surgeon, he did his fellowship in hand surgery and he is a
22 hand surgeon, would he be more qualified as a hand surgeon to
23 do an examination of a wrist?
24 A. No.
25 Q. He is not? If you were going to go for a second

1 opinion or a consult on a wrist, would you rather go to you, a
2 sports medicine expert, or a wrist surgeon?
3 A. A second opinion for treatment, I would rather go to a
4 wrist surgeon.
5 Q. But you won't give me that a wrist surgeon is more
6 qualified to examine and give an opinion on Ms. Floyd's wrist,
7 a sports medicine orthopedist is as qualified?
8 MR. HARRIS: Objection to the form.
9 THE COURT: I will sustain the objection. Can
10 you rephrase that?
11 MR. BUCHMAN: Sure.
12 Q. Who do you think is more qualified to give an opinion
13 regarding Ms. Floyd's wrist, a sports medicine orthopedist
14 expert or a hand wrist surgeon?
15 A. For this particular case, this is a basic distal
16 radius fracture. It's something that you learn in the first
17 year of residency. So I would say in either case it would be
18 acceptable. There are certain hand things that are very, very
19 complicated that I would probably say I wouldn't feel
20 comfortable with. This is not one of them.
21 Q. So you feel you are as qualified as a hand and wrist
22 surgeon?
23 A. For this particular case?
24 Q. Convenient for this case but if it was something
25 different, maybe not?

1 A. Correct.

2 MR. HARRIS: Convenient? Objection.

3 THE COURT: What's the objection?

4 MR. HARRIS: I will withdraw it.

5 THE COURT: Okay, let's continue.

6 Q. Have you done a wrist fusion surgery in the last seven

7 years?

8 A. No.

9 Q. Have you done a wrist fusion surgery in the last ten

10 years?

11 A. No.

12 Q. Have you ever billed for a wrist fusion surgery?

13 A. No.

14 Q. So your $80,000 estimate is based on somebody else's

15 wrist surgery or just something you're kind of thinking about?

16 A. It's based on typical surgeries that I would do that

17 are comparable.

18 Q. Have you ever looked up the charge for a wrist fusion

19 surgery at your hospital?

20 A. Charges at the hospital are similar based on certain

21 surgeries. Anesthesia is the same no matter --

22 MR. BUCHMAN: Objection, Your Honor --

23 THE COURT: I will sustain the objection. You

24 asked him a question. If he believes it's not easily

25 answered yes or no, whatever, he can explain. So that's

1 what he is doing. He is explaining it.

2 Go ahead, doctor.

3 MR. BUCHMAN: I take an exception.

4 THE COURT: Answer the question.

5 MR. HARRIS: Can he finish the answer?

6 THE COURT: Yes.

7 THE WITNESS: Anesthesia costs are comparable on

8 different surgeries. The facility fee which means what the

9 hospital charges is comparable based on certain surgeries.

10 And then it's based on the surgeon's fee and the surgeon's

11 fee can be very variable based on which hospital you go to,

12 which doctor you see. If they take insurance, if they

13 don't take insurance.

14 Q. Did you speak to any hand surgeons before coming here

15 today and asked them what they charge for a wrist fusion?

16 A. No.

17 Q. Did you speak to any hand surgeon and asked them what

18 they charge for a Carpal Tunnel release?

19 A. Well, I know that.

20 Q. Okay, how about this, just the fact that somebody does

21 IME's or independent medical runs, does that make them

22 unbelievable?

23 A. No.

24 Q. In fact, you do IME's for defendants, don't you?

25 A. Yes.

1 Q. And you do No-Fault exams for auto accidents, correct?
2 A. Not anymore.
3 Q. But you used to?
4 A. I used to.
5 Q. And just the fact that you did those doesn't make you
6 more or less credible?
7 A. Correct.
8 Q. Because when a doctor comes they should give us what
9 they believe is their opinion with their professional
10 expertise?
11 A. Correct.
12 Q. Now, when you do IME's, do you do them at the West
13 44th Street address?
14 A. Yes.
15 Q. Do you ever do them in Brooklyn?
16 A. No.
17 Q. You only do your IME's at your office?
18 A. Correct.
19 Q. Now, there were questions about a company like Express
20 Exams, a third-party company who organizes these things. Do
21 you ever get work through third-party vendors for IME's?
22 A. Yes.
23 Q. You get work from like Imedview, Inc., correct?
24 A. Not that particular one.
25 Q. Have you ever gotten work from Imedview?

1 A. I don't think so.

2 Q. I would like to show you a document and maybe it will

3 refresh your recollection, if I may?

4 A. Sure.

5 Q. Take a look at this and you can go down to the bottom

6 of Page 3, see where I circled. And see if that refreshes your

7 recollection that you have done IME's for a third-party company

8 Imedview, Inc.?

9 THE COURT: What's the name of this company

10 again?

11 MR. BUCHMAN: Imedview, Inc.

12 THE COURT: Bottom of the third page you said?

13 MR. BUCHMAN: Yes, it's circled.

14 A. This is from 2005, is that what I am reading?

15 Q. I believe so.

16 A. Yes, okay.

17 Q. That's refreshes your recollection you have done IME's

18 for that company?

19 A. In 2005 I did them in Brooklyn, I guess. I don't

20 remember 2005, but I guess it was for this company at some

21 point.

22 Q. When you did IME's for Imedview, Inc., were they in

23 your office or somewhere else?

24 A. That was in an outside office, correct.

25 Q. Where was that done, in Brooklyn?

1 A. This one was, correct.
2 Q. Usually when you do IME's in certain counties, you
3 have to go to that county to perform them; is that right?
4 A. That's correct.
5 Q. So if it was suggested by somebody that you go to
6 different counties to do IME's that there is something untort
7 about it or something improper --
8 MR. HARRIS: Objection, Your Honor.
9 THE COURT: Sustained.
10 Q. But is it normal practice --
11 MR. HARRIS: Objection.
12 MR. BUCHMAN: I am asking the question.
13 Q. Is it normal practice for a doctor to travel to
14 different counties to do exams in those counties, isn't that
15 true?
16 A. Yes.
17 Q. How about the company D & D Associates, is that
18 another third-party vendor for IME's?
19 A. Yes.
20 Q. You still work for them?
21 A. No.
22 Q. You did work for them?
23 A. Yes.
24 Q. Are you still on any other panels for any other IME
25 companies?

1 A. Only a workers' Comp. company.
2 Q. What company is that?
3 A. It's called Utopia.
4 Q. So these companies are the ones where lawyers would
5 call up and say, "I need an orthopedist do an IME, give me a
6 list", and someone will pick you, right?
7 A. I am not sure how it works.
8 Q. Again, normal course of business as a orthopedist if
9 you are going to do these type of exams, correct?
10 A. If you are going to do exams for the defense, yes.
11 Q. As far as doing them for plaintiffs, you usually get
12 contacted by the lawyer, or his office, or her office, correct?
13 A. Correct.
14 Q. Just to focus on we are in agreement you are not a
15 hand surgeon or hand specialist, correct? So I don't have to
16 go through any articles, your Twitter page.
17 A. Correct.
18 Q. Nothing in your Twitter page, 154 tweets about hand
19 surgery, correct?
20 A. Correct.
21 Q. Knees, elbows?
22 A. Correct.
23 Q. The videos, we went onto your website and clicked on
24 the two videos. Nothing about hands. One is about steroids,
25 one is about heat issues, heat strokes in athletics, correct?

1 A. Correct.

2 Q. I want to discuss with you some of the basics that are

3 in the record.

4 MR. BUCHMAN: If I may, Your Honor, may I give

5 the doctor the evidence, the records?

6 THE COURT: Sure.

7 Q. Doctor, you are welcomed to look at any of the

8 records. I am going to open you to the area where I am going

9 ask you questions about. Feel free if you think you need to

10 refer to anything else, by all means don't feel limited by

11 where I ask you to look. I want to focus on, one of the issues

12 in this case is life expectancy.

13 MR. HARRIS: Objection, Your Honor. It's not an

14 issue. May we approach?

15 THE COURT: You can approach.

16 (Off-the-record discussion held at the bench)

17 THE COURT: Let's continue. I think you had an

18 objection, Mr. Harris.

19 MR. HARRIS: I did, Your Honor.

20 THE COURT: You are sustained.

21 MR. HARRIS: Thank you, Judge.

22 Q. Doctor, medical records in and of themselves are

23 important, correct?

24 A. Correct.

25 Q. And isn't it important for a doctor to keep accurate

1 records?

2 A. Yes.

3 Q. In fact, there are state rules and regs requiring to

4 the best of your ability to make your records accurate and

5 timely?

6 A. Yes.

7 Q. And the abbreviation "ROM", range of motion?

8 A. Correct.

9 Q. And you are familiar with the term "extremities"?

10 A. Yes.

11 Q. Does the term "extremities" refer to arms, legs, hands

12 and feet?

13 A. Yes.

14 Q. So then assume for this question that for the past ten

15 months Ms. Floyd has been going to Kingsbrook Jewish Medical

16 Center for the last ten months and within those records for the

17 last ten months there are entries that talk about normal range

18 of motion of extremities, no complaints of pain or swelling in

19 the extremities. Is that consistent with your testimony that

20 she is in constant pain in her wrist?

21 MR. HARRIS: Objection to the form, Your Honor.

22 I would ask that the attorney direct to a specific note or

23 notes, not just a general question encompassing months of

24 records.

25 THE COURT: I will sustain that. Rephrase it,

1 consistent with pain.
2 Q. I would like you to turn to what would be Page 2 of
3 148 in your records, the records that you see.
4 A. Okay.
5 Q. Under the section that says "examination, general
6 examination", you go down to the word "extremities". Do you
7 see that?
8 A. Yes.
9 Q. And after the word "extremities", it says "normal
10 ROM", correct?
11 A. Yes.
12 Q. So that means in her extremities which would be her
13 hands, her feet, her arms and legs there is normal range of
14 motion?
15 A. Correct.
16 Q. Of course, you are not that doctor. We don't know
17 exactly what he meant but that's what it says here.
18 A. Correct.
19 Q. And if there was something -- then the next words say,
20 "mild tenderness on right calf and thigh. No redness, no
21 swelling." Of course, that's not her wrist, but she made a
22 complaint to a part of her body, correct?
23 A. No, that's something the doctor found. I don't know
24 if she complained about that.
25 Q. So the doctor found that. Let's go back up on that

1 page to the third line on Page 2 of 148. There is a whole list
2 of vital signs and there is a little term there on the third
3 line. It says "pain scale." It says "zero out of ten."
4 A. Correct.
5 Q. What does "zero out of ten" for pain mean?
6 A. No pain.
7 Q. Now, let's go back down to the bottom of Page 2,
8 bottom left corner, all the way in the corner.
9 A. Okay.
10 Q. It says under "General ROS", it says "Musculoskeletal
11 negative for joint swelling and rash." And then if you
12 continue on to Page 3 it says "Positive for joint pain, BL"
13 which means bilateral, "knee, right one and left", correct?
14 A. Correct.
15 Q. So there is an example and the date of this if you go
16 to the first page, Page 1 of 148, what's the date of this
17 entry?
18 A. The date of this is 8/26/2014.
19 Q. Three weeks ago?
20 A. Correct.
21 Q. Is there any mention anywhere from three weeks ago
22 about her wrist and pain?
23 A. No.
24 Q. Let's move on then to Page 7, and we go towards the
25 middle. It's the section "General", but I want to go down to

1 the second full paragraph in the section, "General." And it
2 states, "Patient only complains of left ear pain", and it goes
3 on to talk about the left ear pain. And then we go further
4 down and it says, "Also she has chronic bilateral knee pain and
5 she follow-up with orthopedic clinic."
6 Any mention of the wrist or hand?
7 A. No.
8 Q. Now, let's go to the next page, Page 8 of 148. We go
9 to the top where it says, "General appearance, alert and
10 oriented, female, obese", but that's not the issue. I want to
11 go to the next line, the bottom of that section, "Extremities,
12 hands, feet, arms, legs, normal range of motion." Do you see
13 that again?
14 A. Yes.
15 Q. Do you think it's relevant?
16 MR. HARRIS: Objection to form.
17 THE COURT: Rephrase it.
18 MR. HARRIS: That is a legal conclusion.
19 MR. BUCHMAN: Okay, I will withdraw the question.
20 THE COURT: Okay.
21 Q. Let's go to Page 12 of 148. You know what, let's go
22 back. This one that's on Page of 7 and 8 of 148, those are
23 from July 1st of this year, correct?
24 A. Yes.
25 Q. So that would be two months ago?

1 A. Correct.

2 Q. Before the trial?

3 A. Correct.

4 Q. Now, let's go to Page 12 of 148. This takes us to

5 June 19th of 2014, correct?

6 MR. HARRIS: What page?

7 MR. BUCHMAN: 12 of 148.

8 A. Correct.

9 Q. And we go to that page and we go to "Vital Signs",

10 and, again, we get another pain scale of zero out of ten,

11 correct?

12 A. Correct.

13 Q. Let's skip to Page 14 of 148. There isn't much more.

14 I am not going to belabor this point. But Page 14 of 148 gets

15 us to May of 2014, three and a half months ago?

16 A. Correct.

17 Q. Again "Vital Signs, Pain Scale, zero out of ten",

18 correct?

19 A. Yes.

20 Q. Under "General Examination", it says, "Extremities,

21 normal range of motion", correct?

22 A. Yes.

23 Q. Let's take us to May 6, 2014, on Page 16 of 148.

24 A. Okay.

25 Q. And looking at the middle of Page 16, again, under

1 "Vital Signs", we have another pain scale of zero out of ten,
2 correct?
3 A. Yes.
4 Q. And the "examination" means a doctor did some type of
5 examination, correct, physical exam?
6 A. Correct.
7 Q. Under this doctor's physical exam, general appearance
8 says alert and oriented, correct?
9 A. Correct.
10 Q. If you go down to the last line of "General
11 Examination" of three and a half, four months ago,
12 "extremities, normal range of motion" correct?
13 A. Correct.
14 Q. And if we go to Page 17, bottom left corner, it talks
15 about "review of systems", and I believe we are still on the
16 same May 6th. And you continue on to Page 18, on the top left
17 corner it talks about, "review of systems." Under the section
18 "Musculoskeletal", and musculoskeletal is the bones, correct?
19 A. Correct.
20 Q. And muscles?
21 A. Correct.
22 Q. And the wrist is a joint, correct?
23 A. Correct.
24 Q. So musculoskeletal it says "negative for joint pain
25 and joint swelling or a rash", correct?

1 A. Correct.

2 Q. And doctors don't write these things unless they make

3 an observation, correct?

4 A. Usually.

5 Q. Do we have any reason to believe that in these eight

6 or nine entries to this point that any of these doctors had any

7 other motive other than just to treat Ms. Floyd because they

8 are her treating doctors?

9 A. I don't even know what kind of doctor this is.

10 Q. But it's a medical doctor?

11 A. Correct.

12 Q. Again, we go to Page 24 of 148. This will take us to

13 December of 2013, a little bit after your exam, right? It

14 takes us about three weeks after your exam?

15 A. Correct.

16 Q. And we have here -- we go down to the middle of the

17 page, pain scale zero out of ten. Do you see that under "Vital

18 Signs"?

19 A. Yes.

20 Q. And we go to Page 25 on the left column, under "Review

21 of Systems, general ROS" which is general review of systems,

22 correct? We go down two thirds in that section. It says,

23 "Musculoskeletal negative for joint pain, joint swelling and

24 rash", correct?

25 A. Correct.

1 Q. We have a couple of more pages here and we will be
2 done.
3 A. This is doctor --
4 Q. I am just asking what it says. If counsel wants to go
5 over the doctor, you guys will talk about it on redirect?
6 A. Okay.
7 Q. On Page 27 of 148, November 22 of 2013, that's about
8 two weeks after your exam or a week after your exam?
9 A. Yes.
10 Q. Again, we have pain scale of zero out of ten in the
11 general section under "Vital Signs", correct?
12 A. Correct.
13 Q. On Page 28, the next page, under the Review of
14 Systems, "General Review of Systems, musculoskeletal negative
15 for joint pain and joint swelling", correct?
16 A. Correct.
17 Q. And this will be the last one, Pages 34 and 35 of 148.
18 A. Okay.
19 Q. Again, under "Vital Signs", this is October 18th of
20 2013, that's about three or four weeks before your exam.
21 A. October what?
22 Q. October 18th of 2013.
23 A. What page are you on?
24 Q. 34 of 148.
25 A. Yes, correct.

1 Q. That's a few weeks before your exam. And then the
2 vital signs, they give all different types of information.
3 There's blood pressure, there's heart rates and there's weight
4 and there's temperatures and all that stuff, BMI. But pain
5 scale is zero out of ten, correct?
6 A. Correct.
7 Q. And exam, general examination, extremities, this time
8 it says no edema?
9 A. Correct.
10 Q. Edema is swelling, right?
11 A. Correct.
12 Q. We shoot over to Page 35, again, a few weeks before
13 your exam, "musculoskeletal negative for joint pain." Did we
14 read all of those entries correctly?
15 A. Correct.
16 Q. And doctors have a duty under the state rules and
17 regulations to write things in the record that are true and
18 correct to the best of their ability, correct?
19 A. Correct.
20 Q. And if somebody is mentioning range of motions of
21 extremities and you said it was the hands, and the feet, and
22 the arms and legs, that's related to the left hand and wrist we
23 think?
24 A. Correct.
25 Q. Did you review Ms. Floyd's these clinic records before

1 coming here today?

2 A. Yes.

3 Q. Do you see any complaints of pain in any of those

4 records in the last ten months?

5 A. No.

6 Q. Now, you understand the physician who did the surgery

7 and had a few follow-ups with Ms. Floyd is Dr. Pay, correct?

8 A. Correct.

9 Q. Did you ever call him?

10 A. No.

11 Q. So you never spoke to him?

12 A. No.

13 Q. So you don't know why he is not here today?

14 A. I have never even met the man. I don't know who he

15 is.

16 Q. Well, could Dr. Pay have done a Carpal Tunnel release

17 when he was removing the hardware?

18 A. Yes.

19 Q. Did he?

20 A. No.

21 Q. And you don't know why, you never spoke to him, right?

22 A. Correct.

23 Q. So you didn't ask Dr. Pay his opinion on whether a

24 Carpal Tunnel release could or should be done?

25 MR. HARRIS: Objection. Asked and answered.

1 THE COURT: Sustained.

2 Q. And you haven't called him since then to ask him what

3 he thinks about --

4 MR. HARRIS: Objection. Asked and answered.

5 THE COURT: Sustained. He never spoke to him.

6 Q. Do you remember specifically how Ms. Floyd was

7 referred to your office?

8 A. No.

9 Q. Did you ever speak to any of the lawyers or any of the

10 personnel from Mr. Harris' office before your exam?

11 A. No.

12 Q. Did you ever speak to any of the attorneys or any of

13 the staff from Mr. Harris' office after this?

14 A. Not until we reviewed this for the trial.

15 MR. BUCHMAN: I think I am done. I am just

16 looking through my notes.

17 THE COURT: Go right ahead.

18 MR. BUCHMAN: I have nothing further.

19 THE COURT: Thank you. Any redirect?

20 MR. HARRIS: Yes, Judge.

21 THE COURT: Go right ahead.

22 REDIRECT EXAMINATION

23 BY MR. HARRIS:

24 Q. Doctor, just a few follow-up questions.

25 Counsel just asked you a moment ago about whether

1 Dr. Pay could have done a Carpal Tunnel release at the time he
2 took out the hardware. Your answer was "yes", correct?
3 A. Correct.
4 Q. Was there an indication to do a Carpal Tunnel release
5 at that time from your review of the records?
6 A. No.
7 Q. And so when you answered the question directly, and I
8 appreciate that you answered exactly what was being asked of
9 you, doctor, but could you now explain for the jury why you
10 would not have or Dr. Pay from your review of the records did
11 not do a Carpal Tunnel release back in 2012, August of 2012?
12 A. Her symptoms were mild and most times if you have mild
13 symptoms you are not going to operate on that. When the
14 symptoms become moderate to severe or chronic, then you will be
15 more aggressive with the treatment.
16 Q. Are there any risks to the Carpal Tunnel release at
17 all? You said it was a 15 minute procedure. He could have
18 just done it and it would be over, right?
19 A. That's true. I would say from reading the operative
20 report that there was a lot of adhesions and scar tissue. He
21 actually caused a radial artery injury that he dictates in the
22 operative report because of likely the adhesions and scar
23 tissue that he had to get around and to do more surgery could
24 also do more harm sometimes. So after he caused the radial
25 artery injury, he had to repair that and that may have given

1 him second thought.

2 Q. Wait a minute, a radial artery injury. What is the

3 radial artery? Let's just start with that.

4 A. So there are two main arteries that supply the hand

5 the blood supply it needs to live, the radial artery and the

6 ulna artery. In his report he dictates that upon dissection he

7 caused a radial artery injury and it needed to be repaired.

8 Q. Is that something typically that occurs when you are

9 taking someone's hardware out that the surgeon would damage the

10 radial artery?

11 A. No.

12 Q. That doesn't typically occur?

13 A. No.

14 MR. BUCHMAN: Objection. Asked and answered.

15 THE COURT: Overruled.

16 MR. BUCHMAN: I take exception.

17 Q. Counsel asked you, "do you know why Dr. Pay isn't here

18 in court", right?

19 A. Correct.

20 Q. If you damage the radial artery during surgery, is

21 that a reason why wouldn't want to come to court if you were

22 the surgeon, doctor?

23 A. It's not good for him.

24 Q. Do you know why counsel didn't subpoena Dr. Pay to be

25 here as he has every right to do?

1 MR. BUCHMAN: Objection, Your Honor.

2 MR. HARRIS: You are saying you don't have the

3 right to subpoena him?

4 THE COURT: I will sustain the objection. Let's

5 move on.

6 Move on.

7 MR. HARRIS: I am.

8 Q. There were nine entries that counsel pointed out, I

9 believe, with no complaints to the extremities according to the

10 notes in the chart, yes?

11 A. Yes.

12 Q. And those were all notes that were made in the past

13 ten months, approximately?

14 A. Correct.

15 Q. Are you able to tell from any of those notes, doctor,

16 what type of doctors were writing down those notes? In other

17 words, were they orthopedic surgeons like yourself, whether it

18 be a sports medicine doctor, or a hand surgeon, or anyone else

19 as compared to, let's say, a gynecologist or gastroenterologist

20 or something like that?

21 A. Not with any certainty but what I can tell you is that

22 this is a clinic in a hospital. And if you notice on all of

23 the entries, a resident sees the patient. This could be a

24 first year resident, a second year resident, a third year

25 resident. The attending doctor electronically signs the chart

1 off on this. Many of these clinics, the attending physician
2 who is supervising doesn't even show up for the clinic. So
3 every single entry is, you know, you can see at the bottom is
4 signed by a PGY 2 which means post graduate year. Post
5 graduate year means you are in residency, you are training.
6 These systems that are used in these hospitals by
7 default make you fill this information out because the billers
8 for hospital need this to do optimal billing for the clinic.
9 And unless you go in there and change ever entry it is all
10 going to be by default like this. It's in my hospital too.
11 It's in every hospital like this. Good or bad, this is what
12 has happened to the health or medical profession based on all
13 of the health care reform laws and all of the billing
14 restrictions. This is what it has come to. It's a sea of
15 charts that 90 percent of it has nothing to do with the patient
16 or what the problem is.
17 Q. So, doctor, wait a minute. If I went to the
18 Kingsbrook Medical Clinic and I saw a second year resident for
19 a sore throat and they put down that I had no complaints of my
20 arms or legs, do you have any opinion as to whether residents
21 typically in those clinics when somebody comes in for a sore
22 throat or a gynecological issue actually examines your arms and
23 legs?
24 A. Never.
25 Q. Doctor, you said earlier that you haven't done

1 yourself a wrist surgery in seven years but that you typically
2 operate on shoulders, knees and ankles.
3 A. Correct.
4 Q. Why is it that you stopped operating on wrists
5 specifically in the past seven years?
6 A. You only -- the hospitals are so crowded now you only
7 get a certain amount of OR time.
8 Q. OR is operating room?
9 A. Operating room. Like an airport, you only have that
10 amount time. You have to fill it. If you don't fill it, you
11 lose it. I have enough sports cases now which is what I like
12 to do that I would rather just do that. The other reason is,
13 if you don't fill your OR time within a certain period of time
14 before that day, they give it away except for the hand.
15 THE COURT: "They", meaning the hospital?
16 THE WITNESS: The hospital will give it away to
17 somebody else except for the hand surgeon. They are
18 allowed to leave slots open for all the wrist fractures
19 that come in and all the emergency hand stuff they need to
20 do. So a hand surgeon can leave his schedule open a little
21 bit even until the day before his OR day, his operating
22 day, and then fill it with emergency whereas I would not be
23 able to do that.
24 Q. One last thing, doctor, I think Mr. Buchman asked you
25 whether you had done IME exams and you had said "yes". What

1 percentage of your practice is devoted to IME's or matters
2 concerning litigation like this as compared with treating
3 regular patients?
4 A. I probably devote about four to five hours a week,
5 tops.
6 Q. How many days a week are you operating typically?
7 A. Every Monday all day and then some Thursdays half a
8 day.
9 Q. If Dr. Nathan came in here for the defense and he said
10 that one third to 40 percent of his time was devoted to
11 litigation matters, court cases, Workers' Compensation cases,
12 would a fellow like that be able to operate once a week in your
13 opinion?
14 A. Probably not.
15 Q. Why not?
16 A. It takes -- to get operative cases you have to see a
17 lot of people to get those cases. So I only schedule about ten
18 percent of my patients for the operating room because most
19 things are sprains, or strains, or could be treated with
20 therapy or injections. So if you are devoting 40 percent of
21 your week towards that, I don't see how you can find any
22 patients to even operate on.
23 Q. So what percentage of your practice is for treating
24 patients? I understand you said hours. If you had to quantify
25 it, what would the answer be?

1 A. I would schedule three hours a week for the IME's or
2 the litigation type stuff, three hours a week.
3 Q. How many hours a week are you working in total would
4 you say?
5 A. I don't know. Every day otherwise. I start at 7:45
6 in the morning. I get home around 5:30, 6:00 every day.
7 Q. So eight, nine-hour days?
8 A. I can't do math.
9 Q. I think it's about ten percent.
10 No further questions, doctor.
11 THE COURT: Any recross?
12 RECROSS EXAMINATION
13 BY MR. BUCHMAN:
14 Q. Have you ever met Dr. Nathan?
15 A. No.
16 Q. Have you ever looked him up on New York Doctor
17 physician's profile?
18 A. No.
19 Q. Do you know anything about his practice?
20 A. No.
21 Q. You know nothing about his credentials?
22 A. No.
23 Q. And with that you are going to just make this
24 assumption that Mr. Harris says these numbers are true and
25 there is no way he can do surgeries, is that what you are

1 telling us?

2 MR. HARRIS: Objection. Argumentative.

3 THE COURT: Overruled.

4 A. I am not making an assumption. I am just answering

5 the question that he asked me.

6 Q. Right. And these records, so you are now saying that

7 these entries are lies?

8 A. They are not lies but this the reality of medicine in

9 these clinics and these hospitals.

10 Q. Are you in the clinics now?

11 A. I have to cover a clinic.

12 Q. Have you been to the Kingsbrook Jewish Medical Center

13 clinic this year?

14 A. No.

15 Q. Have you been to the Kingsbrook Jewish Medical Clinic

16 last year?

17 A. I have never been to that clinic.

18 Q. But you know how they operate and you know the entries

19 are not true?

20 A. I have worked in lot of hospitals and I know how this

21 works in clinics.

22 Q. But you have never been in this hospital?

23 A. Correct.

24 Q. So you don't know what goes on in this hospital; is

25 that correct?

1 A. Not at this particular Kingsbrook Jewish Hospital
2 clinic.
3 Q. Right. Thank you.
4 THE COURT: That's it, Mr. Buchman?
5 MR. BUCHMAN: Yes.
6 THE COURT: Thank you, doctor. You are excused.
7 (WITNESS EXCUSED)
8 THE COURT: Anything else to present, Mr. Harris?
9 MR. HARRIS: In terms of evidence, Judge?
10 THE COURT: Yes.
11 MR. HARRIS: Yes. May we approach?
12 THE COURT: You can approach.
13 (Off-the-record discussion held at the bench)
14 THE COURT: Mr. Harris, do you have anything else
15 to present on direct?
16 MR. HARRIS: Not on our direct case, no, Judge.
17 THE COURT: So the plaintiff rests?
18 MR. HARRIS: Yes.
19 THE COURT: Anything else to present,
20 Mr. Buchman?
21 MR. BUCHMAN: No. I have already called my
22 witness, so I have nothing further.
23 THE COURT: The defendant rests. I believe you
24 have a rebuttal witness.
25 MR. HARRIS: We would like to call back Arvella

1 Floyd for one limited purpose on rebuttal, Judge.

2 MR. BUCHMAN: Your Honor, I noted my objection.

3 THE COURT: At the bench you did and I overruled

4 your objection to having her testify briefly as a rebuttal

5 witness.

6 I will remind Ms. Floyd she is still under oath.

7 Please have a seat.

8 (A R V E L L A F L O Y D, having resumed the

9 witness stand, was examined and testified further as

10 follows:)

11 THE COURT: You may begin.

12 DIRECT EXAMINATION

13 BY MR. HARRIS:

14 Q. Good afternoon, Ms. Floyd.

15 A. Good afternoon.

16 Q. I'm sorry to put you back on the spot. I just wanted

17 to clear up one or two things.

18 First, are you left-handed or right-handed?

19 A. Right-handed.

20 Q. How does that work? In other words, what hand do you

21 write with?

22 A. Right.

23 Q. What hand before this accident did you do activities

24 with on a regular basis excluding writing?

25 A. Left because I had sprained my wrist when I was