

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF QUEENS : CIVIL TERM : PART CSCP
3 -----X
4 JOSE RIVERA,
5
6 Plaintiff,
7
8 -against- Index No. 16240/13
9
10 LLOYD LAMPELL, JURY TRIAL
11
12 Defendant.
13 -----X
14 Supreme Courthouse
15 88-11 Sutphin Boulevard
16 Jamaica, New York 11435
17 March 9, 2016
18
19 B E F O R E:
20
21 THE HONORABLE MARTIN E. RITHOLTZ,
22 J U S T I C E
23
24 A P P E A R A N C E S:
25
26 FINKELSTEIN & PARTNERS
27 Attorneys for the Plaintiff
28 1778 South Road - Route 9
29 Wappingers Falls, New York 12590
30 BY: BRIAN D. ACARD, ESQ.
31 CHRISTOPHER CAMASTRO, ESQ.
32
33 PICCIANO & SCAHILL, P.C.
34 Attorneys for the Defendant
35 900 MERCHANTS CONCOURSE - SUITE 310
36 WESTBURY, NEW YORK 11590
37 BY: FRANCIS J. SCAHILL, ESQ.
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172
2173
2174
2175
2176
2177
2178
2179
2180
2181
2182
2183
2184
2185
2186
2187
2188

030916 rivera.txt
1 THE COURT: Bring them in.
2 THE COURT OFFICER: All rise, jury entering.
3 (Whereupon, the jury entered the courtroom.)
4 THE COURT: Good morning, jurors. You may be
5 seated. Everyone may be seated.
6 Before we get started, I want to recognize someone
7 who is in my courtroom, it is her last day, Theresa Logan,
8 who has been with me a few months. Unfortunately in terms
9 of the Court system, they failed because if they were
10 really functioning properly she would remain in Queens
11 County. She's going to Suffolk. I just want to recognize
12 her. Really a round of applause. We'll miss you.
13 At this time you may call your next witness.
14 MR. ACARD: Thank you, your Honor. We call Lynn
15 Mizzy Jonas to the stand.
16 Ms. Jonas, please raise your right hand.
17 L Y N N M I Z Z Y J O N A S , called as a witness by and on
18 behalf of the Plaintiff, after having been first duly sworn, was
19 examined and testified as follows:
20 THE CLERK: Please be seated. In a loud, clear
21 voice please state your name and business address.
22 THE WITNESS: My name is Lynn Mizzy, M-I-Z-Z-Y,
23 Jonas, J-O-N-A-S, 42nd Street Austins Place, A-U-S-T-I-N-S,
24 Staten Island, New York 10310.
25 THE COURT: You may inquire.

ea

152

Jonas - Plaintiff - Direct

1 MR. ACARD: Thank you, your Honor.
2 DIRECT EXAMINATION
3 BY MR. ACARD:

4 Q Good morning, Ms. Jonas.

5 A Good morning.

6 Q The address you just gave us, is that your business
7 address?

8 A Yes.

9 Q And that is in Staten Island?

10 A Yes.

11 Q Can you tell the jury what you do for a living?

12 A I'm a vocational consultant.

13 Q And can you explain what that is?

14 A Sure. I evaluate people's employability and earning
15 capacity. I meet with clients, I do vocational interviews and
16 testing. I do a job analysis. Can you hear me? I do job
17 analysis where I analyze what the requirements are to different
18 jobs. I determine what the labor market is for different jobs,
19 and I'm called in on cases like this to testify about people's
20 ability to work and what they can earn.

21 Q Can you tell us your educational background?

22 A Yes. I've got an undergraduate degree in psychology
23 from Mills College, and that's in California. I have a masters
24 degree in guidance and counseling from City University, 1978.

25 Q Now, do you have specialized training for your field?

ea

153

Jonas - Plaintiff - Direct

1 A Yes.

2 Q Can you explain to the jury?

3 A Well, because of my professional certifications, which
4 I can go into also, I have ongoing continuing education,
5 seminars, workshops, inservice training which I've been doing
6 since I've been in this field, which is 40 years.

7 Q And you mentioned your specialist certifications. Can
8 you explain that to the jury?

9 A Sure. I'm a board certified vocational expert at the
10 diplomate level, which is the highest of the three levels. That
11 requires -- it's a national certification, requires seven years
12 of post-graduate, post-masters-degree experience doing forensic
13 evaluations. One must have continuing education credits to
14 maintain this certification.

15 I'm a certified rehabilitation counselor, which is more
16 geared towards vocational rehabilitation, helping people get
17 jobs, things like that, also a national organization with
18 continuing education, certified school counselor in the State of
19 New York.

20 I'm certified in work evaluation techniques, which is,
21 in other words, that's to give vocational tests, how to
22 determine the reliability and validity on how to administer
23 those tests and interpret these tests, and I was certified by
24 the U.S. Department of Labor Worker's Compensation programs as a
25 rehabilitation counselor.

ea

154

Jonas - Plaintiff - Direct

1 Q Do you have any membership in any professional
2 organizations?

3 A Yes. I'm a member of the National Rehabilitation
4 Association and International Association of Rehabilitation
5 Professionals.

6 Q And can you tell us a little bit about your
7 professional experience?

8 A Yep. It began in the 70s in Staten Island. I began
9 working for St. Vincent's, North Richmond Community Health

10 Center as a vocational evaluator. That's where I began to get
11 my actual hands-on training in testing, things like that.

12 After five years when I got my masters degree, I was
13 promoted and I ran the whole department. I was chief of
14 rehabilitation services. We had shelters, workshops. I ran
15 therapy groups, inservice training, a multidisciplinary staff,
16 job placement, job evaluation.

17 After that I became employed as rehabilitation
18 specialist for Intercore, which was a disability management
19 company. And what that involves was case management of people
20 who had been injured on jobs. I would meet with them and their
21 doctors. I would meet with the employers to see if we could get
22 them back to work.

23 I then began also consulting with the Social Security
24 Administration as a vocational expert, and that meant I would
25 attend hearings for people applying for SSD and DSI, which is

ea

155

Jonas - Plaintiff - Direct

1 disability, and I would advise the administrative law judge as
2 to whether or not a person had transferrable skills and how many
3 jobs would exist in the economy if they were able to do such a
4 job.

5 I also began work with the Office of Worker
6 Compensation programs, with the Department of Labor, and I had a
7 caseload with them, too, where I would try to get -- well, there
8 were federal employees, postal workers, park workers, people who
9 had been injured. I would go with them to their doctor, analyze
10 their jobs, counsel them to see whether or not they could go
11 back to work.

12 And then I do this. I retired from those jobs and now

13 I exclusively do consulting work with attorneys and insurance
14 companies.

15 Q And so you are in your own private practice?

16 A Yes.

17 Q And for how long has that been?

18 A Since the early '80.

19 Q And you do professional consultations, you stated?

20 A Excuse me?

21 Q You do consultations, professional consultations?

22 A Yes.

23 Q And what did those consultation involve?

24 A Well, in an evaluation such as thinks? I'm not sure if
25 that is what you're asking.

ea

156

Jonas - Plaintiff - Direct

1 Q In general when you do a consultation.

2 A Well, typically I do injury cases and matrimonial
3 cases. What that means is I meet with clients to -- after I
4 review all the records that the attorney gives me, medical
5 records, work records, things like that, I meet with the clients
6 and I perform a vocational evaluation.

7 What that involves is an interview where I go through
8 the education, the work experience, and how their injuries
9 affect them, what their skills are, and then I administer a
10 battery of vocational tests. This gives me the opportunity not
11 only to see how they compare with other people who have various
12 jobs by testing them, but also gives me the opportunity to
13 observe their work behavior, because when you spend a few hours
14 with the person in work simulation you can really see what it is
15 like when they are trying to work with their hands on,

16 concentrate on a task, and then I write up a report.

17 Q Now, have you ever been recognized in any courts in the
18 State of New York as an expert in your field?

19 A Yes.

20 Q About how many occasions?

21 A Well, Supreme Court, Compensation Court, Federal Court,
22 all of that matrimony courts, hundreds of times, over. I've
23 been doing this for 30 years.

24 Q Are you being compensated for your time here today?

25 A Yes, sir.

ea

157

Jonas - Plaintiff - Direct

1 Q Okay. And how much time did you take out of your
2 office from Staten Island to be here today?

3 A The whole day.

4 Q And how much are you being compensated?

5 A \$3,000 for my day, the day.

6 Q Is that the usual and customary fee?

7 A I'm told I'm cheaper. It's my customary fee.

8 Q Do you work for both plaintiffs and defendants?

9 A Yes, sir, I do.

10 Q Now, did there come a time when my office asked you to
11 do an evaluation of Jose Rivera?

12 A Yes.

13 Q And when was that?

14 A April 22nd of last year.

15 Q And where did that evaluation take place?

16 A Hempstead, in one of your offices.

17 Q And you mentioned some of the procedures that you use
18 in your evaluation before. Are those the same type of

19 procedures you did in the evaluation of Jose?

20 A Yes.

21 Q And when you did that evaluation did you prepare a
22 report?

23 A Yes.

24 Q Do you have that report with you?

25 A Yes.

ea

158

Jonas - Plaintiff - Direct

1 Q And would it help you to refresh your recollection if
2 you could refer to that report?

3 A Yes.

4 Q So feel free to refer to it as you need it, okay?

5 A Thank you.

6 Q Now, at the time that you did the evaluation were you
7 provided with any records?

8 A Yes.

9 Q Can you tell the jury what you were provided with?

10 A Okay. I'll have to refer to my report because it's a
11 lot.

12 THE COURT: You may.

13 A All right. Medical reports of Dr. Tanttleff
14 T-A-N-T-T-L-E-F-F, Dr. Lubliner, Dr. Kleinman, Dr. Lattuga, Miss
15 Rosen, physical therapist, New York Spine Specialists, Island
16 Musculoskeletal Care, Franklin Hospital Medical Center, Winthrop
17 University Hospital, Dr. Liu, L-I-U, New York Pain Management
18 Group, Primary Health Care, and then other things, Verizon
19 employee's records, bill of particulars, and the deposition
20 transcript of Jose Rivera.

21 Q And did you review all of those records?

22 A I did.
23 Q And what did you learn from those records?
24 A Well, I was mainly interested in the most recent
25 medical records so I just went through a general history,

ea

159

Jonas - Plaintiff - Direct

1 because my job is to determine if is there any kind of work he
2 can do now. So it was a big file, obviously, because I named a
3 lot of hospitals and doctors, but basically I knew that he was
4 injured on the job in 2012 in July and he was taken to the
5 hospital.

6 From there he began treatments, and those treatments
7 include epidural injections in his back and his neck, cortisone
8 injections in the knees. He went to physical therapy. He got
9 pain medications. It didn't help so then he had two surgeries
10 in 2013, which was the year after he was hurt. He had a fusion
11 on his neck and a fusion on his lower back. He also had knee
12 injuries and surgery was not recommended for that. He had
13 physical therapy. He had chiropractic, he had epidural,
14 medication, and then it was determined --

15 I can go right to the most recent medical reports.

16 Q Okay.

17 A Okay. Dr. Mikeliss, M-I-K-E-L-I-S-S, he worked with
18 Lattuga, said that he was -- This was in September of 2014.

19 MR. SCAHILL: Objection to was Dr. Mikeliss said,
20 your Honor.

21 THE COURT: Okay, sustained.

22 Q We can move on.

23 A Dr. Kleinman on 2/10/15 concluded that he was a patient
24 totally disabled.

030916 rivera.txt
25 MR. SCAHILL: Objection to what the other

ea
160

Jonas - Plaintiff - Direct

1 doctors --
2 MR. ACARD: Dr. Kleinman is ready to testify.
3 THE COURT: Let's have a sidebar. Just use the
4 word objection or sidebar.
5 (Whereupon, at this time a discussion was held
6 sidebar.)
7 THE COURT: Okay, objection overruled. You may
8 answer.
9 THE WITNESS: Okay.
10 THE COURT: Do you remember the question?
11 THE WITNESS: I was up to doctor --
12 THE COURT: I think she gave the answer. You
13 already gave the answer. Can we have it read back, the
14 question and answer?
15 (Whereupon, at this time the testimony was read
16 back by the court reporter.)
17 THE COURT: I'm going to allow that to stand.
18 MR. ACARD: Thank you, your Honor.
19 Q Did you also take a history from Jose Rivera
20 personally?
21 A Yes.
22 Q And can you tell us about that history?
23 A Okay. I asked him what his issues were resulting from
24 the accident because that's why I was there. First he said --
25 he complained about his lower back. It was mainly his lower

ea
161

1 back and his neck, those were the two main problems. He said he
2 felt like there was a huge weight in his back and it went down
3 from his back and through his buttocks to the legs to the bottom
4 of his feet, and he was in pain all the time, it was constant.
5 Sometimes it would get worse, sometimes it was less worse, and
6 if he would walk or sit more than ten minutes or so it would be
7 exacerbated.

8 He was using a cane to get around. I saw him
9 constantly fidgeting in his chair and getting up. We were
10 together for over two hours. He got up and down, moved around
11 fidgeted the whole time.

12 Secondly, the neck was very painful. He felt like he
13 had little needles stabbing him, and the pain would go, as neck
14 pain goes, into his shoulders and into his arms. He said it was
15 constant and felt like a kink.

16 He also had problems with his hands, that they would
17 cramp up because he was using the cane for his -- on the right
18 side. He would use his left hand and that made his left hand
19 feel worse.

20 His right knee had pain because he had a torn meniscus.
21 He would have to dangle his leg when he was sitting down. He
22 got headaches several times a week, which lasted anywhere from
23 an hour to a few days, and he was very depressed. This is
24 something that he said he didn't talk to his family about. His
25 family is here, I guess. Anyway, he said he doesn't talk to his

ea

162

Jonas - Plaintiff - Direct

1 family about. He just loses focus. He loses concentration. He
2 gets headaches.

3 Then he talked about his treatment. He said he went
4 for physical therapy three times a week. He had a back brace, a
5 TENS unit at home, which is like an electronic stimulation
6 thing. He used bands, heating pads, did exercises as much as he
7 could. He was following the recommendations of his doctors.

8 He was taking medication, Tramadol, Flexeril, and
9 Ambien. He said that helped but it didn't stop the pain, but he
10 hadn't taken any of that when he came to see me because he was
11 driving to the interview and he didn't want to take the drugs
12 when he was driving.

13 Those were his pain complaints and --

14 Q Did you take an education history from him as well?

15 A Yes.

16 Q Can you tell us about that?

17 A Mr. Rivera didn't finish high school. He dropped out
18 in his senior year. He was having some family issues. His
19 sister had died and he left school.

20 He took the GED, but that was during that time. He
21 didn't know, he wasn't sure if he passed it or not. Later on
22 when he was about 19 he went to a technology class at Albert
23 Miller School in the electronics field, became a certified
24 electronic technician later on.

25 When he was employed he took various classes on the job

ea

163

Jonas - Plaintiff - Direct

1 in alarm, close circuit, TV, welding, car stereo installation,
2 locksmith, and voltage. He always took the courses at the time
3 job that they offered.

4 Q Did you get any type of employment history?

5 A Yes.

6 Q Okay.

7 A He started work at 16, stock boy cashier. Then he
8 worked at a piano restoration place when he was 17, and then he
9 worked as a stock boy and a cashier at a pharmacy. Then he went
10 to this technology school and got the training.

11 In 1989 he started at a place called Jayso, J-A-Y-S-O,
12 Electronics, started as a stock boy and in six years he worked
13 his way up to general manager. He was doing sales, he was
14 fixing thing. He worked with law enforcement on alarms. He
15 said he was known as, quote, doctor, because people would call
16 him to diagnosis electronic problems. He had a lot of pride in
17 this job.

18 From there he went to King Alarm in New Jersey where he
19 sold security products, but he took the NYNEX test so he started
20 there in 1996 and he remained at NYNEX until 2012. NYNEX is now
21 Verizon, as we know. So he had a number of jobs at this
22 company. I'll just run through them and tell you what they
23 entailed.

24 Started as customer service rep, that's on the phone,
25 people we talk to when we call Verizon. Then he became a

ea

164

Jonas - Plaintiff - Direct

1 splicer, that is where he was underground installing cables.
2 9/11 he was assigned to rebuild the lines, the telephone lines,
3 so he worked down there for six months.

4 Then he worked in INM, which is installation and
5 maintenance. His job was quote specialist. He worked inside
6 buildings fixing phone lines and hooking up all the connections.
7 He did that for two years. He moved to different locations and
8 did this.

9 Then he went to FIOS in the early 2000s. He took FIOS
10 training classes for a couple of weeks. He did installations.
11 He set up the terminal box. He would have to climb up the
12 poles. If anybody has had FIOS installed they know what the guy
13 does. He did everything. He was physical. He was connecting
14 wires. He was climbing. He was lifting. By the 2011, he was
15 earning over a hundred thousand dollars a year.

16 Then he was injured on July 5, 2012. He tried to get
17 back to work the following January, but he couldn't handle it
18 after eight days. He had just been picking up trucks to bring
19 things back to the garage, and he couldn't even do that. That
20 was even less than his previous job, wasn't that physical.
21 That's it.

22 Q Okay, thank you. Now, you mentioned that you spent
23 over two hours with Mr. Rivera?

24 A Yes, two and a quarter hours.

25 Q And during that time did you perform any tests on Mr.

ea

165

Jonas - Plaintiff - Direct

1 Rivera?

2 A Yes, I did.

3 Q What is the reason that you performed tests?

4 A Well, a test gives you a score and it shows you how you
5 do compared to other people so you can measure what their
6 different abilities are compared to certain workers. Not only
7 that you have the opportunity, as I said earlier, to observe
8 them so you can see, are they aggressive when they tackle their
9 work, do they pay attention, do they move around, does their
10 mind wander, are they good with their minds to think, what is
11 the response to the work. So, I was able to really capture him

12 in a work simulation and see what he was like.

13 Q Do you consider the testing an important part of your
14 evaluation?

15 A Yes.

16 Q And why is that?

17 A Well, because if you just talk to a person and they
18 tell you certain things you've got nothing objective. Well, you
19 have less objective evidence and information to back up what you
20 think.

21 Q Now, did you observe, in this particular instance, did
22 you observe Mr. Rivera while you were doing the testing?

23 A Yes.

24 Q And for what reason do you observe him?

25 A I wanted to see if he could physically handle it. I

ea

166

Jonas - Plaintiff - Direct

1 wanted to see if he was paying attention. I wanted to see if he
2 was making enough of an effort.

3 Q Can you describe the tests that you performed?

4 A Yes. First I did manual dexterity, because over
5 99 percent of all jobs require use of the hands in some way,
6 either typing, or writing, or holding something, or attaching
7 something.

8 So there is a test called the Purdue Pegboard, and it's
9 a four-part test where you pick up tiny things and put them in
10 holes and you assemble the small objects. I gave him all four
11 parts where he would first use his right hand, then his left
12 hand, then both hands together. He worked in the lowest
13 percentile for every single test.

14 what happened was he was working very slowly. He was

15 fumbling. He would, when he was -- when you are doing this test
16 you are -- there's a board in front of you on the table and he
17 was resting his elbows on the table while he was picking up the
18 pins and putting them in. He was fumbling on all the small
19 pieces. He would pick pieces out of the cup and he would drop
20 them, so what happened was he was constantly moving, but what
21 happens was his score was very low.

22 Then I gave him something called the Crawford Small
23 Parts Dexterity Test, which is a test that you use your hands
24 for small work but you are using tools, and the tool in this
25 case was a screwdriver. So he had to pick up a tiny screw, put

ea

167

Jonas - Plaintiff - Direct

1 it in a hole, and then with two hands use the screwdriver to
2 drive it in all the way, and there's 36 of these to do.

3 So what happened was he was using both of his hands and
4 he started to shake out the right hand, because I had seen his
5 hands shaking before when he was working and he was cramping up,
6 his neck was starting to bother him because when you are working
7 at a desk you are holding your head down and his neck was
8 bothering him, because he said he had neck problems, so it all
9 kind of makes sense. Both of his hands were trembling. He was
10 getting pain in his right arm and the lower back was bothering
11 him. Oh, I stopped the test. There was no point in continuing.

12 Then we went into the clerical tests where he didn't
13 really have to use his hands as much except to use a pencil.
14 The first one was verbal comprehension, and this is a test where
15 you match up words, you have to say a group of synonyms. He did
16 well on this. He was in the average range compared to
17 assemblers, cashiers, little lower compared to cashiers, but

18 average compared to mail clerks and file clerks and the general
19 male employed population.

20 what happened was as he's working through this he
21 started losing his concentration, I don't know, he may have
22 scored higher had he not lost his concentration. He said, I
23 have a quote, I was spacing out, and so I read it once and
24 embedded it in my head. What this showed me, though, was
25 motivation because if a person is not trying to do well they

ea

168

Jonas - Plaintiff - Direct

1 will do poorly in everything, but he did well on this, he did
2 average.

3 Then I gave him a numerical ability test, and by this
4 time we are two hours into this, meeting the two of us. It's
5 decimals, fractions, simple math, and he scored below average
6 compared to the general population and clerical workers but
7 average compared to cashiers.

8 what I observed while he was doing this was he was
9 always flexing his right hand. He'd be shifting in his chair.
10 He was not really focused on it. He wasn't concentrating that
11 well.

12 Then finally I gave him a test called visual speed and
13 accuracy where you have to compare numbers, are they exactly the
14 name, are they different, so it's an ability to know detail.
15 It's a good test for concentration and attentiveness, and he was
16 below average in this test. He understood it, he was fairly
17 accurate, but he was very slow and he was just losing his
18 concentration, it was obvious.

19 At the end we were together for two and a half -- two
20 and a quarter hours. I asked him how he felt compared to when

21 he arrived. He said his lower back and neck were throbbing and
22 his hand right hand was cramping and tingling. The end.

23 Q At the time that Jose was doing the testing, did you
24 feel he was giving his best efforts in the testing?

25 MR. SCAHILL: Objection.

ea

169

Jonas - Plaintiff - Direct

1 THE COURT: Let's have a sidebar.

2 (Whereupon, at this time a discussion was held
3 sidebar.)

4 THE COURT: Sustained as to form. Rephrase the
5 question.

6 Q Ms. Jonas, as part of your evaluation process are you
7 evaluating the effort of the person that is taking the test?

8 A Yes.

9 Q And in your professional opinion to a reasonable degree
10 of vocational rehab certainty did you feel that Mr. Rivera was
11 giving his best effort?

12 A Yes.

13 Q And how were you able to determine that?

14 A His complaints were consistent with the medical reports
15 I had read. He was agreeable to trying everything I did, I gave
16 to him to do. He stuck with it. He only -- I'm the one that
17 ended the one test; he didn't ask to stop the test. He was
18 moving around appearing very uncomfortable, but staying on the
19 job and he did well on that verbal test, which showed a good
20 effort.

21 Q And that was significant, the verbal test?

22 A Yes.

23 Q Based on the records that you reviewed and the results

24 of testing that you did and the observations that you just
25 described to us, do you have an opinion with a reasonable degree

ea

170

Jonas - Plaintiff - Direct

1 of vocational rehab certainty as to whether or not Jose Rivera
2 is employable?

3 A Yes, I do.

4 Q And can you state your opinion?

5 A I do not think that Jose Rivera is employable.

6 Q And can you explain the basis for your opinion?

7 A Yes. He's been deemed totally disabled by the doctor.

8 MR. SCAHILL: Objection.

9 THE COURT: Okay, sustained. The record will
10 speak for itself.

11 A Okay. When I'm provided -- I don't know if I can say
12 this, but I'll try to cooperate. When I'm provided with medical
13 evidence from a person's doctor that says they are totally
14 disabled, as a vocational rehabilitation --

15 MR. SCAHILL: Same objection, your Honor.

16 THE COURT: Talking about what she relied her
17 decision on. Okay, so continue.

18 A As a vocational person and not a medical doctor, I need
19 to allow the medical opinion to prevail in terms of what a
20 person's physical ability is, otherwise it would be
21 irresponsible as a vocational person to supersede what the
22 doctor says, that's number one.

23 Number two: After observing Mr. Rivera work, actually
24 I watched him work, and I was watching him work sitting down
25 working, and he wasn't even standing up and climbing ladders

ea

Jonas - Plaintiff - Direct

1 like he did in this other job, watching him listening to his
2 actual subjective complaints. Combining that with what the
3 medical records showed, that is totally inconsistent with the
4 demands of any job, even a sedentary job.

5 A sedentary job, even if you are working on a phone as
6 a dispatcher and customer service rep, like he was, you have to
7 show up to work every day. If you are in pain and you have to
8 take medication, you can't make your own schedule and go in when
9 you feel like it. You have to be prompt. You have to show up
10 every day. You have to sit at your desk and do your work. If a
11 call comes in or emergency comes in you can't be up from your
12 station attending to your pain, stretching, fidgeting, or
13 distracted because of your pain. You have to pay attention the
14 whole time.

15 Even in a low pressure job you still have to be there.
16 You have to show up on time. You have to show up every day, and
17 you have to pay attention and fill your quota.

18 Q Now, I just want to be clear about something so there's
19 no confusion. Based on your results, do you feel that Mr.
20 Rivera actually has skills that are transferable?

21 A Yes.

22 Q Can you tell us a little bit about that?

23 A He understands wiring, circuitry and various basic
24 computer functions which can be applied to all kinds of
25 electronics jobs. He understands. Some of it is dated now, but

ea

Jonas - Plaintiff - Direct

1 he learns quickly from his work history.

2 Q And with those skills, can you elaborate or explain why
3 you don't believe that he can use them now in an employment
4 situation?

5 A It's not about the skills. It's about whether or not
6 he can physically do a job. Doesn't matter what it is. He
7 can't -- Some jobs don't require any skills, considered by the
8 Department of Labor unskilled, where, for example, you are a
9 greater at Costco or even basic file clerk jobs and basic
10 cashier jobs, and when you have skills to pile on that you
11 can -- then you have to concentrate even more. He's unable to
12 do that.

13 Q Now, besides your own testing results and your own
14 observations, did you use any other tests to perform your
15 evaluation?

16 A I analyzed his jobs, if that's what you're wondering
17 about.

18 Q Can you explain that?

19 A Yes, sure. The Department of Labor has a directory
20 called the Dictionary of Occupational Titles known as the DOT,
21 and this is an actual dictionary of occupational titles, over
22 12,000 jobs in this, in these volumes. Every single job is
23 coded according to skill level, industry, interests, data
24 people, physical capacity, everything you can think of.

25 So I analyzed the jobs that he had held according to

ea

173

Jonas - Plaintiff - Direct

1 the DOT numbers, and what I determined was as a mechanic it was
2 a skilled job, as splicer, all of his jobs were skilled
3 actually. Some of them were light, meaning he would have to

4 stand and walk all day and not lift more than 20 pounds. Others
5 were heavy. I think he had a heavy job, yes. The line
6 installer's job is heavy where he had to lift up to between 50
7 and 100 pounds, and climbing around on poles, and crouching in
8 tunnels and ditches, all kinds of things.

9 He had some above average aptitudes that he
10 demonstrated in clerical perception, general learning ability.
11 He demonstrated temperaments, including being able to do
12 precision work, deal with people, be decisive. He really showed
13 a lot of ability on his job.

14 Q Ms. Jonas, have you ever heard of the term secondary
15 gain?

16 A Yes.

17 Q Okay. And can you explain for the jury what that is?

18 A That is where you are getting other benefits from your
19 disability, so people associate that with malingering.

20 Q And is that something that you take into account when
21 you are doing your testing?

22 A Yes.

23 Q And did you take that into account when you were
24 evaluating Mr. Rivera?

25 A I always try.

ea

174

♀

Jonas - Plaintiff - Direct

1 Q Thanks. And did you reach any conclusions with a
2 reasonable degree of vocational rehabilitation certainty as to
3 whether secondary gain was in play here?

4 A I don't believe there was secondary gain. I thought
5 his primary loss was dominant.

6 Q And can you explain what that means, primary loss?

7 A Yes. He's lost his ability to work and support his
8 family, lost his ability to be physically fit and comfortable.
9 He didn't gain anything.

10 Q Now, before coming here today, did you have an
11 opportunity to review the vocational rehab report of Dr. David
12 Stein?

13 A Yes.

14 Q And did you form any impressions about that report?

15 A Some.

16 Q Can you describe those impressions?

17 MR. SCAHILL: Objection, your Honor.

18 THE COURT: Let's have a sidebar.

19 (Whereupon, at this time a discussion was held
20 sidebar.)

21 THE COURT: Rephrase the question.

22 Q Ms. Jonas, did you have an opportunity to review the
23 opinions of Mr. Stein in his report?

24 A I did.

25 Q And did his opinions differ from yours?

ea

175

Jonas - Plaintiff - Direct

1 A Yes.

2 Q And can you describe the difference?

3 A Well, he concluded that Mr. Rivera was able to do a
4 handful of sedentary jobs. What he did was he met with him. I
5 don't know how long he was with him. I don't think, I don't
6 believe the report said that, but he didn't do any testing like
7 I did. He applied a computer program to form his conclusion,
8 McCroskey, M-C-C-R-O-S-K-E-Y, I believe, which is a computer
9 matching program based on that DOT I told you about.

10 what you do is you plug in the number code of the jobs
11 a person had performed, the line installer, customer service
12 rep, all of those are all coded. Then you enter certain
13 restrictions like no lifting over 20 pounds, no twisting and
14 turning, things like that. Then the computer program prints out
15 a list of the jobs that are left.

16 So what this report showed was that prior to the injury
17 Mr. Rivera had access to hundreds of jobs, I forget, I think it
18 was 43 percent of all the jobs in his -- in the group that he
19 measured. Following the restrictions that he put in, he had
20 access to couple of dozen, I don't remember the number. What he
21 put in, though, is that he was able to sit down and do a job,
22 sit, do a desk job basically, and that was where my opinion and
23 Dr. Stein's opinion diverged.

24 Q And so were your opinions essentially the same with
25 regard to transferrable skills?

ea

176

Jonas - Plaintiff - Cross

1 A Yes. I think we did agree on what Mr. Rivera's
2 abilities were in terms of skills and intelligence. We
3 disagreed on whether or not he could work now because I
4 considered the total disability that the medical reports stated
5 as well as my own two and a quarter hours of observations and
6 objective testing, so that's -- that may be why we disagree.

7 MR. ACARD: Thank you very much.

8 THE COURT: Cross-examination.

9 MR. SCAHILL: Thank you.

10 CROSS-EXAMINATION

11 BY MR. SCAHILL:

12 Q Good morning, Ms. Jonas.

13 A Hi.

14 Q My name is Frank Skahill and I represent the defendant
15 in this case, Lloyd Lampell.

16 A Yes.

17 Q Am I correct that your only contact with Mr. Rivera was
18 a two-and-a-half-hour interview and testing approximately a year
19 ago in April of 2015?

20 A Yes, sir.

21 Q So prior to your testimony here today, you had no
22 further contact other than that two and a half hour interview
23 one year ago, correct?

24 A Two and a quarter hours, yes.

25 Q Prior to your testimony this morning, you did not

ea

177

Jonas - Plaintiff - Cross

1 contact Mr. Rivera to see if his physical condition has changed;
2 is that correct?

3 A That's correct.

4 Q You also did not contact him to see if his condition
5 has improved; is that correct?

6 A Correct.

7 Q So you are assuming that his condition has remained
8 stable over the last year and has not changed, correct?

9 A My opinion is based on what I knew in 2015.

10 Q That wasn't my question, Ms. Jonas. Am I correct that
11 you're making certain assumptions here, one of those assumptions
12 is that Mr. Rivera's condition has not changed at all; is that
13 correct?

14 A Yes.

15 Q would you agree that people who have suffered an

16 injury, through medical treatment, physical therapy, and other
17 modalities of treatment improve over the course of time? would
18 you agree with that?

19 A Some do, yes.

20 Q well, would you also agree that individual's vocational
21 profile and their ability to work changes as time elapses from
22 the date of an injury; would you also agree with that?

23 A Yes.

24 Q Okay. So you're stating opinions to this jury to a
25 reasonable degree of certainty in your field as a vocational

ea

178

Jonas - Plaintiff - Cross

1 evaluation expert, correct?

2 A Yes.

3 Q But those opinions are a year old. They are without
4 the benefit of any further input from Mr. Rivera?

5 A Yes.

6 Q Is that fair to say?

7 A That's fair.

8 Q And Mr. Rivera's condition could have changed over the
9 last year, but you are unaware of that because you didn't
10 contact him to find out what his current status is, correct?

11 A Yes.

12 Q And, for example, you told the jury earlier that he had
13 great difficulty sitting for two and a half hours during the
14 course of your evaluation, correct?

15 A Yes.

16 Q I'd like you to assume for the moment that Mr. Rivera
17 has been sitting on a wooden bench here in court for the last
18 three days. would you agree that that's a change in his ability

19 to do sedentary work?

20 A No.

21 Q You would not agree?

22 A No.

23 Q Okay. Now, when you interviewed Mr. Rivera you
24 indicated that you reviewed certain documents, correct?

25 A Yes.

ea

179

Jonas - Plaintiff - Cross

1 Q And those documents were given to you by his attorney,
2 correct?

3 A Yes.

4 Q Now, when you came to know Mr. Rivera, it wasn't in the
5 course of making recommendations as far as his employability, it
6 was for your testimony in this lawsuit?

7 A That's correct.

8 Q Fair to say? And you indicated that you work as a
9 consultant, you've testified many times before, correct?

10 A Yes.

11 Q How many times have you testified for plaintiffs in the
12 last five years?

13 A I don't know. I've done both, but I don't have the
14 list with me.

15 Q Is it predominantly plaintiffs that you've testified
16 for?

17 A I'm not sure.

18 Q Well, how many times in the last year have you
19 testified?

20 A Usually about a half a dozen times, but that's
21 really -- that's a very rough estimate because, as you know,

22 most cases don't go to trial.

23 Q So in addition to your testimony you also prepare
24 reports for plaintiff's attorneys, correct?

25 A Correct.

ea

180

Jonas - Plaintiff - Cross

1 Q So plaintiffs reach out to you. This is part of your
2 marketing, that you hold yourself out as an expert for
3 plaintiffs in cases where there is an issue as to whether or not
4 that plaintiff can be employed; is that fair to say?

5 A That's not accurate.

6 Q Well, you don't get contacted out of the blue, you put
7 yourself out there as an expert for plaintiffs and vocational
8 rehabilitation issues, correct?

9 A I would say my referral base is half, 50/50 plaintiff
10 and defense, and it's all word of mouth.

11 Q But you do put yourself out there for lawyers that if
12 you have had a case that there's a vocational expert issue
13 you're the person to come to for a report and testimony. You do
14 put yourself out there, right?

15 A I don't really like the words "put myself out there",
16 I'm sorry.

17 Q Well, this is your job, this is what you do.

18 A I operate completely word of mouth. I don't advertise
19 anywhere. All I have had that would even resemble this is a
20 LinkedIn page.

21 Q Okay.

22 A That I hardly even look at.

23 Q So when you --

24 A That's it.

25 Q So when you were first contacted by the plaintiff's

ea

181

Jonas - Plaintiff - Cross

1 attorney, and that was sometime in 2015; is that correct?

2 A I believe so, yes.

3 Q When you were first contacted by the plaintiff's
4 attorney, were you told that Mr. Rivera has a lawsuit pending?

5 A Probably.

6 Q Well, that's the reason that they came to you?

7 A Yes.

8 Q So you knew going into the interview that he has a
9 lawsuit pending, correct?

10 A Absolutely.

11 Q And when you talked about secondary gain before, a
12 lawsuit is part and parcel of the issue of secondary gain,
13 correct?

14 A I can't answer that yes or no.

15 Q Well, Mr. Rivera is asking this jury to award him money
16 for injuries from an accident that happened in July of 2012,
17 correct?

18 A Yes.

19 Q And it's quite possible that he could be exaggerating
20 the extent of his injuries because he is asking the jury to
21 award him money; isn't that correct?

22 A Anything is possible.

23 Q Is that a fair statement?

24 A Anything is possible. I disagree with the premise that
25 he is exaggerating, but it's possible.

ea

182

1 Q Well, the information that was provided to you
2 consisted of solely the reports of the plaintiff's experts and
3 the plaintiff's doctors, correct?

4 A I think I read a worker's compensation doctor, Dr.
5 Kleinman, the one that I said am I allowed to say, he was
6 totally disabled so I don't think that is a plaintiff lawyer.

7 Q Plaintiff doctor.

8 A I'm sorry, doctor.

9 Q Did you ask for -- or did you review any of the reports
10 from the defendants other than Dr. Stein?

11 A Whatever I reviewed I cited in my earlier testimony.

12 Q All of the information that you have listed is all
13 people that have been associated with the plaintiff. There is
14 no document listed in your report that indicates that you saw
15 any information from the defendants in this case.

16 A Only the compensation doctor, I believe.

17 Q Okay. Would you agree with me that your opinion would
18 be more objective and informed if you had the opportunity to
19 review both sides, including the defendant's expert's report;
20 would that be a fair statement? That's a yes or no.

21 A I don't know. It would depend --

22 THE COURT: Yes or no, or I can't answer yes or
23 no.

24 A I can't answer yes or no.

25 Q Now, Mr. Rivera gave you a history, correct?

ea

183

Jonas - Plaintiff - Cross

1 A Yes.

2 Q And you asked him to be open and honest with you in
Page 30

3 giving you a complete and accurate history, correct?

4 A Yes.

5 Q He never mentioned to you that he had a 15-year history
6 of chronic neck and back pain; is that fair to say?

7 A Not exactly. I knew about the other accidents.

8 Q Well, is there anywhere listed in your report that Mr.
9 Rivera had a 15-years history of chronic neck and back pain?

10 MR. ACARD: Your Honor, I object.

11 THE COURT: You're objecting, right?

12 MR. ACARD: Yes.

13 THE COURT: Objection overruled. You can answer.

14 A Well, I don't cite it as a 15-year history, but I do
15 mention that he had had previous injuries and he had returned to
16 work. That's how I dealt with it in my report, so I
17 acknowledged it.

18 (Whereupon, the following was recorded and
19 transcribed by Official Court Reporter Laura Paro.)

20 (Continued on next page.)

21 * * * * *

22

23

24

25

ea

♀

Jonas - Plaintiff - Cross

184

1 CROSS EXAMINATION

2 BY MR. SCAHILL:

3 Q Were you aware that he was diagnosed with a herniated
4 disk in both his neck and back prior to the accident of July 5,
5 2012?

6 A I know he had had injuries. I don't recall the precise
7 diagnosis, but I do recall that he has injuries in those areas
8 previously, yes.

9 Q Did he also reveal to you that this is his third
10 lawsuit seeking to recover for neck and back injuries all from
11 car accidents?

12 A That was in the deposition and most of the injuries
13 that he referred to --

14 Q I'm asking you, I'm sorry to cut you off, the question
15 was, did he reveal to you that this is the third lawsuit that he
16 has filed seeking recovery for neck and back injuries from car
17 accidents?

18 THE COURT: Yes or no.

19 A No.

20 Q So in terms of the history that was provided to you,
21 did he also reveal to you that he had a host of medical
22 conditions that were not related to the accident which brings us
23 here to Court from July 5 of 2012, did he say anything to you
24 about other medical issues that he had?

25 A Yes.

1p

♀

1 Q Did he tell you that he had a history of asthma?

2 A Yes.

3 Q GERD's disease?

4 A GERD, yes.

5 Q Sleep apnea?

6 A Yes.

7 Q That he had a tumor in 2014 that was removed from his
8 stomach and he had to undergo surgery?

9 A Yes.

10 Q Did he tell you that he had a history of depression for
11 many years?

12 A Let me check that. No, I don't recall that.

13 Q You diagnosed him as depressed?

14 A I did not diagnosis him as that. He said he was
15 depressed.

16 Q So the information that was relayed to you by
17 Mr. Rivera, you took that information, and you put it in your
18 report pretty much verbatim, so whatever complaints he made you
19 wrote it down; is that fair to say?

20 A Yes.

21 Q would you also agree with me that those are all
22 subjective complaints?

23 A Yes.

24 Q There is no way to verify; correct?

25 A They are subjective complaints.

1p

♀

Jonas - Plaintiff - Cross

186

1 Q So you indicated that Mr. Rivera told you that he was
2 depressed; correct?

3 A Yes.

4 Q And you did not do anything to verify that for your
5 vocational evaluation; is that fair to say?

6 A No. I don't believe I saw that in his records. I may
7 have, I just doesn't recall.

8 Q There was no medical record to document that yet you
9 indicated in your report that part of the reason that he is
10 unemployable is that he was depressed; is that also fair to say?

11 A I'm sorry, I didn't hear the beginning of your

12 question.

13 Q Part of the reason that you felt he was unemployable is
14 because he had this depression; is that fair to say?

15 A I don't know if I used that word. I talked about his
16 lack of focus and concentration problems as a psychological
17 factor. I don't recall if I testified that his depression was
18 keeping him from working.

19 Q Now, you would agree with me that Mr. Rivera has a
20 certain skill set that the average laborer does not have?

21 A Yes.

22 Q Is that fair to say?

23 A Yes.

24 Q That he is skilled and has at least 10 years of
25 experience working electronics?

1p

♀

Jonas - Plaintiff - Cross

187

1 A Yes.

2 Q And that is a very portable skill; correct?

3 A Yes.

4 Q That's something that companies need on a regular
5 basis; correct?

6 A Yes.

7 Q And that's also something that companies need
8 instruction on or instructors, they need people to be able to
9 teach other employees about the electronic industry; correct?

10 A Yes.

11 Q would you also agree with me that Mr. Rivera was a
12 member of a union --

13 A Yes.

14 Q -- at the time. And that he was also an employee of

15 Verizon which employs thousands of individuals in the New York
16 area; is that all fair to say?

17 A Yes.

18 Q Are you familiar with the American Disabilities Act of
19 2002?

20 A Yes.

21 Q And that sets the Federal standards for employing
22 people with disabilities?

23 A Yes.

24 Q Are you aware that Verizon has a specific program to
25 employ people with disabilities?

1p

8

Jonas - Plaintiff - Cross

188

1 A Yes.

2 Q And are you aware of Verizon's rating for employing
3 people with disabilities?

4 A It's what?

5 Q Rating.

6 A No.

7 Q As an employer?

8 A No.

9 Q Did you ever hear of a publication Careers & the
10 Disabled?

11 A I believe so.

12 Q That's a publication to deal with people seeking
13 employment when they are disabled; correct?

14 A Right.

15 Q Were you aware that Verizon has been named consistently
16 by this publication as one of the nations top 50 employers for
17 people with disabilities?

18 A That's great.

19 Q Would you agree with me that Verizon has an outreach
20 and employee base that are people with disabilities?

21 A I don't know how the system works. I don't know how
22 the outreach system works.

23 Q Would you agree there are many people that work at
24 Verizon with disabilities?

25 A I don't know the number.

1p

8

1 Q People in wheelchairs work at Verizon?

2 A Yes.

3 Q And have full-time jobs. They show up everyday on
4 time, do their work and they are given reasonable accommodations
5 by their employers?

6 A Provided they can complete the essential function of
7 their job, yes, absolutely.

8 Q In terms of the applicability of the Federal Americans
9 for Disabilities Act, an employer such as Verizon is required to
10 give reasonable accommodation to workers that have disabilities;
11 correct?

12 A Provided they can complete the essential functions of a
13 job, yes.

14 Q You indicated that Mr. Rivera told you that he went
15 back to work and worked there for eight days and then stopped
16 working; correct?

17 A Yes.

18 Q And he was on Workers' Compensation benefits at that
19 point; correct?

20 A I believe so.

21 Q And he continued on Workers' Compensation benefits for
22 several years; correct?

23 A I don't recall how long he was.

24 Q Did you ask him if he was still on Workers'
25 Compensation when you interviewed him a year ago in April of

1p

8

Jonas - Plaintiff - Cross

190

1 2015?

2 A I think the case had settled by the time we met.

3 Q The Workers' Compensation case settled?

4 A Yes.

5 Q Meaning that he got a lump sum award?

6 A I don't know what he got, but that's often the case,
7 yes.

8 Q Did you speak to him about any of that?

9 A No.

10 Q You knew that he was coming to see you for purposes of
11 this lawsuit, you didn't inquire about the status of his
12 Workers' Comp case?

13 A He told me he had been getting \$792 a week from
14 Workers' Comp and the case settled.

15 Q For three years he was getting \$792 a week from
16 Workers' Comp for staying home?

17 MR. ACARD: Objection, your Honor.

18 THE COURT: Sustained. Sustained.

19 Q Did you take that into account when we talked about the
20 issue of secondary gain that someone would be getting \$800 a
21 week for staying home?

22 A Of course that's the point of Workers' Comp. When they
23 can't work they have to be compensated.

24 Q Did Mr. Rivera report to you that he ever spoke to his
25 employer, Verizon, about reasonable accommodations that are

1p

±

Jonas - Plaintiff - Cross

191

1 required by the Federal statute?

2 A No.

3 Q Would you agree with me that, hypothetically, if
4 Mr. Rivera went to his employer, Verizon, and said I'm disabled,
5 I can't climb poles any more, I can't pick up 100 pounds, that
6 they would be required to provide him with a reasonable
7 accommodation for employment?

8 MR. ACARD: Objection, your Honor.

9 THE COURT: I'll allow it.

10 A If that was the only thing he couldn't do, lift 100
11 pounds and climb poles there would be other jobs he could do.

12 Q Would you also agree --

13 A All right go ahead.

14 Q Would you also agree that a person that has a 10 year
15 work history, and is skilled in electronics could work with
16 reasonable accommodations at a company like Verizon if they
17 wanted to?

18 A If they were able to. It's different.

19 Q I didn't ask you that. I asked you if they wanted to.

20 A If they wanted to, yes, only if they were able to.

21 MR. SCAHILL: Nothing further. Thank you, Judge.

22 THE COURT: Any redirect?

23 MR. ACARD: No, your Honor.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you, sir.

1p