

1 SUPREME COURT OF THE STATE OF NEW YORK

2 BRONX COUNTY: CIVIL TERM: PART 23

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4 JESSIE BAH,

5 Plaintiff, INDEX NO.  
98557/05

6 -against-

7 NOELLE MALAVET, ALONZO MALLOY and VW CREDIT, INC.,  
8 Defendants.  
9 -----

X  
June 23, 2008  
CROSS EXAMINATION  
OF DR. ISRAEL

12 851 Grand Concourse  
13 Bronx, New York

14 B E F O R E:

THE HONORABLE DOMINIC MASSARO,  
15 Justice

16  
17 A P P E A R A N C E S:

18 THE TURKEWITZ LAW FIRM  
99 Park Avenue, Suite 800  
19 New York, New York 10016  
BY: ERIC TURKEWITZ, ESQ.  
20 Attorney for Plaintiff

21 WILSON ELSER MOSKOWITZ EDELMAN  
3 Gannett Drive  
22 White Plains, NY 10604-3407  
23 BY: CARL L. STECCATO, ESQ.  
Attorney for Defendant -  
24 VW CREDIT, INC.

25 (Appearances Continued)

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A P P E A R A N C E S (cont'd.)

VOUTE, LOHRFINK, MAGRO & COLLINS, LLP  
170 Hamilton Avenue  
White Plains, NY 10601-1789  
BY: KEVIN P. FITZPATRICK, ESQ.  
Attorney for Defendant -  
NOELLE MALAVET

PAMELA ROSS  
OFFICIAL COURT REPORTER

1  
2 (Whereupon, direct examination is  
3 completed and cross examination commences.)

4 THE COURT: We continue.

5 MR. TURKEWITZ: Thank you, Judge.

6 CROSS EXAMINATION

7 BY MR. TURKEWITZ:

8 Q Good morning, Dr. Israel.

9 A Good morning.

10 Q In your report you indicated that you read  
11 through the Jacobi Hospital records, correct?

12 A Yes.

13 Q And I'll assume you paid particular note  
14 to the operative report?

15 A The operative report.

16 Q All right, what I want to do briefly with  
17 you is reconstruct the injuries she suffered in the  
18 accident. Two other doctors have already done this  
19 but I want to make sure you're in accord with the  
20 prior testimony.

21 You've seen models of the spine and pelvis  
22 and hips such as this many times before, correct?

23 A Few times.

24 Q Okay. And where the -- this part over  
25 here, this is the back and this is the front of the

Dr. Israel - Defendant - Cross

1 person, correct?

2 A Okay.

3 Q Posterior and anterior in medical terms.

4 A Right, anterior and posterior.

5 When you said "back" I wasn't sure what  
6 you meant by back. It is the back, but I think you  
7 were referring to the back of the back, and we refer  
8 to it as anterior and posterior.

9 Q What we have here is the femur or thigh  
10 bone, correct?

11 A That's part of it, it's not the whole  
12 thing.

13 Q Yes, this is not a full scale human body?

14 A That's correct.

15 Q We have the top of the femur and the ball  
16 and socket joint that forms the hip, correct?

17 A That's correct.

18 Q And the socket is called the acetabulum?

19 A That's correct.

20 Q And you know from reading, from speaking  
21 with Ms. Bah and reading the medical records, she  
22 was sitting at the time of the accident in the back  
23 seat, correct?

24 A That was my understanding.

25 Q You know she was hit from behind, the car

Dr. Israel - Defendant - Cross

1 was hit from behind and she was jammed up against  
2 the car in the front -- I'm sorry, the seat that was  
3 in front?

4 A That's correct, that's what I heard.

5 Q So when she was in a sitting position the  
6 femur would have been roughly at a 90-degree angle  
7 depending on whether she was slouching down or not?

8 A Roughly, yes.

9 Q And the force of the accident caused the  
10 head of the femur to shatter the back of the  
11 acetabulum, correct?

12 A It fractured.

13 Q Okay. There were multiple pieces, weren't  
14 there?

15 A Yeah, but I'm not sure exactly what you  
16 mean by shattered. There were a few pieces.

17 Q And when that happened it went through and  
18 became dislocated outside the joint backwards in the  
19 posterior direction, correct?

20 A Posterior, yes.

21 Q So this was not just a fracture of the  
22 acetabulum, but also a dislocation, correct?

23 A Yes, it's referred to as a fractured  
24 dislocation.

25 Q And in the emergency room they reduced the

Dr. Israel - Defendant - Cross

1 fracture, they reduced the dislocation, they pulled  
2 it back into the socket, correct?

3 A I believe so. I'd have to refer to those  
4 notes.

5 MR. TURKEWITZ: Could I have the  
6 Jacobi chart, please?

7 MR. FITZPATRICK: Judge, to expedite  
8 I'll stipulate that that is what was done at  
9 Jacobi Hospital rather than go through a  
10 voluminous record.

11 MR. TURKEWITZ: I'm going to leave  
12 it here, Judge, so he can refer to it as he  
13 wishes.

14 Q This is not intended as a memory test. I  
15 just want to reconstruct for the members of the jury  
16 what it is that happened to the hip, and if you were  
17 to read through it you would have seen that they  
18 pulled it back into the joint in the emergency room,  
19 correct; do you remember that?

20 A I know the hip was reduced. I'm not sure  
21 exactly where it was reduced. I would have to refer  
22 to the records.

23 Q Please take a moment.

24 A You can't look through these records in a  
25 moment.

Dr. Israel - Defendant - Cross

1 Q Well, you are just going to concentrate on  
2 the emergency room or the discharge summary types of  
3 pages.

4 MR. TURKEWITZ: May I approach, Your  
5 Honor, with that one page admission information  
6 in my open records? If there's no objection  
7 from counsel.

8 Q Would that be of assistance?

9 A Okay.

10 Q I'll also, just to bring you up to speed  
11 here on reconstructing what happened at Jacobi, show  
12 you a three-page orthopedic consult dated July 10,  
13 2005, the accident having happened the evening  
14 before.

15 A Okay.

16 Q And the other document I'm going to show  
17 you is the operative report.

18 A Okay.

19 Q All right. Having read through these you  
20 feel a little more up to speed on the Jacobi  
21 admission?

22 A A little.

23 Q Okay. So, what happened at Jacobi is that  
24 first in the emergency room they reduced the  
25 dislocation putting it back into the joint, correct?

## Dr. Israel - Defendant - Cross

1 A That's correct.

2 Q But unfortunately it didn't stay in the  
3 joint and it slipped out of the joint and dislocated  
4 a second time, correct?

5 A Correct.

6 Q And the reason it dislocated a second time  
7 is that a portion of the acetabulum is missing, it  
8 just slipped out the same way it had been out  
9 before, correct?

10 A That would have been one of the reasons  
11 why.

12 Q And because that portion of the acetabulum  
13 was missing and because of a need to put the femur  
14 back where it's supposed to be they placed -- they  
15 did something called a placing of an acetabulum  
16 traction pin, correct?

17 A Yes.

18 Q Acetabulum traction pin, which you've used  
19 before?

20 A Yes.

21 Q Many times, correct?

22 A Enough.

23 Q Okay. And that's where a pin is drilled  
24 through the femur, one of the bones in the lower  
25 leg?



## Dr. Israel - Defendant - Cross

1 A This I believe was the tibia.

2 Q I'm sorry?

3 A I believe it was the tibia.

4 Q Okay, it was drilled through the tibia,  
5 and traction was placed in order to keep this in  
6 place, correct?

7 A Yes.

8 Q Now, the force of the collision didn't  
9 only break off pieces of the back of the acetabulum,  
10 but it also broke off cartilage, correct? You saw  
11 that in the operative reports?

12 A That's correct, but that's part of the  
13 acetabulum.

14 Q Okay. Now, the cartilage, and this is how  
15 it's been described previously in the courtroom, so  
16 correct me if I am wrong, but -- or the other  
17 doctors, correct me if I am wrong, it acts something  
18 like teflon in a pan in that it helps make for a  
19 smooth, smooth movement of the femur inside the  
20 acetabulum?

21 A I wouldn't use the term "teflon," but in  
22 essence cartilage is important for the joint.

23 Q Okay, and if you have fractured cartilage  
24 or broken cartridge inside the acetabulum and then  
25 you put the joint back together you're going to have

Dr. Israel - Defendant - Cross

1 instead of a smooth surface the way I might have  
2 assuming I had no injuries, you would have a rough  
3 surface inside the joint, correct?

4 A Depends on how it's reconstituted.

5 Q Well, of course it depends on how it's  
6 reconstituted, but this is one of the risks,  
7 correct?

8 A I don't know what you mean by that.

9 Q Let me back up a moment. There is a  
10 condition that occurs sometimes in patients who have  
11 injuries of the hip, such as Ms. Bah, called  
12 posttraumatic arthritis, correct?

13 A That's correct.

14 Q And posttraumatic arthritis can occur when  
15 you have instead of a smoothly working hip you have  
16 a rough surface, correct?

17 A That's correct.

18 Q In fact, what will happen or what can  
19 happen is that the head of the femur can become  
20 flattened due to the grinding of bone against bone  
21 instead of against cartilage, right?

22 A I think you're using that term improperly,  
23 flattened. It has very specific connotations in  
24 orthopedics and we would not describe it as  
25 flattened.

Dr. Israel - Defendant - Cross

1 Q Well, wouldn't you see if you had--

2 MR. TURKEWITZ: Withdrawn.

3 Q Couldn't you see -- let me do this a  
4 different way.

5 You haven't seen any of the X-rays,  
6 correct?

7 A That's correct.

8 Q I went through your report and there's no  
9 mention of having reviewed any x-rays?

10 A I did not review any of the x-rays.

11 Q Never reviewed any of the x-rays of Dr.  
12 Dassa?

13 A No, I was never provided any of those  
14 X-rays.

15 Q Okay. Would you agree that a flattening  
16 out of the top of the femur --

17 MR. TURKEWITZ: Withdrawn.

18 Q If you had a flattening down on the top of  
19 the femur that was seen a year or more after an  
20 accident such as this, would that be an indication  
21 of posttraumatic arthritis?

22 A Counsel, with all due respect I know you  
23 are trying to be descriptive about this, the term  
24 flattening, when you refer to the head of the femur  
25 it probably would represent something other than an

Dr. Israel - Defendant - Cross

1 arthritic problem, so I don't think you really mean  
2 it, but if you do I'll be happy to respond to it.

3 Q If you had seen --

4 MR. TURKEWITZ: Withdrawn.

5 Q If you had a rough -- if you had the femur  
6 going up against the rough surface would you see any  
7 deterioration inside the joint as a progressive  
8 nature, not necessarily immediately?

9 A Let me just explain something. Normally  
10 when you would follow this type of a problem there  
11 are -- there's articular surface, and articular  
12 surface when you have a fracture of the acetabulum  
13 the most important part of the acetabulum is always  
14 the superior weight bearing surface, so if you  
15 looked at it from an anterior-posterior point of  
16 view you would look at the space in between the  
17 femoral head and lip of the acetabulum. That's not  
18 quite the same thing as the posterior lip of the  
19 acetabulum.

20 Q So if you saw a decreased space between  
21 the femoral head and the acetabulum --

22 A Well, where?

23 Q Excuse me?

24 A Where did you see that?

25 Q It's a hypothetical question I'm asking

Dr. Israel - Defendant - Cross

1 you.

2 A Well, where hypothetically did you see  
3 that?

4 Q I'm asking you a hypothetical question.

5 A I know, and --

6 Q Please, you've testified many times  
7 before, correct?

8 A I have.

9 Q You know I'm allowed to ask you  
10 hypothetical questions. You've answered, you've  
11 been asked and answered hundreds --

12 MR. STECCATO: Argumentative.

13 MR. FITZPATRICK: Objection.

14 A Counselor, I'm trying to answer your  
15 question, but when you ask me a hypothetical  
16 question you have to be precise and descriptive so I  
17 can answer it and I would be happy to.

18 Q Is one of the signs of posttraumatic  
19 arthritis a decrease in the space between the  
20 femoral head and the acetabulum?

21 A That's correct.

22 Q So if a physician saw that on X-ray a  
23 posttraumatic arthritis would form part of the  
24 differential disease after an injury such as this,  
25 correct?

Dr. Israel - Defendant - Cross

1 A That would be correct, yes.

2 MR. STECCATO: Your Honor, may we  
3 approach for a second?

4 (Whereupon, an off-the-record  
5 discussion was held at the bench.)

6 THE COURT: Please continue.

7 MR. TURKEWITZ: Thank you, Judge.

8 Q When you saw Ms. Bah she made complaints  
9 of pain when the hip was moving, didn't she?

10 MR. STECCATO: Your Honor, I  
11 object.

12 You don't need the model for the  
13 question.

14 THE COURT: Come up.

15 (Whereupon, an off-the-record  
16 discussion was held at the bench.)

17 THE COURT: Let us continue.

18 Q When you were testifying before I believe  
19 that you stated that when you saw Ms. Bah  
20 approximately a year after the accident that she had  
21 a disability, correct?

22 A That's correct.

23 Q And that this was a disability that was  
24 directly related to the accident, correct?

25 A It appeared to be, yes.

Dr. Israel - Defendant - Cross

1 Q And this was a disability that you believe  
2 would be permanent, correct?

3 A That's correct.

4 Q And the disability that she had -- first  
5 of all, she was in pain, correct?

6 A Well, the reason that I called it a  
7 disability was not due to her complaint, but the  
8 physical findings that I had.

9 Q You saw that she was limping?

10 A Well, she was using a cane, she said she  
11 couldn't walk without a cane, so from that  
12 prospective she was limping. Aside from the use of  
13 the cane I have no other way of knowing.

14 Q Given the nature of the injuries to the  
15 acetabulum as well as the sacral fractures, Ms. Bah  
16 appearing at 63 years old and using a cane  
17 approximately a year after the accident didn't  
18 surprise you, did it?

19 A Well, given the nature of this type of  
20 fracture which was a fracture dislocation of the  
21 acetabulum, a posterior hip fracture, I would not  
22 attribute that to arthritis, and, you know, it is  
23 what it is and I made note of it and I made note of  
24 the objective findings, and the reason I gave her  
25 the disability was because of the loss of motion

Dr. Israel - Defendant - Cross

1 that was subjective and that was clear.

2 Q Regardless of whether the disability on  
3 that date was due to posttraumatic arthritis or  
4 simply from the direct insult to her body from the  
5 accident, she did have a disability on that date  
6 that was related to the accident, correct?

7 A She had a disability related to the  
8 accident.

9 Q And this restricted her ability to do  
10 certain things, didn't it?

11 A Fundamentally, no. She had probably --

12 Q Well --

13 MR. STECCATO: Let him finish his  
14 answer.

15 MR. TURKEWITZ: It was a yes or no  
16 question.

17 MR. STECCATO: I don't think so.

18 Q Did it limit her ability to do things or  
19 not?

20 A Certain things she probably would have  
21 difficulty doing, but not by very much. She had some  
22 mild limitation of motion in flexion of the hip.

23 Q Well, you know she was a certified nurse's  
24 aid, correct?

25 A That's correct.



## Dr. Israel - Defendant - Cross

1 Q And over the course of your career you  
2 have met and seen hundreds of certified nurses aids  
3 in action, correct?

4 A That's correct.

5 Q And they pick patients up, they wheel  
6 patients around, they are doing manual work as well  
7 as supporting -- as well as any psychological  
8 support that they may provide, correct?

9 A That's true.

10 Q And I think you would probably agree that  
11 when you saw Ms. Bah in your office approximately a  
12 year after the accident that she would not have been  
13 suitable -- it would not have been suitable for her  
14 to go back to work as a nurse's aide, correct?

15 A I would not agree to that.

16 Q You would not agree?

17 A I would not.

18 Q Let me ask you a hypothetical question:

19 Let's assume that in March of 2008, two  
20 other defense experts examined Ms. Bah finding that  
21 she was moderately disabled for one and markedly  
22 disabled for the other. Would you agree that that  
23 represents a progressive deterioration of her  
24 condition from the time that you saw her?

25 MR. STECCATO: Objection to form.

Dr. Israel - Defendant - Cross

1 THE COURT: If he understands it I'll  
2 allow him to answer.

3 MR. FITZPATRICK: Objection also.

4 THE COURT: Overruled.

5 A I don't know what the basis was for that,  
6 so I don't know what it represented.

7 Q I want you to assume that a Dr. Haberman  
8 -- do you know Dr. Haberman?

9 A I do know Dr. Haberman.

10 Q I want you to assume Dr. Haberman sat in  
11 that very chair on Friday and told the members of  
12 the jury she was moderately disabled and could no  
13 longer do her work as a certified nurses's aid.  
14 Would that opinion represent a deterioration of the  
15 condition that Ms. Bah is suffering from with  
16 respect to her injuries?

17 MR. FITZPATRICK: Continuing  
18 objection.

19 MR. STECCATO: Continuing objection,  
20 Your Honor.

21 THE COURT: Noted.

22 A I don't know the basis for that opinion.

23 Q You've seen many --

24 THE COURT: Counsel, I assume you  
25 are assuming that the opinion is accurate for

Dr. Israel - Defendant - Cross

1 the purpose of this question?

2 MR. TURKEWITZ: Of course. It's  
3 deterioration.

4 MR. <sup>Sleeve</sup>TURKEWITZ: Same objection, Your  
5 Honor. Is there a question?

6 THE COURT: Is there a question?

7 MR. TURKEWITZ: I thought there was a  
8 question.

9 A I'm lost already, I'm not sure.

10 Q If Dr. Haberman told the members of this  
11 jury on Friday that she was moderately disabled and  
12 could no longer work as a certified nurses's aid  
13 would you agree that that would represent a  
14 different opinion than the one that you had with  
15 respect to her condition just a year after the  
16 accident, correct?

17 A That's correct.

18 Q .And that would represent the deterioration  
19 of her condition, correct?

20 A Well, I don't know the basis for his  
21 opinion, so I can't say that it would be a  
22 deterioration.

23 Q Do you know Dr. David Kaufman at  
24 Montefiore?

25 A I do not.

Dr. Israel - Defendant - Cross

1 Q I want you to assume he's a neurologist  
2 that examined Ms. Bah and found that she was  
3 markedly disabled.

4 MR. STECCATO: Objection, Your  
5 Honor. Assumes a fact.

6 THE COURT: Let me hear the  
7 question.

8 Q Would you agree that that examination and  
9 opinion was formed in March of 2008, just a few  
10 months ago? Would you agree that that opinion of  
11 her condition represents a deterioration and a  
12 change from the opinions that you formed two years  
13 ago?

14 MR. STECCATO: Objection, Your  
15 Honor.

16 MR. FITZPATRICK: Objection also.

17 THE COURT: I think on  
18 reconsideration I'm going to sustain the  
19 objection.

20 Q You've done many of these exams of  
21 medical/legal exams in the past, haven't you?

22 A That's correct.

23 Q Approximately how many do you do on a  
24 monthly basis?

25 A It varies. I would say I do about 30 a

## Dr. Israel - Defendant - Cross

1 week on average.

2 Q Per week?

3 A Yes.

4 Q 1,500 per year?

5 A Probably, roughly that.

6 Q And how much do you get paid for each of  
7 these examinations?

8 A About 150 an exam.

9 Q And you get paid additional for the  
10 report?

11 A No.

12 Q You get paid additional for the  
13 consultation with the attorney?

14 A What consultation?

15 Q Any consultation that you might have after  
16 you do a report. Doesn't an attorney want to talk  
17 to you?

18 A Sometimes, sometimes not

19 Q And when you do, do they get charged for  
20 that?

21 A Yes.

22 Q At what hourly rate?

23 A \$500 an hour.

24 Q \$500 an hour? And the report -- and the  
25 examination and the report itself are only 150?

Dr. Israel - Defendant - Cross

1 A That's correct.

2 Q And how often do you, in taking the  
3 witness stand --

4 MR. TURKEWITZ: Withdrawn.

5 Q Approximately, if you're doing --

6 MR. TURKEWITZ: Withdrawn.

7 Q Do you have specific days that you use for  
8 doing these medical exams?

9 A Yes.

10 Q What days?

11 A Generally Wednesday and Friday,  
12 occasionally Tuesday.

13 Q So when you're doing 30 exams per week,  
14 that's basically 15 exams on a Wednesday and 15  
15 exams on a Friday?

16 A Yeah, roughly so.

17 Q And in addition to doing the exams you are  
18 also dictating the reports?

19 A Well, I do or I make notes and a report is  
20 constructed and I review the report and I sign off  
21 on it.

22 Q And are you also seeing other patients on  
23 those days?

24 A Sometimes I do.

25 Q So you're seeing about 15 medical -- doing

Dr. Israel - Defendant - Cross

1 about 15 medical/legal exams on each of these days  
2 plus you are also seeing regular patients, correct?

3 A Yes, sometimes. I mean it varies my  
4 schedule, varies quite a bit.

5 Q And approximately how many times per year  
6 do you testify?

7 A Well, I would say I average about once or  
8 twice a month. Now, that can vary from month to  
9 month, but I would say it averages out to that.

10 Q Approximately 15, 18 times per year?

11 A Well, it's one to two a month, it could be  
12 any place between, I guess, about 12 to 24. I mean,  
13 it's a rough estimate, counselor, I'm not sure  
14 exactly.

15 Q How long have you been doing these types  
16 of medical/legal exams?

17 A Well, orthopedic surgery, as you probably  
18 know, often --

19 Q Just how long have you been doing the  
20 medical/legal exams?

21 A Since I've been in practice, but as I  
22 tried to explain to you, orthopedic surgery involves  
23 injuries and injuries involve medical/legal  
24 evaluations and reports and very often testimony in  
25 court, so since the time I was in practice since I

## Dr. Israel - Defendant - Cross

1 left my position as director of sports medicine at  
2 Joint Disease, which was 1980, I've been doing  
3 this. I do it for both plaintiffs and I do it for  
4 defendants.

5 Q This forms a very substantial part of your  
6 current practice, doesn't it?

7 A It does.

8 Q And because you are seeing so many  
9 patients --

10 MR. TURKEWITZ: Withdrawn.

11 Q Because you are seeing some individuals in  
12 a medical/legal context you cannot possibly remember  
13 all of them, correct?

14 A Well, I don't remember all my patients  
15 that I am seeing for treatment, that's why I rely  
16 upon notes and things like that.

17 Q And that's why it's important for your  
18 notes to be accurate, correct?

19 A That's correct.

20 Q And I noticed in reading your report that  
21 one of the things you did was you said her scar was  
22 only six inches long?

23 A That's correct.

24 Q You have already admitted, I believe, that  
25 that was an error, correct?



Dr. Israel - Defendant - Cross

1           A       I didn't say it was an error. I said it  
2 looked like the typical hip incision.

3                   As I told you I do a lot of hip  
4 replacements that normally are six inches. Now, I  
5 know the operative report said 28 centimeters and I  
6 tried to explain to you when I make a hip incision  
7 and I dictate an operative report it's not like I  
8 measured it to dictate that operative report.

9                   There's a certain protocol that doctors  
10 usually use. I don't think the gentleman that did  
11 this operation measured it, it was an estimate too,  
12 so I have one estimate, they had another estimate.

13           Q       Are you aware that Dr. Haberman told the  
14 jury on Friday that it was a ten inch scar?

15           A       I am not.

16           Q       Are you aware that Dr. Dassa told the jury  
17 on Thursday that it was a ten inch scar?

18           A       I am not.

19           Q       In your report did you note that there was  
20 a loss of consciousness for Ms. Bah?

21           A       That's what she told me.

22           Q       Sir, are you aware that there isn't any  
23 testimony in any record any place that says she had  
24 a loss of consciousness?

25           A       Well, there's testimony from me that she

## Dr. Israel - Defendant - Cross

1 told me to.

2 Q Well, this is what you have dictated,  
3 correct?

4 A It's what I had in my records.

5 Q Weren't you furnished with something  
6 called a Bill of Particulars with respect to her  
7 injuries?

8 A I was.

9 Q And there isn't anything about a loss of  
10 consciousness there, is there?

11 A I would have to refer to the Bill of  
12 Particulars.

13 What I am telling you, when I indicated  
14 she lost consciousness that's what she told me.

15 Q When Ms. Bah showed up in your office did  
16 she come with an attorney by the name of Ariella  
17 Coleman?

18 A She did

19 Q And did Miss Coleman give you a two page  
20 recitation of her injuries that you signed that  
21 looks exactly like this?

22 A Okay.

23 Q And is that your signature on the bottom  
24 of the page?

25 A Looks like it is..

## Dr. Israel - Defendant - Cross

1 Q And does loss of consciousness appear any  
2 place on the list of injuries that you were given at  
3 the time you did your report on those two pages?

4 A Does not mention that.

5 Q And did you write in your report that she  
6 had a bilateral hip --

7 MR. TURKEWITZ: Withdrawn.

8 Q -- that she had bilateral hip injuries to  
9 both hips?

10 A Yes.

11 Q And are you aware that there's not one  
12 single claim that the accident caused an injury to  
13 the right hip, only to the left?

14 A I understand that, but what I am --

15 Q Would you agree --

16 A Counsel, can I answer? This is what she  
17 told me.

18 Now, you may have put in your Bill of  
19 Particulars other than what she told me, but I put  
20 down what she told me. You may have given me a list  
21 that this is what your claims are and this is what  
22 your lawsuit is about. She told me otherwise, and I  
23 think you would agree with me that I should have put  
24 that down if she told me.

25 Q Only if it was actually told to you.

Dr. Israel - Defendant - Cross

1 A She told me.

2 Q There was not a stenographer present.

3 MR. FITZGERALD: I object to the  
4 argument.

5 THE COURT: One second, one second,  
6 please.

7 MR. TURKEWITZ: I offer into  
8 evidence a two-page recitation of injuries that  
9 was given to Dr. Israel and which he has  
10 acknowledged represents his signature on it as  
11 Plaintiff's Exhibit 18.

12 MR. FITZPATRICK: I object to this.

13 THE COURT: One second, first share  
14 it with counsel.

15 Any objection?

16 MR. STECCATO: Well, Your Honor,  
17 this is a letter from Mr. Turkewitz' firm to  
18 Dr. Israel listing conditions.

19 We already have a Bill of Particulars  
20 as part of the marked pleadings in this case. I  
21 don't need to have this admitted into evidence.

22 MR. TURKEWITZ: He signed it, he  
23 acknowledged it, and it conflicts with his  
24 report.

25 MR. STECCATO: It doesn't conflict.

Dr. Israel - Defendant - Cross

1 MR. FITZPATRICK: This is a letter  
2 proposed by Mr. Turkewitz, it's self-serving,  
3 and based on that alone, Judge, it won't go  
4 into evidence, just as a Bill of Particulars  
5 which was prepared by Mr. Turkewitz, it's  
6 self-serving and won't go into evidence.

7 THE COURT: Please approach.

8 (Whereupon, an off-the-record  
9 discussion was held at the bench.)

10 THE COURT: Objection is sustained.

11 Q Were you handed a copy to keep for your  
12 file?

13 THE COURT: We will mark it as  
14 Plaintiff's 18 for identification.

15 (Whereupon, Plaintiff's Exhibit 18,  
16 was marked for identification.)

17 THE COURT: Please continue.

18 Q Were you handed a copy for your own files  
19 of this list of injuries?

20 A I would have to look in my files.

21 Q I'm sorry?

22 A I would have to look in my files.

23 Q Well, you didn't bring your files with  
24 you, did you?

25 A I did not.

Dr. Israel - Defendant - Cross

1 Q And as somebody who has testified --

2 MR. TURKEWITZ: Withdrawn.

3 Q How long have you been testifying 18 to 24  
4 times a year, for how many years?

5 A Well, probably I've been testifying since  
6 the beginning of my orthopedic career, so --

7 Q Would it be fair to say that you have been  
8 a witness in a courthouse hundreds of times?

9 A Probably, yes.

10 Q And the questions that I'm asking you  
11 today about where your file is, it's not the first  
12 time you've heard those questions?

13 A That's correct.

14 Q Every attorney who comes into court and  
15 questions you says, doctor, did you bring your  
16 records with you, correct?

17 A That's not correct.

18 Q Excuse me?

19 A That is not correct.

20 Q Only 90 percent?

21 MR. FITZGERALD: Judge, I object.

22 It's argumentative.

23 Q Did I, in fact, serve you with a subpoena  
24 to make sure that you brought your records to court  
25 serving you with a subpoena on March 25, 2008?

Dr. Israel - Defendant - Cross

1 MR. TURKEWITZ: If I may approach?

2 Q Does it look exactly like this?

3 A Counselor, I'm not aware of this subpoena.

4 Q Well, who accepted the subpoena for you?

5 A I don't know.

6 MR. TURKEWITZ: I offer the subpoena  
7 and the original affidavit of service into  
8 evidence.

9 THE COURT: Share them with counsel.

10 MR. FITZPATRICK: Objection.

11 MR. STECCATO: Objection, Your

12 Honor.

13 THE COURT: Over the objection of  
14 defense counsel we will mark it as Plaintiff's  
15 19 in evidence.

16 (Whereupon, Plaintiff's Exhibit 19,  
17 was marked in evidence.)

18 Q Inside the file that you have, the one  
19 that you did not bring to court, you have  
20 handwritten notes concerning those conversations  
21 with Jesse Bah and Miss Coleman, don't you?

22 A Yes.

23 Q Inside that file, sir, you have  
24 transmittal letters from the people that hired you,  
25 don't you?

Dr. Israel - Defendant - Cross

1 A I'm not sure.

2 Q That would be a company called D and D  
3 Associates?

4 A That's correct.

5 Q And this is a company that hires you to do  
6 exams of people who brought lawsuits, correct?

7 A That's correct.

8 Q You made yourself -- other than making  
9 yourself available to D and D Associates, do you  
10 make yourself available to any other companies that  
11 are busy hiring experts to testify in court?

12 A I do.

13 Q How many other companies?

14 A About four or five.

15 Q And do some of those companies send you  
16 correspondence that tells you that they are looking  
17 for specific things?

18 A I don't know exactly what you mean by  
19 that. Usually the correspondence is please arrange  
20 to examine this patient on such and such date and  
21 evaluate their particular problems.

22 Q And those companies always do it for  
23 defendants, correct, those four or five companies  
24 that hire you?

25 A That actually is not true, they do it on



Dr. Israel - Defendant - Cross

1 occasion for plaintiffs.

2 Q How many times have those companies hired  
3 you for plaintiffs?

4 A I don't know. A few times.

5 Q What percentage of the time that you take  
6 the witness stand are you doing it for defendants  
7 excluding your own patients?

8 A Explain to me exactly what you mean by  
9 that.

10 Q Referring to those times when you are  
11 hired specifically to examine somebody where the  
12 person is not your patient.

13 A Never. When I'm doing it, if there's a  
14 lawsuit and they have asked me to evaluate somebody,  
15 it's somebody that I treat.

16 Q And those four or five companies over the  
17 course of the last five years have sent to you how  
18 many individuals to exam? Has it been about 1,500 a  
19 year?

20 A We just went through the numbers. You went  
21 through the numbers, and I would guesstimate that's  
22 what it is.

23 Q So all of those --

24 MR. TURKEWITZ: Withdrawn.

25 Q I'm not sure if I asked you this question

Dr. Israel - Defendant - Cross

1 yet, but when you examined Ms. Bah in your office  
2 did you take an X-ray of her hip?

3 A I did not.

4 Q Let me ask you a hypothetical question:

5 ~~Let~~ You say you had seen one of your own  
6 patients approximately 20 times over the course of  
7 two years and a doctor hired for a lawsuit sees the  
8 patient only once for the purpose of the lawsuit.  
9 Who's opinion do you think would be more important?

10 MR. STECCATO: Objection, Your  
11 Honor.

12 Q The one that's seen her 20 times or the  
13 one who's seen her only once?

14 MR. FITZPATRICK: Objection also.

15 THE COURT: Objection sustained.

16 MR. STECCATO: Thank you, Your  
17 Honor.

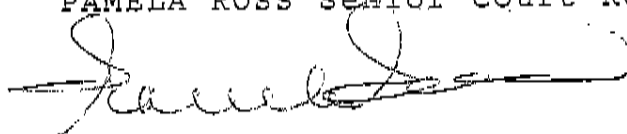
18 MR. TURKEWITZ: Nothing else.

19 (Whereupon, the cross examination of  
20 Dr. Israel is completed.)

21 \* \* \* \* \*

22 This is to certify that the foregoing is a true  
23 and accurate transcript of the stenographic  
24 minutes taken within.

25 PAMELA ROSS Senior Court Reporter



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PAMELA ROSS  
SENIOR COURT REPORTER  
BRONX SUPREME COURT  
851 Grand Concourse, Room 206  
Bronx, New York 10451  
(718) 618-1680  
TAX I.D. # 088-52-0857

August 5, 2008

TO: BLANK, GOONICK & DITTENHOEFER  
ATTN: KINGWEN WU

RE: BAH V. MALAVET  
Index 98557/05  
Cross Examination of Dr. Israel

For original transcript of minutes in the above  
captioned matter, held before the Honorable  
DOMINIC MASSARO on June 23, 2008.

Total Amount Due.....\$175.00  
Total Amount Paid.....\$175.00

THANK YOU!!!!