

**APPELLATE COURT
OF THE
STATE OF CONNECTICUT**

A.C. 42493

JUDITH KISSEL

VS.

CENTER FOR WOMEN'S HEALTH, P.C., ET AL.

APPENDIX TO BRIEF OF PLAINTIFF-APPELLEE

TO BE ARGUED BY:

ALINOR C. STERLING

FOR THE PLAINTIFF-APPELLEE:

**ALINOR C. STERLING
SEAN K. MCELLIGOTT
SARAH STEINFELD
MATTHEW S. BLUMENTHAL
KOSKOFF, KOSKOFF & BIEDER, P.C.
350 FAIRFIELD AVENUE
BRIDGEPORT, CT 06604
TEL: (203) 336-4421
FAX: (203) 368-3244
ASTERLING@KOSKOFF.COM
SMCELLIGOTT@KOSKOFF.COM
SSTEINFELD@KOSKOFF.COM
MBLUMENTHAL@KOSKOFF.COM**

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D.N. FST CV 12 6013562 S

JUDITH KISSEL

VS

CENTER FOR WOMEN'S HEALTH, P.C.

SUPERIOR COURT
STAMFORD-NORWALK
JUDICIAL DISTRICT
STAMFORD/NORWALK JUDICIAL
DISTRICT AT STAMFORD

2012 SEP -6 A 10: 56

:SEPTEMBER 6, 2012

MEMORANDUM OF DECISION
RE MOTION TO DISMISS # 105.00 AND 109.00

The plaintiff, Judith Kissel, commenced this medical malpractice action by way of in-hand service of process on the Center for Women's Health, P.C. (Center) on April 4, 2010 and on Reed Wang on April 6, 2010. The plaintiff filed a two-count complaint against the defendants, and each count is directed at a different defendant. The counts are substantially similar, and the plaintiff makes the following allegations in them. Beginning on April 22, 2010, the plaintiff began receiving acupuncture and related treatment from Reed Wang, who was an employee of the Center. While under the care and supervision of the defendants, the plaintiff suffered severe and serious permanent injuries. These injuries were caused by the failure of the Center to exercise reasonable care and by the failure of Reed Wang to exercise that degree of care and skill ordinarily and customarily used by licensed acupuncturists in that the defendants, failed to protect adequately the plaintiff from contact with a heat lamp during her acupuncture procedure, left the plaintiff unattended during the course of her acupuncture treatment, failed to utilize a safe heating system during the acupuncture procedure and failed to care adequately and properly for the plaintiff for her acupuncture treatment needs.

On May 24, 2012, the Center filed a motion to dismiss the plaintiff's complaint (105.00) on the ground that the court lacks personal jurisdiction over the defendant because the plaintiff failed

to comply with General Statutes § 52-190a. The Center filed a memorandum of law in support of its motion. On June 8, 2012, by motion to dismiss (109.00) Reed Wang joined in the Center's motion to dismiss and its accompanying memorandum of law (109.00). On June 28, 2012, the plaintiff filed a request for leave to file an amended complaint (112.00) and also a memorandum of law in opposition to the defendants' motions to dismiss, to which she attached an affidavit by her attorney. The Center filed an objection to the plaintiff's request for leave on July 9, 2012, as well as a memorandum of law in reply to the plaintiff's opposition to the motions to dismiss. The plaintiff, in turn, filed a reply to the Center's objection to the plaintiff's request for leave, to which the Center filed a surreply. The matter was heard at the short calendar on July 16, 2012 before me.

“A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Bacon Construction Co. v. Dept. of Public Works*, 294 Conn. 695, 706, 987 A.2d 348 (2010). “The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone. . . . Where, however . . . the motion is accompanied by supporting affidavits containing undisputed facts, the court may look to their content for determination of the jurisdictional issue and need not conclusively presume the validity of the allegations of the complaint.” (Internal quotation marks omitted.) *Ferreira v. Pringle*, 255 Conn. 330, 346-47, 766 A.2d 400 (2001). “Because a lack of personal jurisdiction may be waived by the defendant, the rules of practice require the defendant to challenge that jurisdiction by a motion to dismiss.” (Internal quotation marks omitted.) *Golodner v. Women's Center of Southeastern Connecticut, Inc.*, 281 Conn. 819, 825, 917 A.2d 959 (2007).

The defendants make the following arguments in support of their motions. Because the plaintiff's claims sound in medical malpractice, the plaintiff is required to comply with § 52-190a. Pursuant to § 52-190a (a), the plaintiff was required to obtain and file a written opinion letter of a similar health care provider. The failure to obtain and file such a written opinion letter constitutes insufficient process and, therefore, does not subject the defendants to the jurisdiction of the court. Further, § 52-190a (c) provides the remedy of dismissal for any defendant who is subject to a legal action in which the written opinion letter is not attached to the complaint. The court must first resolve the jurisdictional question raised in the motion to dismiss before considering the plaintiff's request for leave to amend the complaint. The defendants conclude that because the court lacks personal jurisdiction over the defendants, their motion to dismiss should be granted and, accordingly, the court does not have discretion to permit an amendment to attach the written opinion letter.

In opposition to the motions, the plaintiff argues the following. She obtained a written opinion letter from a similar health care provider prior to her filing of the complaint but inadvertently did not attach it to the complaint. The plaintiff has filed a request for leave to file an amended complaint, to which she has attached the written opinion letter. The Appellate Court has held that in instances where the written opinion letter existed at the time of the commencement of the action but was inadvertently not attached to the complaint, the trial court has discretion to deny a motion to dismiss and to allow an amendment. Because the plaintiff obtained a written opinion letter prior to the commencement of the action but did not attach the written opinion letter to the original complaint through inadvertence and oversight, this court denies the defendants' motion to dismiss and grants her request for leave to file the amended

complaint. A dismissal of the plaintiff's suit would elevate form over substance and would violate Connecticut public policy of allowing a trial on the merits.

Section 52-190a (a) provides in relevant part: "No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death . . . in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. . . . [T]he claimant or the claimant's attorney . . . shall obtain a written and signed opinion of a similar health care provider, as defined in [General Statutes §] 52-184c . . . that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion." See *Morgan v. Hartford Hospital*, 301 Conn. 388, 396, 21 A.3d 451 (2011).

"Section 52-190a requires that the written opinion letter must have been obtained prior to filing the action and that the good faith certificate and opinion letter must be filed when the action commences. Section 52-190a (c) provides: 'The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action.' It is the failure to obtain and file the opinion letter which serves as a basis for the dismissal. . . . The plain language of the statute clearly provides that the legislature contemplated a dismissal being filed early in the proceedings." *Id.*, 396-97. "[T]he written opinion letter, prepared in accordance with the dictates of § 52-190a . . . is akin to a pleading that must be attached to the complaint in order to commence properly the action. *Id.*, 398.

In addition to holding that dismissal of an action is the proper remedy for when a plaintiff in a medical malpractice case fails to attach to her complaint a written opinion letter that complies with § 52-190a (a), the courts also have held that such a failure to comply with § 52-190a (a) is a sufficient ground for bringing a motion to dismiss. “Failure to comply with the statutory requirements of service renders a complaint subject to a motion to dismiss on the ground of lack of personal jurisdiction.” *Id.*, 401. “[T]he attachment of the written opinion letter of a similar health care provider is a statutory prerequisite to filing an action for medical malpractice. The failure to provide a written opinion letter, or the attachment of a written opinion letter that does not comply with § 52-190a, constitutes insufficient process and, thus, service of that insufficient process does not subject the defendant to the jurisdiction of the court. . . . Accordingly . . . because the written opinion letter of a similar health care provider must be attached to the complaint in proper form, the failure to attach a proper written opinion letter pursuant to § 52-190a constitutes insufficient service of process Because . . . the absence of a proper written opinion letter is a matter of form, it implicates personal jurisdiction. It is in the nature of a pleading that must be attached to the complaint.” (Citation omitted.) *Id.*, 401-02.

Although the law is explicit that a written opinion letter complying with § 52-190a (a) must be attached to the complaint in a medical malpractice case in order to subject the defendant to the jurisdiction of the court and to avoid dismissal of the action, the law is less clear as to the legal consequences when a plaintiff obtained a statutorily valid written opinion letter prior to commencing the action but failed to attach it to her original complaint and subsequently seeks to amend her complaint to attach that written opinion letter. This is the precise issue with which this court is faced. The appellate court addressed this question directly: “Given the fallibility

existing in the legal profession . . . it is possible that a written opinion of a similar health care provider, existing at the time of commencement of an action, might be omitted through inadvertence. In such a scenario, it certainly may be within the discretionary power of the trial judge to permit an amendment to attach the opinion, and, in doing so, deny a pending motion to dismiss. Such a discretionary action would not be at variance with the purpose of § 52-190a, to prevent groundless lawsuits against health care providers.” *Votre v. County Obstetrics & Gynecology Group, P.C.*, 113 Conn. App. 569, 585, 966 A.2d 813, cert. denied, 292 Conn. 911, 973 A.2d 661 (2009). It is important to note that the court restricted the possible discretionary power of trial court judges to allow amendments to a complaint to attach a written opinion letter only to instances in which the written opinion letter existed prior to the commencement of the action. “The plaintiff could not turn back the clock and attach by amendment an opinion of a similar health care provider *that did not exist at the commencement of the action.*” (Emphasis added.) *Id.*, 586.

The Superior Court is split over the precedential value of the language in *Votre* recognizing the potential discretion of trial court judges to deny a motion to dismiss to permit a plaintiff to amend its complaint to attach a written opinion letter that existed prior to the commencement of the action.¹ Some cases have characterized this language as dicta; see,

¹The Supreme Court has declined to rule on the issue of whether the trial court has discretion to permit a plaintiff to amend his complaint in a medical malpractice case to attach a written opinion letter that was obtained prior to the commencement of the action. In a footnote, the court noted the relevant language in *Votre*, but declined to take a position on the issue. Because the plaintiff never sought to amend his complaint, the court concluded that it was “not presented with an opportunity to resolve a division in Superior Court authority concerning whether amendment of the defective pleading, including the substitution of a new opinion letter for one that appears not to comply with § 52-190a (a) or one that was not filed at all, is an appropriate response to a pending motion to dismiss pursuant to § 52-190a (c), in light of the

Bradley v. Yale New Haven Hospital, Superior Court, judicial district of New Haven, Docket No. CV 10 5033272 (January 28, 2011, *Burke, J.*) and *Lohnes v. Hospital of St. Raphael*, Superior Court, judicial district of New Haven, Docket No. CV 09 5031448 (April 6, 2010, *Wilson, J.*) (49 Conn. L. Rptr. 594); while at least one case has explained why the ruling is not dicta. *Squeo v. Norwalk Hospital Ass'n.*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV 09 5012548 (January 22, 2010, *Tierney, J.T.R.*) (49 Conn. L. Rptr. 346, 347). In *Squeo*, the court held that the above-quoted language from *Votre* “is not dictum. Although *Votre* did not involve a preexisting health care provider opinion letter, it did involve the plenary review of [General Statutes] § 52-190a. . . . *Votre* also discussed the purpose of [General Statutes] § 52-190a. . . . ‘[I]t is not dictum . . . when a court . . . intentionally takes up, discusses, and decides a question germane to, though not necessarily decisive of, the controversy. . . . Rather, such action constitutes an act of the court [that] it will thereafter recognize as a binding decision.’ *Cruz v. Montanez*, 294 Conn. 357, 377 (2009); *Red II, LLC v. Conservation Commission*, 117 Conn. App. 630, 647 (2009).” (Citations omitted.) *Id.* The court proceeded to deny the defendant’s motion to dismiss on the basis that the plaintiff had obtained a valid written opinion letter prior to the commencement of the action and had attached it to an amended complaint. *Id.*, 348. Without analyzing the precedential value of the above-referenced language in *Votre*, other courts have quoted it as authority to consider a plaintiff’s amended complaint that contained a written opinion letter that existed prior to the

Appellate Court’s statement in *Votre* Inasmuch as this issue is not presented by this certified appeal, we take no position on the continuing viability of this aspect of *Votre* . . . which already has been the subject of some question.” (Citations omitted.) *Bennett v. New Milford Hospital*, 300 Conn. 1, 30 n.17, 12 A.3d 865 (2011).

commencement of the action. See, e.g., *Xicohtencatl v. Yale New Haven Hospital*, Superior Court, judicial district of New Haven, Docket No. CV 11 6018319 (October 18, 2011, *Burke, J.*) (considering the plaintiff's amended complaint to which an opinion letter was attached, but ultimately dismissing the amended complaint because the opinion letter was not written by a similar healthcare provider) and *Dilling v. Leckowicz*, Superior Court, judicial district of New Britain, Docket No. CV 09 5013972 (December 15, 2009, *Pittman, J.*) (denying the defendant's motion to dismiss on the basis that the plaintiff had attached to his amended complaint a written opinion letter that existed prior to the commencement of the action).

Without taking a position on the viability of the language at issue in *Votre*, this court holds, in the absence of any appellate authority to the contrary, that to the extent that the written opinion letter existed prior to the commencement of this action, then the court, in the exercise of its discretion, may deny the defendants' motions to dismiss and consider the written opinion letter that is attached to the amended complaint.

The issue, then, becomes whether the plaintiff's written opinion letter was in existence prior to the commencement of the action. This case is complicated by the fact that the written opinion letter is not dated. Relying on the affidavit of her attorney, the plaintiff argues that the written opinion letter, in fact, did exist prior to the commencement of the action. (See Memorandum in Opposition to Motion, Exhibit A, # 113.00.) Nevertheless, the defendants dispute this fact. In their reply memorandum, the defendants argue that the Attorney Affidavit filed by the plaintiff contains controverted facts, including whether a similar health care provider wrote the opinion letter prior to the commencement of the action and whether the failure to attach the written opinion letter was inadvertent or an oversight. The defendants assert that the

written opinion letter is undated and does not given any indication that it was written prior to the commencement of the action. Therefore, the defendants reason, an evidentiary hearing is required to resolve the disputed facts before the court determines whether it has personal jurisdiction over the defendants. This court does not agree.

“[Practice Book Section 17-46] sets forth three requirements necessary to permit the consideration of material contained in affidavits submitted in a summary judgment proceeding. The material must: (1) be based on ‘personal knowledge’; (2) constitute facts that would be admissible at trial; and (3) affirmatively show that the affiant is competent to testify to the matters stated in the affidavit.” *Barrett v. Danbury Hospital*, 232 Conn. 242, 251, 654 A.2d 748 (1995). The court may consider not only the facts presented by the parties’ affidavits and exhibits, but also the “inferences which could be reasonably and logically drawn from them” *United Oil Co. v. Urban Redevelopment Commission*, 158 Conn. 364, 381, 260 A.2d 596 (1969). In this case, the plaintiff submits the duly sworn and notarized affidavit of her attorney. Although “[g]enerally an affidavit by a party’s attorney should not be used to oppose a summary judgment motion . . .”; (citation omitted) *2830 Whitney Avenue Corp. v. Heritage Canal Development Associates, Inc.*, 33 Conn. App. 563, 567, 636 A.2d 1377 (1994); here, the attorney’s affidavit is not being used to establish the existence of a genuine issue of material fact. Rather, the purpose of the affidavit is to verify the date that it received a written opinion letter and attached it to the complaint for purposes of opposing a motion to dismiss and establishing compliance with § 52-190a. Cf. *Mahoney v. Bridgeport Hospital*, Superior Court, judicial district of Fairfield, Docket No. CV 09 5025134 (August 8, 2011, *Bellis, J.*) (“An attorney’s affidavit can be accepted . . . if it does not attest to facts of the case but it merely

authenticates other proffered documents.”) and *Daniels v. Ericson*, Superior Court, judicial district of New London, Docket No. CV 06 5001423 (July 17, 2007, *Hurley, J.T.R.*) (“The remaining documents submitted by Daniels are multiple police reports from the New London police department. While none of the police reports are certified and, therefore, would normally be inadmissible, the affidavit by Daniels’ attorney properly authenticates them.”). The attorney’s attestations are directed not at creating a genuine issue of triable fact, but as to the steps taken in the preparation for the filing of the complaint that he witnessed or of which he was aware. Therefore, the attorney’s attestations are based on his personal knowledge and clearly indicate that he is competent to testify to the matters stated in the affidavit. Accordingly, the court finds that the affidavit can be considered in deciding the defendants’ motions to dismiss. See *Dilling v. Leckowicz*, supra, Superior Court, Docket No. CV 09 5013972 (in denying the defendant’s motion to dismiss on the basis that the plaintiff had attached to an amended complaint a written opinion letter, considering the pro se plaintiff’s “Good Faith Certificate” that claims that the written opinion letter was obtained prior to the commencement of the action).

Turning, then, to the attestations made in the affidavit, the attorney claims that he signed the complaint in this action on March 30, 2012 and that at the time he filed the complaint, the signed, written opinion letter of the similar health care provider existed and was retained in the plaintiff’s file. He further attests that his failure to attach the written opinion letter was inadvertent and an oversight. Such attestations are based on the attorney’s personal knowledge, and constitute facts that would be admissible at trial and indicate that the attorney is competent to testify to the matters stated in the affidavit. The defendants do not submit any evidence to rebut the attorney’s attestations, but rather make conclusory statements challenging the evidence.

Cf. *Gupta v. New Britain General Hospital*, 239 Conn. 574, 583, 687 A.2d 111 (1996) (A party's conclusory statements, "in the affidavit and elsewhere . . . do not constitute evidence sufficient to establish the existence of disputed material facts.") and *Gambardella v. Kaoud*, 38 Conn. App. 355, 360, 660 A.2d 877 (1995) (Averments contained in an affidavit that are merely denials of the allegations in a complaint "are an insufficient basis for the rendition of summary judgment."). Therefore, in the absence of counter-evidence by the defendants, the court finds that the written opinion letter existed prior to the commencement of this action and that the attorney's failure to attach it to the original complaint was inadvertence or an oversight. Accordingly, the court, in the exercise of its discretion, denies the Motions to Dismiss 105.00 and 106.00.

Accordingly, Motions to Dismiss 105.00 and 106.00 are denied. The objection to the request to amend 114.00 is overruled.

SO ORDERED.


EDWARD R. KARAZIN, JR.
JUDGE TRIAL REFEREE

Decision entered in accordance with the
foregoing. All parties of record notified
9/6/2012



DOCKET NO.: FST-CV-12-6013562S : **SUPERIOR COURT**
JUDITH KISSEL : **JUDICIAL DISTRICT OF**
 : **STAMFORD/NORWALK**
v. : **AT STAMFORD**
CENTER FOR WOMEN'S HEALTH, P.C.; :
REED WANG : **MARCH 14, 2014**

SECOND AMENDED COMPLAINT

COUNT ONE:

JUDITH KISSEL v. CENTER FOR WOMEN'S HEALTH P.C.

1. At all times mentioned herein, the defendant, CENTER FOR WOMEN'S HEALTH P.C. was a professional corporation organized and existing under the laws of the State of Connecticut comprised of medical professionals practicing in Stamford, Connecticut.

2. At all times mentioned herein, the co-defendant, REED WANG was a servant, agent, apparent agent and/or employee of the defendant, CENTER FOR WOMEN'S HEALTH P.C.

3. Commencing on or about April 22, 2010 and thereafter, the defendant, CENTER FOR WOMEN'S HEALTH P.C. and its servants, agents, apparent agents and/or employees and those under its supervision and control, undertook the care, treatment, diagnosing, monitoring and supervision of the plaintiff, JUDITH KISSEL, for the purpose of providing acupuncture and related services.

4. While under the care, treatment, diagnosing, monitoring and supervision of the defendant, CENTER FOR WOMEN'S HEALTH P.C. and its servants, agents, apparent agents and/or employees and those under its supervision and control, the plaintiff, JUDITH KISSEL, suffered severe, serious, painful and permanent injuries as hereinafter set forth in paragraph 6.

5. The said injuries suffered by the plaintiff, JUDITH KISSEL, were caused by the failure of the defendant, CENTER FOR WOMEN'S HEALTH P.C. and its servants, agents, apparent agents and/or employees, to exercise reasonable care under all of the circumstances then and there present in that they:

- a. did not adequately protect plaintiff from contact with a heat lamp during her acupuncture procedure;
- b. did not properly place heat lamps during the acupuncture procedure such that the lamps remained a safe distance from the plaintiff;
- c. left the plaintiff unattended during the course of the acupuncture procedure and failed to promptly respond to her cries for help while she was being burned by the heat lamp;
- d. failed to utilize a safe heating system during the acupuncture procedure that would not contact the plaintiff and/or cause burns to the plaintiff;
- e. failed to adequately and properly care for, treat, monitor, diagnose and supervise the plaintiff for her acupuncture treatment needs;
- f. did not provide the plaintiff with acupuncture personnel who possessed the requisite knowledge, skill, and experience to adequately and properly care for, treat, diagnose, monitor and supervise the plaintiff;
- g. did not promulgate and/or enforce rules, regulations, standards and protocols for the care and treatment of patients such as the plaintiff.

6. As a result of the carelessness and negligence of the defendant, CENTER FOR WOMEN'S HEALTH P.C. and its servants, agents, apparent agents and/or employees, the plaintiff, JUDITH KISSEL, suffered the following serious, severe, painful and permanent injuries:

- a. third degree burns to left foot and toes;
- b. five day admission to Westchester Medical Center Burn Unit;
- c. multiple skin graft surgeries;
- d. multiple painful debriding procedures;

- e. broken toe;
- f. infection in bone of toe;
- g. permanent deformity and scarring of left toes, foot and leg;
- h. permanent pain in left foot; and
- i. loss of sensation/numbness in left foot and toes.

7. As a result of the aforementioned injuries, the plaintiff, JUDITH KISSEL, has been permanently deprived of her full ability to carry on and enjoy life's activities.

8. As a further result of her injuries, the plaintiff, JUDITH KISSEL, has incurred and will continue to incur expenses for medical care and treatment, all to her financial loss.

COUNT TWO:
JUDITH KISSELL v. REED WANG

1. At all times mentioned herein, the defendant, REED WANG, held himself out to the general public as a licensed acupuncturist duly licensed to practice in the State of Connecticut.

2. At all times mentioned herein, the defendant, REED WANG, was a servant, agent, apparent agent and/or employee of the co-defendant, CENTER FOR WOMEN'S HEALTH P.C.

3. Commencing on or about April 22, 2010 and thereafter, the defendant, REED WANG undertook the care, treatment, diagnosing, monitoring and supervision of the plaintiff, JUDITH KISSEL, for the purpose of providing acupuncture and related services.

4. While under the care, treatment, monitoring, diagnosing and supervision of the defendant, REED WANG and his servants, agents, apparent agents and/or employees, the plaintiff,

JUDITH KISSEL, suffered serious, severe, painful and permanent injuries, as hereinafter set forth in Paragraph 6.

5. The said injuries suffered by the plaintiff, JUDITH KISSEL, were caused by the failure of the defendant, REED WANG and his servants, agents, apparent agents and/or employees and those under his supervision and control, to exercise that degree of care and skill ordinarily and customarily used by licensed acupuncturists under all of the circumstances then and there present in that they:

- a. did not adequately protect plaintiff from contact with a heat lamp during her acupuncture procedure;
- b. did not properly place heat lamps during the acupuncture procedure such that the lamps remained a safe distance from the plaintiff;
- c. left the plaintiff unattended during the course of the acupuncture procedure and failed to promptly respond to her cries for help while she was being burned by the heat lamp;
- d. failed to utilize a safe heating system during the acupuncture procedure that would not contact the plaintiff and/or cause burns to the plaintiff;
- e. failed to adequately and properly care for, treat, monitor, diagnose and supervise the plaintiff for her acupuncture treatment needs.

6. As a result of the carelessness and negligence of the defendant, REED WANG and his servants, agents, apparent agents and/or employees, the plaintiff, JUDITH KISSEL, suffered the following serious, severe, painful and permanent injuries:

- a. third degree burns to left foot and toes;
- b. five day admission to Westchester Medical Center Burn Unit;
- c. multiple skin graft surgeries;
- d. multiple painful debriding procedures;
- e. broken toe;

- f. infection in bone of toe;
- g. permanent deformity and scarring of left toes, foot and leg;
- h. permanent pain in left foot; and
- i. loss of sensation/numbness in left foot and toes.

7. As a result of the aforementioned injuries, the plaintiff, JUDITH KISSEL, has been permanently deprived of her full ability to carry on and enjoy life's activities.

8. As a further result of her injuries, the plaintiff, JUDITH KISSEL, has incurred and will continue to incur expenses for medical care and treatment, all to her financial loss.

WHEREFORE, THE PLAINTIFF, JUDITH KISSEL, HEREBY CLAIMS MONETARY DAMAGES IN EXCESS OF FIFTEEN THOUSAND & 00/100 DOLLARS (\$15,000.00), EXCLUSIVE OF INTEREST AND COSTS, STATES THAT THIS MATTER IS WITHIN THE JURISDICTION OF THIS COURT, AND FURTHER REQUESTS THE FOLLOWING RELIEF:

- a. Compensatory damages;
- b. Interest;
- c. Expenses and costs of prosecuting this action to which the plaintiff is entitled, including, but not limited to, experts' fees and costs;
- d. Such other relief to which the plaintiff is entitled, either in law or equity, which the court deems just and proper.

DOCKET NO. FST-CV-12-6013562S : **SUPERIOR COURT**
:
JUDITH KISSEL : **J.D. OF STAMFORD**
:
vs. : **AT STAMFORD**
:
CENTER FOR WOMEN’S HEALTH, P.C., :
ET AL. : **DECEMBER 11, 2017**

THIRD AMENDED THIRD-PARTY COMPLAINT

COUNT ONE: Violation of the Connecticut Products Liability Act (“CPLA”), Conn. Gen. Stat. § 52-572m:

1. Pursuant to the Connecticut Product Liability Act, Connecticut General Statutes (“Conn. Gen. Stat.”) § 52-572m, *et seq*, Plaintiff brings this complaint to assert claims against third party defendant HEALTH BODY WORLD SUPPLY, INC. a/k/a THE WABBO COMPANY (“WABBO”).

2. Plaintiff is presently, and was at all times material hereto, a resident of the State of Connecticut, and is a “claimant” within the meaning of Conn. Gen. Stat. § 52-572m.

3. WABBO is presently, and was at all times material hereto, a foreign corporation organized and existing under the law of the State of California, having its principal place of business at 474 W. Esplanade Avenue, San Jacinto, CA 92583, and authorized to do business in, and in fact transacting business in or contracted to supply goods or services to, Connecticut, in satisfaction of Connecticut General Statutes § 33-929.

4. At all relevant times herein, WABBO was engaged in the business of selling the CQ-36 Teding Diancibo PU (“TDP”) Dual Heat Lamp (“the lamp” or “this lamp”) with the expectation that

they will be shipped, purchased and used in Connecticut, and the product was, in fact, purchased by Wang and used in Connecticut.

5. At all relevant time herein, WABBO was a “product seller” within the meaning of Conn. Gen. Stat. § 52-572m(a). WABBO manufactures, sells and/or distributes the lamp.

6. Plaintiff, Judith Kissel, filed her original Complaint on March 30, 2012 and filed her Revised Complaint on November 16, 2012.

7. Prior to April 22, 2010, WABBO distributed, sold and/or otherwise placed into the stream of commerce the lamp, which was purchased by Wang on or about March 10, 2008 and used by Wang on April 22, 2010.

8. The lamp was placed into the stream of commerce by WABBO with the expectation that it would reach consumers without substantial change in condition and, as of April 22, 2010, there had been no substantial change in the condition of the lamp.

9. On April 22, 2010, Wang furnished acupuncture treatment to the Plaintiff. Wang placed the lamp in the position expected to be used for treatment, such that the head hung at an angle over where the Plaintiff’s foot was expected to be placed. At some point, Wang preheated the lamp. After all needles were placed, Wang left the room. When he returned, the lamp had inadvertently and unintentionally lowered onto the Plaintiff’s left foot.

10. The lamp was designed, manufactured, distributed, or sold such that the stabilizing hardware and hydraulic mechanisms for the lamp head and arm were deficient, and as a result the arm

inadvertently and unintentionally lowered causing the head to fall onto the Plaintiff's left foot, thereby causing her alleged injuries.

11. On and after April 22, 2010, the Plaintiff was caused to suffer severe, painful, and permanent injuries, as are more fully described below, due to the malfunction of the lamp in that,

- (i) a defect caused the Plaintiff's harm;
- (ii) the incident that caused the plaintiff's harm was of the kind that ordinarily does not occur in the absence of a product defect, and
- (iii) any defect most likely existed at the time the product left the manufacturer's or seller's control and was not the result of reasonably possible causes not attributable to the manufacturer or seller.

12. As a result of the lamp falling on her, the Plaintiff has suffered the following serious, severe, painful and permanent injuries:

- a. third-degree burns to left foot and toes,
- b. seven-day admission to Westchester Medical Center Burn Unit,
- c. multiple skin graft surgeries,
- d. multiple painful debriding procedures,
- e. broken toe,
- f. infection in bone of toe,
- g. permanent deformity and scarring of left toes, foot and leg,
- h. permanent pain in left foot, and

i. permanent loss of sensation/numbness in the left foot and toes.

13. As a result of her injuries, the Plaintiff has been permanently deprived of her full ability to carry on and enjoy life's activities.

14. As a result of her injuries, the Plaintiff has incurred and will continue to incur expenses for medical care and treatment, all to her financial loss.

15. The injuries to the Plaintiff were caused by and are the responsibility of WABBO pursuant to Conn. Gen. Stat. § 52-572m *et seq.*, in that:

a. WABBO was negligent in distributing, selling and/or otherwise placing the lamp into the stream of commerce in one or more of the following ways:

- i. It failed to affix to the lamp a warning concerning the heat plate's potential to cause harm and/or injury.
- ii. It negligently distributed or sold the lamps because the lamp failed to include any locking device on the hydraulic mechanisms and joints;
- iii. It negligently distributed or sold the lamps because the lamp failed to include a safety guard over the face of the heating element;
- iv. It failed to provide a user manual or instructions for use with the lamp;
- v. It failed to provide a user manual or instructions on its website;
- vi. It failed to place a safety guard of some kind in front of the heating plate;
- vii. It did not do any of i.-vi. above after having a reasonable opportunity to inspect the subject lamp prior to placing it in the stream of commerce;

- viii. It did not do any of i.-vi. above after having a reasonable opportunity to inspect the model of lamps prior to placing it in the stream of commerce;
- ix. It did not do any of i.-vi. above despite the fact that it knew or should have known that without the steps taken above harm and/or injury would result;
- x. It did not recognize that without all, or at least some, of the modifications listed in i.-vi. above, harm and/or injury would likely result; and/or
- xi. It placed the lamp in the stream of commerce anyway despite all of the deficiencies listed above.

b. WABBO is strictly liable for the injuries to the Plaintiff because:

- i. Prior to April 22, 2010, when the lamp was sold or placed into the stream of commerce by WABBO, it was in a defective condition unreasonably dangerous to consumers;
- ii. The lamp was placed into the stream of commerce by WABBO with the expectation that it would reach consumers without substantial change in condition and, as of April 22, 2010, there had been no substantial change in condition of the lamp;
- iii. On April 22, 2010, the lamp was in a defective condition unreasonably dangerous to the Plaintiff in one or more of the following ways:
 - A. It was designed, manufactured, distributed, or sold such that the stabilizing hardware and hydraulic mechanisms for the lamp head and

arm were deficient, and as a result the arm inadvertently and unintentionally lowered causing the head to fall onto the Plaintiff's foot, thereby causing her alleged injuries;

- B. It was designed, manufactured, distributed, or sold so that it lacked a safety guard to cover the heating element;
- C. It was designed, manufactured, distributed, or sold so that it lacked a locking mechanism to stabilize the articulating arm;
- D. It was designed, manufactured, distributed, or sold such that it had a dangerous propensity in the absence of proper warning and instructions regarding its use;
- E. It was neither modified nor recalled by WABBO despite its dangerous design and lack of proper warnings and instructions;
- F. It was distributed or sold without proper instructions regarding its safe use; and/or
- G. It was distributed or sold without proper warnings regarding its safe use.

16. One or more of the defects and acts of negligence described herein was a substantial factor in causing the injuries to the Plaintiff.

17. WABBO is the seller and distributor of the CQ-36 TDP Dual Heat Lamp that is the subject of this Third-Party Complaint, where the sale is for resale or for use or consumption.

18. WABBO sold or distributed the lamp which it knew or should reasonably have known was in a defective condition unreasonably dangerous to a consumer or user.

19. The defect in the lamp caused the injury for which compensation has been sought by the Plaintiff.

20. The lamp was in a defective condition unreasonably dangerous to the consumer or user at the time at which it sold and distributed the lamp to Wang.

21. The lamp was expected or could reasonably have been expected to reach Wang without substantial change in the condition once it left WABBO.

22. For any or all of the foregoing reasons, the Third-Party Defendant WABBO is liable to the Plaintiff for the injuries and damages set forth above.

COUNT TWO: RECKLESSNESS (Conn. Gen. Stat. § 52-240b):

23. The plaintiffs reallege and incorporate by reference each and every allegation in paragraphs 1 through 22.

24. The Third-Party Defendant WABBO knew that the lamp had a dangerous tendency to lower inadvertently and unintentionally when worn.

25. WABBO knew that the heating element of the lamp, when used, attained a temperature of at least 572 degrees Fahrenheit, a temperature at which the heating element would cause catastrophic injuries if it came in contact with human flesh.

26. WABBO knew that the lamp would be used in a manner in which the lamp heads would be hung approximately eight to twelve inches over a patient's bare skin.

27. WABBO knew that the lamp had no safety guard over the face of the heating element that would prevent the heating element from coming into direct contact with a patient's bare flesh.

28. Despite knowledge of these risks to the safety of product users, consumers, or others who might be injured by the lamp, WABBO sold and distributed the lamp.

29. WABBO sold and distributed the lamp with reckless disregard for the safety of product users, consumers, or others who might be injured by the lamp.

30. The Plaintiff's injuries were the result of the WABBO's reckless disregard for the safety of product users, consumers, or others who might be injured by the lamp.

WHEREFORE, THE PLAINTIFF, JUDITH KISSEL, HEREBY CLAIMS MONETARY DAMAGES IN EXCESS OF FIFTEEN THOUSAND & 00/100 DOLLARS (\$15,000.00), EXCLUSIVE OF INTEREST AND COSTS, STATES THAT THIS MATTER IS WITHIN THE JURISDICTION OF THIS COURT, AND FURTHER REQUESTS THE FOLLOWING RELIEF:

- a. Compensatory damages;
- b. Punitive damages;
- c. Interest;
- d. Expenses and costs of prosecuting this action to which the plaintiff is entitled, including, but not limited to, experts' fees and costs;
- e. Such other relief to which the plaintiff is entitled, either in law or equity, which the court deems just and proper.

SRI CHANGLE LTD



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Manual

Exhibit
Exhibit No.: 7
Name: Sami Ng
Date: 6-21-17 JB
RESQUIRE

GOU
GONG
TDP



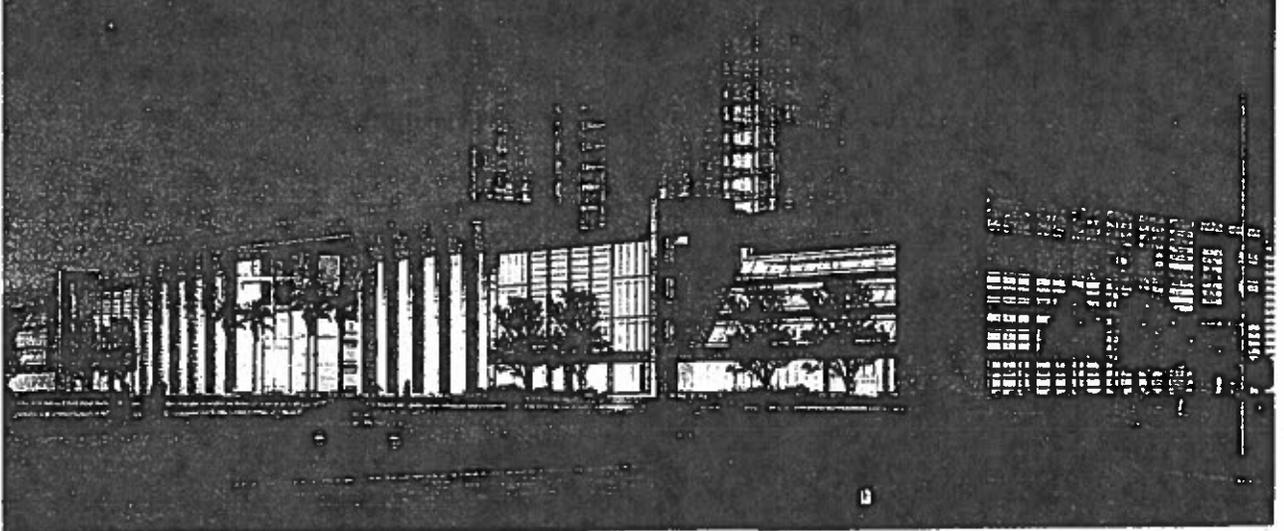
ate Research Institute
gLe Silicate Co., Ltd

11/29/17	PLAINTIFF'S EXHIBIT FULL
2	
Kissel v. CWH	
JB No. 12001356.2	

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Congratulations!
You bought a genuine Gou WenBin TDP lamp!

USA/CANADA EXCLUSIVELY
DISTRIBUTED BY:
HEALTH BODY WORLD SUPPLY INC
Address: 1090 Investor Place San Jacinto,
California 92582
Questions: CALL (800)852-4609
(951)925-0388
Website: WWW.TDPSHOP.COM



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PRECAUTIONS:

Before using the TDP unit, please read these operating instructions carefully. Take special care to follow the instructions relating to warnings and precautions.

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CHONGQING SILICATE RESEARCH INSTITUTE

Chongqing Silicate Research Institute (CSRI), one of the country's leading research, development and training organizations, has always stood at the forefront of nonmetallic material science. In just four decades, the Institute has established a lengthy track record of major contributions to the nonmetallic material science. One of the most acknowledged achievements is the invention of TDP lamps. TDP lamps were invented in 1979 by a group of our scientists and engineers led by the highly accomplished researcher, Mr. Gou Wenbin (former president of CSRI from 1970 to 1986, died in 1986). Mr. Gou discovered a special formulation of 33 minerals, which, when heated to a specific temperature, emits the therapeutic far-infrared energy. The 33 minerals coat a metal disc, the 'curing plate', which is mounted in the head of the lamp. The development of the mineral formulation involved extensive research.

CSRI is well equipped with complete and advanced appliances for scientific experiments and testing. Its technical capabilities and influence are strong. It undertook and accomplished over 80 scientific research projects at national, provincial and municipal levels. Its scientific research achievements

won an international Gold Medal and international Silver Medal.



发

第 11

发明名称：磁引磁生特效磁灯
发明人：苟文彬
专利号（申请号）：831005
专利权人：重庆硅酸盐研究所
该发明已由本局依照中华人民共和国专利法授予专利权。

十年八月



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national natural science award, a national award in advanced science and technology and a great number of awards and honors at provincial and municipal levels.

In order to protect the reputation of our genuine Gou Gong TDP Lamps, and to safeguard the consumer's interests, in 1996 Chongqing Silicate Research Institute invested cooperatively with Chongqing Risk Investment Company to set up Chongqing Changle Silicate Limited Liability Company, which is mainly engaged in development, manufacture and sale of glass, enamel, ceramics and TDP Lamps.

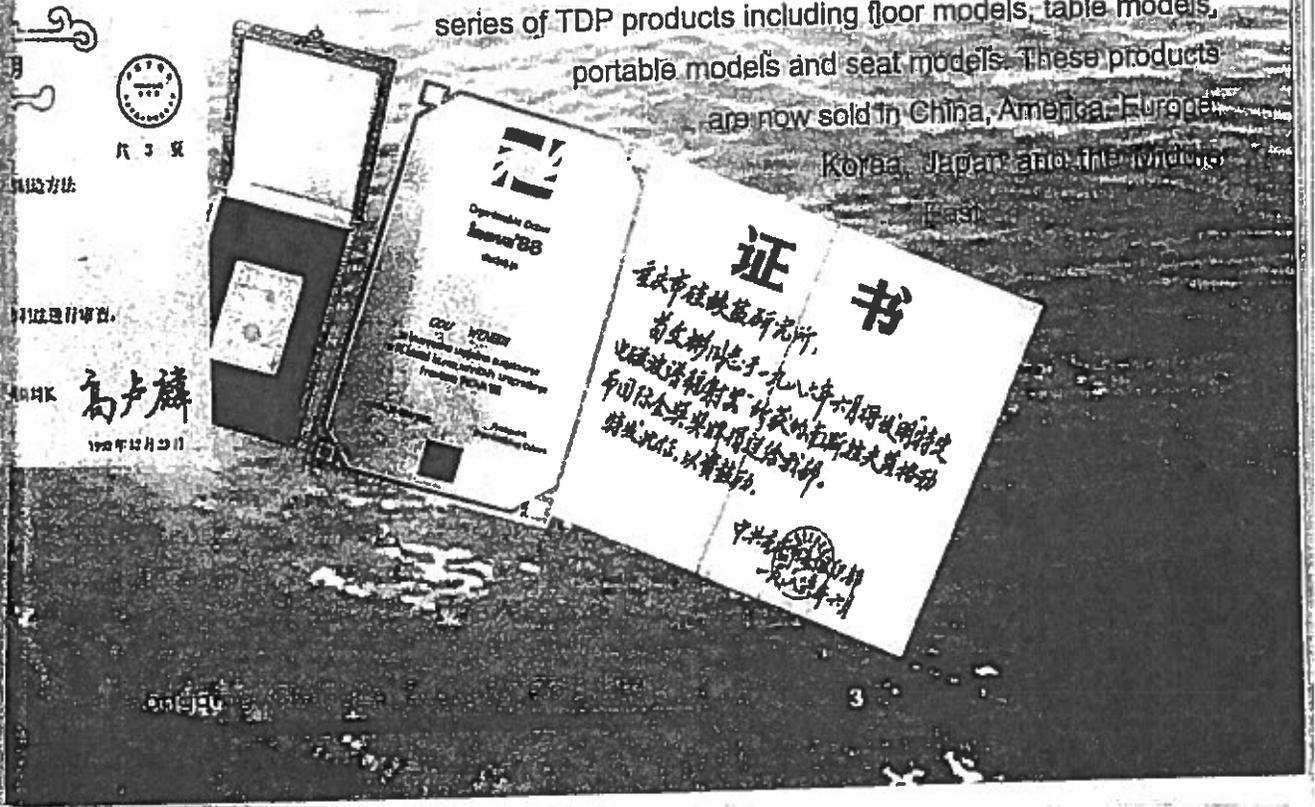
In November 1996, Changle Company stopped supplying the TDP curing plate, the key component of the TDP Lamp, to all outside assembly plants. The "GouGong" trademark was registered, while also keeping the "Changle" trademark. Thus only the Changle Company has the sole right to produce and sell genuine Gou Wenbin TDP lamps. Based on market demand, the Changle Company developed and manufactured a

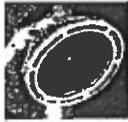
series of TDP products including floor models, table models, portable models and seat models. These products

are now sold in China, America, Europe,

Korea, Japan and the Middle

East.





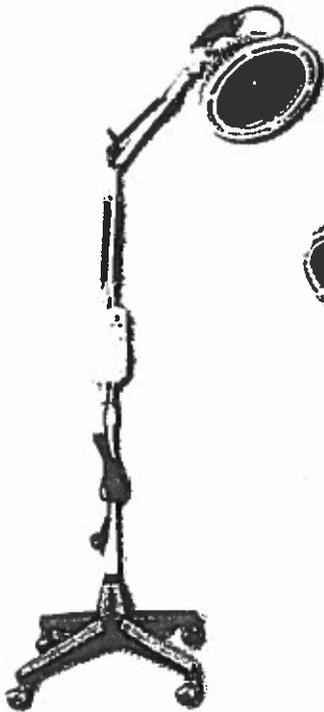
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Production type: Type B Class I

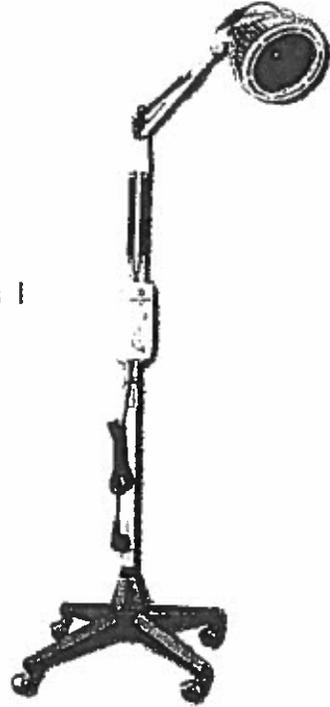
PARTIAL PRODUCTS OF OUR COMPANY



CQG-222A



CQG-270B



CQG-270A



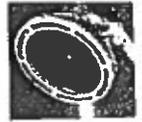
CQG-222B



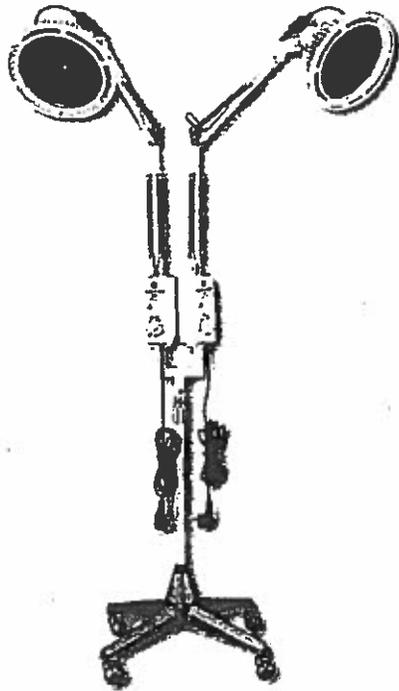
Chongqing Silicate Research Institute



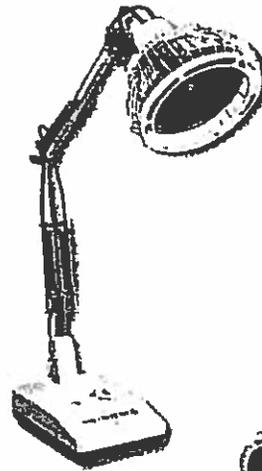
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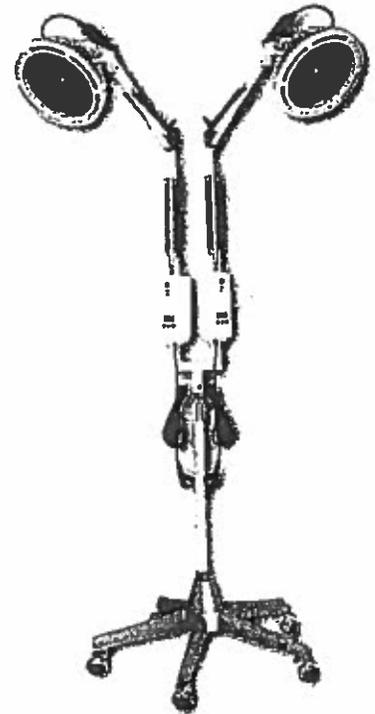
CQG-222AA



CQG-111A



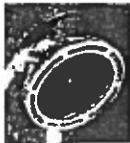
CQG-111B



CQG-222BB

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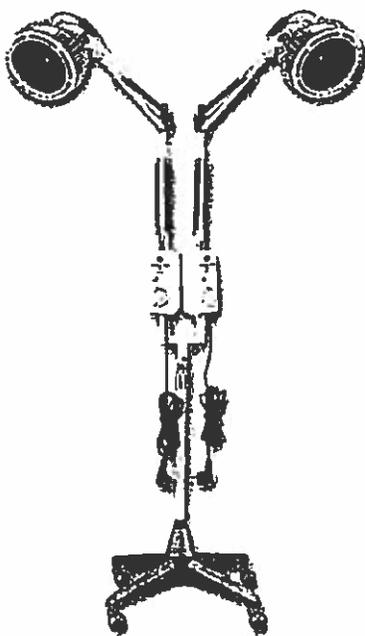
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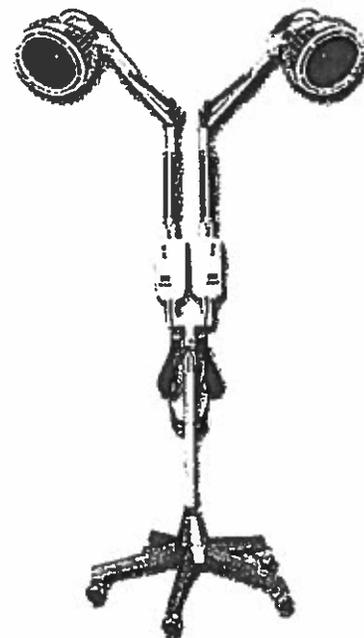
CQG-222B+



CQG-270



CQG-270AA



CQG-270BB

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Introduction

TDP stands for Te-ding Dian-ci-bo Pu meaning Special Electromagnetic Spectrum in Chinese. The TDP lamp does not produce visible light. This unique lamp emits specific waves with a wavelength of far-infrared energy (2-25 microns), which match the infrared emissions of the human body.

A TDP Lamp contains three basic parts: 1) the support; 2) the heater and 3) the curing plate. When the curing plate is heated to a specific temperature, it emits spectrum electromagnetic waves in the range of 2-25 microns. The TDP curing plate, the key component of the product, is a significant scientific and technological achievement. The mineral infrared therapy device is an entirely new concept in medical technology. Basically, the device promotes metabolism, enhances immunity, improves micro circulation and diminishes inflammation.

Experiments were conducted in numerous hospitals and universities to observe the biological effects of the heated minerals' far-infrared emissions. The TDP lamp was tested by Chongqing Environmental Protection Bureau, the China Measurement Institute and others not found any harmful effects on humans or the environment. The lamp was exhibited at the 1986 Zagreb International Fair in Yugoslavia in competition with 560 inventions from 18 countries and was awarded the Gold Medal. At the 1986 Brussels Eureka World Fair for Invention, Mr. Gou received the Silver Medal Award. The TDP lamp was patented in China in 1992 and was granted the Medical Apparatus and Instruments Certificate by the China State Medicine Bureau.

It has also got the ISO13485:2003 and CE.

The TDP lamp has been used by numerous healthcare practitioners including M.Ds., orthopaedic doctors, chiropractors, naturopathic doctors, and acupuncturists. Since most of them got incredible results, it quickly became a popular item on the medical equipment market. In the past 16 years, millions of patients have been safely treated around the world including China, Japan, Korea, Israel, Hong Kong and the United States. In China, people refer to TDP lamp as a "Miracle Lamp".

To profit from the reputation of genuine Gou Wenbin TDP lamps, a number of manufacturers started to produce TDP lamps in the late of 1990's. Many of them do not have the same therapeutic effect as the genuine Gou Wenbin TDP lamps, but most of these manu-

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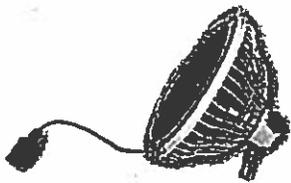
facturers and their distributors claim that their TDP lamps are the genuine Gou Wenbin TDP lamps. They also claim that their lamps won all honors earned by CSRI even though the mineral formula of the curing plate, has never been revealed, sold, or transferred to any other company by CSRI.

All TDP lamps sold in North America before November 1996 had the curing plates manufactured with the patented and original technology by CSRI. CSRI stopped supplying its curing plates to any other manufacturers in November 1996. The unique trademark "Gou Gong" or "Chang Le" was registered for our authentic TDP lamps in China, the United States of America and other countries. CSRI also signed long-term contracts with a number of foreign companies to establish these companies as the authorized distributors of the patented lamps. The goal of these contracts is to ensure that consumers receive the genuine lamp, to provide a reliable supply and to protect the interest of customers and the reputation of CSRI. CSRI now sells its TDP products only to authorized distributors. Please go to our website <http://www.china-tdp.com> for more information. We expect to better serve our customers by constantly improving the quality of our products and service.

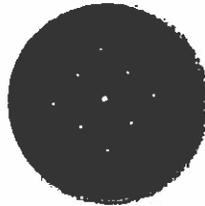


Main Parts

Figure 1.0: Replacement Parts for Floor Standing Models



Head



Curing Plate



Heater



Mica Plate



Arm



Base



Vertical Bar



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NAME AND FUNCTION OF EACH PART

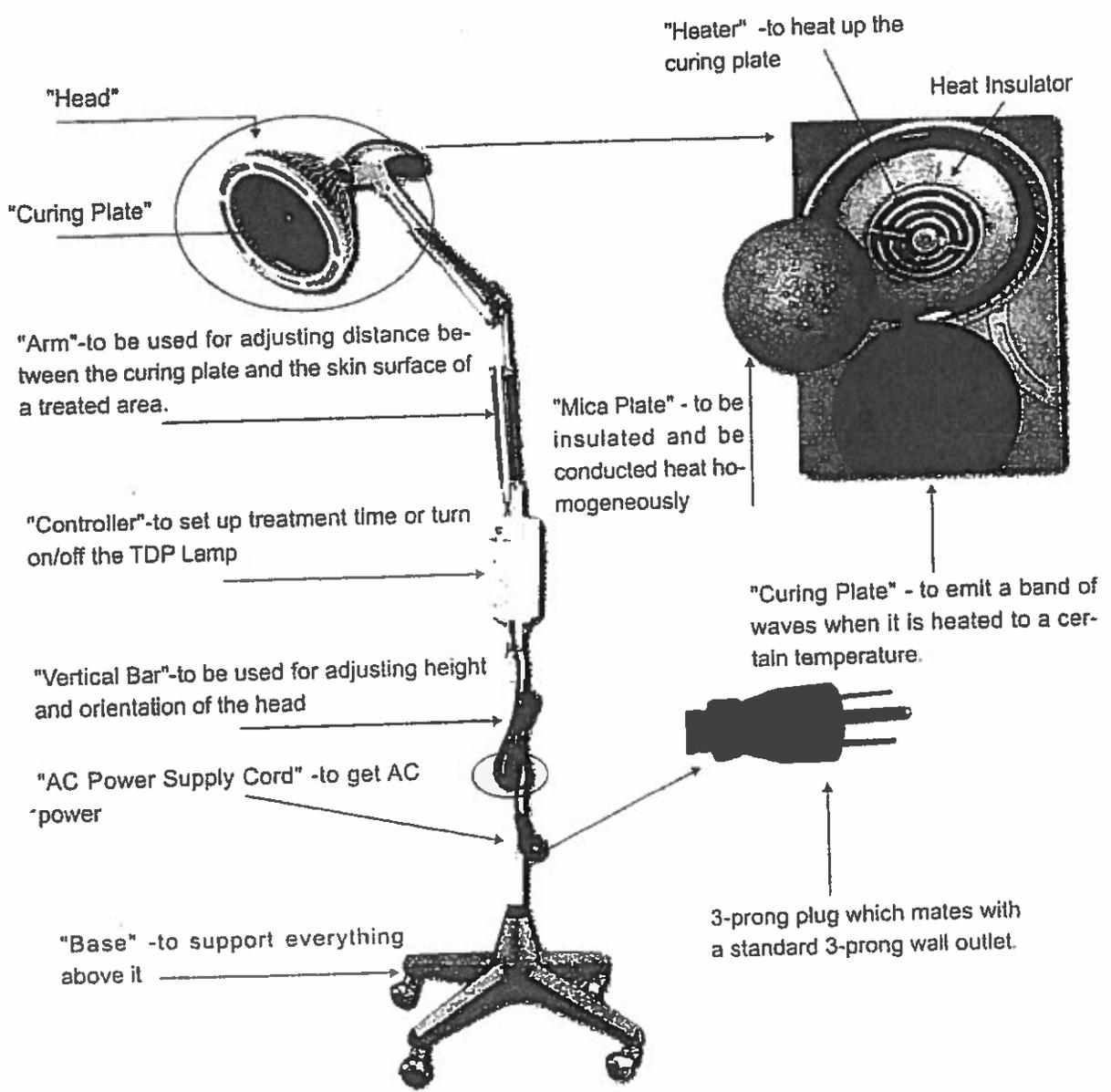


Figure 2.0 (a) Name and Function of Each Component of Floor Standing Model TDP Lamps

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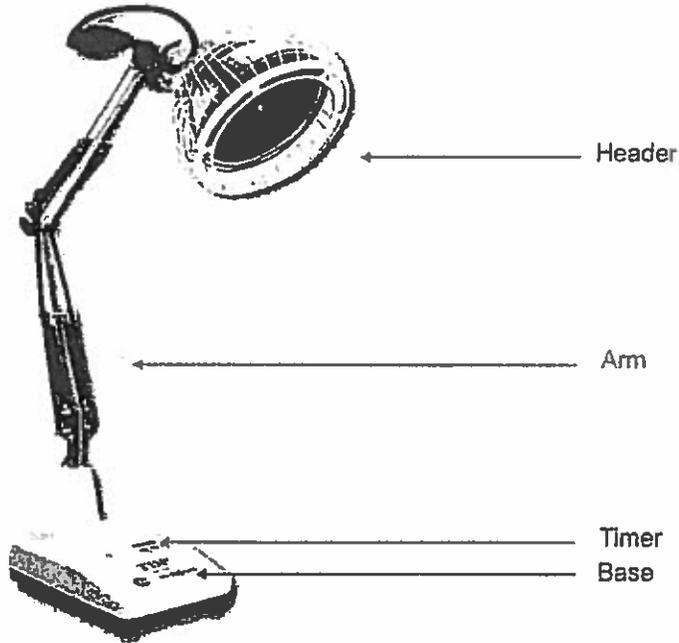
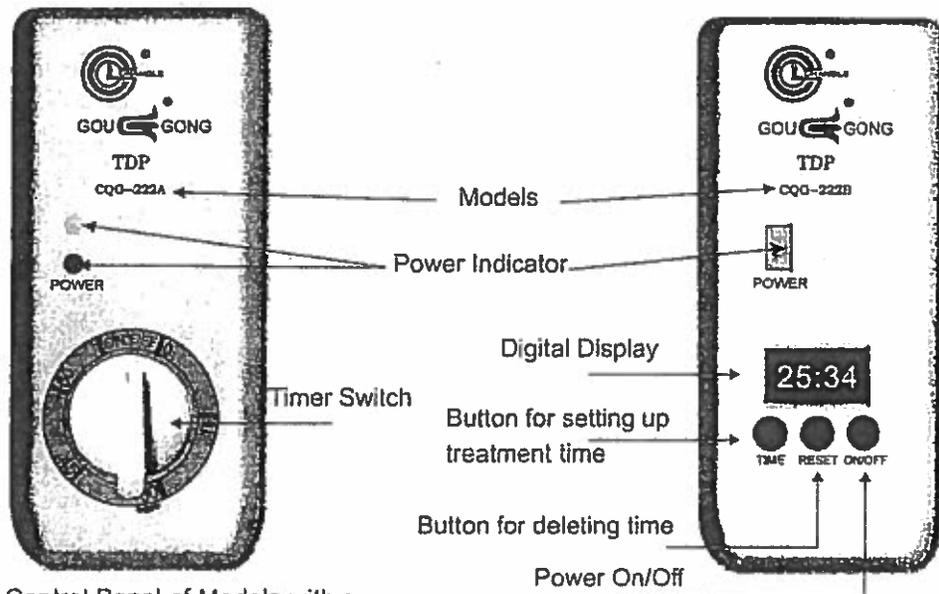


Figure 2.0: (b) Name and Function of Each Component of Desk Top Model TDP Lamps



(a) Control Panel of Models with a Manual Timer

(b) Control Panel of Models with a Digital Timer

Figure 3.0: Control Panel for Floor Standing Models



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WORK PRINCIPLE

When the TDP curing plate, coated with a proprietary mineral formation consisting of 33 elements essential to the human body, is heated by a heater, it emits electromagnetic waves from 2 to 25 microns in wavelength and 28 to 35 mw/cm² in intensity. These waves are similar to the length and intensity of the electromagnetic waves released by a human body. We feel heat during TDP treatments. However, it is not the heat but the electromagnetic waves that provides the remarkable curative effect. The head of the unit emits off not only waves but also the minerals on the curing plate. After being absorbed by a human body, the emissions can excite the minerals of our bodies on a molecular level, causing similar oscillations in our own elemental components. Essentially, the electromagnetic waves and minerals released from the curing plate induce biological effects and strengthen microcirculation, and promote metabolism..

INDICATIONS FOR USE

When the mineral curing plate of the lamp is heated, it emits a special band of waves in the infrared range of 2-25 microns. This range of infrared heat is recommended for temporary pain relief of muscular pain, arthritis, shoulder pain, back pain and joint stiffness. The TDP lamp may be used for the temporary relief of minor muscle and joint pain and stiffness, the temporary relief of minor joint pain associated with arthritis, the temporary increase in local circulation where applied, and relaxation of muscles. In addition, the lamp may also help muscle spasms, minor sprains and strains, and minor muscular back pain.

The TDP Lamps are widely used by Chiropractors, Acupuncturists, Physical Therapists, and other medical practitioners .

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Warning

1. This unit should be used under the advice and supervision of a physician.
2. TDP treatments should not be used on the following patients:
 - Women during pregnancy
 - Infants
 - People fitted with pace makers, defibrillators of any type, or electrical implants.
 - People with high fever, otitis media, splenitis, ophthalmic diseases, cancer, cardiac Disease, open pulmonary tuberculosis, serious arteriole sclerosis and bleeding tendencies.
 - People with hypertension should avoid focussing the TDP lamp on the head
3. When the unit is being used for facial treatments, one must take effective measures to protect and cover his or her eyes.
4. Do not use the unit over areas of insensitive skin with abnormal sensation such as patients with diabetes unless being sure that the treatment would not cause burn.
5. Do not use the unit in the presence of poor circulation.
6. The temperature on the skin surface should be less than 113 °F (45 °C) or a temperature that feels comfortable to the patient. The temperature can be changed by adjusting the distance between the curing plate and the skin surface on the treated portion of the body. The treatment may cause burns on skin if the treatment time is long or the temperature on skin surface is high. The unit must be used with caution.
7. The curing plate must be kept intact and cannot be cleaned with any type of liquid.
8. The curing plate will gradually lose its clinical effect after it has been used for 1,000 hours. After being used for 1,500 hours, it should be replaced with a new one. Before replacing it, read the relevant instructions in this User Manual.



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DESCRIPTION OF MODELS

As shown in Figure 4.0, a floor standing TDP lamp is assembled by putting the following four parts together:

1. Base 2. Vertical bar 3. Arm 4. Head

Any one of these four parts can be replaced with a new one at any time. You can purchase these parts from our authorized distributors or our representative.

The name and function for each component are shown in Figure 2.0a and b. Except for the control system, the area of the curing plate and the supporting system, all models work in the same way, i.e. after heated to a certain temperature, the curing plate emits a band of mineral waves in the infrared range of 2-25 microns. The difference between CQG-111 (A/B) and CQG-222 (A/B/AA/BB) {or CQG-270 A/B} is that CQG-111 models are designed to sit on desk while CQG-222 and CQG-270 models are designed to stand on the floor. The diameter of the curing plate for Model CQG-111, 222, and 270 is different too. The diameters are 4-1/2 inches (116 mm), 6-1/2 inches (166 mm) and 4-7/8 inches (124 mm) for Model CQG-111, 222, and 270, respectively. Only CQG-222AA (or BB) has two heads that allow it to be used for two separate areas simultaneously. However, either one can be turned off while the other is still on since the heads are controlled by two independent timers.

The difference between Model "A" (or "AA") and "B" (or "BB") is the control system. Models "A" and "AA" have a mechanical control system, and Model "B" and "BB" have an electronic control system. As shown in Figure 3.0a, a built-in timer is used to set up treatment time for Model "A" and "AA". When the timer is pointed to "Off", the TDP lamp is off. If the timer is switched to point to "N" minutes (for example 10 minutes), the TDP lamp will be operating for "N" minutes and the timer will gradually rotate to zero in "N" minutes. The control system for Models "B" and "BB" use an electronic system as shown on Figure 3.0b. The "On/Off" button is used to turn on or off a TDP lamp. A user can set up treatment time by holding on the "Time" button. The "Reset" button is used to clear the setting, and then a user can reset the treatment time. After the treatment time is set and the TDP lamp is operating, an electronic timer will display the remaining time on the LCD display window. Once the treatment time is reached, an alarm will signal to tell that the treatment is finished.

As shown on Figure 3.0(a), treatment time is set by depressing and turning the timer switch clockwise for Models with a manual timer. The power indicator is lit when it is operating.

For Models with a digital timer, there are three buttons as shown on Figure 3.0(b). They are "Time", "Reset" and "On/Off". Obviously, the button "On/Off" is used to turn on or off the TDP lamp. Treatment time is set by pressing the "Time" button. When the "Time" button is pressed, the number displayed in the digital display window automatically increases. Once the button is released, the treatment time will be the number shown in the window. If a user wants to reset the time, he can press "Reset" button to clear the time and then use the "Time" button to reset time.



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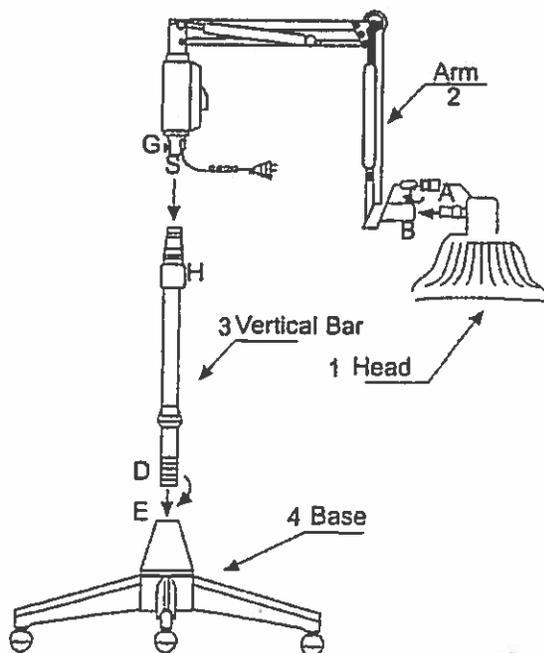
Installation Instructions For Floor standing Model

1. Open the box from the topside and remove all parts from the box.

Warning

Do not insert your fingers between the bars of the arm when you take the arm from the box. The bars can pinch or otherwise squeeze fingers if you place your fingers between bars.

2. Insert the lower part D of the Vertical Bar into Hole E of the Base and tighten the Nut F from the bottom.
3. Install the lower part S of the Arm on the top of the Vertical Bar and tighten the Screw G.
4. Insert the Joint A of the Head into Hole B on the top of the arm and tighten the Screw C. Be sure that the Joint A is fully inserted into Hole B.
5. You may adjust the orientation of the Head after you loosen Screw C. After you finish the adjustment, tighten Screw C.
6. After loosening Nut H, you can adjust the height of the upper part by pulling it up. Maximum height adjustment for the floor standing models is 8 inches (20 cm) and the maximum total height of the Unit is 52 inches (132 cm). Never exceed the maximum total height. After it reaching the desired height, be certain to tighten Nut H.
7. Put the head's AC power supply cord into the arm's, be sure it is fully into.
8. Put the arm's AC power supply cord into the AC outlet, be sure it is fully into.



Warning

Never pull the vertical bar out to more than 8 inches (20 cm) in length for a floor standing unit; always make sure that Nut H is firmly tightened and the upper part will not fall before using the unit.

How to adjust head's position

- 1) Slightly loosen Screw C to revolve and adjust the head.
- 2) Slightly loosen Nut H to adjust the height of the unit.
- 3) After it reaches the desired position, tighten all screws you have loosen for the adjustment.
- 4) Adjust the head position by pressing either segment of the arm.

Figure 4.0: Installation for Floor Standing Models

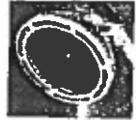
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The Special Electromagnetic Therapeutic Apparatus



Technology Parameters

Model Index	CQG-111A	CQG-111B	CQG-222A	CQG-222B	CQG-222AA	CQG-222BB	CQG-270A	CQG-270B
Curing Plate Diameter	4-1/2 in (116mm)	4-1/2 in (116mm)	6-1/2 in (116mm)	6-1/2 in (116mm)	6-1/2 in (116mm)	6-1/2 in (116mm)	4-7/8 in (124mm)	4-7/8 in (124mm)
Control Timer	Manual	Digital	Manual	Digital	Manual	Digital	Manual	Digital
Voltage (V)	110/220	110/220	110/220	110/220	110/220	110/220	110/220	110/220
Electric Power(W)	220 ± 10	220 ± 10	250 ± 10	250 ± 10	250 ± 10	250 ± 10	230 ± 10	230 ± 10
Style	Desktop	Desktop	Floor standing	Floor standing	Floor standing (Dual Heals)	Floor standing (Dual Heals)	Floor standing	Floor standing
Head	Fixed	Fixed	Removable	Removable	Removable	Removable	Removable	Removable
Life of Curing Plate(Hours)	1,000-1,500	1,000-1,500	1,000-1,500	1,000-1,500	1,000-1,500	1,000-1,500	1,000-1,500	1,000-1,500
Life of Heater (Hours)	1,500-2,000	1,500-2,000	1,000	>1,000	>1,000	>1,000	>1,000	>1,000
Arm lifting range	2-15 in (5-38cm)	2-15 in (5-38cm)	12-52 in (30-135cm)	12-52 in (30-135cm)	12-52 in (30-135cm)	12-52 in (30-135cm)	12-52 in (30-135cm)	12-52 in (30-135cm)
Vertical Bar Adjustable range	0	0	0-8 in (0-20cm)	0-8 in (0-20cm)	0-8 in (0-20cm)	0-8 in (0-20cm)	0-8 in (0-20cm)	0-8 in (0-20cm)
Arm Extending range	10-20 in (25-50cm)	10-20 in (25-50cm)	9-29 in (20-73cm)	9-29 in (20-73cm)	9-29 in (20-73cm)	9-29 in (20-73cm)	9-29 in (20-73cm)	9-29 in (20-73cm)
Elevation(Degree)	60-240	60-240	90-180	90-180	90-180	90-180	90-180	90-180
Azimuth(Degree)	N/A	N/A	0-360	0-360	0-360	0-360	0-360	0-360

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The Special Electromagnetic Therapeutic Apparatus

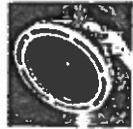
General Safety

- 1.The unit should be connected to an electric power source only of the type described in the operating instructions or as marked on the unit.
- 2.To prevent electric shock, do not use the polarized plug with an extension cord or electrical outlet unless the prongs can be fully inserted into the cord or outlet to prevent any exposure of the prongs on the polarized plug.
- 3.AC power supply cords should be routed so that they are not likely to be walked on or pinched by items placed upon or against them. Never take hold of the plug or cord if your hand is wet, and always grasp the plug body when connecting or disconnecting it.
- 4.As a general rule, do not let children near the lamp head during its operation or its cooling period.
- 5.The unit should be kept out of the reach of children. The unit could injure children if they were near or under the unit.
- 6.Do not attempt to repair or replace any part of the unit unless it is specifically recommended in this guide. All other servicing should be referred to a qualified technician.
- 7.Before performing any service, disconnect the unit from power supply.
- 8.You must make sure that the arm and the vertical bar can stay at the desired position after you adjust the position of the head. The head would fall and cause injury to the patient if the arm and the vertical bar are not able to hold the head.
- 9.Turn the power off when the unit is not in use. When left unused for a long period of time, the unit should be unplugged from the AC outlet.
- 10.The unit should be protected against dampness and violent percussions.
- 11.The unit should not be operated continuously for over 60 minutes. Always use the timer to control the operation of the unit. If you leave the unit on for a long period time such as many hours by just turning on its power, the heater of the unit would fail or cause damage to other properties or injure to the patient. Never use the unit for more than 8 hours in a single day.
- 12.The unattended use by child or incapacitated person may be dangerous.
- 13.Never place the unit on an uneven surface. It may cause the unit to overturn.



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The Special Electromagnetic Therapeutic Apparatus



14. Users may replace the head, arm or vertical bar on floor models. Never trade any part between different models. You may replace an old part with a new one, but you must make sure that 1) the new part matches the unit's model and 2) other parts will continue to function properly for many incoming months. Before replacing it, read the relevant instructions in this User Manual.

15. Never place fingers between the bars of the arm when moving the arm. The bars can pinch or otherwise squeeze fingers.

16. The temperature on the surface of the curing plate can be as high as 572 °F (300 °C). To avoid injury from burns, the curing plate should not be touched during operation or cool down.

17. Keep in mind that the mechanical function will decrease after the unit has been used for some time. Before each use, always examine all mechanical parts to be certain they are working properly. During a treatment, mechanical failure of some parts may cause burns or injury to the patient.

18. If any part of the unit does not work properly, you should not use the unit until the problem is fixed.

19. Teach children not to play with the control or other parts.



OPERATION INSTRUCTIONS

1. You may adjust the height of the unit by following Instruction Steps 1 to 3 as shown below

Caution:

The upper part of the unit may fall down during a treatment. Before you use the unit, you must make sure that you have firmly tightened Nut H as shown on Step 3. Please keep in mind that the maximum adjusted height of vertical bar is 8 inches (20 cm). Never exceed the limit.

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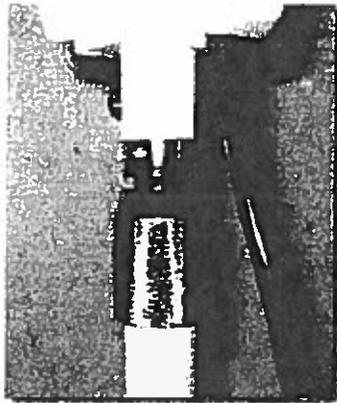
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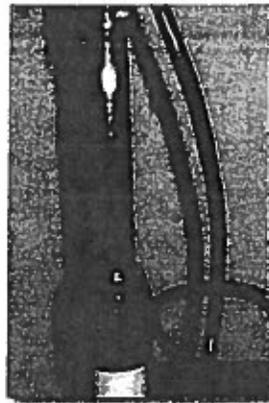


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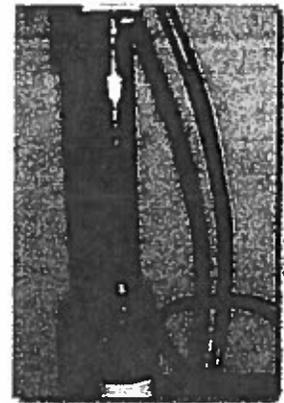
The Special Electromagnetic Therapeutic Apparatus



Step 1: Loosen Nut H by rotating counterclockwise



Step 2: Pull the upper part up



Step 3: Tighten Nut H by rotating clockwise

2. Adjust the position of the lamp head by pressing two segments of the arm.

Caution:

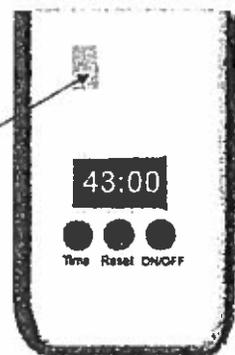
The arm consists of 4 vacuum arm supports. It allows the head to be adjusted to any position. Beware that the vacuum arm supports will lose their function after a long time of use. Before you use the unit, examine the mechanical parts to be certain that the arm can hold the head for long time.

3. For models with an electronic controller, please follow the following steps to turn on the unit:



Step 1: Press and Hold "Time" button until the desired time is displayed

When power indicator is lit, the unit is in working condition



Step 2: Press "ON/OFF" button to turn the unit on or off



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The time on the LCD Display will automatically count down when the treatment time expires, the power indicator will be off and the number on the LCD display will be back to the initial number. If the desired treatment time is the same for the next treatment, the user just presses the "ON/OFF" button. When using the unit again, if the user wants to set up a different treatment time, he can press the "RESET" button first. Then he can reset up the time as described above.

Warning

If the power indicator is lit the unit is operating even though time on the display screen is "0.00" or other number. The unit is off only when the power indicator is not lit. Do not continuously use the unit for more than 1 hour at a time and eight hours a day. If you accidentally leave the unit in working condition for a long time, the heater may fail and it may also cause damage to your other property or injure people. To avoid this happening, you should always use the timer to control the treatment time.

For models with a manual timer, you can turn it on by switching the timer clockwise to point to a certain desired position. Then the power light will be on and the manual timer will automatically count down the time. After the treatment time expires, the unit will automatically turn off.

4. Pre-heat the unit for 10 minutes.
5. Expose the affected part of the body or the relevant acupuncture point (See the point picture and the table for clinical application) directly toward the curing plate.
6. Adjust the distance for 12 to 16 inches (30 to 40 cm) from the curing plate to the affected part. The best result is obtained when the local skin temperature is between 104°F-113°F (40 to 45°C) and the patient feels comfortable. Please refer to Reference Table for clinical Application for the appropriate distance.
7. Refer to the clinical Application Table for treatment time: 15-60 minutes each time (maximum should not be longer than 60 minutes), 1 or 2 times a day, 7--10 days of a course of treatment, but it can be a longer period for the purpose of health-care if instructed by a physician.



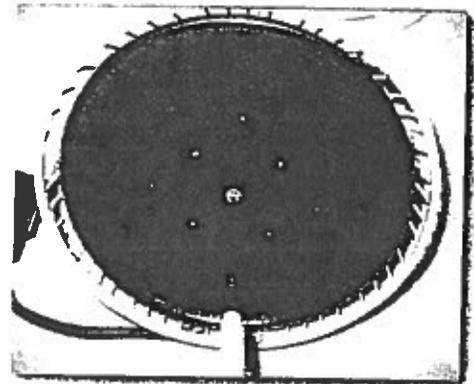
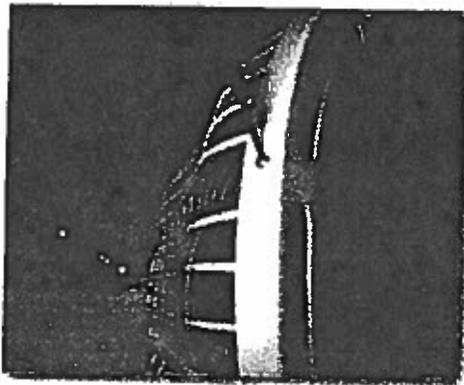
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Warning:

The unit can cause burns and injuries to patients if the distance between the curing plate and human body is too short or the treatment time is too long. The best distance is one that feels comfortable to the patient. Never use the unit on patients with insensitve skin unless being sure that the treatment will not cause burn. If the local skin temperature is 113°F (45°C) maximum treatment time is 15 minutes.

Installation Instructions for changing the curing plate



Step No.1: Turn off the power. For floor standing models, take the head off from the TDP lamp.

Step No.2: Remove the safety grilling cover as shown.

Step No.3: Remove the used curing plate as shown.

Step No.4: Remove the used mica plate.

Step No.5: Install a new mica plate.

Step No.6: Install a new curing plate.

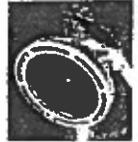


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The Special Electromagnetic Therapeutic Apparatus



Step No.7:Put the safety grilling cover back.

Step No.8:Reinstall the head on the TDP lamp.

To maintain good therapeutic effect, you should change the curing plate after 1,000 to 1,500 hours of use. The life of the heater is also between 1,000 to 2,000 hours. Changing the heater of the unit is very difficult. We do not suggest a user to change the heater himself. Since the head is easily removed or installed on the unit, we strongly suggest users to replace the whole head after every 1,500 hours of use. A new head will provide stable temperature and dense mineral waves.



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The Special Electromagnetic Therapeutic Appar

Reference Table for Clinical Application

S/No.	Diseases	Area of TDP LAMP focus	Shining Xue Wei	Shining Distance (inch/cm)*		Shining Time (minute)		Period of Treatment	Point to Take Note
				Adult	Child	Adult	Child		
1	Various soft tissue injured	Injuries area	-	12-18 in (30-40 cm)	18 in (40 cm)	30-40	20	1-18	-
2	Lumbago	Loins area	Shenshu	12 in (30 cm)	16 in (40 cm)	30-40	20	Average 8.3	-
3	Ornitis	Shoulder area	Jianyu Jugu Jianshen	12-18 in (30-40 cm)	N/A	40	N/A	5-20	-
4	Sciatica	Weist orbutockarea	Welzhog Huanliao Chengshan	12-18 in (30-40 cm)	N/A	40	N/A	20-100	-
5	Wound infection	Infected area	-	12-18 in (30-40 cm)	16 in (40 cm)	30-40	20	3-12	Clean the wound area
6	Bell's palsy	Facial area	Juache yingpiang	12-18 in (30-40 cm)	16 in (40 cm)	40-50	30	2-40	Cover eyes Feel Sweat and thirst
7	Alopecia	Head area	-	12-18 in (30-40 cm)	16 in (40 cm)	40-50	30	Average 18	Feel sweat and itches
8	Chilblains	Area of concern	-	12 in (30 cm)	16 in (40 cm)	20	20	2-7	Keep trouble skin dry
9	Dampoa	Navel region	Shenhu	12 in (30 cm)	16 in (40 cm)	30	20	2-9	-
10	Cholecystitis	Gall area	Zhongwen	12-18 in (30-40 cm)	16 in (40 cm)	30	20	2-8	-
11	Hepatitis	Hepat area	-	12-18 in (30-40 cm)	16 in (40 cm)	30	20	2-14	-
12	Neurasthenia	Back and neck area	Fengchi	12-18 in (30-40 cm)	-	30	-	2-10	Not too hot
13	Pelvic infection	Hypogastrium area	Sanyinjiao	12-18 in (30-40 cm)	-	30	-	Average 17	-
14	Irregular menstruation	Hypogastrium area	Sanyinjiao	12-18 in (30-40 cm)	-	30	-	3-10	-
15	Dysmenorrhea	Hypogastrium area	Sanyinjiao	12-18 in (30-40 cm)	-	30	-	3-5	-
16	Children pneumonia	Chest/Back area or both	Chest or Bast	N/A	16 in (40 cm)	N/A	20	3-9	-
17	Infant diarrhea	Umbilicus area	Hoku	N/A	16 in (40 cm)	N/A	20	3-5	-
18	Dermatophytosis	Fous	-	12-18 in (30-40 cm)	12-18 in (30-40 cm)	30	20	6-30	-
19	Neurodermatitis	Fous	-	12-18 in (30-40 cm)	16 in (40 cm)	30	20	Average 13	-
20	Eczema	Fous	-	12-18 in (30-40 cm)	16 in (40 cm)	30	20	Average 8	-
21	Silicosis	Chest or back	-	12-18 in (30-40 cm)	N/A	45-60	N/A	90	-
22	Angina pectoris caused by coronary atherosclerosis	Left chest the heart area	-	12 in (30 cm)	N/A	30	N/A	1-7	-
23	Rheumatoid Arthritis	Affect Joints	Ouchi Jianyun	12-18 in (30-40 cm)	16 in (40 cm)	60	20	7-10	Twice daily

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The Special Electromagnetic Therapeutic Apparatus

MAINTENANCE AND REPAIR

1. Avoid strongly shaking the unit, avoid moisture and keep the curing plate intact.
2. Prevent the power wire from burning. If it is burnt, you should replace it with a new one . If it is wet, allow it to dry before using the unit.
3. If the power indicator of lamp isn't lit after turning on the unit, but the curing plate can be heated, you should not use the unit. It means that the power indicator fails. For models with a digital timer, you can buy a new motherboard to replace the failed one.
4. If the heater is broken, you can change a new one or the hole part including the safety grilling cover, heater and curing plate.
5. If controller is broken, you can change a new one or the whole part from arm to controller.
6. If other parts are broken, you can get in touch with us or our authorized distributors and representative . You can get the representative list from <http://www.china-tdp.com> .
7. When left unused for a long period of time, unplug the unit from the AC outlet.

Caution:

1. For safety, be sure that the power is off before repairing.
2. If you want the circuit diagram, technology parameters or other data, please contact us, we will give the best service.
3. Please pay attention that the new part should be related with the repaired unit when you are changing the mating parts.

Declaration:

1. The picture are for reference only, it is the practical that counts.
2. Because of the regulation of laws and industry, or the demand of technology, our company has the right to modify the material structure and user manual of TDP.



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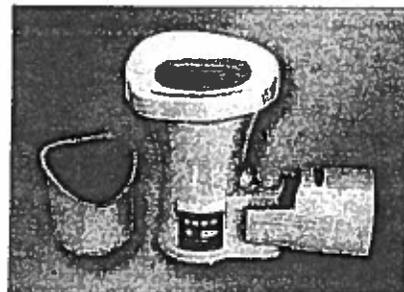


The Special Electromagnetic Therapeutic Apparatus

NEW PRODUCT

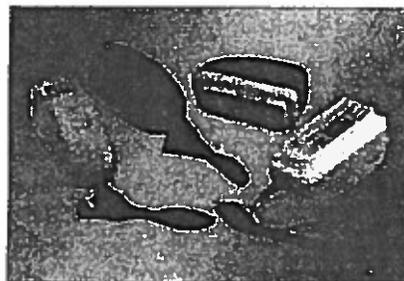
1. Multifunctional therapeutic apparatus

Multifunctional therapeutic apparatus is a multifunctional mixed mode apparatus. It is made of the main body, the seat cover, the veil. It has two adjunctive therapy systems of fumigating and faradipuncture. So you can choose the way as you need. The main body of this TDP can be used as an independent therapeutic apparatus to irradiate directly. Put the seat cover on the main body, it becomes a seat type TDP lamp, mainly used in pelvic inflammatory disease, colpitis, urethritis, gynecological wound healing and prostatitis. You can regulate the temperature according to personal information or environment. Put the veil on the main body, it becomes a cosmetic apparatus. You can irradiate directly on the face to be used in facial paralysis and wound healing. It also can irradiate the face directly through fumigating, even making the facial mask. It will get the better effect. Concrete method of application refers to the special manual.



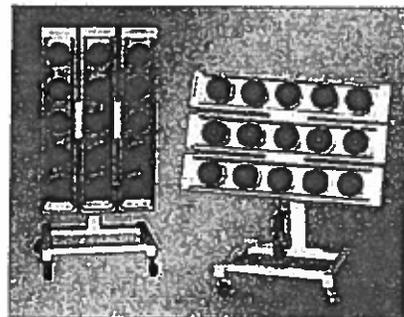
2. CQG-101 handheld TDP lamp

CQG-101 handheld TDP lamp is a small, convenient and easily carried handheld product. Users use it according to the marking on the TDP and the notice in the manual.



3. High-power physical ability training machine

High-power physical ability training machine is a large TDP lamp, mainly used in physical culture institute and epehebeion. The main uses are: First, when the athlete training for using this TDP, it is equal to being in progress has no oxygen training; Second, athlete will dissipate fatigue and restore his strength when he uses after sporting or competition. It is propitious to the athlete recover and compete earlier; Third, it is good for various soft tissue injured and wound healing to recover and compete earlier. Except these, it is suitable for sauna and leisure industry. Mainly purpose is to dissipate fatigue and health care. Concrete method of application refers to the special manual.



DOCKET NUMBER: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JD OF STAMFORD
v. : AT STAMFORD
CENTER FOR WOMEN'S HEALTH, P.C., :
ET AL. : SEPTEMBER 9, 2015

THIRD AMENDED THIRD-PARTY COMPLAINT

COUNT ONE: VIOLATION OF THE CONNECTICUT PRODUCTS LIABILITY ACT
("CPLA"), CONN. GEN. STAT. § 52-572m.

11/22/17 PLAINIFF'S EXHIBIT FULL
11
Kissel v. CWH
FB No. 126013562

11003

13. On April 22, 2010, Wang began furnishing acupuncture treatment to Kissel. Wang placed the lamp in the position expected to be used for treatment, such that the arm was outstretched and the head hung at an angle approximately eighteen (18) inches over where Kissel's foot was expected to be placed. Wang then turned the lamp on to begin preheating it, explained to Kissel to de-robe and get dressed in the appropriate medical garments, and left the room. After Wang returned to the room, the preheating process lasted approximately another ten (10) to fifteen (15) minutes while Wang placed the needles into Kissel. After all needles were placed, Wang left the room, and after approximately five (5) to seven (7) minutes returned to check on Kissel. By that time, the lamp had already spontaneously fallen on Kissel. Kissel told Wang the lamp had fallen on her left foot.

14. The lamp was designed, manufactured, distributed, or sold such that the stabilizing hardware and hydraulic mechanisms for the lamp head and arm were deficient, and as a result the arm spontaneously lowered causing the head to fall onto Kissel's foot, thereby causing her alleged injuries

15. Kissel alleges that as a result of the lamp falling on her, she has suffered the following serious, severe, painful and permanent injuries:

- a. third degree burns to left foot and toes,
- b. five day admission to Westchester Medical Center Burn Unit,
- c. multiple skin graft surgeries,
- d. multiple painful debriding procedures,
- e. broken toe,
- f. infection in bone of toe,

- g. permanent deformity and scarring of left toes, foot and leg,
- h. permanent pain in left foot,
- i. loss of sensation/numbness in left foot and toes, and

16. Kissel alleges that as a result of her injuries she has been permanently deprived of her full ability to carry on and enjoy life's activities.

18. Kissel alleges to have sustained injuries for which she is seeking: (a) compensatory damages,

19. Wang has denied the material allegations in Kissel's Second Amended Complaint filed against him.

21. The alleged injuries to Kissel were caused by and are the responsibility of WABBO pursuant to Conn. Gen. Stat. § 52-572m *et seq.*, for one or more of the following reasons:

- a. WABBO was negligent in distributing, selling and/or otherwise placing the lamp into the stream of commerce in one or more of the following ways:
 - i. It failed to affix to the lamp a warning concerning the heat plate's potential to cause harm and/or injury;
 - ii. It negligently designed and/or manufactured the lamps by failing to include adequate locking devices, including but not limited to a rotating tension clamp at the base of the head and other locking devices on the hydraulic mechanisms and joints;
 - iii. It failed to provide a user manual or instructions for use with the lamp;
 - iv. It failed to provide a user manual or instructions on its website;
 - v. It failed to place a heating shield of some kind in front of the heating plate;
 - vi. It did not do any of i.-v. above after having a reasonable opportunity to inspect the subject lamp prior to placing it in the stream of commerce;
 - vii. It did not do any of i.-v. above after having a reasonable opportunity to inspect the model of lamps prior to placing it in the stream of commerce;
 - viii. It did not do any of i.-v. above despite the fact that it knew or should have known that without the steps taken above harm and/or injury would result;

- ix. It did not recognize that without all, or at least some, of the modifications listed in i.-v. above, harm and/or injury would likely result; and/or
 - x. It placed the lamp in the stream of commerce anyway despite all of the deficiencies listed above.
- b. WABBO is strictly liable for the injuries to Kissel and Wang because:
- i. Prior to April 22, 2010, when the lamp was sold or placed into the stream of commerce by WABBO, it was in a defective condition unreasonably dangerous to consumers, including Wang;
 - ii. The lamp was placed into the stream of commerce by WABBO with the expectation that it would reach consumers without substantial change in condition and, as of April 22, 2010, there had been no substantial change in the condition of the lamp;
 - iii. On April 22, 2010, the lamp was in a defective condition unreasonably dangerous to Kissel and Wang in one or more of the following ways:
 - A. it was designed, manufactured, distributed, or sold such that the stabilizing hardware and hydraulic mechanisms for the lamp head and arm were deficient, and as a result the arm spontaneously lowered causing the head to fall onto Kissel's foot, thereby causing her alleged injuries;
 - B. it was designed, manufactured, distributed, or sold such that it had a dangerous propensity in the absence of proper warnings and instructions regarding its use;

- C. it was neither modified nor recalled by WABBO despite its dangerous design and lack of proper warnings and instructions;
- D. it was designed, manufactured, distributed, or sold without proper instructions regarding its safe use; and/or
- E. it was designed, manufactured, distributed, or sold without proper warnings regarding its safe use.

22. One or more of the defects and acts of negligence described herein was a substantial factor in causing the injuries to Kissel described above.

23. In the event Kissel recovers a judgment against Wang, that judgment will have been brought about, in whole or part, by the defective condition of the subject product.

24. WABBO is the manufacturer, seller and distributor of the CQ-36 TDP Dual Heat Lamp that is the subject of this Third-Party Complaint, where the sale is for resale or for use or consumption.

25. WABBO manufactured, sold and distributed the lamp which it knew or should reasonably have known was in a defective condition unreasonably dangerous to a consumer or user.

26. The defect in the lamp caused the injury for which compensation has been sought by Kissel.

27. The lamp was in a defective condition unreasonably dangerous to the consumer or user at the time at which it sold and distributed the lamp to Wang.

28. The lamp was expected or could reasonably have been expected to reach Wang without substantial change in the condition once it left WABBO.

VOLUME II

STATE OF CONNECTICUT : SUPERIOR COURT
JUDICIAL DISTRICT OF STAMFORD AT STAMFORD

----- x

JUDITH KISSEL,

Plaintiff,

Vs.

CENTER FOR WOMEN'S HEALTH, P.C.
et al.,

Defendants.

----- x

DOCKET NO.: FST-CV-12-6013562S

Continued Videotaped Deposition of REED
WANG, taken pursuant to Section 243, et
seq., of the Connecticut Practice Book, at
the law offices of Rome, McGuigan, One State
Street, Hartford, Connecticut, before Bonita
Cohen, a Registered Merit Reporter and
Notary Public in and for the State of
Connecticut, License Number 00041, on
Friday, January 23, 2015, at 1:48 p.m.

12/13/17 99
PLAINTIFF'S EXHIBIT Full
Kissel v. CWH
No. 12G013562

2 Q. And after you left the room, the preheating
3 process lasted approximately another 10 to 15 minutes
4 while you placed needles into Ms. Kissel. Correct?

5 A. Yes. Correct.

6 Q. After all those needles were placed, you
7 left the room, and after approximately five to seven
8 minutes you returned to check on Ms. Kissel. Correct?

9 A. Correct.

10 Q. By that time the lamp had already
11 spontaneously fallen on Kissel without the exertion of
12 any outside force. Correct?

13 A. Correct.

14 Q. Ms. Kissel told you that the lamp had fallen
15 on her left foot. Correct?

16 A. Correct.

17 Q. And you believe that the lamp was improperly
18 designed such that the arm of the heat lamp
19 spontaneously lowered causing the head to fall onto
20 Ms. Kissel's foot and thereby causing her injuries.
21 Correct?

22 A. Correct. Exactly the way it's described in
23 the transcript just reading.



TDP 神燈

TDP Miracie Lamp

華寶®
TDP Lamp

特定電磁波譜 (TDP) 治療器

The special Electromagnetic Therapeutic Apparatus

Exhibit
Exhibit No.: 9
Name: Sami Ng
Date: 10-21-17
ESQUIRE

- 榮獲南斯拉夫薩格勒布國際博覽會金牌
- TDP治療器核心部件--TDP輻射板1985年獲國家發明專利
- 榮獲比利時布魯塞爾尤裡卡國際發明博覽會銀獎
- A Gold Medal at Zagreb International Fair in Yugoslavia
- The TDP curing plate, the key component of the TDP lamp has obtained the national patent for invention in 1985
- A Silver Medal at Brussels Eureka World Fair for Invention, in Belgium

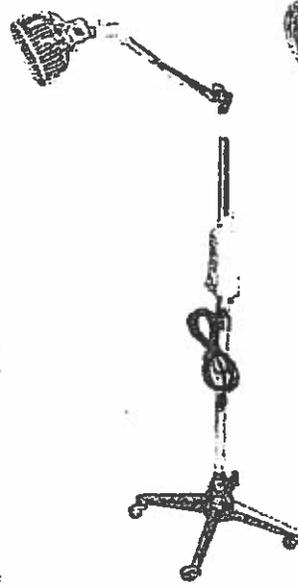


CQ-36

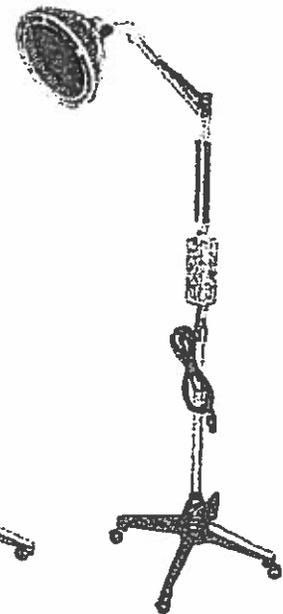


CQ-12

TDP 發明單位
TDP Lamp Patent Unit



CQ-27

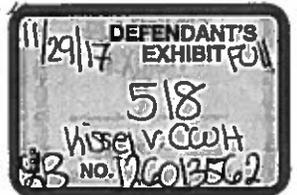


CQ-29

嚴正聲明

TDP 治療器(俗稱"神燈")的核心部件---TDP輻射板是重慶市硅酸鹽(G.S.Y)研究所已故所長苟文彬和他領導的研究所的獨家重大科技發明成果, 1985年獲國家發明專利(專利號為:85100830.5), 此專利技術從未向任何單位或個人轉讓, 從1996年11月起我所已停止向任何TDP生產單位或組裝廠提供TDP輻射板, 所以他們採用的TDP輻射板均不屬於重慶市硅酸鹽(G.S.Y)研究所發明生產, 同時也與重慶市硅酸鹽(G.S.Y)研究所的發明專利技術毫無關係。為謹防假冒, 請廣大用戶認準由重慶市硅酸鹽(G.S.Y)研究所和重慶長樂硅酸鹽有限責任公司聯合製造的, 為華寶公司定牌生產的華寶牌TDP治療器和輻射板。

本公司TDP產品係獲國家發明專利 專利號: 85100830.5
 本企業TDP產品以獲得美國聯邦食品及藥物管理局(FDA)許可證號碼5108 號碼: K02085



重慶市硅酸鹽研究所
 重慶長樂硅酸鹽有限責任公司

產品直銷商: 華寶醫療保健品有限公司
 Distributed by: Health Body World Supply Inc.(HBW)

**TDP Special
Electromagnetic Health Lamp
Gold Medal of Zegreb International Fair
Silver Medal of 35th Brussels Eureka
World Fair For Invention**

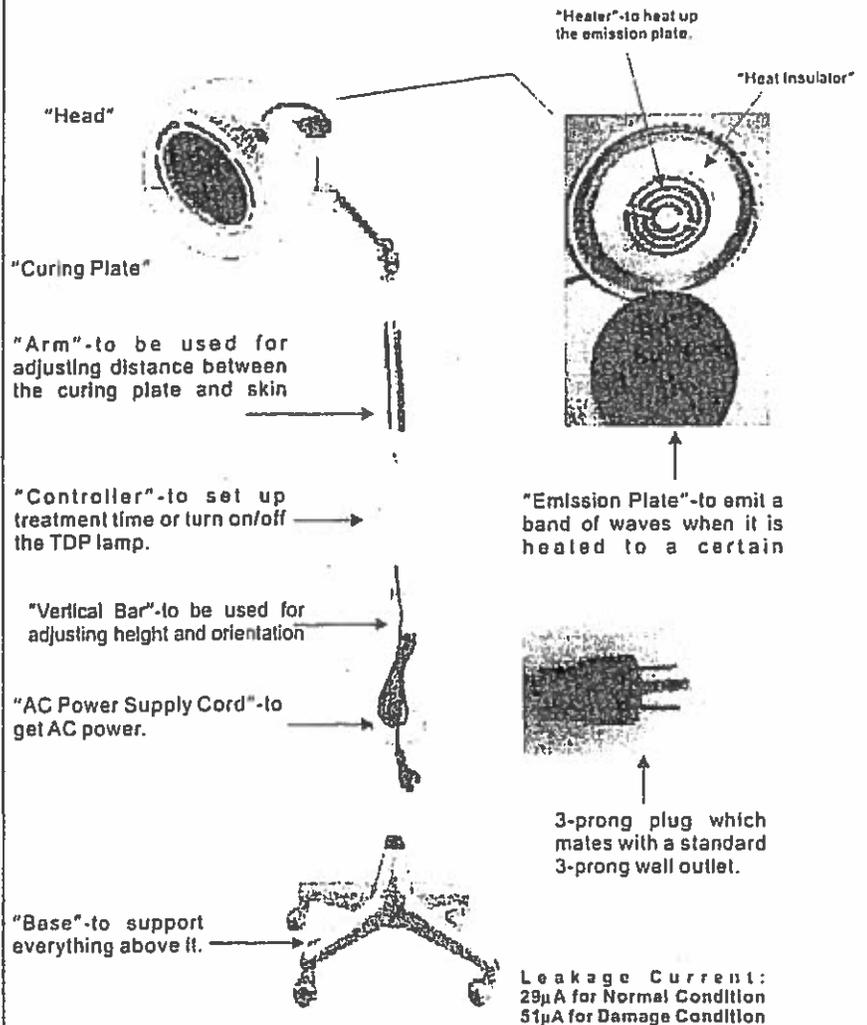
What is TDP Lamp?

The TDP Special Electromagnetic Health Lamp was invented in China by a group of scientists and physicians headed by Dr. Gou Wenbin. The TDP lamp is a new type therapeutic and health device. With the functions of promoting metabolism, regulating physiological deficiency, diminishing inflammation and easing pain, the tissue injuries, arthritis and various skin conditions. Since introduced into clinic and family use in early 1980, the TDP Lamp has successfully treated up to 60 million patients in China, Hongkong, South Asia, Japan, Europe, Australia and recently in North America. Due to its prominent therapeutic effects, the TDP Lamp is known in China and HongKong as the "Miracle Lamp".

How TDP Lamp works?

Different from conventional infrared lamp and microwave therapeutic device, the TDP Lamp features a round plate coated with a proprietary mineral formation consisting of 33 elements essential to the human body. When activated by the built-in electric heating element, this mineral plate emits a special band of electromagnetic waves ranging from 2 to 25 (microns) in wavelength and 28/34 mw/sq.cm in intensity that coincide with the wavelengths and intensity of the electromagnetic waves released by a human body and are consequently absorbed by the body (so-called selective absorption). This absorbed electromagnetic energy has been found to yield therapeutic effects on the human body by 1) helping generate various beneficial biochemical stimuli that body may lack due to illness, accident or injury; 2) accelerating the decomposition of unstable structures such like dead cell; 3) enhancing the body's function of adjustment and immunity.

NAME & FUNCTION OF EACH PART



Operation:

1. Assemble the TDP Lamp and Adjust the position of the head according to the Figure.
2. Insert the plug into a rated voltage power supply socket and turn on the lamp by depressing the power switch. The indicator will be lit, the lamp will be ready for use after being preheated for 10-15 minutes.
3. Expose the troubled part of the body or the relevant acupuncture point directly toward the lamp head. Normally use a TDP, but exposing different parts toward a few Lamps is allowed.
4. The distance of 20 to 30cm (8 to 12 inches) is OK from the lamp Head to the troubled part. The best result is obtained when the local skin temperature is kept at 40°C (104°F) or the patient feels comfortable.
5. Treatment time length: 30 to 60 minutes each time, 1 or 2 times a day; 7 to 10 days a course of treatment, but it can be for a long period for purpose of health-care.

Caution:

1. On operation do not touch the lamp head. The TDP should be protected against dampness and violent percussion. Its plate should be kept intact, and can never be cleaned with any liquid.
2. The part of received irradiation must be exposed, otherwise therapeutic effects is insufficiency. Effective measures must be taken to protect the eyes when the lamp is used for facial treatment. Temperature will be depressed if user is the baby.
3. The distance between you and the lamp's isn't too shorter to avoid accident when the lamp is heated.
4. The lamp's plate must be changed when it becomes wine (about after two years)
5. To prevent accident, do not let children operate this apparatus or get access to the lamp head when it is being heated.
6. Please first check the fusion when the lamp can't work, if it isn't OK, please used spare one.
7. The radiator can be steam evaporating when TDP Lamp be used first. The phenomenon will disappear after put through the power in 2-3 minutes.

TDP Heat Lamp Main Technology Parameter

Model	Control Method	Head Size (In.)	Electric Power (W)	Voltage (V)	Spectrum Range (μm)	Elevation (deg.)	Extension of Supporter (mm)	Azimuth (deg.)	Plate Limited (hr.)	Remarks
CQ-12	Digital	4.5"	230±10	(220/110)±10	1-25μm	>270	>400	>50	1000-1500	Desk Type Single Head
CQ-27	Manual	5"	250±10	(220/110)±10	1-25μm	>90	>500	360	1000-1500	Floor Type Single Head
CQ-29	Manual	6.5"	250±10	(220/110)±10	1-25μm	>90	>500	360	1000-1500	Floor Type Single Head
CQ-36	Manual	2/5"	2x250±10	(220/110)±10	1-25μm	>90	>500	360	1000-1500	Floor Type Dual Head

Note: After using 1000 hours, the Emission Plate can still be used but its effect decreases; after 1500 hours, the effect decreases sharply, need to change the new emission plate.

治療板工作1000小時後，仍可繼續使用，但效果下降；1500小時後效果急劇下降，需要更換新板。

TDP Control Panel of Models with a Manual Timer

TDP 的安裝程序：

一、將照射頭上接頭A與支臂上的孔B配合好後，並左右轉動檢查是否靈活，輕旋螺釘到C不動為止（切勿用力過大，以免撞壞螺釘）。

二、將大立柱3上螺紋部D與支腳4上的孔E配合好後，從底部將雙螺帽旋到螺柱上并旋緊。

三、將TDP上部5與TDP下部6燈杆對接好後輕旋螺釘G到不動為止。

四、調節：1、擰鬆螺釘C可旋轉調節燈頭位置；2、擰鬆螺釘G可平面旋轉360度調節上部；3、擰鬆螺母H可升降燈杆6，調節燈的高低。

使用方法：

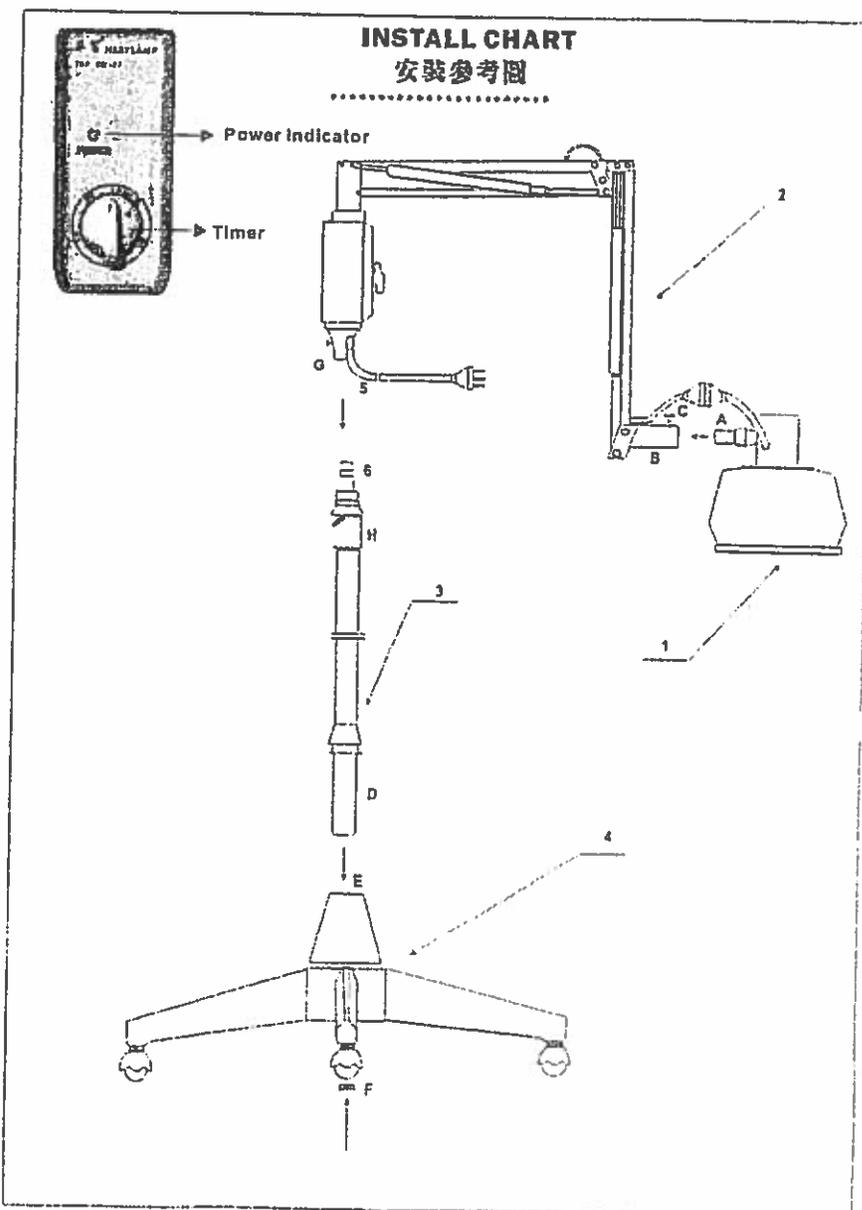
- 按圖裝配好TDP燈并把燈頭調節到所需要的位置和角度。
- 連接電源：將TDP治療器電源插頭插入額定電源插座內，打開電源開關，指示燈亮後待機器預熱10-15分鐘即可進行照射治療。
- 照射部位：暴露病處或相關穴位，直接照射。一般抵用一臺機器，也可同時用幾臺機器照射不同的部位。
- 照射距離：照射處皮膚距離塗料板20-30公分（8-12英寸），皮膚表面溫度保持在40℃左右，或以患者自感舒適為宜。
- 照射時間：每次照射30-60分鐘，每日1-2次，7-10天為一療程，療程之間可隔三天左右，如病情需要，可連續長期照射，亦可做長期保健照射。

注意事項：

- 為確保使用安全和延長機器壽命，用後即關閉電源，要防止強烈震動，受潮，注意保護塗料板面。
- 接受照射的部位必須完全裸露，否則影響療效，但照射面即時患者應戴上有色的眼鏡或眼罩，保護雙眼，以免發生眼球乾燥現象，如對嬰兒使用，皮膚溫度酌減。
- 照射距離不宜過近，否則容易發生皮膚灼傷（如發紅或起水泡）或接觸塗料板而被燙傷；但距離過遠，也要影響療效，加熱狀態下，嚴禁觸碰塗料板；調整燈頭亦應小心，以防灼傷。
- 當發現塗料板逐漸變為暗紅色（大約二年後），表明該板需要更換。
- 勿讓兒童操作本治療器或接近加熱燈頭。
- 凡電源為220V/110V可以互相轉換的TDP，接通電源前應特別勿忘將電源轉換開關撥到與當地電壓相符的位置上。
- 當機器不正常工作時，請首先檢查熔斷器是否損壞，若損壞，請予商家購買備用件。

禁忌症：

高燒患者惡性腫瘤，活動性結核、高血壓、動硬化，有出血傾向及皮膚過敏者禁止使用。



TDP REFERENCE TABLE FOR CLINICAL APPLICATION

TDP 臨床應用參考表

序號 S/No.	疾病 Diseases	照射部位 Shining Portion	照射穴位 Shining Xue Wei	照射距離 Shining Distance		照射時間 Shining Time		治療次數 Period of Treat	注意事項 Point to Take Note
				成人 Adult	兒童 Kid	成人 Adult	兒童 Kid		
1	軟組織損傷 Various Soft tissue Injured	受傷部位 Injuries Portion		30-40	40	30-40	20	1-18	
2	腰肌勞損傷 Lumbago	腰部 Loins Portion	腎俞 Shenshu	30	40	30-40	20	Average 8.3	
3	肩周炎 Omitis	肩周部 Shoulder Portion	肩髃巨骨 Jianyu Jugu Jianzhen	30-40		40		5-20	
4	坐骨神經痛 Sciatica	腰或臀 Waist or Buttock	委中環跳承山 Weizhong Huantiao Chengshan	30-40		40		20-100	
5	外科感染 Wound Infection	感染部位 Infection Portion		30-40	40	30-40	20	3-12	清洗傷口 Clean the wound portion
6	面神經麻痺 Bell's Palsy	面部 Face	頰車 迎香 Jiache Yingxiang	30-40	40	40-50	30	2-40	保護眼睛 Cover eyes 感到出汗或口渴 Feel Sweat and Thirst
7	脫髮 Alopecia	頭部 Head Portion		30-40	40	40-50	30	平均13次 Average 13	出汗發癢 Feel Sweat and Itches
8	冬瘡 Chilblains	凍傷部位 Troubles Port		30	40	20	20	2-7	保持病灶乾燥 Keep trouble skin dry
9	腹瀉 Diarrhea	臍周圍 Navel Region	神闕 Shenque	30	40	30	20	2-9	
10	膽囊炎 Cholecystitis	膽區 Gall Area	中脘 Zhongwen	30-40	40	30	20	2-8	
11	肝炎 Nepatitis	肝區 Nepar Area		30-40	40	30	20	7-14	不要過熱 Not too Hot
12	神經衰弱 Neurosthenia	後頸部 Back Neck	風池 Fangchi	30-40		30		2-10	
13	盆腔炎 Pelvic Infection	下腹部 Hypogastrium	三陰交 Sanyinjiao	30-40		30		Average 17	
14	月經不調 Irregular Menstruation	下腹部 Hypogastrium	三陰交 anyinjiao	30-40		30		3-10	
15	痛經 Dysmenorrhea	下腹部 Hypogastrium	三陰交 Sanyinjiao	30-40		30		3-5	
16	小兒肺炎 Children Pneumonia	胸或肺部 Chest or Back	肺俞 Feishu		40		20	3-9	
17	小兒腹瀉 Infant Diarrhea	臍周圍 Umbilicus	合谷 Hegu		40		20	3-5	
18	各種瘡癤 Dermat Ophytosis	瘡癤感染部位 Focus		30-40	30-40	30	20	6-30	清洗患部 (Clean the trouble spot)
19	神經性皮炎 Neurodermatitis	皮損部位 Focus		30-40	40	30	20	Average 13	Do
20	濕疹 Eczema	皮損部位 Focus		30-40	40	30	20	Average 8	Do
21	矽肺 Silicosis	胸背部 Chest and Back		30-40		45-60		90	
22	冠心病心絞痛 Angina Pectoris caused by coronary heart diseases	胸前區 Left Chest Heart Area		30		30		1-7	

NO: FST-CR12-6013562S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S : NOVEMBER 15, 2017
HEALTH, ET AL

BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE

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

Representing the Plaintiff:

ATTY. SEAN MCELLIGOTT
ATTY. MATT BLUMENTHAL
Koskoff Koskoff & Bieder, P.C.
350 Fairfield Avenue
Bridgeport, CT 06604

Representing the Defendant(s):

ATTY. DAVID J. ROBERTSON (Center for Women's Health)
ATTY. KEITH BLUMENSTOCK
Heidell, Pittoni, Murphy & Bach, LLP
855 Main Street, Suite 1100
Bridgeport, CT 06604

ATTY. MARY ALICE MOORE LEONHARDT (Dr. Wang)
ATTY. ERIN CANALIA
Moore Leonhardt & Assoc. LLC
67 Holly Hill Lane
Greenwich, CT 06831

ATTY. PAUL MEADE (WABBO Company)
ATTY. JOHN KELLY
Halloran & Sage, LLC
225 Asylum Street, #18
Hartford, CT 06103

Recorded By:
S. Jerry-Collins

Transcribed By:
S. Jerry-Collins
K. Hirschbeck
Court Recording Monitor
123 Hoyt Street
Stamford, CT 06905

1 R E E D W A N G

2 of 129 Kings Highway North, called by the plaintiff,
3 having been duly sworn, testified as follows:

4 **DIRECT EXAMINATION BY ATTY. MCELLIGOTT:**

5 Q Good afternoon, Dr. Wong (As said)

6 A Good afternoon.

7 Q I just want to follow up on a couple of things that
8 we heard in opening. The first is; did you listen to the
9 opening from WABBO's lawyer?

10 A I did.

11 Q And there was a suggestion that nobody thought the
12 lamp was dangerous, even after it burned Ms. Kissel.
13 There's not notice to WABBO, etc. Did you hear that?

14 A I heard.

15 Q Okay. In fact --

16 THE COURT: Keep your voice up, sir.

17 THE WITNESS: A little more; right?

18 THE COURT: Please.

19 THE WITNESS: I try. I try my best.

20 THE COURT: Thank you.

21 THE WITNESS: Yes.

22 Q In fact, as soon as this incident happened, you never
23 used the lamp again; right?

24 A Yes.

25 Q You put it in a closet because you knew somebody was
26 going to be asking questions about it; right?

27 A Correct.

1 THE COURT: For what's left of the afternoon.

2 Okay.

3 ATTY. MCELLIGOTT: Yes, Your Honor

4 THE COURT: Sir, you can come up here, please.

5 You're still under oath.

6 THE WITNESS: Yes.

7 (Whereupon Dr. Wang took the witness stand)

8 THE COURT: I think I moved the microphone.

9 (Pause)

10 THE COURT: All right, counsel.

11 ATTY. MCELLIGOTT: Thank you, Your Honor. I
12 would like to -- now that we've agreed on Plaintiff's
13 Exhibit 11 I'd like to publish that to the jury. We
14 don't have the physical copy yet to mark but if we
15 could pub -- if there's no objection I'd like to
16 publish Plaintiff's Exhibit 11, the full exhibit, to
17 the jury.

18 THE COURT: All right. Well, we have 11 ID
19 which is not -- so this is going to be separate from
20 ID -- the ID --

21 ATTY. MCELLIGOTT: We're just gonna replace --

22 THE COURT: -- a new 11.

23 ATTY. MOORE-LEONHARDT: -- them.

24 THE COURT: Do you want to replace it or is this
25 gonna be in addition to?

26 ATTY. MCELLIGOTT: Why don't we just replace it.

27 THE COURT: All right. Anybody object.

1 ATTY. MEADE: No, Your Honor.

2 ATTY. MOORE-LEONHARDT: No, Your Honor.

3 THE COURT: All right. So if you --

4 ATTY. MCELLIGOTT: Okay. Thank you.

5 THE COURT: Do you have -- do you have something
6 to give the clerk or it'll come later.

7 ATTY. MCELLIGOTT: We're -- we almost have
8 something to give the clerk --

9 THE COURT: All right.

10 ATTY. MCELLIGOTT: -- we do have --

11 THE COURT: Okay.

12 ATTY. MCELLIGOTT: -- correct on the screen.

13 THE COURT: All right.

14 ATTY. MCELLIGOTT: Okay. Yes, eleven, o, three,
15 please.

16 ATTY. ROBERTSON: Your Honor, we can't see the
17 screen from here so I don't know what's being
18 projected.

19 THE COURT: Well, why don't you come around
20 then.

21 ATTY. MOORE-LEONHARDT: Thank you, Your Honor.

22 ATTY. ROBERTSON: (Indiscernible).

23 ATTY. MCELLIGOTT: Okay.

24 **DIRECT EXAMINATION BY ATTY. MCELLIGOTT:**

25 Q So, Dr. Wang, this is your complaint against WABBO in
26 this matter, correct?

27 THE COURT: Okay. Let -- just so it's clear,

NO: FST-CR12-6013562S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S : NOVEMBER 15, 2017
HEALTH, ET AL

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, G.A., Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 15th day of November, 2017.

Dated this 22nd day of November, 2017 in Stamford, Connecticut.



S. Jerry-Collins
Court Recording Monitor

NO: FST-CV126013562S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : NOVEMBER 15, 2017
Et Al

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on November 15, 2017.

Dated November 16, 2017 in Stamford, Connecticut.


Kasey Hirschbeck
Court Recording Monitor

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : NOVEMBER 16, 2017
P.C., ET AL

BEFORE THE HONORABLE KENNETH POVODATOR,
JUDGE AND JURY

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

Representing the Plaintiff:

ATTORNEY SEAN MCELLIGOTT
ATTORNEY MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant
Center for Women's Health P.C.:

ATTORNEY DAVID J. ROBERTSON
ATTORNEY KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street
Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant
Health Body World Supply Inc., aka The WABBO COMPANY:

ATTORNEY PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By: Pipina Plakopitas
Transcribed By: Paul McKenna
Pipina Plakopitas
Robin Mitchell
Court Recording Monitor
123 Hoyt Street
Stamford, Connecticut 06905

1 your name and address and spell your name for her?

2 THE WITNESS: Reed Wang.

3 THE COURT: Can you spell it?

4 THE WITNESS: R-e-e-d W-a-n-g. And 129 Kings
5 Highway North, Willows Medical Complex, Westport, CT,
6 06880.

7 THE COURT: Be seated, sir.

8 THE WITNESS: Thank you.

9 CONTINUING DIRECT EXAMINATION BY ATTY. MCELLIGOTT:

10 Q Good morning, Dr. Wang.

11 A Good morning.

12 Q So I just want to review some of the testimony that
13 we had yesterday about your third party complaint against
14 the WABBO Company. Do you recall the testimony from
15 yesterday?

16 A Yes, I couldn't see that.

17 Q You can't see it?

18 A Uh-huh.

19 Q We talked about how in the complaint you stated that
20 the lamp was unreasonably dangerous for four reasons,
21 correct?

22 A Could you repeat again?

23 Q We talked about how your complaint stated that the
24 lamp was unreasonably dangerous at the time you used it for
25 four reasons, correct?

26 A I won't say that.

27 Q Just specifically what we established yesterday --

1 A Correct.

2 Q And they're located in Hemet, California?

3 A Right.

4 Q Okay. And then if you could just highlight on the
5 right, sales invoice.

6 The sales invoice has a bar code and a date, serial or
7 SI number, and the date is March 10th, 2008. And was that the
8 date that you purchased the lamp at issue in this case,
9 Plaintiff's Exhibit 1, from HBW WABBO?

10 A Correct.

11 Q And underneath, under customer, customer is Dr. Wang,
12 444 Bedford Street Number 8 E, Stamford, Connecticut; correct?

13 A That's my billing address.

14 Q What's that?

15 A That's a billing address.

16 Q That's the billing address. That was your home
17 residence?

18 A At that time, right, yes.

19 Q Okay. And then under shipped to, it says Dr. Reed Wang
20 1011 High Ridge Road, Stamford, Connecticut, United States.
21 And do you recognize that address?

22 A Yes. That Center Woman's Health address.

23 Q That's the Center for Women's Health address, right?

24 A Right.

25 Q Okay. And you -- if you could just highlight all the
26 items -- all right, so you ordered two different things from
27 WABBO on March 10th, 2008, correct?

1 in a particular position.

2 Counsel, ask your question and make sure that's
3 vertical, please.

4 ATTY. McELLAGOTT: Thank you, your Honor.

5 BY ATTY. McELLAGOTT:

6 Q And just before we do that, I just want to confirm some
7 testimony we had prior to the break that on the day of
8 Ms. Kissel's treatment, the lamps hung over her feet from the
9 side of the massage table, correct?

10 A Pointed over, not hung over.

11 Q Didn't we just establish that we -- I can have it read
12 back to you, that your testimony before the break was that in
13 Stamford the lamps hung over the patient from the side? Did
14 you testify to that just ten minutes ago, or no?

15 A I don't recall.

16 Q You don't recall that?

17 A Yeah.

18 Q Okay. Let me try to refresh your recollection. In
19 Westport, the lamp would hang over the feet from the back,
20 correct?

21 A If you consider this hung over --

22 Q I'm sorry, sir, is that correct or not?

23 A Would you repeat.

24 Q Sure. In Westport, the lamp would hang over the feet
25 from the back, correct?

26 A You -- that's your question, was --

27 Q My question to you, yes or no?

NO: FST-CV 12-601-3562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH ET AL : NOVEMBER 16, 2017

Pages
1 - 31

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and accurate electronic copy of a true and correct transcription, done to the best of my ability, of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 16th day of November, 2017.

Dated this 17th day of November, 2017 at Stamford, Connecticut.

Paul J. McKenna
Court Recording Monitor

Paul J. McKenna OCR
2-1-19

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, : NOVEMBER 16, 2017
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C E R T I F I C A T I O N - Pages 32-111

I hereby certify the foregoing pages (32-111) are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 16th day of November, 2017.

Dated this 17th day of November, 2017 in Stamford, Connecticut.



Pipina Plakopitas
Court Recording Monitor

NO: FST CV12-6013562 : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
STAMFORD/NORWALK
VS. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S
HEALTH, P.C., ET AL : NOVEMBER 16, 2017

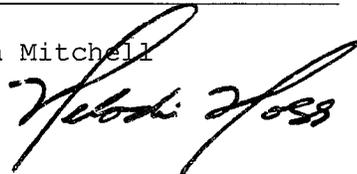
C E R T I F I C A T I O N

(PAGES 112-215)

I hereby certify the foregoing pages, pages 112-215, are a true and correct transcription of the digital audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, on the 16th day of November, 2017.

Dated this 17th day of November, 2017, in Torrington, Connecticut.

Robin Mitchell


OCR
2-1-19

FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : NOVEMBER 21, 2017

BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE
AND JURY

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

Representing the Plaintiff:

ATTORNEY SEAN MCELLIGOTT
ATTORNEY MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Bridgeport Avenue
Bridgeport, Connecticut 06604

Representing the Defendant, Center for Women's Health, PC:

ATTORNEY DAVID J. ROBERTSON
ATTORNEY KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street, Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant, Dr. Reed Wang:

ATTORNEY MARY ALICE MOORE LEONHARDT
ATTORNEY ERIN CANALIA
MOORE LEONHARDT & ASSOCIATED, LLC
67 Holly Hill Avenue
Greenwich, Connecticut 06831

Representing the Defendant, Health Body World Supply, Inc. AKA
The WABBO Company:

ATTORNEY PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 ASYLUM Street
Hartford, Connecticut 06103

Recorded By:
Elizabeth Staron
Transcribed By:
Elizabeth Staron
Usamah Khan
Melodie Moss
Court Recording Monitor
123 Hoyt Street
Stamford, Connecticut 06905

1 sheet or is it simply the exhibit I believe has it in
2 there? And I'm going to explain to the jury in a
3 moment what that means, but does anybody want the
4 full errata sheet or is it sufficient that the
5 excerpted language relating to the appropriate
6 question is there?

7 ATTY. MEADE: I don't have any objection, Your
8 Honor. I agree that's attached to the exhibit and it
9 is the errata sheet.

10 ATTY. ROBERTSON: Yeah, I agree. I think its
11 fine the way it's been presented and attached.

12 ATTY. LEONHARDT: No objection, Your Honor.

13 THE COURT: Ladies and gentleman, when a
14 deposition is taken just as when we have a monitor
15 here taking testimony, they're taking down the
16 questions and answers as best they can.

17 Sometimes there are mistakes in the
18 transcriptions, sometimes there are people who say,
19 oh, that's not the right answer. People whose
20 depositions are taken are given an opportunity to
21 prepare what's called an errata sheet saying I think
22 there was a mistake here and they're supposed to
23 actually say -- technically they're supposed to say
24 why the change is being made because, again, from my
25 experience I know that sometimes its -- you're pretty
26 sure that the monitor didn't get it right, maybe it
27 is something that sounds like it, sometimes it is

1 just the witness says, oh, that was a mistake. I
2 realize that that was a mistake. The point is it's
3 an opportunity to give last minute corrections.

4 So the errata sheet that counsel is talking
5 about is after the deposition is typed up the witness
6 has an opportunity to make corrections. And counsel
7 is alluding to a couple of corrections that were
8 made. So are you going to read the correction at
9 this point?

10 ATTY. MCELLIGOTT: Thank you, Your Honor. And
11 so the original transcription state: QUESTION, Back
12 to exhibit 7. So as best as you can recall, this
13 manual that's exhibit 7 is the manual that you
14 believe was related to the lamps that your company
15 was selling in the United States in 2008, is that
16 right? ANSWER, Maybe.

17 The errata sheet which is dated 27th of July
18 2017 signed under oath by Sami Wu Kuang, NG, states
19 reason for change translation in wrong (Sounds like)
20 and changes the answer from maybe to yes. So I'll
21 just re-ask the question and you can give the amended
22 answer.

23 *Question: Back to exhibit 7, so as best you can recall*
24 *this manual that's exhibit 7 is the manual that you believe*
25 *was related to the lamps that your company was selling in*
26 *the United States in 2008, is that right?*

27 *Answer: Yes.*

1 Question: All right. Do you believe that this manual
2 that you identified as exhibit 7 was the manual that related
3 to the CQ36 heat lamp that was sold to Dr. Wang in 2008?

4 Answer: What do you mean by relate?

5 Question: Well, this is the manual that went to the lamp
6 that was sold to Dr. Wang in 2008. That's your testimony,
7 isn't it?

8 Answer: Yes.

9 Question: And you believe that it was in the box that
10 was sent to him with the lamp at the time he received the
11 order from WABBO in 2008, right?

12 Answer: Maybe.

13 ATTY. MCELLIGOTT: Your Honor, again there's a
14 corrected answer in the errata sheet and the
15 correction states, reason for change translate in
16 wrong, change answer maybe to yes. I'll read the
17 question and would you please read the answer as
18 amended.

19 Question: And you believe that it was in the box that
20 was sent to him with the lamp at the time he received the
21 order from WABBO in 2008, right?

22 Answer: Yes.

23 Question: And you say maybe because you never inspected
24 the box to make sure the manual was in there before the box
25 was sent out to Dr. Wang, far enough?

26 Answer: Yes.

27 ATTY. MCELLIGOTT: Your Honor, at this time we'd

FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : NOVEMBER 21, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing 1-68 pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 21st day of November, 2017.

Dated this 22nd day of November, 2017 in Stamford, Connecticut.

Elizabeth Staron
Court Recording Monitor

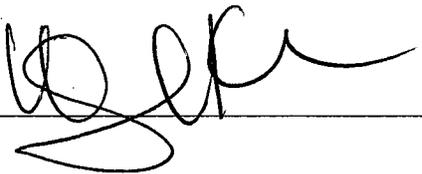
Elizabeth Staron OCR
2-1-19

FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : NOVEMBER 21, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing 69-99 pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, J.D. # 1, Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 21st day of November, 2017.

Dated this 22nd day of November, 2017 in Stamford,
Connecticut.



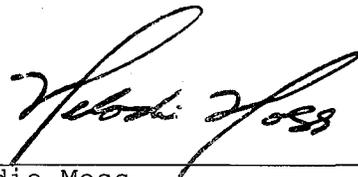
Usamah Khan
Court Recording Monitor

NO: FST-CV-12-6013562 : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C.,
ET AL : NOVEMBER 21, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages (100-140) are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 21st day of November, 2017.

Dated this 22nd day of November, 2017 in Stamford, Connecticut.



Melodie Moss
Court Reporter

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : NOVEMBER 22, 2017
P.C., ET AL

BEFORE THE HONORABLE KENNETH POVODATOR,
JUDGE AND JURY

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

Representing the Plaintiff:

ATTORNEY SEAN MCELLIGOTT
ATTORNEY MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant
Center for Women's Health P.C.:

ATTORNEY DAVID J. ROBERTSON
ATTORNEY KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street
Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant
Health Body World Supply Inc., aka The WABBO COMPANY:

ATTORNEY PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By:
Rebecca Schalk

Transcribed By:
Pipina Plakopitas
Paul McKenna
Melodie Moss
Rebecca Schalk
Court Recording Monitor
123 Hoyt Street
Stamford, Connecticut 06905

1 ATTY. ROBERTSON: No problem, Your Honor.

2 THE COURT: Again, this is something we were
3 going through yesterday.

4 I think we are done with all the preliminaries
5 unless somebody thinks there is something else that
6 we need to address and if not, I am going to ask
7 counsel to ask his first question.

8 S A M I K U A N G N G,

9 called as a witness, after having been duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION BY ATTY. MCELLIGOTT

12 Q Good morning, Ms. Kuang Ng.

13 You are the owner of the HBW -- I am sorry, Health
14 Body World Supply doing business as the WABBO Company,
15 correct?

16 A Yes, I am.

17 Q And you were the owner of that company in March of
18 2008, correct?

19 A Yes, I am.

20 Q In 2008 WABBO was engaged in the business of selling
21 TDP lamps among other things, correct?

22 A Yes.

23 Q And WABBO was the company that sold the TDP lamp at
24 issue in this case to Dr. Wang, correct?

25 A Yes.

26 ATTY. MCELLIGOTT: Your Honor, may I obtain
27 Plaintiff's Exhibit 1?

1 Q And Ms. Kuang Ng, the lamp that has been marked as
2 Plaintiff's Exhibit 1 in this case, that is the lamp that
3 WABBO sold to Dr. Wang in 2008, correct?

4 A Yes, it is.

5 ATTY. MCELLIGOTT: And could we see Plaintiff's
6 Exhibit 16, full exhibit, 11083?

7 Your Honor, can I have the witness binder to
8 hand to the witness in case she can't see?

9 Q This document is at Tab 16 in the binder.

10 A Yes.

11 Q In March of 2008 Dr. Wang ordered the TDP lamp,
12 Plaintiff's Exhibit 1, from the WABBO company, correct?

13 A Yes.

14 Q And on or about March 10, 2008 WABBO shipped
15 Plaintiff's Exhibit 1 to Dr. Wang, correct?

16 A Yes.

17 Q And Plaintiff's Exhibit 16 is the sales invoice that
18 accompanied the lamp when it was shipped, correct?

19 A Yes, it is.

20 Q And -- thanks. At the time the lamp was shipped to
21 Dr. Wang, it had no locking mechanisms on any of the joints
22 of the arms of the device, correct?

23 A Can you repeat?

24 Q Sure. At the time Plaintiff's Exhibit 1 was shipped
25 to Dr. Wang there was no device on the lamp to lock it in
26 place once it was adjusted, correct?

27 A Yes, it's true.

1 the jury and the record are a little bit clear as to
2 what the answer is.

3 ATTY. MCELLIGOTT: Your Honor, I think it's
4 probably easier if I just clarify it. I understand
5 the confusion.

6 THE COURT: Well, I want to make sure that
7 whatever answer came out is comprehensible to the
8 jury and to the extent -- again I am not saying that
9 I may be not susceptible perhaps to be confused when
10 they're not, but I have to use that as a benchmark.
11 That if I'm confused, I have to assume there is a
12 good chance that at least some -- one or more members
13 of the jury to be confused. So can you answer the
14 question again, please?

15 The question was about the shield.

16 THE WITNESS: The attorney can ask that question
17 for safety shield again, one more time so I will
18 answer one by one.

19 THE COURT: Do you want to ask it again or do
20 you want the monitor to play it back?

21 ATTY. MCELLIGOTT: I can try to ask it again.

22 Q So, when Plaintiff's Exhibit 1 was shipped to Dr.
23 Wang, it did not have a safety shield between the heat plate
24 of the device and the anticipated location of the patient,
25 correct?

26 A I agree that it did not come with a shield.

27 THE WITNESS: I agree there is no cover but I

1 disagree he say safety cover.

2 THE COURT: The question is whether there was a
3 shield on the face of the lamp. That's the question,
4 isn't it?

5 ATTY. MEADE: The question was safety shield,
6 yes.

7 A It is true it did not come with a shield on the
8 surface. I agree.

9 ATTY. MCELLIGOTT: I'm just a little confused as
10 to the procedure, Your Honor, because I'm not sure
11 the record is going to reflect when the witness
12 choosing to answer in English versus --

13 THE COURT: Well, that's why I said she should
14 be answering in her primary tongue.

15 THE INTERPRETER: I have suggestion. Because
16 your question is about the safety shield, I would
17 like you to break down the question bit by bit.

18 ATTY. MCELLIGOTT: I'll do my best. I'm also
19 happy to proceed in English and if something needs
20 translating.

21 THE COURT: The problem is we don't know whether
22 or not the person really understands or is just
23 guessing at what the English question means.

24 The whole idea of using an interpreter is that
25 that way we have a greater level of confidence that
26 the person understands the question. It's a binary
27 kind of issue, not just the answers but it's the

1 Q And the function of the spring piston is it's what
2 provides the upward force to hold the lamp up, correct?

3 A Yes, it is.

4 Q And when these spring pistons lose their mechanical
5 function the upward force becomes reduced, correct?

6 A It's true.

7 Q Okay. And you knew that in 2008 before you shipped
8 the device to Dr. Wang, correct?

9 THE WITNESS: Can you repeat the question?

10 Q You knew that when the spring pistons underwent use
11 that their mechanical function was reduced, correct?

12 A It's true.

13 Q And so over time with use the upper force provided by
14 these spring pistons lessens, correct?

15 A Yes.

16 Q Until one day the spring pistons can no longer hold
17 up the weight of the lamp head, correct?

18 A Yes, it's true.

19 Q And WABBO attempted to warn users of that propensity
20 of the lamp, correct?

21 A Yes, we did.

22 Q And you did that in two ways, through a -- through
23 the manual and through a warning sticker, correct?

24 THE INTERPRETER: I didn't catch the second one.

25 Q You did that in two ways, through the manual and
26 through the use of a warning sticker, correct?

27 THE INTERPRETER: Waring sticker?

1 Q Warning?

2 THE INTERPRETER: Warning sticker, okay.

3 A Yes.

4 Q Okay. And just so it's clear, the propensity of the
5 lamp to lose mechanical function in the way that I described
6 this was something you knew about prior to shipping the lamp
7 to Dr. Wang, correct?

8 A It's true.

9 Q Is it fair to say that -- strike that.

10 When the springs, pistons become worn, the lamp has a
11 tendency to lower inadvertently?

12 A Yes.

13 Q I want to make sure I put this down correctly.

14 When the spring pistons become worn on this lamp, the
15 lamp has a propensity to lower inadvertently, correct?

16 THE INTERPRETER: It's already --

17 Q And the second, WABBO knew about the lamp's
18 propensity in 2008 --

19 ATTY. MEADE: Your Honor. I am sorry.

20 I have an issue with the translation. And
21 it has to do with the translation of the term
22 inadvertently.

23 ATTY. MCELLIGOTT: We can't have two
24 translators, Your Honor.

25 Respectfully, this is the court-appointed,
26 certified --

27 THE COURT: That's correct.

1 THE COURT: That's the protocol we have to
2 follow.

3 THE INTERPRETER: She ask me about the meaning
4 of the word a-w-a-r-e. I explain that she wrote down
5 here. I said, it means like do you realize, do you
6 know that.

7 ATTY. MCELLIGOTT: Can I ask the translator, if
8 I change this to knew, would that make it easier for
9 you to translate into Chinese?

10 THE COURT: Just ask the question.

11 THE INTERPRETER: It's fine. She is all set
12 now.

13 THE COURT: Rather than asking him -- I'm giving
14 him instructions because that's part of my job. Your
15 job is you ask the question and he will translate and
16 we'll do the best we can and if we have a problem,
17 we'll try to work through it.

18 Q In 2008 WABBO knew of the lamp's propensity to lower
19 inadvertently, correct?

20 A Yes.

21 Q Okay. And there may be an issue with the word
22 inadvertent so I want to use different words and see if --
23 the same thing that I think it is.

24 When spring pistons become worn the lamp has a
25 propensity to lower without warning?

26 A I answer that question already.

27 THE COURT: Answer the question. If the

1 question is asked again, you have to answer it as
2 best you can.

3 A True.

4 Q And when the spring pistons become worn, the lamp has
5 a propensity to lower on its own?

6 A Yes.

7 Q And this is the last one, when the spring pistons
8 become worn the lamp has a propensity to lower
9 spontaneously.

10 I will re-ask it. When the spring pistons become
11 worn, the lamp has a propensity to lower spontaneously?

12 A Yes.

13 THE COURT: You have to speak up so we pick it
14 up.

15 A Correct.

16 Q And just so we're clear, whatever word you use to
17 describe the lamp's propensity, inadvertent, lower and
18 spontaneous on its own, WABBO was aware of that propensity
19 in 2008 before it sold the lamp to Dr. Wang, correct?

20 A I will like you to repeat the question.

21 Q No matter the choice of word, WABBO was aware of the
22 lamp's propensity to lower inadvertently/spontaneously/on
23 its own prior to selling the lamp to Dr. Wang, correct?

24 A Correct.

25 Q And WABBO was aware that the lamp had no piece of
26 metal between the heating element and the intended location
27 of the patient when it shipped the lamp to Dr. Wang,

1 ATTY. MCELLIGOTT: Your Honor, may I approach
2 the witness?

3 THE COURT: Certainly.

4 Q Ms. Kuang Ng, I'm showing you what's been marked as
5 Plaintiff's Exhibit 62 which is a photograph of a warning
6 sticker.

7 THE COURT: Well, there is no question pending.

8 ATTY. MCELLIGOTT: I was just breaking it down.

9 Q That is the warning sticker that you think was
10 affixed to the lamp when it was shipped to Dr. Wang,
11 correct?

12 A It should be.

13 Q And the location of that warning sticker, where it
14 should be, is one on each top of lamp arms, correct?

15 A It should be in common sense. It should be
16 reasonably in that location.

17 Q Okay. And in fact, you believe there was in fact a
18 sticker here and here, and let the record reflect I am
19 referring to the top of the arms of the lamp, when you
20 shipped it to Dr. Wang, correct?

21 THE INTERPRETER: Can you repeat the question
22 again?

23 Q There were stickers here when you shipped the lamp to
24 Dr. Wang, correct?

25 A I cannot be certain whether it was on top of the arm
26 in 2008.

27 Q Okay. So let me ask it again. There should have

1 been warning stickers on the top of the arms when this was
2 shipped to Dr. Wang in 2008, correct?

3 A Yes.

4 ATTY. MCELLIGOTT: Your Honor, I would ask that
5 Plaintiff's Exhibit 62 for ID be made a full exhibit.

6 ATTY. MEADE: No objection, Your Honor.

7 ATTY. ROBERTSON: No objection.

8 ATTY. MOORE LEONHARDT: No objection, Your
9 Honor.

10 THE COURT: As of now, 62 is a full exhibit by
11 agreement.

12 ATTY. MCELLIGOTT: Okay, can we publish
13 Plaintiff's Exhibit 62 for the jury, please?

14 Q Okay. So, the warning sticker that should have been
15 at the top of the lamp arm states "Attention supporting arm
16 line wearing," correct?

17 A It should be.

18 Q Well, the sticker that should be there should say,
19 Attention supporting arm line wearing, correct?

20 A Everything on that is correct.

21 ATTY. MEADE: May I hear -- I am sorry. Could
22 that be read back? I did not hear the interpreter's
23 answer.

24 THE COURT: The witness's answer was everything
25 on that is correct.

26 ATTY. MEADE: Thank you.

27 THE COURT: If you want it played back, but

1 that's --

2 ATTY. MEADE: No, no, thank you, Your Honor.

3 THE COURT: That is almost verbatim what she
4 said.

5 THE COURT: Counsel, we seem to be having cell
6 phone issues so could you please either move them
7 further away from the microphones. We've had this
8 problem before. It's some background electronic
9 noise generated by phones because I hear some noise.
10 Is that something different?

11 Could you please turn off your phones or put
12 them on the back bench area where somehow move them
13 further away from the microphones, please?

14 We have enough issues with making sure we get
15 accurate transcripts. We don't need to have the
16 noise on top.

17 THE COURT: It sounds like someone may have
18 cured the problem.

19 ATTY. MCELLIGOTT: Can I ask one more question
20 and then we can take the break?

21 THE COURT: Okay.

22 Q The purpose of that sticker is to warn the user of
23 the lamp's propensity to lower spontaneously when the spring
24 pistons become worn, correct?

25 A It's true but the head of the lamp lowers that fact
26 doesn't mean it's harmful or dangerous.

27 THE COURT: The question -- the witness just

1 needs to answer the question, and the question was
2 that the condition of lowering is what the warning is
3 about; is that correct?

4 THE WITNESS: That's true.

5 ATTY. MCELLIGOTT: Thank you.

6 THE COURT: Alright, we are going to take our
7 mid-morning break. We will come back at about ten
8 of. Please again no discussions, no research, just
9 enjoy your 15, 20 minute break and we'll see you all
10 about ten of.

11 (WHEREUPON THE JURY PANEL EXITS)

12 (RECESS)

13 (Transcription by P., Plakopitas ends)

14 *****

15

1 with the device in 2008 would not prevent contact with any
2 piece of the body that might be able to fit through this
3 hole, correct?

4 A But it prevents human skin from contacting that
5 heating black plate inside.

6 Q Right. That's the safety provided by - the safety
7 grilling cover on the device, correct?

8 A Yes.

9 Q And you know that this device, this black iron
10 heating plate inside the device, gets burning hot when the
11 lamp is in use, correct?

12 A Yes. It is true. And the user and the doctors all
13 know that.

14 Q And the manual states that the black iron heating
15 plate gets to 572 degrees, correct?

16 A It is said in the manual in that way but I'm not sure
17 exactly the exact degree of temperature.

18 Q Okay. And you know that they knew in 2008 that if a
19 572-degree iron plate had contact with human skin will cause
20 catastrophic damage, correct?

21 A Yes. It is true but proper use will prevent it and
22 it will not happen.

23 Q And in addition to knowing that iron plate could
24 badly burn somebody, you knew that the head of the device
25 had a propensity to spontaneously lower after it had been
26 used for some period of time, correct?

27 A We, as sellers, know that fact [and the people who

1 use it also know that fact.]

2 ATTY. ROBERTSON: Your Honor, I'm just going to
3 move to strike that last part; it's not responsive.
4 It's just what they knew and not what others knew.

5 THE COURT: Anyone wish to be heard on that?

6 ATTY. LEONHARDT: I'd join in.

7 THE COURT: Pardon me?

8 ATTY. LEONHARDT: I'd join in with counsel.

9 ATTY. MEADE: She was just answering the
10 question.

11 THE COURT: All right. The last portion of the
12 question about what other people know is stricken.
13 The jury should disregard it to the extent that you
14 can. Disregard something you've heard. Next
15 question, please.

16 Q And given your knowledge of those two things - the
17 burning hot plate and the propensity to lower - you shipped
18 the device with a safety grilling cover to prevent contact
19 with skin, correct?

20 A Yes.

21 Q But the safety and grilling cover that was shipped
22 with the device will prevent contact with only some body
23 parts, correct?

24 A True.

25 Q For example, it's not going to prevent the lamp from
26 lowering down and having the heat plate contact someone's
27 foot, correct?

1 Q You knew that the patient would be thrown on a
2 massage table, correct?

3 A I do not know the position of the patient in the
4 clinic.

5 Q You knew that the device would be used over bare
6 skin, correct?

7 A I don't know because it's the doctor's use; it's
8 decision by the doctor. [proofed]

9 Q So is it your testimony that in 2008, WABBO didn't
10 know that the device could be used over bare skin?

11 A It depends on what situation because it's doctor's
12 decision.

13 Q And you knew that when the spring pistons became worn
14 on the device that it had a tendency to lower inadvertently
15 or spontaneously, correct?

16 A That's true, yes.

17 Q And you knew that the device, if lowered on top of a
18 body part that fit within the safety grilling cover shipped
19 with the device, that body - that safety grilling cover
20 would not prevent skin contact with the heating element,
21 correct?

22 A Yes - but I do not agree with your idea. [Because
23 the doctors will check it before they start using it.]

24 ATTY. ROBERTSON: Your Honor, I'd object and
25 move to strike. That's not responsive to the last
26 question.

27 ATTY. LEONHARDT: I'd join in the objection,

1 All right. Counsel, ask your question.

2 Q I asked you the following question at your deposition
3 and you gave the following answer to the questions:

4 QUESTION: Would you agree with me that the cost
5 of adding a safety screen to a CQ-36 dial lamp is
6 insignificant with respect to the overall cost of the
7 product?

8 ANSWER: I don't agree because after the screen
9 was added, I feel like the customer are willing to
10 pay for a higher price.

11 Q Did I read that correctly?

12 A Yeah, you read it correctly.

13 Q And so can we agree that in 2008, the addition of a
14 safety card on the device was economically feasible?

15 A We agree, yes.

16 Q And you'd agree with me that in 2008, the addition of
17 a safety guard on the device was technically feasible?

18 A Because it was a long time ago so I don't exactly
19 remember about technical addition feasibility in 2008.

20 Q All right. You've seen house fans?

21 A Yes.

22 Q And you've seen the screen that covers a house fan to
23 prevent a (indiscernible) from touching the blades?

24 A Yes.

25 Q Such a screen existed, technologically speaking in
26 2008, correct?

27 A Yes.

1 2008, you were aware of the cost of the lamp from the
2 factory, correct?

3 A I should - I probably knew but I don't remember
4 exactly now.

5 Q And you were aware, as a distributor of products in
6 the United States, of the cost of adding features to the CQ-
7 36 lamp, correct?

8 A Yes but not exactly how much.

9 Q And I'm not asking you how much it would have cost to
10 add a locking mechanism but you'd seen on products a dial
11 and through the ability to lock the joint in place?

12 A Yes.

13 Q And such locking mechanisms exist in the country of
14 China?

15 A I can say I have seen similar devices but not exactly
16 the model. It seems to be like I don't remember exactly as
17 the same model. But I know devices similar to this have
18 such locking devices.

19 Q So you've seen CQ-36-style lamps similar to what's
20 been marked as plaintiff's Exhibit 1, with locking
21 mechanisms on each of the joints that raise and lower the
22 heads (sounds like), correct?

23 A She said what I told her is not what you said so we
24 have to rephrase the question.

25 Q All right. You are aware of the existence of locking
26 mechanisms, correct?

27 ATTY. MEADE: Your Honor, I have to object. I

1 locking mechanisms on some devices, correct?

2 A I didn't see.

3 Q You didn't say that?

4 THE COURT: No, is it that you didn't say that
5 or you haven't seen them?

6 MS. WU TANG: I work - I did not see any other
7 products that have similar devices - locking device
8 like this.

9 Q My question is -- and you had not - you were
10 unfamiliar with the concept of a joint-locking device in
11 2008?

12 ATTY. MEADE: It's been asked and answered.

13 ATTY. MCELLICOTT: I don't think it has.

14 THE COURT: It's not been asked and answered.

15 THE INTERPRETER: Should I?

16 THE COURT: Ask the question.

17 A I just knew that products sold by other companies may
18 have such devices with that locking mechanism.

19 Q And you knew that in 2008, correct?

20 A Yes.

21 ATTY. MEADE: Your Honor, I have to raise an
22 objection at this point.

23 THE COURT: All right -

24 ATTY. MCELLICOTT: Well, Your Honor -

25 THE COURT: -- we're gonna --

26 ATTY. MCELLICOTT: It's - before we get into it,
27 it's lunchtime.

1 dangerous; correct?

2 A Are you talking about device after long use or any
3 new device?

4 Q So I'm talking about when the spring pistons become
5 worn, the lamp has a propensity to lower inadvertently.
6 That propensity, just standing alone, is dangerous. Do you
7 agree with that?

8 A Yes.

9 Q And you need --

10 THE COURT: That's a yes?

11 THE INTERPRETER: Yes.

12 BY ATTY. MCELLIGOTT:

13 Q And if WABBO's going to distribute this thing, it
14 needs some way of informing the end user to watch out for
15 this danger; right?

16 A I believe it's not up to us to tell them and I think
17 the user should know that.

18 ATTY. ROBERTSON: I'm going to object. Move to
19 strike.

20 THE COURT: Are you claiming the answer?

21 ATTY. MEADE: Yes I am, Your Honor. Yes. Do we
22 need an argument on that?

23 THE COURT: All right. Could you playback the
24 question please?

25 THE MONITOR: Yes, Your Honor.

26 (Whereupon a playback occurred)

27 THE COURT: All right, the objection -- the

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, : NOVEMBER 22, 2017
P.C., ET AL

C E R T I F I C A T I O N - Pages 1-46

I hereby certify the foregoing pages (1-46) are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 22nd day of November, 2017.

Dated this 22nd day of November, 2017 in Stamford, Connecticut.


Ripina Plakopitas
Court Recording Monitor

NO: FST-CV 12-601-3562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH ET AL : NOVEMBER 22, 2017

Pages 47 - 76

C E R T I F I C A T I O N

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Dated this 24th day of November, 2017 at Stamford, Connecticut.

Paul J. McKenna
Court Recording Monitor

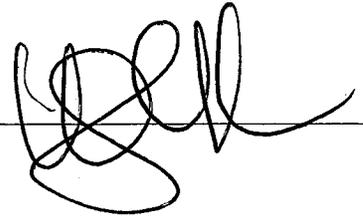
Paul J. McKenna
2-1-19

FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : NOVEMBER 22, 2017

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J.D. # 1, Stamford, Connecticut, before the Honorable Kenneth
Povodator, Judge, on the 22nd day of November, 2017.

Dated this 24th day of November, 2017 in Stamford,
Connecticut.



Usamah Khan
Court Recording Monitor

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, : NOVEMBER 22, 2017
P.C. ET AL

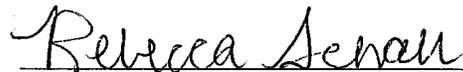
Page 114 - 129

C E R T I F I C A T I O N

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Dated this 24th day of November, 2017 in Stamford, Connecticut.



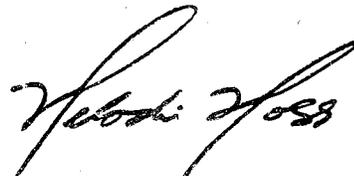
Rebecca Schalk
Court Recording Monitor

FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : NOVEMBER 22, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages (130 - 157) are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 22nd day of November, 2017.

Dated this 24th day of November, 2017 in Stamford,
Connecticut.



Melodie Moss
Court Reporter

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. ET AL : NOVEMBER 28, 2017

**BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE
AND JURY PANEL**

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

Representing the Plaintiff:

ATTY. SEAN MCELLIGOTT
ATTY. MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant Center for Women's Health P.C.:

ATTY. DAVID ROBERTSON
ATTY. KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street, Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant Health Body World Supply Inc.,
AKA The WABBO Company:

ATTY. PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By: Lynda Scott
Transcribed By: Lynda Scott
Carrie Provenzale
Rebecca Reveis
Amanda Staron
Court Recording Monitors
Stamford & Bridgeport, CT

1 **T A E H O K I M,**

2 Was hereby sworn and did testify under oath as follows:

3 THE CLERK: Thank you. Please state your name
4 and address for the record.

5 DR. Kim: Tae Ho Kim. 61 James Street,
6 Apartment 15C, New York, New York 1001.

7 THE CLERK: Thank you.

8 THE COURT: Be seated, sir.

9 THE MONITOR: Your Honor, may I have the
10 spelling of the witness's name, please?

11 DR. Kim: The- as in Tom -a-e space H-o, last
12 name Kim, K-i-m.

13 THE COURT: All right. Counsel.

14 ATTY. MCELLIGOTT: Thank you, Your Honor. Good
15 morning, Dr.

16 DR. Kim: Good morning.

17 **DIRECT EXAM BY ATTY. MCELLIGOTT:**

18 Q Can you please tell the jury what you do for a
19 living?

20 A I'm a Board-certified plastic surgeon.

21 Q And where were you working as a plastic surgeon in
22 2010?

23 A I was working at the Westchester Medical Center.

24 Q Okay.

25 A And in White Plains.

26 Q Okay. And just so the jury knows who you are, you
27 were the plastic surgeon at the Westchester Medical Center

1 A No that's still third degree.

2 Q And if it gets into the muscle layer, is that fourth
3 degree?

4 A Yes.

5 Q Then if it gets into the bone layer that's also
6 fourth degree?

7 A Bone, tendon. Any other deep important structure.

8 Q So we know from reading records in the case, that Ms.
9 Kissel ultimately had an exposed bone as part of her injury.
10 Does that mean she had a fourth-degree burn?

11 ATTY. ROBERTSON: I'm just going to object,
12 Your Honor. This isn't something that the witness
13 rendered treatment for, for reading records. He's
14 not here to testify about reading records; it's about
15 his care and treatment, that's what he's an expert
16 on. So I'm just concerned about that element of it
17 because that's not part of what we've talked about so
18 far, that first (indiscernible).

19 THE COURT: All right. Counsel, do you want to
20 point to something in the record?

21 ATTY. MCELLIGOTT: Well, not right now. I'll
22 get to the record.

23 THE COURT: Subject to you doing that, the
24 objection's sustained at this time.

25 ATTY. MCELLIGOTT: Okay.

26 **BY ATTY. MCELLIGOTT:**

27 Q So what type of burns did Ms. Kissel have?

1 A She had first degree, superficial second degree, deep
2 second degree and third-degree burns.

3 Q Okay. And let's take a look at plaintiff's exhibit
4 56, Bates label 10000. And the medical record states on
5 exam, patient has full-thickness burns of the medial aspect
6 of the great toe from the MTP joint distal -- I'll stop
7 there. So what does that refer to, that note?

8 A Are you -- do you want me to interpret MTP or?

9 Q

10 Well, okay, so it says -- first of all, what's a full-
11 thickness burn?

12 A A full-thickness burn is what we talked about, a
13 complete injury to the epidermis and entire dermis.

14 Q Okay. So full thickness is synonymous with third
15 degree?

16 A Yes.

17 Q Okay. And what's a full-thickness burn of the medial
18 aspect of the great toe from the MTP joint distally?

19 A So that's describing -- the medial part is on the
20 picture to the right of the toe, the MTP stands for
21 metatarsal phalangeal joint. So if you look at the toe from
22 where it comes out from the foot, that's where the MTP joint
23 would be.

24 Q Okay.

25 A So they're describing the full-thickness burn distal
26 to the foot and up into the toe.

27 Q All right. So I noticed that, for example, on this

1 part of the patient's foot, the wound is red, do you see
2 that?

3 A Yes.

4 Q And on this part of the patient's foot, it appears to
5 be yellow and brown with black at the very tip. Can you
6 describe why that would be?

7 A So the part on the proximal foot, that's what we
8 consider a deep second-degree burn, it still has the
9 vascular network so that's why it's still red.

10 Q So when you say -- you're talking about -- did you
11 say proximal foot?

12 A Well, mid -- where you're pointing there.

13 Q That's a deep second-degree burn?

14 A That's a deep second-degree burn.

15 Q And you say that because it's still -- you can tell
16 it still has that blood supply that we talked about,
17 oxygenated red blood?

18 A Yes.

19 Q Otherwise, if that vascular structure was
20 compromised, it would start to turn color?

21 A It would turn whitish, yes.

22 Q Okay. So just can you describe why there is -- that
23 the top of the toe the white?

24 A Well, that's a classic appearance of a third degree
25 burn, white, you know, yellowish, leathery appearance to the
26 skin because it's lost its blood supply.

27 Q Okay. And are you familiar with -- did you learn in

1 residency or your training how long it takes skin to burn at
2 what temperature?

3 A Yes, I mean, it wasn't extensive but we know
4 generally temperature and causation.

5 Q So essentially, a lower temperature contact with the
6 skin takes longer to burn than a higher temperature contact
7 with the skin, is that right?

8 ATTY. ROBERTSON: I'm just going to object.

9 Beyond the scope of the expert witness disclosure.

10 THE COURT: Overruled.

11 A Yes.

12 **BY ATTY. MCELLIGOTT:**

13 Q So a 527-degree iron plate may take a certain amount
14 of time to create a third-degree burn that a 200-degree
15 plate would take more time, is that fair?

16 ATTY. ROBERTSON: Objection, same objection.

17 Beyond the scope of the expert witness disclosure.

18 ATTY. MEADE: Objection, lack of foundation.

19 Your Honor.

20 ATTY. MOORE LEONHARDT: Join, Your Honor.

21 THE COURT: Overruled.

22 A I mean, after you get beyond 160 degree Fahrenheit,
23 the burn happens very quickly. So I mean, once you get to
24 that high of thermal energy that you're talking about then
25 it's hard to -- whether it's milliseconds or fractions of
26 that I can't tell you but once you get above 160, it
27 literally takes a second to cause that injury.

1 Q Exactly. So -- and milliseconds matter in that,
2 could matter in that context, is that fair?

3 A Yes.

4 Q So for example, if there was a chart, the first
5 second, within that chart might have a difference in how
6 long it takes this burn to happen at different temperatures
7 but they would all happen in under a second, is that
8 correct?

9 ATTY. ROBERTSON: Your Honor, I'm just going to
10 object. Leading and beyond the scope --

11 THE COURT: Sustained and leading.

12 **BY ATTY. MCELLIGOTT:**

13 Q Just describe for the jury the relationship between
14 temperature and amount of time to burn? I know you already
15 have but go through it.

16 A Well, I mean, it's not a perfect science but at 160
17 degree Fahrenheit we know that it takes about a second to
18 cause a significant burn. It all depends on the type of
19 burn it is, whether it's contact burn, flame burn.

20 So there's a lot of variables when we talk about
21 this. But as you get -- lower the temperature, let's say at
22 like 120 degree, it takes many seconds to actually cause
23 significant injuries. We know that contact time and
24 temperature has a significant positive correlation.

25 Q Okay. And this was a contact burn suffered by Ms.
26 Kissel?

27 A Yes.

1 Q Okay. All right. So the record states that there
2 were partial thickness burns of the medial toe and that's
3 this --

4 A -- the second toe? That's the second toe.

5 Q Oh, second toe. Okay. And dorsum foot. So when we
6 partial thickness burns, is that another way of saying
7 second degree burns?

8 A Yes.

9 Q All right. And after you assessed the patient --
10 let's take a look at the second image. And this just
11 shows -- so if we're looking at this, if we see red, we know
12 it's -- if you see red, we can see here the absence of the
13 top layer of skin in this wound, is that fair?

14 A Do you mean the epidermis or?

15 Q Yeah, the epidermis.

16 A Right, yes.

17 Q So this sort of like is where the epidermis is no
18 longer present?

19 A For that region, yes.

20 Q And the same with down here, this is where the
21 epidermis is no longer present?

22 A Yes.

23 Q Okay. And how are second degree burns like the ones
24 on the foot and leading up to the toe, how are those treated
25 by a plastic surgeon?

26 A Well, it depends. The judgment has to be whether
27 they're really deep second degree which could mimic a third

1 A Yes.

2 Q So there's a pre-operative diagnosis, second and
3 third-degree burns of left dorsum of foot, large and the
4 second toes. That was the same as your assessment of the
5 patient on the 23rd, three days earlier?

6 A Yes.

7 Q And post-operative diagnosis, it still says the same.
8 And why would that be the case?

9 A The diagnosis doesn't change just because you have a
10 procedure.

11 Q Okay. And the operation was described as a wound
12 debridement of the foot using Versa-Jet and wet (as spoken)
13 blade excision. Let's just put our focus on that, what is
14 that?

15 A Well, I think first there's a typo there. There's no
16 such thing as a wet, w-e-t, blade incision, I think they --
17 whoever dictated it -- meant weck, w-e-c-k which is a type
18 of surgical tool that we use for tangential excision. So
19 it's a nice tool for excising burn injuries.

20 ATTY. MOORE LEONHARDT: Your Honor, I would
21 object. The witness is not qualified to say there's
22 a mistake in the record, the record was created by
23 another author. There's no indication that he was
24 involved in the information that is contained in the
25 record and it would be improper for this witness to
26 interpret the mistake and then testify what his
27 belief is as to what the record should reflect.

1 **REED WANG,**

2 having been previously duly sworn, was examined and
3 testified as follows:

4 **DIRECT EXAMINATION BY ATTY. MCELLIGOTT CONTINUED:**

5 Q Good afternoon, Dr. Wang.

6 A Good afternoon.

7 Q So I want to start by asking you about Plaintiff's
8 Exhibit 60, which is a full exhibit. We'll put that up.
9 All right. So, Dr. Wang, do you remember answering
10 interrogatory answers in this case?

11 A I couldn't see it.

12 Q All right. So your binder that's right there, that's
13 actually --

14 ATTY. MCELLIGOTT: Could I have Plaintiff's
15 Exhibit 60, please?

16 (Pause)

17 BY ATTY. MCELLIGOTT:

18 Q Dr. Wang, I am just going to read for you. Actually,
19 if not --

20 ATTY. MCELLIGOTT: So just for the record, I am
21 reading from responses and objections to defendant
22 HBW Supply, Inc.'s second set of interrogatories and
23 requests for production directed to third party
24 plaintiff, Reed Wang, dated June 13th, 2013.

25 ATTY. MEADE: Your Honor, may I ask just for a
26 moment so that I can -- I don't seem to have Exhibit
27 60 in the materials that I have in front of me, but I

1 at any time prior to the alleged occurrence, please indicate
2 the number of times you used or operated the product.

3 And then at the bottom of page, type of use, the
4 number of times someone else used the product, and nobody
5 else used the product during that two-year period, correct?

6 A Can you speak slowly?

7 Q Sure. During the two-year period of time from March
8 2008 until April of 2010, nobody other than you used the
9 product, correct?

10 A Correct.

11 Q And we talked about how during that two-year period,
12 you used the product one and a half times a week, is that
13 right?

14 A Correct.

15 ATTY. MOORE LEONHARDT: Would you bring it back
16 further, please, so we can see it?

17 ATTY. MCELLIGOTT: Okay.

18 BY ATTY. MCELLIGOTT:

19 Q And this interrogatory asked you how many times you
20 used it, correct, during that time?

21 A Correct.

22 Q And if we go to the answer on the bottom, my answer
23 to this assumes the heat lamp was used for approximately 20
24 minutes on the number of patients referenced in response to
25 letter A above and that from June 1st 2008 through the date
26 of the alleged incident, I used the heat lamp an average of
27 -- on an average of eight patients per week, correct?

1 A When the time --

2 Q Did I read that correctly?

3 A Yes.

4 ATTY. MCELLIGOTT: All right. Could you go to
5 the next page?

6 Q From the date of receipt until June 8th -- June 1st,
7 2008, two hours and 40 minutes. From June 1st, 2008 through
8 the date of the alleged incident, assuming April of 2010 it
9 was used for three quarters a month, 22.75 months multiplied
10 by four weeks per month equals 91 weeks multiplied by eight
11 patients equals 728 uses.

12 So can we agree, Dr. Wang, that prior to your use of
13 the device on Ms. Kissel, you used the lamp 728 other times?

14 A That's my guess. Yes. It's an estimation.

15 (Pause)

16 Q So if I wrote that down correctly, your testimony is
17 that you used the device 728 times before using it on Ms.
18 Kissel, correct?

19 A Approximation.

20 Q Okay. And you estimate that you used the device a
21 total of 242.66 hours before using it on Ms. Kissel,
22 correct?

23 A Approximation, yes.

24 Q Okay. And you used it with -- it would have been 728
25 other patients, correct?

26 A Approximation. I --

27 Q Approximation?

1 Q Sure. There are screws that hold the spring pistons
2 on the bottom of the lamp arms, correct?

3 THE COURT: You need to speak up louder.

4 A I speak, I speak louder. Thank you. Yes.

5 Q Okay. And there are four of them, correct?

6 A Yes.

7 Q And when you set the lamp up each one of the a
8 hundred and sixty times that you did it, you would take your
9 hands and you would make sure these screws were tight,
10 correct?

11 A That's not exactly.

12 Q Tell me exactly what you did.

13 A I do inspection in two ways. Mostly I use usually I
14 use screw.

15 Q Screwdriver.

16 A More detailed. I'm not saying every day. Sorry.
17 I'm not saying every -- every day I do thorough. The only
18 difference between monthly and daily is monthly I go
19 literally use tools. If daily inspection I feel by --
20 obviously is now a different story. Say for example, if a
21 the back is not tight enough I will bring screw but it never
22 happened but every month I do using screw and this and also
23 bring screw. And also base I do this way and now it's tight
24 because between the base and the part, the stent also need
25 to be checked and obviously the arm.

26 Q Okay. So I want to try to break it down.

27 A Sure.

1 Q So every day when you would set it up that hundred
2 and sixty times you would manually take your fingers and you
3 would make sure that these four screws supporting the spring
4 pistons on the arms were tight, correct?

5 A Not necessarily. I can --

6 Q Well, is that not correct?

7 A Correct.

8 Q It is correct?

9 A Yes.

10 Q So you would take your fingers and would twist these
11 to make sure they were tight, correct?

12 A Not always because if they're really tight there's no
13 need. I can do that. Quickly sure.

14 Q Okay. And then once a month you would take a
15 screwdriver and you would put it into the screws and you
16 would make sure it was tight, correct?

17 A Yes, every screw.

18 Q Every screw including the screws down here.

19 A Right.

20 Q Correct?

21 A Yes.

22 Q Okay. And we know now that that the spring pistons
23 are loose. Those screws are loose, correct?

24 A Dangerously loose.

25 Q Dangerously loose, correct?

26 A Correct.

27 Q And you would not use the lamp in this condition,

1 during your procedure, correct?

2 A Not practical. Yes, not possible.

3 Q So why then -- then why is it dangerous?

4 A Dangerous loose like this.

5 Q No, I know but no one is going to touch it, right?

6 A No, that's not -- with this if not patient touch it
7 still dangerous.

8 Q Oh, okay. So what you're saying is that in this
9 condition the lamp can simultaneously come down during your
10 procedure.

11 A Can happen anything. Dangerous action can happen
12 anyways.

13 Q Okay. And that's why you wouldn't use it at its
14 loosened condition, right?

15 A Obviously no.

16 Q And it's also possible isn't it that while you're out
17 of the room during an acupuncture procedure -- first of all,
18 patients move during acupuncture, correct?

19 A Minor movement. I told them.

20 Q We'll get into the movement that they do in a minute
21 but you know that patients will move during acupuncture,
22 correct?

23 A Minor movement.

24 THE COURT: Does the witness have to stand for
25 the rest?

26 ATTY. MCELLIGOTT: He doesn't. Thank you, your
27 Honor.

1 A Without manual, read the whole manual, I really
2 cannot answer. There's so much technical issue.

3 Q Hold on. Hold on. I'm not asking you about the
4 manual. I'm just asking you about your knowledge. Okay.
5 So you don't need to read the manual to answer this
6 question. Just based on your knowledge you didn't know in
7 March of 2008 that when the spring pistons became worn the
8 lamp had a propensity to lower inadvertently, correct?

9 A I know it's not.

10 Q Okay. You know that when the spring pistons become
11 worn, the lamp does not have a propensity to lower
12 inadvertently?

13 A Just very hypothetical. It's not a reality you ask
14 me if that -- how much degree. Worn after two years
15 obviously have little. So you're assuming wore; how much?
16 We use one day have minor wore under telescope. So it's a
17 broad question I cannot answer.

18 Q So your point is that wear happens slowly over time,
19 correct?

20 A Pardon me?

21 Q You're saying wear of the device happens slowly over
22 time, correct?

23 A Obviously, five years, ten years clear.

24 Q And you noticed the machine wearing slowly over time,
25 correct?

26 A Can you repeat again?

27 Q You noticed over the two years that you had the

1 device the machine wearing slowly over time, correct?

2 A Yes, can be minor.

3 Q Okay. Okay. And would you agree now that the device
4 has a propensity to lower inadvertently?

5 ATTY. ROBERTSON: I'm just going to object, your
6 Honor. Are we talking about now as it stands in this
7 courtroom?

8 ATTY. MCELLIGOTT: Now as it sits here right
9 now.

10 ATTY. ROBERTSON: That's irrelevant.

11 THE COURT: Sustained.

12 Q Let me ask you this just more clearly. If the device
13 had stickers on the top that said caution, machine line
14 wearing --

15 A Where is the sticker?

16 Q I'm asking you if --

17 A I know there's one sticker.

18 Q Hold on.

19 A Sorry.

20 Q There's no stickers on the device, correct?

21 A I think there's sticker on the back of the hat if I
22 remember clearly correctly.

23 Q Okay. The sticker on the back of the hat says
24 warning hot surface, avoid contact, right?

25 A Correct.

26 Q There are no stickers on the arms -- on the tops of
27 the arms, correct?

1 A No.

2 Q All right.

3 THE COURT: Might be 62.

4 Q All right. Plaintiff's 62 on the screen full
5 exhibit. All right. First of all, did -- was there ever a
6 sticker like Plaintiff's Exhibit 62 on the top of the arms
7 of Plaintiff's Exhibit 1?

8 A No.

9 Q Okay. If you had seen -- actually strike that. Did
10 you ever see any warning sticker on the device warning of a
11 propensity of the lamp heads to lower when the spring
12 pistons became worn?

13 A No.

14 Q All right. And you were unaware of that propensity
15 when you purchased the device, correct?

16 A Can you repeat it again?

17 Q You were unaware of the propensity of the device to
18 lower when it was worn, correct?

19 A Depends on how much wore.

20 Q So you were aware that with some wear there was some
21 affect in terms of the spring pistons to hold the heads up,
22 correct?

23 A Hold steady should be and it was.

24 Q So you noticed that during the two years that you
25 used the device that there was less force holding the lamp
26 heads up provided by the spring pistons, correct?

27 A That's not true.

1 for the two years you owned the device; correct?

2 A I only use one.

3 Q Okay. And can you tell the jury -- identify for the
4 jury which head you used on the day of Ms. Kissel's
5 treatment?

6 A I think right side.

7 Q Okay.

8 A Let me see, may I go to see it?

9 Q Sure.

10 A I think you know.

11 Q I -- I do know.

12 A I agree -- I agree with you. That's fine.

13 Q But I have to have the jury know.

14 A That one. This one. On the right side.

15 Q All right.

16 **(PAUSE)**

17 ATTY. MCELLIGOTT: All right. Your Honor, I'd
18 just like --

19 Q And the reason why you know that it's the right side
20 that you used on the day of Ms. Kissel's treatment is that
21 some of her skin is still stuck to the device; right?

22 A I think so.

23 Q All right. So if you'd just come down and identify
24 the place that the skin is on the device?

25 A I have identified already.

26 Q I just want --

27 A You want me to identify it again?

1 Q So, I just want you to point out exactly where the
2 skin is on the lamp. All right. These two spots here?

3 A [indiscernible] Yes.

4 Q Okay. And on the day of treatment of Ms. Kissel,
5 after you did her -- your assessment of her and you
6 documented what points you were going to use, you went into
7 the multifunction room and you turned the lamp on to preheat
8 it; right?

9 A Correct.

10 Q It takes five minutes to fully warm up; correct?

11 A Maybe -- maybe a little more than five.

12 Q And the lamp just simply has a timer on the dial;
13 correct?

14 A Correct.

15 Q And it's -- basically when you turn it, it turns on,
16 when the timer's off, it's turns off; correct?

17 A It will turn off automatically.

18 Q There's no heat setting on, it's either on or off;
19 correct?

20 A No.

21 Q What?

22 A No heating degree. I cannot control the degree of
23 heat, the temperature.

24 Q Okay. And in any event, for it to provide its
25 benefit it has to get up to the maximum temperature;
26 correct?

27 A There's no -- can you repeat again?

1 Q And the room is not soundproof; correct?

2 A Sound -- not soundproof, yes.

3 Q All right. And when it seems to you that the patient
4 is on the table, you knock on the door; correct?

5 A Yes.

6 Q And when you came in for Ms. Kissel's case, she was
7 lying on the table in her underwear, paper gown open in the
8 front; correct?

9 A Correct.

10 Q And at that point, you started placing the needles;
11 correct?

12 A I explained what I'm going to do. I --

13 Q Okay. And at some point when your done with your
14 explanation, you start placing the needles; correct?

15 A No. There's another procedure.

16 Q Well, I'm asking -- at some point, do you start
17 placing the needles during the procedure?

18 A Yes. You --

19 Q Okay. And first --

20 A You collect --

21 Q -- needle goes between the patient's brows; correct?

22 A Yes. Between the two brows.

23 Q What's that?

24 A Between the two brows, middle.

25 Q Right. And between the -- and -- and while you're
26 placing the needles, the lamp is pointed at her feet;
27 correct?

1 A 18 inches, about 18 inches.

2 Q All right. It is -- and I think we talked about this
3 before, it's 18 inches between the lamp and the tips of her
4 toes; correct?

5 A May I go there, show you?

6 Q No. I'm just asking you --

7 A Sorry.

8 Q -- the distance. You said 18 inches. That's the
9 distance between the lamp and the tips of her toes; correct?

10 A The position's different.

11 Q My question is, the 18-inch measurement that you're
12 describing is the distance between the lamp head and her
13 tips of her toes; correct?

14 A Correct.

15 Q Because we know in this case that while you were out
16 of the room the lamp had traveled 18 inches and came to rest
17 on her toes; correct?

18 A Not -- incorrect.

19 Q That's incorrect?

20 A What do you mean?

21 Q Okay.

22 A Repeat again. Question?

23 Q We know that when you left the room it was 18 inches
24 above her toes; correct?

25 A Before I left the room?

26 Q Before you left the room.

27 A Yes.

1 A Correct.

2 Q And you told her to stay as still as possible while
3 the needles were in; correct?

4 A I -- that initial -- yes, that's fine. I told
5 before. Yes.

6 Q And that's all you told her before leaving the room;
7 correct?

8 A Correct.

9 Q All right. And then you left the room and closed the
10 door; correct?

11 A Before I leave the room, I told her call me. She
12 understand.

13 Q Okay.

14 A She understood.

15 Q All right. And after that, you went to the nursing
16 station just a few feet away from the door of the
17 multifunction room; correct?

18 A Yeah. My work station.

19 Q All right. And we -- you took a picture after the
20 incident to show how close you were during the treatment;
21 correct?

22 A Correct.

23 Q And you took that two months after the incident
24 because you thought you might need that picture; correct?

25 A I don't know how long, but yes.

26 Q Okay.

27 A That's -- they ask for it.

1 Q And again, from the nursing station you could hear,
2 very well, what's going on in the multifunction room;
3 correct?

4 ATTY. MOORE LEONHARDT: Objection, Your Honor;
5 the witness corrected counsel and called it his work
6 station, not nursing station.

7 Q All right. And from the work station you could hear
8 everything that happens in the multifunction room; correct?

9 A Correct.

10 Q You could hear the creak of the table; correct?

11 A Correct.

12 Q You could hear the -- the gown rustling; correct?

13 A Correct.

14 Q And your plan was to check on Ms. Kissel three to
15 four times during the 20-minute period she was undergoing
16 the acupuncture; correct?

17 A Approximately, yes.

18 Q All right. So you planned to check on her
19 approximately every five to seven minutes; correct?

20 A Yes.

21 Q And the number one reason you make those checks is
22 for the safety of the patient; correct?

23 A Not only safety --

24 Q Hold on. Is that the number one reason why you check
25 on the patient every five minutes is for safety?

26 A That's one of the reasons, yes.

27 Q All right. And safety is always number one when it

1 isn't whether it has happened. The question is
2 whether you need to monitor the patient to make sure
3 it is not happening. That's the question; correct?

4 ATTY. MCELLIGOTT: Yes.

5 THE WITNESS: Yes.

6 THE COURT: Next --

7 Q You do need to do that; right?

8 A I -- that's one of the --

9 Q That's important for safety; correct? All right.
10 Correct?

11 A I will say yes.

12 Q And you know that if the heat lamp gets too close to
13 the patient it can cause a burn; right?

14 A Depends on how close. If close as you -- you showed
15 it, not only pains, you could burn. So degree is
16 difference.

17 Q All right. And while the time -- the time you were
18 at the work station, you listened carefully for any signs of
19 distress coming from the multifunction room; correct?

20 A Doesn't have to be distress.

21 Q You heard -- you listen for any sound at all; right?

22 A No. I didn't hear anything.

23 Q I know. But you were listening intently the entire
24 time she was in there for any sound at all; correct?

25 A I didn't hear anything from her.

26 Q My first --

27 THE COURT: Okay. The question --

1 ATTY. MCELLIGOTT: I'm going to ask --

2 THE COURT: Okay. The question is not whether
3 you did hear anything. The question is whether you
4 were listening so that you could hear something.

5 THE WITNESS: Good. Good. The -- that's very
6 clear.

7 THE COURT: That's your question, isn't it?

8 ATTY. MCELLIGOTT: Yes.

9 THE WITNESS: Very clear. Yes.

10 Q Okay. You were listening; correct? And you didn't
11 hear anything; right?

12 A I open my ear only for [indiscernible].

13 Q Your ears are wide open, you didn't hear any
14 grunting, cries for pain -- of pain, any sound at all from
15 the room; correct?

16 A Correct.

17 Q You didn't hear the sound of, for example, an entire
18 lamp tipping over; correct?

19 A No, I didn't hear.

20 Q All right. And you routinely at the five-minute mark
21 go in for your routine check of Ms. Kissel; correct?

22 A I check everyone that way.

23 Q What's that?

24 A I check every patient that way.

25 Q And when you went in to check on Ms. Kissel, what you
26 saw was the burning hot heat lamp sitting on her foot;
27 correct?

1 A Become contact to her foot, yes.

2 Q And you saw her laying there silently; correct?

3 A She has a tear.

4 Q Well, my question is was she silent?

5 A Silent.

6 Q Okay. So what you saw is a burning hot heat lamp on
7 her foot and a patient silently laying on the exam table;
8 correct?

9 A Yes.

10 Q That's -- okay.

11 A May -- do you want more information?

12 Q Hold on. Hold on. No.

13 A Okay.

14 Q That's good for now. And it's going to be your
15 testimony for this jury to believe --

16 THE COURT: Okay. No. Just ask the question
17 without the preface.

18 ATTY. MCELLIGOTT: Okay.

19 Q Your testimony is that Ms. Kissel, although you were
20 listening very carefully, silently suffered the third-degree
21 burns that we've seen in pictures in court; correct?

22 ATTY. MOORE LEONHARDT: Objection, Your Honor;
23 argumentative.

24 THE COURT: All right. Just ask a factual
25 question.

26 **(PAUSE)**

27 Q And when you entered the room, you did not observe

1 [indiscernible] now until -- until now I don't have it.

2 Q And how long did you witness the heat lamp burning
3 her foot?

4 A I was not in the room that five minutes, so I don't
5 know.

6 THE COURT: So the question is, how long did you
7 see it? In other words, from the time you were in
8 the room, how long did you see?

9 THE WITNESS: Immediately.

10 Q Okay. And then it probably took you a few seconds to
11 take into -- into your mind what was happening in the room;
12 right?

13 A Could you -- pardon me -- answer?

14 Q Did it take you a couple seconds to realize that a
15 patient -- you go in for your routine check, a patient is
16 silently suffering a third-degree burn?

17 A No. As -- degree, I cannot define. I have to give
18 the emergency room to define that. Not a few seconds.
19 Confusing. I do right away, that's -- doesn't matter how
20 confusing it is, I immediately remove that heat lamp from
21 her foot.

22 Q Okay. And when you saw the lamp on -- and you
23 removed the lamp from her foot; correct?

24 A Yes.

25 Q All right. And let's just go back to the moment when
26 you saw it on her foot. When you left the room to go to the
27 work station, the lamp was 18 inches from her foot; correct?

1 A Correct.

2 Q And when you returned to the room, the lamp was on
3 top of her foot burning her; correct?

4 A Correct.

5 Q And so the lamp traveled approximately 18 inches
6 downward while you were out of the room; correct?

7 A I don't know how it's become contacted.

8 Q Well, would you agree with me that based on your
9 observations before you left the room and when you came back
10 to the room that the lamp head had traveled 18 inches?

11 A Traveled but which way, I don't know.

12 Q Well --

13 A Actually --

14 Q -- it didn't travel up, did it?

15 A Didn't travel up. Yes.

16 Q It traveled down; correct?

17 A Yes.

18 Q And it traveled 18 inches; correct?

19 A I would say yes.

20 Q Okay.

21 A Because I travel --

22 Q That's -- yes is fine. And what you saw was Ms.

23 Kissel's heel flat down on the bottom -- on the exam massage
24 table with the heat lamp on top of it; correct?

25 A I don't remember precise position.

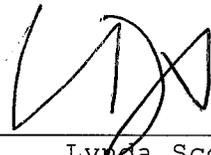
26 Q Okay. If you don't -- if you don't remember, that's
27 fine. I can show you your deposition testimony. And it's

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
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CENTER FOR WOMEN'S HEALTH, P.C. : NOVEMBER 28, 2017
ET AL

C E R T I F I C A T I O N

Page 1 - 56

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Poyodator, Judge, on November 28, 2017.
Dated November 29, 2017 in Stamford, Connecticut.



Lynda Scott
Court Recording Monitor

NO: FST-CV-12 6013562 S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
 : STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : NOVEMBER 28, 2017
P.C., ET AL

C E R T I F I C A T I O N -- Page 57-113

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 28th day of November, 2017.

Dated this 23th day of January, 2019 in Stamford, Connecticut.



Carrie Provenzale
Court Recording Monitor

NO:
FST-CV-12-6013562-S : SUPERIOR COURT

JUDITH KISSEL : JUDICIAL DISTRICT OF
STAMFORD/NORWALK

v. : AT STAMFORD, CONNECTICUT

CENTER FOR WOMEN'S HEALTH,
P.C., ET AL. : NOVEMBER 28, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct excerpt (pgs. 114-163) transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge and a jury, on the 28th day of November 2017.

Dated this 29th day of November, 2017 in Bridgeport, Connecticut.

Rebecca Raveis
Court Recording Monitor

Rebecca Raveis OLR
2-1-19

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : NOVEMBER 28, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages 164-225 are a true and correct transcription to the best of my ability of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 28th day of November, 2017.

Dated this 28th day of November, 2017 in Bridgeport, Connecticut.

Amanda Staron
Court Recording Monitor

Amanda Staron

OLR
2-1-19

NO: FST-CV12-6013562-S

: SUPERIOR COURT

JUDITH KISSEL

: JUDICIAL DISTRICT
OF STAMFORD/NORWALK

V.

: AT STAMFORD, CONNECTICUT

CENTER FOR WOMEN'S HEALTH
P.C., ET AL

: NOVEMBER 29, 2017

BEFORE THE HONORABLE KENNETH POVODATOR
JUDGE AND JURY

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

Representing the Plaintiff:

ATTORNEY SEAN MCELLIGOTT
ATTORNEY MATT BLUMENTHAL
Koskoff Koskoff and Bieder, PC
350 Fairfield Avenue
Bridgeport, CT 06604

Representing the Defendant:

ATTORNEY DAVID J. ROBERTSON
ATTORNEY KEITH BLUMENSTOCK
Heidell Pittoni Murphy & Bach, LLP
855 Main Street - Suite 1100
Bridgeport, CT 06604

Representing the Defendant Dr. Reed Wang:

ATTORNEY MARY ALICE MOORE LEONHARDT
Moore, Leonhardt & Associates, LLC
67 Holly Hill Lane
Greenwich, CT 06831

Representing the Defendant
Health Body World Supply, Inc., AKA The WABBO Company:

ATTORNEY PAUL MEADE
Halloran and Sage, LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06103

Recorded By:
Carrie Provenzale

Transcribed By:
Lisa Franchina
Carrie Provenzale
Lynda Scott
Paul McKenna
123 Hoyt Street - 3rd Floor
Stamford, CT 06905

1 R E E D W A N G

2 (Having been previously sworn in, testified to the
3 following):

4 CONTINUED DIRECT EXAMINATION BY ATTY. MCELLIGOTT:

5 Q Good morning Dr. Wang.

6 A Good morning.

7 Q So I wanted to just pick up -- I only have a few
8 questions for you this morning and then your counsel is
9 going to have some questions for you.

10 But I just want to pick up with where we left off
11 yesterday. When you left the room to go to the work station
12 and Ms. Kissel was on the massage table, the lamp was 18
13 inches from the tip of her toe, correct?

14 A Can you repeat again?

15 Q Yes. When you left Ms. Kissel in the multifunction
16 room, the lamp head was 18 inches from the tip of her toe,
17 correct?

18 A Correct.

19 Q All right. What I wrote down here was that when you
20 left the room the lamp head was 18 inches from toe. That's
21 correct, right?

22 A Correct in two times.

23 Q Okay. And when you returned to the room
24 approximately five minutes later, the lamp had lowered onto
25 her foot, correct?

26 A It come contact to her foot.

27 Q And we talked yesterday, it didn't go up to do that,

1 it went down, correct?

2 A Yes, become contact to --

3 Q Okay.

4 A -- her foot. That's --

5 Q And in order --

6 A -- exact --

7 Q -- for it to become contact with her foot, it had to
8 travel 18 inches, downward, correct?

9 A I don't know what travel means here.

10 Q Move. In order for it to contact her foot, it had to
11 move 18 inches downward, correct?

12 A I would say correct.

13 Q Okay. So I'm going to write down, when you returned
14 to the room, the lamp had moved down 18 inches down, is that
15 fair?

16 A Yes.

17 Q Okay. All right. I wrote when you returned to room,
18 lamp head had moved 18 inches down, that's correct, right?

19 A Correct.

20 Q Okay. And the third thing is, when you returned to
21 the room the lamp was in contact with her toe, correct?

22 A I think so.

23 Q Well, I think you testified to that yesterday, right,
24 when you returned to the room -- I mean, when you -- do you
25 have any question, based on the condition of the lamp now,
26 that the lamp contacted her foot?

27 A What do you mean? Could you define what's condition

NO: FST-CV12-6013562-S : SUPERIOR COURT
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C E R T I F I C A T I O N

Page 1 - 80

I hereby certify the foregoing pages are a true and accurate transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 29th day of November, 2017.

Dated this 22nd day of January, 2019, in Stamford, Connecticut.



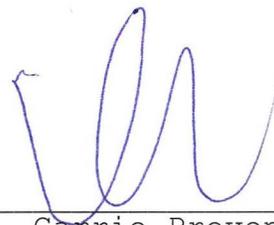
Lisa Franchina
Court Recording Monitor

NO: FST-CV-12 6013562 S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : NOVEMBER 29, 2017
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C E R T I F I C A T I O N -- Page's 81-125

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 29th day of November, 2017.

Dated this 23rd day of January, 2019 in Stamford, Connecticut.



Carrie Provenzale
Court Recording Monitor

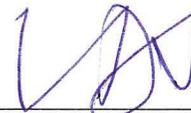
NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : NOVEMBER 29, 2017
ET AL

C E R T I F I C A T I O N

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Dated November 30, 2017 in Stamford, Connecticut.



Lynda Scott
Court Recording Monitor

NO: FST-CV 12-601-3562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
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C E R T I F I C A T I O N

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Dated this 30th day of November, 2017 at Stamford, Connecticut.

Paul J. McKenna
Court Recording Monitor

Paul J. McKenna OCR
2/4/19

FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : NOVEMBER 30, 2017

BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE,
AND JURY

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

Representing the Plaintiff:

ATTORNEY SEAN MCELLIGOTT
ATTORNEY MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Bridgeport Avenue
Bridgeport, Connecticut 06604

Representing the Defendant, Center for Women's Health, PC:

ATTORNEY DAVID J. ROBERTSON
ATTORNEY KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street, Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant, Dr. Reed Wang:

ATTORNEY MARY ALICE MOORE LEONHARDT
ATTORNEY ERIN CANALIA
MOORE LEONHARDT & ASSOCIATED, LLC
67 Holly Hill Avenue
Greenwich, Connecticut 06831

Representing the Defendant, Health Body World Supply, Inc. AKA
The WABBO Company:

ATTORNEY PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 ASYLUM Street
Hartford, Connecticut 06103

Recorded By:
Elizabeth Staron
Transcribed By:
Kasey Hirschbeck
Dorothy DeLuna Bardling
Catherine E. Plavcan
Lynda Scott
Court Recording Monitors
123 Hoyt Street
Stamford, Connecticut 06905

1 DOCTOR REED WANG, after having been
2 previously duly sworn, was examined and testified as
3 follows:

4 VOIR DIRE BY ATTY. MEADE:

5 Q Dr. Wang, I'm showing you what's been marked as
6 Exhibit six, o, nine.

7 A Yes.

8 Q Which is a -- a box for a TDP heat lamp. Do you see
9 that?

10 A Yes, I see it.

11 Q And -- and have you had the opportunity to look at
12 that box closely?

13 A You mean now?

14 Q Today.

15 A Yes.

16 Q And you and your -- your counsel, examined the box
17 and looked at what it -- what it represents, you have done
18 that, correct?

19 A Yes, I can see it clearly.

20 Q Is this box substantially similar to the box that the
21 lamp which is Exhibit 1 was delivered to you in 2008?

22 A You know, nine -- nine years ago for the box is hard
23 to say specifically impossible. I remember it's little
24 flatter. And I -- if I remember correctly, that's really
25 difficult, I think I opened on the -- on the -- if you lie
26 it down that way, I remember I opened this way, than the --
27 from the front, from the top. That's my memorization. This

1 And you answer was: "No, I didn't hear."

2 Did I read that correctly?

3 A I didn't hear. Correct.

4 Q Okay. And you stand by that testimony; right?

5 A I stand by it.

6 Q Okay. All right. And I wanted to talk to you a
7 little bit about essentially your maintenance routine,
8 inspection maintenance routine on the device. And we
9 learned yesterday under questioning from your counsel that
10 you check the tension in the device every day; correct?

11 A Correct.

12 Q And by every day in fairness I'm talking about the
13 160 times that you use the device during the two-year period
14 prior to Ms. Kissel; okay?

15 A Approximation, yes.

16 Q Okay. All right. So you checked the tension on the
17 device and you did that in two ways: One is you manipulated
18 the heads up and down; correct?

19 A Correct.

20 Q And the second is you testified that you gently shook
21 the device to see what would happen; right?

22 A Gently, yes.

23 Q Gently. Okay. And that was part of your inspection
24 and maintenance routine; correct?

25 A More than that.

26 THE COURT: No, he's saying it's part of it.

27 THE WITNESS: Part of it, yes.

1 ATTY. MCELLIGOTT: Yeah.

2 THE COURT: Next question.

3 BY ATTY. MCELLIGOTT:

4 Q All right. All right. So just to be clear. The
5 first part of your inspection and maintenance routine, you
6 checked tension the device by moving the heads up and down;
7 correct?

8 A Correct.

9 Q You gently shoved to see if the heads moved; correct?

10 A Correct.

11 Q All right. And we established during your
12 examination with me that you also checked the looseness
13 and/or tightness of the screws; correct?

14 A Yes.

15 Q And I wrote "check looseness of screws." Is that
16 fair?

17 A Yes.

18 Q And you also testified that on a monthly basis you
19 would put a screwdriver in the screw and tighten it a little
20 bit; right?

21 A If you don't mean, that's all my do every day, daily
22 check. I disagree.

23 Q No, --

24 A There's something more in...

25 Q Oh, there's something -- Look, I'm not done. So
26 there's more that I could put in here.

27 A All right.

1 THE COURT: And I don't think the answer was
2 responsive to that.

3 ATTY. MEADE: Maybe I --

4 THE COURT: So I'm going to strike the answer.

5 ATTY. MEADE: -- maybe I can ask the follow-up
6 question?

7 THE COURT: All right. Well, I'm going to
8 strike the answer. Do you want her to answer that
9 question or are you going to ask a new question?

10 ATTY. MEADE: I'll withdraw the question --

11 THE COURT: All right.

12 ATTY. MEADE: -- and ask a follow-up question.

13 **BY ATTY. MEADE:**

14 Q Would the wearing of the arm and the tendency to fall
15 be something that you would expect someone who was using the
16 lamp regularly to notice?

17 ATTY. ROBERTSON: No. I'm just gonna object. I
18 don't think that this witness -- there's no
19 foundation that this witness has, you know,
20 information about what a user of the lamp would
21 recognize. She is the distributor of the lamp. She
22 is not an engineer. She's not an acupuncturist.

23 ATTY. MEADE: But she -- she was examined on
24 that very issue by counsel, Your Honor, and -- by
25 plaintiff's counsel, as to her knowledge of the
26 alleged propensity.

27 ATTY. ROBERTSON: If -- if my recollection's

1 correct, there were objections at that time, as well.

2 THE COURT: But --

3 ATTY. MOORE LEONHARDT: Yes, Your Honor.

4 ATTY. MEADE: She was permitted --

5 THE COURT: -- she was allowed to testify on
6 that topic; correct?

7 ATTY. ROBERTSON: I don't recall exactly what
8 she testified on. I think there were arguments about
9 it.

10 THE COURT: All right.

11 ATTY. ROBERTSON: I don't recall, Your Honor.

12 THE COURT: I'm going to allow the question.

13 ATTY. ROBERTSON: I'd have to look back at the
14 transcript.

15 (Pause)

16 **BY ATTY. MEADE:**

17 Q Do -- do you recall the question?

18 A Please, one more time, please.

19 Q Could -- could we have the question played back or
20 read back? I'm sorry.

21 THE COURT: Can you, please, (indiscernible)?

22 (Whereupon the monitor executed a playback)

23 A Yes.

24 Q Now, to move onto another -- another subject, you --
25 you started your business, HBW, back in 1999; is that
26 correct?

27 A Yes.

NO: FST-CV126013562S

: SUPERIOR COURT

KISSEL, JUDITH

: JUDICIAL DISTRICT
OF STAMFORD/NORWALK

V.

: AT STAMFORD, CONNECTICUT

CENTER FOR WOMEN'S HEALTH, P.C.
Et Al

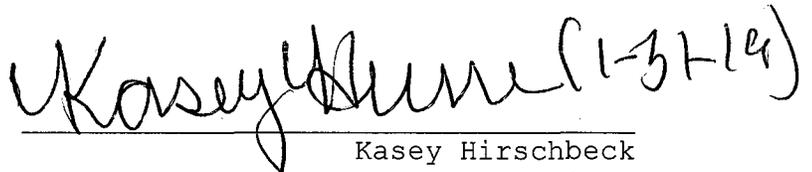
: NOVEMBER 30, 2017

C E R T I F I C A T I O N

(Pages 1-63)

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on November 30, 2017.

Dated December 1, 2017 in Stamford, Connecticut.

 (1-31-17)

Kasey Hirschbeck
Court Recording Monitor

NO: FST-CV-12 6013562 S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : NOVEMBER 30, 2017
P.C., ET AL

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 30th day of November, 2017.

Dated this 23rd day of January, 2019 in Stamford, Connecticut.



Carlie Provenzale
Court Recording Monitor

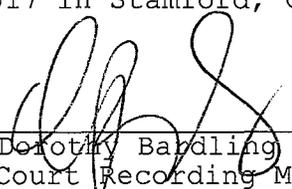
FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : NOVEMBER 30, 2017

*EXCERPT (2:00 to 3:00 Reed Wang Testimony)

C E R T I F I C A T I O N

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Dated this 1st, day of December, 2017 in Stamford, Connecticut.

 1/31/19

Dorothy Bardling
Court Recording Monitor
Pages 122 to 168

FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : NOVEMBER 30, 2017

E X C E R P T
(Pages 169-186)

C E R T I F I C A T I O N

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Dated this 1st day of December, 2017 in Stamford, Connecticut.



Catherine E. Plavcan
Court Recording Monitor

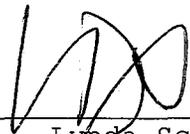
NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : NOVEMBER 30, 2017
ET AL

C E R T I F I C A T I O N

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I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on November 30, 2017.

Dated December 1, 2017 in Stamford, Connecticut.



Lynda Scott
Court Recording Monitor

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 1, 2017
ET AL

**BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE
AND JURY PANEL**

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

Representing the Plaintiff:

ATTY. SEAN MCELLIGOTT
ATTY. MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant Center for Women's Health P.C.:

ATTY. DAVID ROBERTSON
ATTY. KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street, Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant Health Body World Supply Inc.,
AKA The WABBO Company:

ATTY. PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By: Pipina Plakopitas
Transcribed By:
Lynda Scott
Kasey Hirschbeck
Paul McKenna
Court Recording Monitors
123 Hoyt Street
Stamford, Connecticut 06905

1 V I C T O R P O P P ,

2 Was hereby sworn and did testify under oath as follows:

3 THE CLERK: Thank you. Please state your name
4 and address for the record.

5 MR. POPP: My name is Victor A. Popp. My
6 address is 75 Gardner Street, Hingham, Massachusetts.

7 THE COURT: All right. Could you spell your
8 last name, sir, please?

9 MR. POPP: Popp is P-o-p-p.

10 THE COURT: Thank you. Counsel.

11 ATTY. MCELLIGOTT: Thank you, Your Honor. Good
12 morning, Mr. Popp.

13 MR. POPP: Morning.

14 **DIRECT EXAMINATION BY ATTY. MCELLIGOTT:**

15 Q Could you please introduce yourself to the jury and
16 tell them what you do for a living?

17 A My name is victor Popp, I'm an engineer. And I've
18 been a registered professional engineer for about twelve
19 year now. I have my own business at this point but I've had
20 30 years of experience, approximately, in the engineering
21 field. The first 18, maybe a little more than that, 20, was
22 working for different companies that designed and built
23 engineering -- engineered products. Mostly mechanical
24 products, things that move, things that break.

25 And after that I went on my own and now I do
26 consulting. I do failure investigations and analysis and I
27 do design work still and I also consult with people who are

1 fails -- it's in a safe position.

2 Q All right. Well, let's say we wanted to prevent the
3 possibility of inadvertent lamp head movement down, what
4 would be a failsafe design that you could utilize on this
5 device?

6 A Arguably, you would put enough friction in the
7 system, maybe, it would be a -- that's a tough question,
8 you'd have to really familiarize and test the product to
9 find out what works best. But one way would be to put some
10 type of clamping device on there that these things are
11 pretty much clamped up solidly.

12 Q So I've used the term, locking mechanism, you're
13 using clamping and then you had also mentioned a button.
14 Can we just clarify -- what would be -- if we had a device
15 on here that would prevent the hinge from moving, what would
16 we call that, just generally? Then we can get into the
17 specific examples.

18 Q You know, there's a lot, you could use a lot --
19 clamping device is fine, locking mechanism is good too.

20 Q Okay. Let's use locking mechanism.

21 A Okay.

22 Q What are the different types of locking mechanisms
23 you could use to, once it's adjusted in place, lock it in
24 place so it can't inadvertently come down?

25 A Well, thumb screws is a very cheap way to do it, you
26 know, unscrew it and screw it again but thumb screws tend to
27 be not comfortable on your hands. Another way would be like

1 a cam-type device like anybody who's familiar with a front
2 wheel of a bicycle -- that's why I like bicycles, because
3 they have everything on them. They have a quick release hub
4 on the front, you pull up that little lever, it pops right
5 off -- years ago, you had to get a wrench, you don't need a
6 wrench.

7 So that's a very failsafe design too; I mean, it's
8 possible to undo them but they're pretty reliable and well
9 used in the industry.

10 Q How long have -- what do you call them, cam clamps?

11 A It's a cam clamp, yeah.

12 Q Okay. How long has a cam clamp been in use in the
13 United States?

14 A I don't know but they were well used when I was a
15 bicycle mechanic in 1973.

16 Q Okay. Are they expensive?

17 A No, cheap.

18 Q Do you talk about like incremental -- ever heard the
19 term incremental design change or incremental -- when you're
20 talking about the cost of something in relationship to
21 product design, what are the words that you use?

22 A Incremental cost would be one. You'd say, for
23 example, this part here we have make it any way so we've
24 made it out of stainless and it's very skinny, we don't like
25 that, we'll make it a little thicker. How much more to the
26 cost to make it a little thicker? Well, because you've got
27 a machine that's right on there that doesn't change, you

1 have to put a little rough surface on there, that doesn't --
2 all you're doing is making it a little longer. It's not
3 much past that, it's just the extra material of this
4 stainless steel or whatever it is.

5 So it's an incremental cost, this thing might cost,
6 you know, 50 cents. Well, to make it a little longer it
7 costs another two cents, that's incremental. So engineers
8 are typically going to call that an incremental cost
9 improvement, a cost increase, and it's worth it because --

10 Q Okay. And would a cam clamp, if you consider that to
11 be an incremental cost in terms of the real (indiscernible)
12 of the product?

13 A I think you could make an incremental cost, you could
14 find one that would be incrementally small, yeah.

15 Q All right. And just so we're clear, where would you
16 put the cam clamps on this device?

17 A Well, I in my testing -- I just did a quick bread and
18 butter test in my shop at home and I just put it right
19 there. And it's just a little cam, just like a bicycle
20 front wheel thing, put it there and it pinches these two
21 together so they don't move.

22 Q And what about here at this joint?

23 A You know, I don't want to design a whole thing here
24 but there's a number of places it could be done. You could
25 make it part of this base here where it's a device that
26 clamps it right against this base. You could have something
27 come up that grabs onto here. There's infinitely a number

1 of places a clamp could be done. And --

2 Q So if we were trying to prevent inadvertent movement
3 of the lamp head down like that, wouldn't we need a cam
4 clamp on this joint and this joint?

5 A You would need one on this linkage here and on this
6 linkage here. As it's designed, yeah.

7 Q So that would prevent -- oh, because this is a joint
8 and this is a joint -- so that would prevent if it's in a
9 used and upright position, from coming down inadvertently,
10 right?

11 A Right.

12 Q But it wouldn't prevent, I guess that -- I guess that
13 wouldn't -- well, would you put a cam clamp on one, two, and
14 three or just one and two?

15 A One and two, you'd only need two on this to hold it
16 in place.

17 Q All right. And that would prevent --

18 A One would prevent this motion, this part here.

19 Q Uh-huh.

20 A And one would prevent this motion.

21 Q Okay. So can you just identify for the jury where
22 you would put locking mechanisms on this device of which cam
23 clamps are an example?

24 A I would try to put it on this on bracket here; it's
25 already a piece of machined hardware. I would probably put
26 a hole in there and have a cam clamp on the outside.

27 Q And one here to prevent it from doing this?

1 A No, that would prevent it from doing this. If you
2 clamp these two, I mean, clamp these up solid, it's not
3 going to be able to move.

4 Q Oh, oh.

5 A See how these two bars move together?

6 Q Yeah.

7 A That's because they're rotating in there, if you were
8 to clamp this, it would stop that rotation. Even if you did
9 it on one of them, that part --

10 Q I see. All right. So these are -- so the jury can
11 see -- if these are locks, they would have to change
12 position --

13 A only one of these pins has to be locked to stop this
14 thing from rotating on this thing.

15 Q I see.

16 A See how the -- see the rotation here. See this thing
17 go right now and changes to the other way, right? So all
18 you need to do is clamp one of these pins and have that
19 thing clamp up this piece to that piece and it --

20 Q Okay. So basically, the way -- and then marketing
21 came back down you would say the way this is used is it's
22 positioned over the patient and you're only using one side,
23 you put the cam clamp in and then that's it. And then --

24 A Lift the cam over it, pull it down here.

25 Q All right. Lift the cam, move it, pull it down, pull
26 the cam up.

27 Q And then so if we are doing that design-guard-warn

1 hierarchy, design change number one would be locking
2 mechanism on joint, is that right?

3 A Yeah.

4 Q All right. And then --

5 A Only --

6 THE COURT: Before we move onto anything else,
7 we're going to take our mid-morning break.

8 ATTY. MCELLIGOTT: Okay.

9 THE COURT: It's quarter of --

10 MR. POPP: Can I -- Your Honor, I hate to -- one
11 quickie is you can put get away with one clamp here
12 rather than two. I just thought about it. That's
13 all.

14 ATTY. MCELLIGOTT: Okay. Thank you, Your Honor.

15 THE COURT: All right. Ladies and gentlemen,
16 we'll take our mid-morning break. Again, please
17 don't reach any conclusions, don't speculate on
18 anything, don't do any research. We'll be back at
19 approximately twelve o'clock. Recess.

20 THE MARSHAL: All rise, court's in recess.

21 *(Ends typing AM SESSION 1 - Lynda Scott)*

TRANSCRIPTION BY KASEY HIRSCHBECK BEGINS

1 THE COURT: Good afternoon. Be seated,
2 everyone. All right. Are we ready for the jury?

3 ATTY. MCELLIGOTT: Not quite yet, Your Honor.

4 (Pause)

5 ATTY. MCELLIGOTT: Yes, Your Honor.

6 THE COURT: All right. Bring the jury in.

7 (Pause)

8 (Whereupon the jury panel entered the courtroom)

9 THE COURT: All right. Be seated, everyone.
10 Counsel stip -- stipulate that all the jurors and
11 alternates are present?

12 ATTY. MCELLIGOTT: Yes, Your Honor.

13 ATTY. MEADE: Yes, Your Honor.

14 ATTY. ROBERTSON: Yes, Your Honor.

15 ATTY. MOORE-LEONHARDT: Yes, Your Honor.

16 THE COURT: All right. Be seated. Proceed.

17 ATTY. MCELLIGOTT: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED BY ATTY. MCELLIGOTT:

18 Q Mr. Popp, you can come down. I think before the
19 break you were demonstrating how it is that an engineer and
20 a design team would go about making a safety change to this
21 device, is that right?

22 A I don't recall to be honest. How you would make a
23 safety change? Yeah, I think (Inaudible).

24 THE COURT: All right. Hold on a second. Is
25 the microphone --
26
27

1 THE MONITOR: The microphone -- no.

2 ATTY. MCELLIGOTT: The microphone --

3 THE COURT: All right. That's why I wanted to
4 stop before we go any further to make sure the
5 microphone.

6 ATTY. MOORE-LEONHARDT: Oh, that doesn't work.

7 THE COURT: No, that doesn't work.

8 ATTY. MOORE-LEONHARDT: That doesn't work.

9 THE COURT: That's --

10 ATTY. MCELLIGOTT: I twisted that one around,
11 sorry.

12 THE MONITOR: Oh, that's the problem. Okay.

13 ATTY. MCELLIGOTT: I don't know why it's there.

14 THE COURT: Hope springs a term that it'll
15 eventually work.

16 **BY ATTY. MCELLIGOTT:**

17 Q And so one thing to do would be to put a locking
18 mechanism on this joint. That would prevent this motion,
19 right -- right? Yeah. And you could put it on all three
20 which would prevent all the joints from moving, that's
21 another option, right?

22 A Yeah, no need to do three, though.

23 Q So what I wanted to prevent this, as well? Is there
24 a way to put -- do that with one clamp?

25 A Anyone of these pins would -- would lock up. So
26 there's one, two, four pins on the four by linkage so if you
27 locked up any one of those that would lock up this

1 particular arm length from rotating.

2 Q Okay. So if you had a clamp in the middle -- on the
3 middle joint because both these bars have to rotate to do
4 either of this -- well, for this to happen, both these have
5 to rotate? One clamp here would lock the arms in place?

6 A Potentially, one -- one clamp on this particular
7 bracket would pinch enough of these -- both arms, this one
8 on this end and this one on this end. So since you have one
9 contact point for both linkages, this arm and this arm, you
10 might as well try to put it into one clamp, if you can.

11 Q Okay.

12 A And that would be a goal.

13 Q All right. And is there a goal in engineering that
14 the fewer moving parts, the better?

15 A Well, definitely the fewer moving parts, the better
16 end. And you know, ease of use one clamp would be better if
17 you could do it.

18 Q Okay. And so is the design change that you would
19 make as an engineer, in terms of the locking mechanism,
20 prevent the inadvertent falling of the lamp a lock on -- on
21 the middle joint of the device?

22 A Yes, that would do it.

23 Q All right.

24 A It could be designed to do that, I'm sure.

25 Q Okay. The question is, given what you know about
26 this lamp that this gets burning hot, that it's used over
27 bare skin, et cetera, would the product be in an unsafe

1 make a reasonable design change, where does that make you on
2 the safety hierarchy?

3 A You're inter-guarding.

4 Q Okay. And you gave some thought to a guard for this
5 device?

6 A Yes, I did.

7 Q And what are the designing challenges in designing --
8 designing a guard for this device?

9 A Well, I'd need to know a little bit more about how
10 close this thing should and can be to a patient before -- or
11 a person, before injuring them. And I think that would be
12 something that would probably be tested in an engineering
13 environment. We'd say okay, worst case scenario, we cannot
14 let this thing get any closer than say, four inches to -- to
15 a person's flesh. In which case, you'd say, okay, that's
16 easy if you can extend this out four inches and put,
17 potentially, a grid on the front of it, as well.

18 So we would want to determine how far out that guard has
19 to go, and would that adversity effect the performance
20 specifications put out by marketing. And if it did, if it
21 was unworkable, then you might want to go back to marketing
22 and say, do I really need this thing to be six hundred
23 degrees or eight hundred degrees? Can it be four-fifty?
24 And you'd -- you'd again, you go back to the tradeoffs.

25 Q Okay.

26 A But you try not to have an unsafe product just
27 because --

1 Q Yeah.

2 A Yeah.

3 Q So and one way you could do it is --

4 A Unless you have to.

5 Q One way you could do it, the current design as a flat
6 metal screen over the device. What are the benefits and
7 drawbacks of that design?

8 A Well, there'd be, potentially -- the benefit would be
9 somebody couldn't put a (indiscernible) in it and make sure
10 it's not plugged in but somebody couldn't go into that
11 device. So you have a positive guard stopping you from
12 gaining access.

13 Another type of guard would be just to extend this and
14 they did leave it open. If it was extended and left open,
15 potentially, that would be another, again, there's levels of
16 safety, levels of risk. But you can just merely extend this
17 out a little bit, have this ring come out a couple more
18 inches, now less likely, maybe not impossible, but less
19 likely somebody would get in there and -- and be able to
20 burn themselves on it.

21 But you could also put some type of dome guard, like a
22 bulbous shaped guard that would extend these pieces of rods
23 out a little farther, leave that ring in there, have them
24 come down to a point and now you've got a dome, like a leaf
25 guard -- guard -- house, gutters, like that.

26 Q And the dome would be helpful because it gets the
27 metal further from the heating elements so the dome itself

1 would stay cooler the further it is away?

2 A Right.

3 Q And did you do any type of testing in your
4 preparation for your testimony about how hot the end of a
5 domed guard would get?

6 A Yes, I did.

7 ATTY. MEADE: Your Honor, I have -- I have an
8 objection to this. This is beyond the scope of the
9 earlier disclosure.

10 ATTY. MCELLIGOTT: He testified at his
11 deposition about the lack of guards. He drew an
12 alternative design and tested it with a piece of
13 copper. And I don't know what the objection is on
14 disclosure.

15 ATTY. MEADE: Is this about the piece of copper?

16 ATTY. MCELLIGOTT: Yes.

17 ATTY. MEADE: Okay. I apologize.

18 ATTY. MCELLIGOTT: Okay.

19 ATTY. MEADE: Let's move on, Your Honor.

20 **BY ATTY. MCELLIGOTT:**

21 Q All right. So -- so, Mr. Popp, we talked about one
22 problem with this -- or one design challenge here is that,
23 from a safety perspective, if you just put a flat metal
24 thing over here it's gonna get hot, right?

25 A Yes.

26 Q Not as hot as the element but still --

27 A Well, I don't like to use the word, hot. It -- the

1 temperature would go up, yes, to some point, and potentially
2 hot, yes.

3 Q Okay. So if you had a domed guard for -- the metal
4 would be further away and it would stay cooler and be safer,
5 right?

6 A More likely to be cool if the farther away it is from
7 the heating element.

8 Q Right. And so you had an exemplar lamp that you were
9 working with in Massachusetts?

10 A Mm-hm.

11 Q It wasn't --

12 THE COURT: Is that a yes?

13 THE WITNESS: Yes, I'm sorry.

14 A Yes.

15 Q It wasn't the same model or make as Plaintiff's
16 Exhibit 1, is that right?

17 A It was a different make and model, yes.

18 Q Okay. But you were playing around with it to see if
19 you -- if you could come up with safer designs?

20 A Yes, I -- that would be one reason, yes. It was part
21 of what -- what I did with it.

22 Q And so explain to the jury what you did with the
23 piece of copper and why.

24 THE COURT: All right. Does he need to be
25 standing there for this purpose?

26 ATTY. MCELLIGOTT: This is the last one and then
27 he can sit down, Your Honor.

1 and not only did you put the lamp that burned Ms. Kissel in
2 a closet and never used it again, you went to Westport and
3 threw the other one away, right? Answer, correct.

4 And there's just one more fact that I want to add to this
5 hypothetical.

6 ATTY. MCELLIGOTT: You got it.

7 UNIDENTIFIABLE SPEAKER: Yes.

8 Q Dr. Wang was asked the following question during the
9 trial. Question, you didn't hear the sound of, for example,
10 and entire lamp tipping over, correct? Answer, no, I didn't
11 hear. And I want you to assume that that testimony occurred
12 in the context of what he heard while he was outside the
13 room. Okay?

14 A Mm-hm.

15 Q All right. Mr. Popp, assuming all the facts I asked
16 you to assume, do you have an opinion to a reasonable degree
17 of engineering probability regarding whether Plaintiff's
18 Exhibit 1 was in a defective condition, unreasonably
19 dangerous to the consumer or user when it was sold in March
20 2008?

21 A To a reasonable degree or engineering certainty, yes.

22 Q And what is the basis for that opinion?

23 A Just my observations of the design of the product and
24 how it performs.

25 Q Okay. And, Mr. Popp, assuming all the facts I've
26 asked you to assume, do you have an opinion to a reasonable
27 degree of engineering probability regarding whether the

1 defective condition of the lamp was a substantial factor
2 contributing to Ms. Kissel's burn in 2010?

3 A Yes.

4 Q And what is that opinion?

5 A I believe the design defects of the product and the
6 way it was designed caused the injuries.

7 Q Okay. I have to ask this now a few different ways,
8 so just bear with me. Mr. Popp, assuming all the facts I've
9 asked you to assume, do you have an opinion to a reasonable
10 degree of engineering probability whether Plaintiff's
11 Exhibit 1 was in a defective condition, unreasonably
12 dangerous to the consumer because it was sold in March 2008
13 without adequate locking mechanisms?

14 ATTY. MEADE: Objection, Your Honor,
15 (Inaudible).

16 THE MONITOR: I can't hear him.

17 THE COURT: Okay. The -- the monitor couldn't
18 hear you. You need to speak up.

19 ATTY. MEADE: It's leading. So --

20 THE COURT: The objection is leading?

21 ATTY. MEADE: Yes.

22 ATTY. MCELLIGOTT: This is a technical element
23 of my proof that I -- this is really the only way to
24 do it. I never had a leading objection for this --

25 THE COURT: All right.

26 ATTY. MCELLIGOTT: -- part of the hypothetical.

27 THE COURT: All right. The objections

1 overruled.

2 **BY ATTY. MCELLIGOTT:**

3 Q Do you remember -- let me ask -- Mr. Popp, assuming
4 all the facts I've asked you to assume, do you have an
5 opinion to a reasonable degree of engineering probability
6 whether Plaintiff's Exhibit 1 was in a defective condition,
7 unreasonably dangerous to the consumer because it was sold
8 in March 2008 without adequate locking mechanisms?

9 A My opinion is, yes.

10 Q And what's the basis for that opinion?

11 A Just watching the operation of the unit.

12 Q Okay. Mr. Popp, assuming all the facts that I've
13 asked you to assume, do you have an opinion to a reasonable
14 degree of engineering probability regarding whether the lack
15 of adequate locking mechanisms was a substantial factor
16 contributing to Ms. Kissel's burn?

17 A I think the lack of an adequate mechanism -- I'm
18 sorry. An adequate locking mechanism would have prevented
19 the burns.

20 Q Okay.

21 A There are other potential ways that the device could
22 have been designed, but --

23 Q This is --

24 A -- it's defective.

25 Q Okay. Mr. Popp, assuming all the facts that I've
26 asked you to assume, do you have an opinion to a reasonable
27 degree of engineering probability whether Plaintiff's

1 Exhibit 1 was in a defective condition, unreasonably
2 dangerous to the consumer because it was sold in March 2008
3 without an adequate guard over the heat plate?

4 A Yes.

5 Q And what is your opinion?

6 A My opinion is, at it was designed it should have had
7 a guard on there.

8 Q Okay. And what's the basis for that opinion.

9 A Again, my observations of the behavior of the
10 product.

11 Q Okay. Mr. Popp, assuming all the facts that I've
12 asked you assume, do you have an opinion to a reasonable
13 degree of engineering probability regarding whether the lack
14 of an adequate guard over the heating element was a
15 substantial factor contributing to Ms. Kissel's burn?

16 A It's one of several things that could have prevented
17 the burns, yes.

18 Q Okay. And what's the basis for that opinion?

19 A I believed my testing on a guard and at my shop --

20 Q Okay.

21 A -- similar -- on a similar product.

22 Q All right. And Mr. Popp, assuming all the facts that
23 I've asked you to assume, do you have an opinion to a
24 reasonable degree of engineering probability whether the
25 addition of a locking mechanism to Plaintiff's Exhibit 1
26 would have been technologically and economically feasible in
27 2008?

1 A Yes, I believe they would have been technically and
2 economically feasible to add to the design.

3 Q And, Mr. Popp, assuming all the facts that I've asked
4 you to assume, do you have an opinion to a reasonable degree
5 of engineering probability whether the presence of locking
6 mechanisms on the joints of the lamp would have reduced or
7 avoided the plaintiff's injury?

8 A Yes, I think it would have avoided the injuries.

9 Q Okay. And last two. Mr. Popp, assuming all the
10 facts I've asked you to assume, do you have an opinion to a
11 reasonable degree of engineering probability whether the
12 addition of a safety guard over the heat -- between the
13 heating element and patient on Plaintiff's Exhibit 1 would
14 have been technologically and economically feasible in 2007?

15 A Yes.

16 Q And what's your -- what's your opinion on that?

17 A It -- a safety guard would have been technologically
18 and economically feasible.

19 Q Okay. And would a locking mechanism also have been
20 technological and economically feasible?

21 A Yes, I think I answered that one.

22 Q All right. Mr. Popp, assuming all the facts that
23 I've asked you to assume, do you have an opinion to a
24 reasonable degree of engineering probability whether the
25 presence of a guard over the lamps heating element would
26 have reduced or avoided the plaintiff's injury?

27 A I think it would have avoided the injury.

1 ATTY. ROBERTSON: Objection, beyond the scope of
2 the expert witness disclosure.

3 ATTY. MOORE-LEON-HARDT: I join in the that,
4 Your Honor.

5 ATTY. MEADE: As do I.

6 ATTY. MCELLIGOTT: How could that possibly be?
7 I mean, he had to -- he had to make assumptions about
8 --

9 ATTY. ROBERTSON: Are we making --

10 THE COURT: Well, did he make -- making
11 assumptions is different from having an opinion --

12 ATTY. MCELLIGOTT: Oh, true, true, true.

13 THE COURT: -- an affirmative opinion. I mean,
14 that's --

15 ATTY. MCELLIGOTT: Yeah, you're right.

16 THE COURT: -- that's -- the - the problem is
17 that you're reaching -- getting close to the ultimate
18 issue.

19 ATTY. MCELLIGOTT: I hear you. You're right.
20 I'll rephrase it.

21 Q Based on everything you knew, did you make an
22 assumption for purposes of your opinion about how the lamp
23 came to be on Ms. Kissel's foot?

24 ATTY. ROBERTSON: Objection, beyond the scope of
25 the expert witness disclosure.

26 THE COURT: Overruled.

27 A Yes, I did.

1 Q And what was your assumption?

2 ATTY. ROBERTSON: Objection, beyond the scope of
3 the expert witness --

4 THE COURT: Okay.

5 ATTY. ROBERTSON: -- disclosure.

6 THE COURT: Overruled.

7 A To a reasonable degree of engineering certainty I
8 examined the possible scenarios that I came up with as to
9 how that could have fallen 18 inches. And by the way, I
10 found out it -- 18 inches was not likely possible depending
11 on the height of the table.

12 ATTY. ROBERTSON: Strike, Your Honor.

13 ATTY. MOORE-LEONHARDT: Your Honor, move to
14 strike.

15 THE COURT: All right. That's --

16 A But I can --

17 THE COURT: That's stricken.

18 A I can --

19 THE COURT: That is stricken,

20 A Just to --

21 Q We're gonna stick with the -- I understand what
22 you're --

23 A Okay.

24 Q -- saying --

25 A -- All right. But to a reasonably degree of engineer
26 certainty, I came -- the only plausible explanation is that
27 the arms on that --

1 THE COURT: Finish your answer.

2 A -- unit are not adequate -- adequately support that
3 cantilevered load weight of that head, and therefore because
4 of that marginal design it was able to drift down under some
5 excitation.

6 ATTY. ROBERTSON: Objection, Your Honor --

7 ATTY. MOORE-LEONHARDT: Objection, Your Honor.

8 ATTY. ROBERTSON: -- move to strike, beyond the
9 expert witness disclosure, Your Honor. We should
10 have an argument about disclosure.

11 THE COURT: All right. Anything further from
12 this witness.

13 ATTY. MCELLIGOTT: I just need to confer with my
14 co-counsel, Your Honor.

15 (Pause- counsel conferring)

16 ATTY. MCELLIGOTT: Your Honor, we're you
17 anticipating -- oh, it's lunch break. Yeah, why
18 don't we take the lunch break and I'm pretty sure I'm
19 done.

20 THE COURT: Well, I was gonna say that if
21 there's an issue that counsel want to address we can
22 spend five minutes with counsel addressing what the
23 issue is --

24 ATTY. MCELLIGOTT: Yes.

25 THE COURT: If you were done.

26 ATTY. MCELLIGOTT: Let's do that. I -- I think
27 I am. I need to check with Matt, but yes.

1 ATTY. MEADE: Good afternoon, Mr. Popp.

2 MR. POPP: Good afternoon, Paul.

3 **CROSS EXAMINATION BY ATTY. MEADE:**

4 Q You recall meeting me at the deposition back in May,
5 is that fair to say?

6 A Yes.

7 Q That was your first deposition?

8 A Yes.

9 Q This is not your first trial testimony though?

10 A Correct.

11 Q You were retained by the plaintiff's firm in this
12 case in late October of 2016, is that correct?

13 A Yes, that sounds right.

14 Q And you, at that time, you didn't have exhibit 1,
15 you didn't have access to exhibit 1, is that fair to say?

16 A Yes.

17 Q You did however obtain what you call an exemplar lamp
18 which is a different make and model but a similar design?

19 A Yes.

20 Q You look at that exemplar lamp and you conducted some
21 tests with the exemplar lamp?

22 A Yes.

23 Q And you determined that the essential design features
24 of the arm of the lamp were similar to those of the lamp at
25 issue in this case, is that correct?

26 A Yes, ultimately I did.

27 Q There are some distinctions between them --

1 Q Not so violently?

2 A The difference would be the way you lift it up. I
3 never aggressively lifted it --

4 Q Sure.

5 A I just let go of it quickly.

6 Q And you did that --

7 A Yes.

8 Q -- you did that a number of times, correct?

9 A Yes.

10 Q And you had for purposes of your testing, you had
11 made some assumptions about the height of the lamp, the
12 height of the table, and the length of Ms. Kissel's foot,
13 correct?

14 A Yes.

15 Q And those assumptions were that the table was about
16 30 inches high --

17 A Okay. Yes.

18 Q You said that was the standard height of --

19 A I used that number --

20 Q -- a table.

21 A -- but yeah.

22 Q And that Ms. Kissel's foot was about eight inches off
23 it, is that fair?

24 A I believe I said six inches or seven inches but okay.
25 Okay.

26 Q I don't know how long women's feet are. I don't
27 know -- I don't mean any --

1 A I don't know how long her foot was.

2 Q But you used a figure somewhere around seven or eight
3 inches, correct?

4 A I used my wife's foot as an example.

5 Q Don't want to get anyone in trouble.

6 A Okay.

7 Q And using the drop test, you did that a number of
8 times, correct?

9 A Yes.

10 Q And you weren't able to get the head of the lamp,
11 even on this unit here, exhibit A -- exhibit 1, excuse me --
12 you weren't able to get the head of the lamp to drop far
13 enough to come into contact with Ms. Kissel's theoretical
14 toe in any of those tests, is that correct?

15 A I don't recall that being the case, I'm sorry. It's
16 possible that I said that. I at one time had written down
17 the numbers and did the math.

18 Q Yeah. And --

19 A But the drop test revealed it went down approximately
20 nine inches as I recalled. And if I assume a 30-inch plus
21 another six inches or seven inches for the foot that would
22 put us at 37. And we've got another 18 inches of clearance,
23 reportedly.

24 And I believe what I said was the 18 inches may not
25 have happened. Because if you take a 30-inch table -- and I
26 believe Dr. Wang in his deposition said the table was
27 approximately two-and-a-half to three feet high so I didn't

1 think it was possible to get 18 inches the way he described
2 it. So I don't recall if my numbers said that conclusively,
3 the lamp would not have hit her toe if it came down nine
4 inches.

5 Q Well, do you want to look at your numbers --

6 A Sure.

7 (Pause)

8 ATTY. MEADE: May I approach, please?

9 THE COURT: Sure.

10 Q-And I'm showing you what was marked as defendant's
11 exhibit 6, at your May 26, 2017 deposition --

12 A Okay.

13 Q Do you recall us marking this at the deposition, sir?

14 Well, you don't --

15 A Yes. I'll say yes, yeah.

16 Q These are your own --

17 A Yeah, I do remember now, yes.

18 Q -- prior materials from the deposition --

19 A Yes, sir.

20 Q -- and from your investigation in this matter?

21 A Yes, sir.

22 Q And I numbered at the deposition the pages, just for
23 purposes of being able to talk to one another about this, I
24 numbered the pages 1 through 58 --

25 A Yes, sir.

26 Q -- correct?

27 A Yes.

1 Q And I think what you're referring is pages 45 and 46
2 of exhibit 6.

3 A Yes.

4 Q You can take a look at that.

5 (Pause)

6 A Okay.

7 Q And in the drop test, the closest you were able to
8 get the head to drop was to a level of 39 inches, correct?

9 A I don't think it was that low, I thought it was more
10 like 42 inches. It dropped about 9 inches from the full
11 height.

12 Q And you weren't actually able to get it all the way
13 up in terms of your testing, you weren't able to get it up
14 to what you believe was 18 inches from --

15 A Right.

16 Q -- the foot?

17 A Yep. I show here that 13 inches could be true based
18 on a 30-inch high table and an eight-inch foot.

19 Q Okay.

20 A We would say we couldn't have done 18 inches, we
21 would have been at 13 inches, based on a 30-inch table.

22 Q Okay.

23 A However Dr. Wang also said the table could have been
24 three feet. And I think his final answer was three feet, he
25 said two-and-a-half to three feet then he said three feet.
26 So that would put it at 13 minus 6 inches which would have
27 been 7 inches from her toe and if it dropped 9, then yes, it

1 could have hit her toe, in those -- but we don't know the
2 height of the table but --

3 Q We don't know that. And you're assuming that the
4 lamp head is directly above her foot when it starts out, is
5 that fair to say?

6 A Yes.

7 Q For purposes of your testing?

8 A Yes.

9 Q And then you did something else called -- you called
10 it jiggle test. Do you recall doing that?

11 A Yes.

12 Q And that was -- you did at least four sets of 20
13 jiggles of the lamp, correct?

14 A Yes.

15 Q And what you did was you grabbed this area and you
16 jiggled it 20 times like that?

17 A Not that hard but yes.

18 Q 20 times in six or seven seconds?

19 A Yes.

20 Q Yes?

21 A Yeah.

22 Q And you did four of those at least.

23 A Yes I did, I believe.

24 Q And in each of those assuming a 30-inch table height
25 you weren't able to get the lamp to drop far enough to come
26 into contact with Ms. Kissel's toe and -- assuming those
27 distances are correct?

1 A Depending -- hold on, I have to do that math
2 separately.

3 Q Want to take a look at your notes?

4 (Pause)

5 A Yeah. It would have been pretty close.

6 Q But you didn't get it -- on one of the examples you
7 got it pretty close, you didn't get it to actually get it to
8 come to where it would touch, did you?

9 A Assuming a 36-inch high table it would have been
10 approximately two inches away based on the rudimentary tests
11 I did.

12 Q And that was doing --

13 A Twenty jiggles.

14 Q -- all those jiggles. Twenty jiggles.

15 A Yes.

16 Q And by the way, when you did those jiggles, was that
17 silent?

18 A Oh, yeah, quiet. Very quiet. Silent you said,
19 right?

20 Q Yes.

21 A Yes, it was silent.

22 Q It was silent so when I just shook it, did you hear a
23 noise when I shook it?

24 A Well, you were shaking it more violently than I did.
25 But I wouldn't have -- what I was doing, you wouldn't have
26 heard that at all.

27 Q When you did the various tests that you did, you

1 didn't at any time have any situation in which the head of
2 the lamp dropped at one time suddenly a foot or more, did
3 it?

4 A Nine inches.

5 Q No, no. I mean, suddenly, I mean all at once like in
6 one motion?

7 A Yes. Nine inches.

8 Q Um --

9 A That was my drop test where I --

10 Q Oh, for the --

11 A -- bring it up to the top of it --

12 Q -- drop test when you let go of it --

13 A -- just pull my hand away --

14 Q -- and drop it down?

15 A -- and the weight of it would come down nine inches,
16 yes.

17 Q And that wasn't silent either, was it?

18 A That was silent.

19 (Pause)

20 Q You're someone who is a consulting engineer and what
21 you do as an engineer is you investigate accidents and
22 situations and products to come to conclusions as to how
23 things may have happened or whether in this instance where
24 people were asked to come to a conclusion as to whether a
25 particular product was safe, correct?

26 A Yes.

27 Q And as part of your work in an area, would you agree

1 A Yes.

2 Q And you arrived at one scenario that you felt was
3 most likely?

4 A Oh, yes. Yes, correct.

5 Q And you've already told us what that scenario is,
6 correct?

7 A Yes, yes.

8 Q And that was that somehow somebody came into contact
9 with the base -- I mean, the pole or arm of the lamp and
10 caused it to move, right?

11 A Yes, but it would be not necessarily the root cause
12 of the failure.

13 Q (Indiscernible).

14 A The root cause -- that would be sort of a -- I'm
15 sorry.

16 Q You did testify that that was the most likely
17 scenario?

18 A That's a cause but the root cause would be a little
19 different than that. That would be insufficient spring and
20 force on the unit and when you have perturbations and
21 excitations against that type of device then it would be --
22 it would move down. So.

23 Q And you believe that was the most likely scenario --

24 A Some type, yes.

25 Q -- that there was some time of perturbation or
26 excitation on the lamp, correct?

27 A Yes.

1 Q And if there wasn't, you don't have evidence to
2 support that, you can't say that's what happened, correct?

3 ATTY. MCELLIGOTT: Object to the form, he's not
4 here to say what happened.

5 THE COURT: Could you play back the question?

6 *(Playback)*

7 Q -- the most likely scenario was that it was some kind
8 of --

9 A Some type -- yes.

10 Q -- perturbation or excitation on the lamp, correct?

11 A Yes.

12 Q And if there wasn't, you don't have evidence to
13 support that, you can't say that's what happened, correct?

14 ATTY. MCELLIGOTT: Object to the form, he's not
15 here to say what happened.

16 *(Playback ends)*

17 THE COURT: All right. And the objection is?

18 ATTY. MCELLIGOTT: It's asking him to offer fact
19 witness testimony which he's not here to do.

20 ATTY. MEADE: I'm asking him about the basis for
21 his opinion.

22 ATTY. MCELLIGOTT: Well, that's a different
23 question.

24 THE COURT: All right. I'm going to allow it as
25 cross-examination. Are you able to answer the
26 question, sir?

27 MR. POPP: I'd have to hear it again. Sorry,

1 Your Honor.

2 THE COURT: Are you able to play it again?

3 (Playback)

4 Q -- scenario was that it was some kind of --

5 A Some type -- yes.

6 Q -- perturbation or excitation on the lamp, correct?

7 A Yes.

8 Q And if there wasn't, you don't have evidence to
9 support that, you can't say that's what happened, correct?

10 ATTY. MCELLIGOTT: Object to the form, he's not
11 here to say what happened.

12 (Playback ends)

13 THE COURT: Are you able to answer the question?

14 MR. POPP: I only heard up to "if there wasn't."

15 I couldn't understand, it was a little garbled.

16 THE COURT: All right.

17 **BY ATTY. MEADE:**

18 Q You can't say what happened?

19 A So if it wasn't perturbations, I can't say what
20 happened? That's the question?

21 ATTY. MEADE: That's the question, yes.

22 A Well, there's other possibilities that I've examined,
23 a couple of less likely possibilities. But I can't say for
24 certain what happened, I do believe I can.

25 Q And I'd like to direct you to page 215 of your
26 deposition, sir.

27 A Okay. Which line, if you could.

1 Q Starting at page -- excuse me, line 9.

2 THE COURT: Through?

3 ATTY. MEADE: Actually, starting on line 7, I'm
4 sorry.

5 THE COURT: Through what?

6 ATTY. MEADE: Through 22.

7 MR. POPP: Okay.

8 ATTY. MCELLIGOTT: 215?

9 ATTY. MEADE: 215, yes.

10 MR. POPP: Okay.

11 **BY ATTY. MEADE:**

12 Q And at that time you testified that scenario to you
13 was the most likely scenario based on all the other
14 statements in the history and that nothing else really made
15 any sense to you --

16 A Correct.

17 Q -- is that what you testified to at that time?

18 A Right.

19 Q And would you agree, sir, that when you testified as
20 a matter of reasonable engineering probability, that most
21 likely means more likely than not in your mind, is that fair
22 to say?

23 A Yes.

24 Q And so that would necessarily be greater than 50
25 percent?

26 A Yes.

27 Q So all the other scenarios that you could consider

1 would necessarily be less than 50 percent likely, is that
2 fair to say?

3 A Yes.

4 Q And those other scenarios that you've considered
5 included the lamp falling without -- falling inadvertently
6 without outside influence, correct?

7 ATTY. MCELLIGOTT: Well, object to the form.
8 Compound. Inadvertently and without outside force
9 are different.

10 ATTY. MEADE: I beg to disagree.

11 THE COURT: Are you able to answer the question,
12 sir?

13 MR. POPP: I'm willing to answer some -- discuss
14 on what we're talking about when we talk about
15 spontaneously, inadvertently, et cetera.

16 A Spontaneously to me -- and I watch cable TV
17 sometimes -- you're talking about spontaneous combustion
18 where people claim they're sitting on a couch and for no
19 explicable reason they burst into flames.

20 Let's talk about a device sitting in a room, a lamp
21 that is sitting there and nobody's in the room, is that lamp
22 head going to just come down, a ghost touch it? At some
23 point it'll come down but it'll come to rest at a point. Is
24 it going to continue to go down without anybody vibrating or
25 shaking or anything? If it does, I would call that
26 spontaneous.

27 Q Sure.

1 A Okay. Inadvertent to me would mean that the device
2 is supposed to be in a position and somebody bangs into it
3 and it comes down. You didn't mean to make it come down,
4 all you did was bang into it. So that would be an
5 inadvertent situation.

6 Q All right. Let's define our terms then.

7 A Yeah.

8 Q Would you agree that the scenario in which the head
9 of a lamp drops spontaneously, that is without outside
10 influence, without anybody bumping into it, the empty room
11 situation that you're talking about --

12 A Yeah. Okay.

13 ATTY. MCELLIGOTT: Well, object to the form.
14 Compound.

15 THE COURT: Let him finish the question, I'm not
16 hearing anything compound yet. But go ahead, finish
17 the question.

18 BY ATTY. MEADE:

19 Q In your opinion, that scenario -- let me withdraw the
20 question and I'll ask it again.

21 Would you agree, that in your opinion, the scenario
22 of the head of the lamp dropping onto Ms. Kissel's toe
23 without outside influence is unlikely?

24 A In my own opinion, I'd say impossible.

25 Q Thank you.

26 A I do believe in ghosts however I don't think they
27 push lamp heads down when nobody's -- I'd say impossible,

1 MR. POPP: Yes.

2 THE COURT: I'll allow the question.

3 **BY ATTY. MEADE:**

4 Q Did you understand the question?

5 A Yes. So the type of failure I see when I work the
6 lamp is if it didn't leave the factory like that, it would
7 have been gradually -- it would have been a gradual failure
8 where I saw the unit.

9 THE COURT: No, the question was whether it
10 would be observable, that's the question. And that's
11 why I'm asking --

12 MR. POPP: Okay. Okay.

13 THE COURT: -- whether you formed an opinion
14 prior to today on whether it would be observable.

15 MR. POPP: Yeah, okay.

16 THE COURT: I'm not asking you to formulate a
17 new opinion.

18 A Because it's gradual --

19 THE COURT: All right.

20 A But because it's gradual, it would be -- different
21 people would observe it better than others.

22 **BY ATTY. MEADE:**

23 Q And did that --

24 A Some people would be more sensitive to it and notice
25 it.

26 Q But the fact that it's observable and it's observable
27 over time, that is, you can see over time that there's

1 movement in the arm --

2 A I think what would happen, it would become
3 increasingly observable as the wear got worse and worse.

4 Q And that provides a basis for the user, the owner, to
5 guard against problems developing with the lamp?

6 ATTY. ROBERTSON: Objection, based upon
7 acupuncture opinions to the extent it goes back to
8 the (indiscernible).

9 ATTY. MOORE LEONHARDT: I join, Your Honor.

10 ATTY. MEADE: It --

11 THE COURT: Overruled. Can you answer the
12 question?

13 A Well, therein lies the problem because when you have
14 a gradual failure, it gets a little worse every time. When
15 is it bad, how bad is bad? So the first day you move it,
16 it's fine, you buy it, it comes out of the box. A couple
17 months later you move it, it dropped down a half inch, do
18 you notice it, maybe not. Week later you notice it drops
19 down three quarters of an inch so it's gradual.

20 There's no threshold where one day it suddenly drops
21 down five inches, it starts slowly. So it can be deceptive
22 and maybe not observable unless you're measuring with a tape
23 measure, for example, or hanging weights on it and watching
24 to see if it moves.

25 Q Or if you're conducting daily inspections of the
26 unit, would that be something that --

27 A Well, I --

1 ATTY. ROBERTSON: I object again, same basis.
2 The acupuncture (indiscernible).

3 ATTY. MOORE LEONHARDT: Join, Your Honor.

4 **BY ATTY. MEADE:**

5 Q Would that be something that would reveal the wearing
6 of the arm?

7 A It would depend on how thorough your inspection is.
8 You would have to inspect, not just look at the device, see
9 if anything's loose. You'd have to move it a certain
10 amount, measure how much you moved it and see how much it
11 moves, if it moves. It would be a pretty complicated
12 inspection.

13 Q Now you had talked about the design of the hinges of
14 the lamp, of the joint --

15 A Uh-huh.

16 Q -- of the joint of the lamp and the fact that the
17 springs are what hold the lamp head up and keep it in place.
18 And --

19 A They hold it up, they don't necessarily keep it in
20 place. They will keep it in one place. As I think I
21 mentioned that the springs will keep it in one place.

22 Q You talked about the friction also --

23 A Yes.

24 Q -- keeping it up?

25 A That's the second part of it.

26 Q It's the friction at various aspects of the design,
27 correct?

1 Q First of all, 'spontaneous' means different things to
2 an engineer than a regular person possibly, is that right?

3 A Yeah, I would say.

4 Q All right. So you talked about this lamp and there
5 needs to be some force applied to it before it starts to
6 fall in your experience with it, right?

7 A Yes.

8 Q Okay. So if we put this thing in a box, a vacuum,
9 the idea that's calling to you as an engineer that's not
10 going to happen, right?

11 A As long as the box doesn't move.

12 Q And then we talk about it in a regular room in
13 Stamford. We don't know precisely what, if any, inciting
14 force was applied to it on the day of the incident, right? A

15 A Right.

16 Q It could have been - it could have been the table
17 jiggling the side of the lamp was one of your scenarios,
18 correct?

19 ATTY. MEADE: Objection -

20 ATTY. MOORE-LEONHARDT: Objection -

21 ATTY. MEADE: -- it calls for speculation -

22 ATTY. MCELLIGOTT: Your Honor, he was just
23 questioned extensively about all the different
24 scenarios he's (cough obliterates) and that was one
25 of them.

26 ATTY. MOORE-LEONHARDT: Your Honor, there's a
27 difference between scenarios he considered and what

1 his opinion and this opinion calls for speculation.

2 ATTY. MCELLIGOTT: All I'm saying is that was
3 one of the scenarios that he considered.

4 ATTY. ROBERTSON: It's also a leading question.

5 ATTY. MCELLIGOTT: It's redirect. So there are
6 going to be leading. No? Okay. So is the objection
7 sustained on leading grounds?

8 THE COURT: Objection's sustained on leading
9 grounds.

10 Q Is there any relationship between one of your
11 scenarios of the massage table being close to the lamp base?

12 A Yes. I considered that it was a tight room and so
13 potentially, the massage table, if I understand - I don't
14 know what type of table it was - but if it vibrated or shook
15 when she rotated or moved, even slightly, if it hit into
16 that, it could have joggled the stand and caused that lamp
17 head to drift down.

18 ATTY. MOORE-LEONHARDT: Your Honor, I move to
19 strike. It calls for speculation. It's not based on
20 any fact in evidence. And it's irrelevant. It's -
21 what is possible is not probative --

22 THE COURT: Overruled -

23 ATTY. MOORE-LEONHARDT: -- and therefore not
24 relevant.

25 THE COURT: Overruled. Ask your next -
26 overruled.

27 ATTY. ROBERTSON: I join - move to strike.

1 THE COURT: Overruled.

2 Q And the truth is - and I tried to do this in direct.
3 We don't know precisely what, if any, force was applied to
4 it while Dr. Wang was out of the room, right?

5 A Right.

6 Q That's just - nobody knows that, right?

7 A Right.

8 Q But we do know is that that movement of the lamp head
9 down was inadvertent, correct?

10 ATTY. MOORE-LEONHARDT: Objection, Your Honor -
11 leading.

12 A Yes.

13 ATTY. ROBERTSON: Calls for speculation.

14 THE COURT: Sustained on the leading.

15 Q Do we know whether the lowering of the lamp head was
16 inadvertent or deliberate?

17 ATTY. ROBERTSON: Calls for speculation.

18 A Don't know for a hundred percent certain.

19 THE COURT: He's saying whether we know.

20 ATTY. ROBERTSON: (indiscernible). Thank you.

21 Q Is there any evidence you found that somebody
22 deliberately lowered the head on Ms. Kissel's foot?

23 A I found no evidence of that.

24 Q So the absence of deliberate evidence, does that
25 suggest to you that the movement was inadvertent?

26 A Yes.

27 ATTY. MOORE-LEONHARDT: Objection. Calls for

1 speculation.

2 ATTY. MCELLIGOTT: I don't think it's even in
3 dispute --

4 ATTY. MOORE-LEONHARDT: And leading.

5 ATTY. MCELLIGOTT: -- that it's inadvertent,
6 Your Honor.

7 THE COURT: All right. The objection is that
8 it's leading so the objection is sustained. Ask a
9 different --

10 Q How would -- thank you, Your Honor -- how would you
11 describe the movement of the lamp down onto Ms. Kissel's
12 foot in a word?

13 ATTY. MEADE: Objection -- calls for
14 speculation.

15 ATTY. MOORE-LEONHARDT: I join.

16 ATTY. MEADE: The witness has already testified
17 that he doesn't know.

18 ATTY. MOORE-LEONHARDT: Knowing.

19 ATTY. MCELLIGOTT: I'm not saying how it
20 happened. I'm saying was it a volitional act of a
21 (indiscernible)?

22 ATTY. MOORE-LEONHARDT: It asks the same for him
23 to speculate, Your Honor.

24 THE COURT: Objection sustained.

25 Q Your design changes said you propose for this lamp --
26 they are designed to prevent inadvertent movement of the
27 lamp head down onto someone's foot, right?

1 A Yes.

2 Q And so regardless of --

3 A Well, one of them is to prevent inadvertent movement.

4 The other would prevent a problem if it did move.

5 Q So, so long as however it happened, it was
6 inadvertent, your design changes would have prevented the
7 harm, right?

8 A In my opinion, yes.

9 Q You testified that in your own personal life, you
10 struggled with a device that had a similar design. What
11 type of device was that?

12 A It was a desk lamp, engineering lamp I used.

13 Q And why do you say 'struggled with it?'

14 A Well, it was -- it moved into a position -- it would
15 never stay in the right position. So the springs just
16 didn't have enough force to put it in all the positions that
17 were -- that I required of it. So at times, I'd want to
18 move it to a certain spot and it would come back -- I just
19 gave up and said okay, I'll live with it. It's good enough.

20 Q Was it dangerous when you used (indiscernible)?

21 ATTY. MOORE-LEONHARDT: Objection, Your Honor --
22 irrelevant.

23 ATTY. ROBERTSON: Relevance

24 THE COURT: Sustained.

25 Q Locking mechanism and guards, is that some type of
26 new cutting-edge technology to engineers?

27 A No.

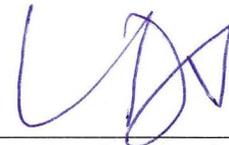
NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 1, 2017
ET AL

C E R T I F I C A T I O N

Page 1 - 70

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on December 1, 2017.

Dated December 4, 2017 in Stamford, Connecticut.



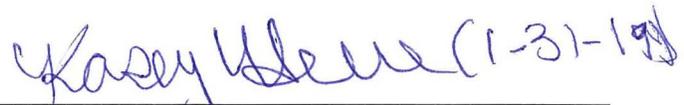
Lynda Scott
Court Recording Monitor

NO: FST-CV126013562S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 1, 2017
Et Al

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on December 1, 2017.

Dated December 4, 2017 in Stamford, Connecticut.



Kasey Hirschbeck
Court Recording Monitor

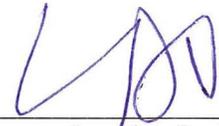
NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 1, 2017
ET AL

C E R T I F I C A T I O N

Page 127 - 194

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on December 1, 2017.

Dated December 3, 2017 in Stamford, Connecticut.



Lynda Scott
Court Recording Monitor

NO: FST-CV12-601-3562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH ET AL : DECEMBER 1, 2017

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C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and accurate electronic copy of a true and correct transcription, done to the best of my ability, of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 1st day of December, 2017.

Dated this 4th day of December, 2017 at Stamford, Connecticut.

Paul J. McKenna
Court Recording Monitor

Paul J. McKenna
2-1-15

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. ET AL : DECEMBER 5, 2017

BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE
AND JURY PANEL

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

Representing the Plaintiff:

ATTY. SEAN MCELLIGOTT
ATTY. MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant Center for Women's Health P.C.:

ATTY. DAVID ROBERTSON
ATTY. KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street, Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant Health Body World Supply Inc.,
AKA The WABBO Company:

ATTY. PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By: Pipina Plakopitas
Transcribed By:
Carrie Provenzale
Lisa Franchina
Lynda Scott
Pipina Plakopitas
Court Recording Monitors
123 Hoyt Street
Stamford, Connecticut 06905

1 **S A M I K U A N G N G,**

2 having been duly sworn, was examined and testified as
3 follows:

4 **CROSS-EXAMINATION BY ATTY. MEADE (CONTINUED) :**

5 Q Ms. Ng, when we left off your testimony the last
6 time, I was asking you some questions about what has been
7 marked as Exhibit No. 615, which I would like to show you at
8 this time.

9 ATTY. MEADE: It has been marked for
10 identification, Your Honor. It's not a full exhibit.

11 BY ATTY. MEADE:

12 Q Now, Exhibit 615 is a screen shot that you obtained
13 from your record system at HBW, is that correct?

14 A Yes.

15 Q And you obtained that screen shot at sometime within
16 the last few weeks, is that correct?

17 A Yes.

18 Q And it shows information available on your system
19 regarding access to the system as to invoice No. 10664, is
20 that correct?

21 A Yes.

22 Q And invoice No. 10664 is the invoice for the order by
23 Dr. Wang of the two CQ-36 heat lamps in 2008, is that
24 correct? And I have showed you Exhibit 16.

25 A Yes.

26 Q All right.

27 THE COURT: Before you go any further, is the

1 Q And was CQG-222 the Gou Gong reference number for
2 their CQ-36 type lamps?

3 A Yes.

4 Q And those lamps were manufactured in the Gou Gong
5 factory in China?

6 A Yes.

7 Q And did the general design of the lamps that they
8 sent to you change between 2005 and 2010?

9 A Yes.

10 ATTY. MCELLIGOTT: I just want to interpose an
11 objection here. I am not sure -- so we're talking
12 about design iteration from 2005 to 2010. And I am
13 not sure there is a foundation for this witness to
14 testify as to any changes that might have occurred
15 during that time, especially in one question.

16 ATTY. MEADE: I am not claiming this witness has
17 technical knowledge of mechanical changes. I'm
18 asking the question with regard to the general design
19 of the product.

20 ATTY. MCELLIGOTT: Well, I think -- I am not
21 sure how you can separate those two things. But we
22 know there were changes and I am just -- I don't want
23 this to be used as evidence that the lamp was the
24 same during --

25 THE COURT: All right.

26 ATTY. MCELLIGOTT: -- those years.

27 THE COURT: Could you play back the question,

1 injury from any TDP lamp?

2 A No.

3 Q When you started selling TDP lamps in the early
4 2000's, were the other companies that we referred to before
5 also selling TDP lamps?

6 A Yes.

7 Q And those lamps, they were selling those in the early
8 2000's, is that fair to say, in the United States?

9 A Should be earlier than early 2000.

10 Q All right. There were other companies selling TDP
11 lamps in the United States before your company did?

12 A Yes, yes.

13 Q And did those lamps have the same basic overall
14 design, width, and articulated arm, and a wheeled base?

15 A Yes.

16 Q And aside from the injury to Ms. Kissel, did you know
17 of any reported serious burn injuries from any TDP lamp
18 before April of 2010?

19 A No.

20 Q And was ChangLe -- the ChangLe Company, was that the
21 only supplier that you had for TDP lamps in 2008?

22 A Yes, because ChangLe, the company of ChangLe is
23 inventor.

24 Q All right. And you sold lamps for ChangLe from the
25 earlier eighties until 2015 -- early -- sorry. Let me
26 withdraw that question.

27 You sold lamps from ChangLe from the early 2000's

1 THE WITNESS: Cori Estrow.

2 THE COURT: Spell your last name?

3 THE WITNESS: Cori Estrow, C-o-r-i E-s-t-r-o-w.

4 THE COURT: And you are still under oath.

5 Counsel, next question. This is a resumption of
6 direct examination.

7 ATTY. BLUMENTHAL: Thank you, Your Honor.

8 C O R I E S T R O W,

9 (having been duly sworn in, testified to the following):

10 RESUMPTION OF DIRECT EXAMINATION BY ATTY. BLUMENTHAL:

11 Q Welcome back, Cori.

12 A Thank you.

13 Q Before we ran out of time last week, you testified to
14 some of your background, some of your relationship with Judy
15 and her role Country Willow Furniture Store and I want to
16 review some of that briefly.

17 So could you remind the jury how long you've been
18 Judy's friend and employer?

19 A Nineteen years.

20 Q And can you describe for the jury again Judy's role
21 at Country Willow?

22 A Yes, Judy is a frontend administrator alongside with
23 me. She is responsible for many important tasks throughout
24 the day. She is responsible for all of our end of day sales
25 paperwork which is huge. She is responsible for all of our
26 financing and furniture protection policies, art catalogs,
27 our price lists, many other in between smaller

1 ATTY. MOORE LEONHARDT: I am just joining the
2 objection.

3 THE COURT: If it's being rephrased, there is no
4 need to join in the objection. The question is
5 withdrawn when he says he is rephrasing it. Ask your
6 question.

7 Q Sorry, Cori. From your observation of Judy during
8 the period following her injury, how did the possibility
9 that she might still need to have her toe amputated affect
10 her activities?

11 ATTY. MEADE: Sam objection.

12 ATTY. ROBERTSON: Objection; hearsay.

13 THE COURT: To the extent that it is limited to
14 what she observed, it's overruled.

15 THE WITNESS: Can I answer?

16 THE COURT: Yes, you can answer based on
17 observations.

18 A Based on my observation, she was very depressed, very
19 concerned.

20 ATTY. MOORE LEONHARDT: Objection, Your Honor.

21 THE COURT: We are talking about --

22 Q I would like you to talk about --

23 THE COURT: The answer is stricken. Ask a
24 question more narrowly, please.

25 Q Just tell us about how this possibility affected what
26 she was able to do from your observations?

27 A From my observation, if she was to lose her toe,

1 chances are good, her foot is literally a bum foot.

2 ATTY. MOORE LEONHARDT: Objection, Your Honor.

3 A She may not have been able to remain at work.

4 THE COURT: The question is what you observed in
5 her conduct based on her foot being injured and/or
6 the possibility of amputation. What you observed in
7 her conduct.

8 ATTY. MOORE LEONHARDT: May we have that answer
9 stricken?

10 ATTY. BLUMENTHAL: Maybe I can --

11 THE WITNESS: I don't know what --

12 ATTY. BLUMENTHAL: -- narrow that down.

13 THE COURT: The previous answer is stricken.

14 THE WITNESS: I am sorry. I am not clear what
15 you mean by the word conduct.

16 THE COURT: The previous answer is stricken.

17 Q So did you observe Judy being more careful as a
18 result of this possibility?

19 ATTY. ROBERTSON: Objection; leading.

20 A Yes.

21 THE COURT: Overruled.

22 Can you answer the question?

23 A Yes.

24 Q So tell us how?

25 A Yes, she had to have a big boot on. She had to
26 walk very slow and carefully. Everything was, you know,
27 navigated differently. She was trying very hard to do

1 everything the doctor told her she could to protect herself.
2 It affected all her behavior.

3 ATTY. BLUMENTHAL: And could we publish this
4 is also from medical Exhibit 6, Bates number 0657,
5 please. If we could zoom in on the second paragraph
6 (indiscernible).

7 Q Can you read that, Cori, from here?

8 A Uh-huh.

9 Q So tell us about how -- what this note tells you
10 about how Judy was being affected by her injury?

11 ATTY. ROBERTSON: I am going to object, Your
12 Honor. She can't testify about a note and what a
13 note tells her.

14 THE COURT: Could you just ask a question about
15 what she observed in a particular respect?

16 ATTY. BLUMENTHAL: Sure.

17 THE COURT: If it happens to coincide with what
18 is in the note so be it, but ask a question that is
19 not referencing the note.

20 Q So the note references frustration about being able
21 to work, sustain her life and feeling that she is not
22 supported by friends and family.

23 ATTY. MOORE LEONHARDT: Objection, Your Honor.

24 ATTY. MEADE: Objection, Your Honor.

25 You just instructed him to ask a question that
26 doesn't reference the note and he referenced the
27 note.

NO: FST-CV-12 6013562 S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : DECEMBER 5, 2017
P.C., ET AL

C E R T I F I C A T I O N -- Page 1 - 48

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 5th day of December, 2017.

Dated this 23rd day of January, 2019 in Stamford, Connecticut.



Carrie Provenzale
Court Recording Monitor

NO: FST-CV12-6013562S

JUDITH KISSEL

: JUDICIAL DISTRICT
OF STAMFORD/NORWALK

V.

: AT STAMFORD, CONNECTICUT

CENTER FOR WOMEN'S HEALTH
P.C., ET AL

: DECEMBER 5, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and accurate transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 5th day of December, 2017.

Dated this 22nd day of January, 2019, in Stamford, Connecticut.



Lisa Franchina
Court Recording Monitor

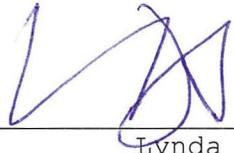
NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 5, 2017
ET AL

C E R T I F I C A T I O N

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I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on December 5, 2017.

Dated December 5, 2017 in Stamford, Connecticut.



Lynda Scott
Court Recording Monitor

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, : December 5, 2017
P.C., ET AL

C E R T I F I C A T I O N - Pages 131-177

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Dated this 6th day of December, 2017 in Stamford, Connecticut.


Pipina Plakopitas
Court Recording Monitor

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 6, 2017
ET AL

**BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE
AND JURY PANEL**

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

Representing the Plaintiff:

ATTY. SEAN MCELLIGOTT
ATTY. MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant, Center for Women's Health P.C.:

ATTY. DAVID ROBERTSON
ATTY. KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street, Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant, Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant, Health Body World Supply Inc.,
AKA The WABBO Company:

ATTY. PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By: Carrie Provenzale
Transcribed By:
Lynda Scott
Carrie Provenzale
Amanda Staron
Colleen Birney
Court Recording Monitors
123 Hoyt Street
Stamford, Connecticut 06905

1 **S A M I K U A N G N G ,**

2 Having been previously sworn, did testify as follows:

3 THE COURT: I'm going to ask you again, for the
4 benefit of the monitor, state your name and address,
5 spell your name.

6 MS. NG: My name is --

7 THE COURT: Into the microphone, please.

8 MS. NG (English): My name is Sami Kuang Ng.
9 Spelled is S-a-m-i, K-u-a-n-g N-g. My address is
10 1236 Perimetnum Court, Hemet, California, 92543.

11 THE COURT: All right. And I'm going to remind
12 you again, just so we're all clear. A couple of
13 times yesterday, you were answering in English, but
14 because Chinese is your primary language, we want to
15 make sure you understand the questions, we want to
16 make sure you can articulate the answers as best you
17 can, so please wait for the interpreter to translate
18 the questions and please speak in Chinese to the
19 interpreter so she can interpret for you. Okay.

20 MS. NG (English): Yes, Your Honor.

21 THE COURT: All right. I have lost track, I
22 guess I could check my notes as to who's asking
23 questions when we interrupted her testimony
24 yesterday.

25 ATTY. MOORE LEONHARDT: I was, Your Honor.

26 THE COURT: That's why you got up?

27 ATTY. MOORE LEONHARDT: Yes, that's why I stood

1 address this --

2 THE COURT: No. No. I --

3 ATTY. MEADE: -- I did it out of the presence of
4 the jury.

5 THE COURT: I -- I appreciate that. I just -- I
6 -- again, I wasn't sure as to what -- you know, what
7 the appropriate timing was. This was the appropriate
8 timing.

9 **(JURY ENTERS)**

10 THE COURT: All right. Be seated, everyone.
11 Counsel stipulate that all the jurors and
12 alternates are present?

13 ALL COUNSEL: Yes, Your Honor.

14 THE COURT: All right. Mr. Meade?

15 ATTY. MEADE: I have no further questions of
16 this Ms. Woo at this time.

17 THE COURT: All right.

18 ATTY. MCELLIGOTT: Actually just -- I have two
19 questions, Your Honor.

20 THE COURT: All right.

21 ATTY. MCELLIGOTT: Very briefly.

22 **RE-DIRECT EXAMINATION BY ATTY. MCELLIGOTT:**

23 Q Ms. Woo, you were asked by Attorney Moore Leonhardt
24 why you expected Dr. Wang to have noticed the lamp's
25 propensity to lower while he owned it; do you recall that
26 question?

27 A Yes.

1 Q And you answered that he had used the device for two
2 years; correct?

3 A Yes.

4 Q And what you meant by that is that you would expect
5 an acupuncturist using Plaintiff's Exhibit 1 for two years
6 to notice its propensity to lower; correct?

7 ATTY. ROBERTSON: I am going to object to
8 characterizing the witness' testimony. She testified
9 to what she testified. Facts are facts. The
10 testimony is what it is.

11 THE COURT: He -- he's asking her to explain
12 what she meant by that. All right. I'll allow it.

13 ATTY. ROBERTSON: Okay.

14 THE COURT: For that -- for -- assuming that
15 that's the purpose; correct?

16 ATTY. MCELLIGOTT: Yes, Your Honor. Can I ask
17 it again so that the record's clear?

18 THE COURT: Sure.

19 Q And what you meant by that is that you would expect
20 an acupuncturist using Plaintiff's Exhibit 1 for two years
21 to notice its propensity to lower; correct?

22 A Yes.

23 ATTY. MCELLIGOTT: Thank you, Your Honor. No
24 further questions.

25 ATTY. MOORE LEONHARDT: I do, Your Honor.

26 THE COURT: All right.

27 **CROSS-EXAMINATION BY ATTY. MOORE LEONHARDT:**

1 **S I M O N E W A N M O R A N ,**

2 Of 163 Edge Hill Road, Fairfield, Connecticut, called
3 as a witness by the Defendant, having been first duly
4 sworn, was examined and testified under oath as follows:

5 THE CLERK: Thank you. Please, state your name
6 and address for the record.

7 THE WITNESS: Simone Wan Moran, 163 Edge Hill
8 Road, Fairfield, Connecticut, 06824.

9 THE CLERK: Thank you.

10 THE COURT: Okay. Could you spell your last
11 name, please, for the record?

12 THE WITNESS: M-O-R-A-N.

13 THE COURT: All right. Thank you. Be seated.

14 THE COURT MONITOR: And you had a middle --
15 Simone?

16 THE WITNESS: Wan, W-A-N.

17 THE COURT: All right. Be seated.

18 THE COURT MONITOR: And you just spell Simone?

19 THE WITNESS: S-I-M-O-N-E.

20 ATTY. ROBERTSON: I think the interpreter just
21 asked if she could leave and I -- I said --

22 THE COURT: Yeah. Does anybody anticipate any
23 further need of the interpreter?

24 Thank you for asking before you leave,
25 appreciate that.

26 Anybody anticipating further need?

27 ALL COUNSEL: No, Your Honor.

1 Q Yeah, all right. So, I'm showing you what's been
2 marked as Plaintiff's Exhibit 1, and --

3 THE COURT MONITOR: I'm sorry. Can you move
4 that microphone?

5 ATTY. MCELLIGOTT: No. I'll -- I can move.
6 I'll move.

7 THE COURT MONITOR: Thank you.

8 Q I'm showing you what's been marked as Plaintiff's
9 Exhibit 1. Have you seen this style of lamp before in your
10 practice?

11 A Yes.

12 Q Okay. And this style of lamp can have a wide range
13 of model descriptions. I'll just tell you that.

14 ATTY. ROBERTSON: Just going to object to
15 leading.

16 Q All right. Well, when I refer to a TD -- I'm sorry.
17 When I refer to a CQ-36 style lamp, I'm referring to the
18 style of lamp that's Plaintiff's Exhibit 1, okay?

19 A Okay.

20 Q All right. And you have some experience with CQ-36
21 style lamps; is that right?

22 A Yes.

23 Q You owned one for approximately one to two years in
24 your practice; correct?

25 A Correct.

26 Q And I think as we go along today it's going to be
27 clear that your lamp was a slightly different design than

1 Plaintiff's Exhibit 1. And let me start by asking you, the
2 lamp that you used -- and you owned in or around 2010; is
3 that right?

4 A Well, before then. It was around 2006.

5 Q Okay. The lamp that you used had a safety screen
6 covering the -- this area; correct?

7 A Yes.

8 Q All right.

9 THE COURT: Okay. You got to keep your voice
10 up.

11 THE WITNESS: Yes. Sorry.

12 Q And also, the lamp that you used was capable of being
13 locked down by tightening the screws on the lamp; right?

14 A Yes.

15 ATTY. ROBERTSON: Just going to object to
16 leading.

17 Q Was --

18 THE COURT: All right. Objection sustained.

19 Ask her --

20 ATTY. MCELLIGOTT: I'll rephrase.

21 Q When you used the CQ-36 style lamp that you owed,
22 were you able to lock the lamp down by tightening the
23 screws?

24 A You were able to tighten it down by screwing -- by
25 tightening the screws.

26 Q Okay. So, you haven't been here for the trial, so I
27 want you to assume that we've had evidence from a mechanical

1 engineer that tightening the bolts and screws on this device
2 does not have the effect of locking it down.

3 A Okay.

4 ATTY. ROBERTSON: Your Honor, I'm just going to
5 object to sort of these preambles and questions. If
6 we're asking a hypothetical, then we can deal with a
7 hypothetical. But this is sort of making a statement
8 about the evidence.

9 THE COURT: All right.

10 ATTY. MCELLIGOTT: Well --

11 THE COURT: Ask a question, please, without --
12 unless the preamble is absolutely essential to the
13 question.

14 ATTY. MCELLIGOTT: Well, her understanding of
15 the difference is essential to the line of questions
16 about her use of her other lamp, but I'll -- I'll ask
17 the -- I'll ask the question.

18 Q And at some point, after you owned the CQ-36 lamp for
19 some period of time what did you do with it?

20 A After a certain amount of -- a certain amount of
21 time, I noticed that even tightening the screws --

22 ATTY. MOORE LEONHARDT: Objection, Your Honor;
23 nonresponsive. He asked what did she do with it and
24 now she's --

25 THE COURT: I think the -- all right.

26 ATTY. MOORE LEONHARDT: -- talking about what
27 she observed.

1 THE COURT: All right. I think it's -- okay.
2 I'm going to allow it because I think I understand
3 that it's the preamble to the ultimate disposition.

4 All right. I'm -- ask your -- you can answer
5 it.

6 THE WITNESS: Okay. So, after a while I noticed
7 that it wasn't locking as well and so I just -- I
8 threw it away.

9 Q And you replaced it with a different design?

10 A Correct.

11 Q And that is the current design that you use in your
12 practice?

13 ATTY. MEADE: Objection, Your Honor.

14 ATTY. ROBERTSON: Objection; relevance.

15 ATTY. MEADE: Relevance.

16 ATTY. MOORE LEONHARDT: I join.

17 THE COURT: All right. This is an appropriate
18 time. We'll take a break. It's mid-afternoon
19 breaktime. I'm going to ask the jury to come --
20 expect to come back at about ten of or five of.

21 And, counsel, we'll try to be back at about
22 quarter of, so we can address the objections that we
23 are going to be dealing with.

24 All right. So, please, don't speculation on
25 what the question is that's -- or where we're going
26 on this issue. Just relax for the next fifteen
27 minutes. We'll see you back in about 20 -- well, for

1 patient, does the standard of care require you to assess the
2 lamp to be sure it's not going to fall?

3 A Yes.

4 Q Okay. Now, the lamp design that you -- once you do
5 that, you have some information from your assessment. Is
6 that fair?

7 A Yes.

8 Q And the information you have from your assessment is
9 either it's stable; that's one possibly, right?

10 A Um-hm.

11 Q Yes?

12 A Yes.

13 Q Or it's possible that after that assessment, you
14 determine that it's unstable; correct?

15 A Correct.

16 Q Now the lamp that you had, the CQ-36 style lamp that
17 you had, if you found it was unstable, you could tighten
18 screws to increase the stability; correct?

19 A Correct.

20 Q Okay. I want you to assume that that's not true for
21 Plaintiff's Exhibit 1.

22 A Okay.

23 Q You can't tighten the screws down and make the lamp
24 any more stable. Okay? So now if as a result of your
25 assessment and inspection before use on a patient, an
26 acupuncturist determines that the lamp is unstable, what
27 does the standard of care require the acupuncturist to do?

1 A Not use it.

2 Q Okay. And I want to show you what Dr. Wang testified
3 to be his daily assessment of the device. First of all, is
4 it your understanding that Dr. Wang adjusted the device once
5 at the beginning of each day and then used it on the
6 patients for that day without further adjusting it?

7 A Yes.

8 Q Okay. So at the beginning of the day, he testified
9 that he would check the tension on the device by moving the
10 heads up and down. Is that a good practice for an
11 acupuncturist to do?

12 A Sure.

13 Q Okay. And that's one of the things that you would do
14 when you were doing your assessment when you owned this
15 style of lamp?

16 A Yes.

17 Q And he gently shook it to see if that had any effect
18 on the heads of the lamp. Is that a reasonable thing for an
19 acupuncturist to do?

20 A Yes, because you can usually see if you move the
21 lamp, the heads would fall a little bit.

22 Q Okay.

23 A If the -- for mine, if the screws were loose, were --

24 Q Okay. And he checked looseness of the screws and he
25 tightened the screws, he checked the lamp head screws and he
26 checked the base connection. Is that are reasonable thing
27 for an acupuncturist to do?

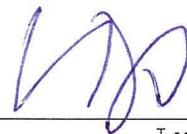
NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 6, 2017
ET AL

C E R T I F I C A T I O N

Page 1 - 55

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on December 6, 2017.

Dated December 6, 2017 in Stamford, Connecticut.



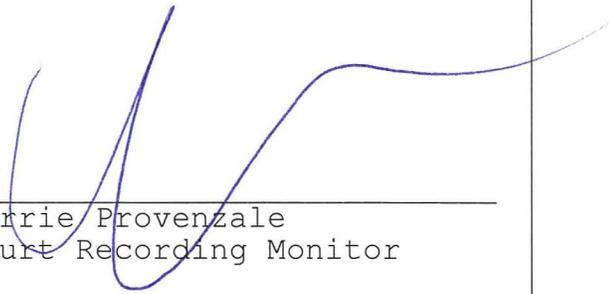
Lynda Scott
Court Recording Monitor

NO: FST-CV-12 6013562 S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
 : STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : DECEMBER 6, 2017
P.C., ET AL

C E R T I F I C A T I O N -- Pages 56 - 86

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 6th day of December, 2017.

Dated this 23rd day of January, 2019 in Stamford, Connecticut.



Carrie Provenzale
Court Recording Monitor

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : DECEMBER 6, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages 87-138 are a true and correct transcription to the best of my ability of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 6th day of December, 2017.

Dated this 6th day of December, 2017 in Bridgeport, Connecticut.

Amanda Staron
Court Recording Monitor

Amanda Staron OLR
2-1-19

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 6, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages 139 through 184 are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 6th day of December, 2017.

Dated this 7th day of December, 2017, in Bridgeport, Connecticut.

Colleen Birney
Court Recording Monitor

Colleen Birney
2-1-19

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 7, 2017
ET AL

BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE
AND JURY PANEL

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

Representing the Plaintiff:

ATTORNEY SEAN MCELLIGOTT
ATTORNEY MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant, Center for Women's Health P.C.:

ATTORNEY DAVID ROBERTSON
ATTORNEY KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street, Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant, Dr. Reed Wang:

ATTORNEY MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant, Health Body World Supply Inc.,
AKA The WABBO Company:

ATTORNEY PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By: Lynda Scott
Transcribed By:
Carrie Provenzale
Lynda Scott
Colleen Birney
Amanda Staron
Paul McKenna
Court Recording Monitors
123 Hoyt Street
Stamford, Connecticut 06905

1 G L E N N V A L L E E ,

2 having been duly sworn, was examined and testified as
3 follows:

4 **DIRECT EXAMINATION BY ATTY. MEADE:**

5 Q Good morning, Professor Vallee.

6 A Good morning.

7 Q Could you please tell us what your occupation is?

8 A I am an associate professor of mechanical engineering
9 at Western New England University in Springfield,
10 Massachusetts.

11 Q And are you a full-time professor?

12 A Yes, I am.

13 Q And do you teach at both at the graduate and
14 undergraduate levels?

15 A Yes, I do.

16 Q And how long have you been at Western New England?

17 A I started teaching in 2002.

18 Q And --

19 A So 15 years.

20 Q And you teach mechanical engineering?

21 A That's correct.

22 Q And can you tell us a little bit about what the study
23 and science of mechanical engineering involves?

24 A It's basically the science of machines and
25 mechanisms. It includes everything from gears and linkages
26 to thermal problems, air conditioning, heat transfer. It's
27 a very broad field, mechanical engineering.

1 BY ATTY. MEADE:

2 Q Do you have an opinion as a mechanical engineer, an
3 expert in mechanical engineering as to whether if the lamp
4 were in that condition of instability, whether that is
5 something that could occur suddenly or would develop over
6 time?

7 A I -- could you repeat that one more time, please.

8 Q I was afraid you were going to say that. Do you have
9 an opinion as an expert in the field of mechanical
10 engineering whether such a condition of instability, that is
11 movement either spontaneously with the application of little
12 or no outside force, do you have an opinion as to whether
13 that is something, that condition is something that could
14 develop suddenly or immediately or whether it is something
15 that occurs gradually over time?

16 A I do.

17 Q And what is that opinion?

18 A That -- no. That doesn't -- a situation like that, a
19 condition like that in a lamp would not just suddenly occur.
20 If it were to occur, it would have to be over a large
21 number of cycles over a long period of time.

22 Q And if you had a user who was using the lamp on a
23 weekly basis, would that be something that you would expect
24 from an engineering perspective that person to be capable of
25 noticing?

26 A Oh, yeah. If you were manipulating the lamp day
27 after day after day and all of a sudden it started dropping

1 under its own weight, then you would notice that.

2 Q And do you have an opinion with reasonable degree of
3 certainty in the field of mechanical engineering as to
4 whether the subject lamp was in an unreasonably dangerous
5 condition on April 22nd, 2010?

6 A I do.

7 Q And what is that opinion?

8 A It was not in an unreasonably dangerous condition.

9 Q And do you have an opinion as to whether the lamp was
10 in an unreasonably dangerous condition as of the time that
11 it was sold on -- in March of 2008?

12 A I do.

13 Q And what is that opinion?

14 A If it was in a safe condition and not unreasonably
15 dangerous when I looked it, it certainly had to have been at
16 the time it was purchased.

17 Q And did you have another opportunity to examine the
18 lamp in June of 2017?

19 A I did.

20 Q And that was two years after your previous exam?

21 A That's right.

22 Q And at that time, did you conduct an examination
23 similar to the one that you had done previously?

24 A I did.

25 Q All right. And did you notice any alteration of the
26 mechanical condition of the arm of the lamp?

27 A I did.

1 J U D I T H K I S S E L ,

2 Was hereby sworn and did testify under oath as follows:

3 THE CLERK: Thank you. Please state your name
4 and address for the record.

5 MS. KISSEL: My name is Judith M. --

6 THE MONITOR: Ms. Kissel, can you please sit
7 down --

8 MS. KISSEL: Yeah, absolutely.

9 THE MONITOR: There you go.

10 MS. KISSEL: My name is Judith M. Kissel. I
11 leave at 94 Grove Street in Mount Kisco, New York.

12 THE COURT: All right. What I'm going to ask
13 you to do is move just a shade back from the
14 microphone and try to keep your voice up so we can
15 make sure everyone can hear you.

16 MS. KISSEL: Okay.

17 THE COURT: And if you try to make believe
18 you're talking to somebody in the back row that might
19 be the best way to do that.

20 MS. KISSEL: Okay.

21 (Pause)

22 ATTY. MCELLIGOTT: (Indiscernible) for people to
23 arrange themselves, Your Honor.

24 (Pause)

25 ATTY. MCELLIGOTT: Everybody all set?

26 ATTY. MEADE: Yes. Thank you.

27 ATTY. MCELLIGOTT: Good afternoon, Judy.

1 Q Why don't you just buy two pairs of shoes?

2 A I don't have the resources to spend on buying two
3 pairs of shoes for each pair that I need to wear.

4 Q So you just wear one that's bigger?

5 A Correct.

6 Q All right. I want to talk to you a little bit about
7 your experiences at the Center for Women's Health leading up
8 to this incident.

9 A Okay.

10 Q You were a long-time patient at the Center for
11 Women's Health in 2010?

12 A Yes.

13 Q And what types of treatment did you receive there
14 over the years?

15 A I received gynecological care, I received nutritional
16 therapy, and then I received some acupuncture. In 2010.

17 Q Okay. And in 2010, on April 22nd, 2010, why did you
18 go there for acupuncture?

19 A It was suggested to me by Monique and I believe Dr.
20 Evans that --

21 Q Who is Monique? I'm sorry to interrupt you.

22 A Monique Klass (phonetic) is one of the -- I think
23 she's a nurse practitioner, I'm not sure but she's a
24 gynecologist and she would treat me for fibroids. And she
25 suggested, she strongly suggested, that I try acupuncture to
26 take care of the fibroids to see that they can get smaller.

27 Q And to stop smoking?

1 A And to stop smoking.

2 Q And on April 22nd, 2010 you arrived at the Center for
3 Women's Health at approximately six p.m.?

4 A Yes.

5 Q And you were greeted by a receptionist who gave you
6 an intake form?

7 A Yes.

8 Q And what happened next?

9 A I made it through the intake form and then Dr. Wang
10 came out into the reception area and he guided me into an
11 office.

12 Q Okay.

13 A And then --

14 Q Did he introduce himself as Dr. Wang?

15 A Yes.

16 Q And was that the first time you had met him?

17 A Yes, I had never met him before.

18 Q All right. And he led you back to a workstation and
19 then what happened next -- or an office, excuse me.

20 A Yes. He went behind a desk and I sat in front and he
21 reviewed my medical history and he explained how he thought
22 he could be of help to the fibroids and the smoking.

23 Q Okay. And that process lasted for approximately an
24 hour ?

25 A Yes.

26 Q And at some point you were taken to the multi-
27 function room we heard?

1 A Yes. He brought me in to the room and he asked that
2 I get undressed and just keep my bra and my underwear on and
3 gave me a paper sheet which opened from the front all the
4 way down from my neck to my feet.

5 Q Okay. And when you got to the multi-function room,
6 did you notice the size of the room?

7 A It was a small room.

8 A And did you notice the presence of the heat lamp in
9 the room?

10 A Yes, it was at the foot of the table. On the right
11 side.

12 Q Okay.

13 A And it -- yes.

14 Q And Dr. Wang told you to get undressed to your
15 underwear, to put on the paper gown and to lie face up on
16 the massage table?

17 A Correct.

18 Q And then he left the room?

19 A He left the room. He did leave the room although I
20 started having some -- I started smelling burning hair and
21 increasing heat on my foot and I thought he had returned to
22 the room -- not having had acupuncture before -- and so when
23 I smelled the burning hair I got mad and I started telling
24 him off. And then suddenly the pain became excruciating,
25 indescribable really. And then --

26 Q Okay.

27 A It's hard to talk about.

1 Q So I think we skipped a couple of steps, I'm just
2 going to go back. What you're describing is the second --
3 he left the room twice, is that right?

4 A Correct.

5 Q And the second time he left the room you were
6 actually on the table in your underwear with the needles in?

7 A Yes.

8 Q And what you just described was what happened after
9 he left the room the second time?

10 A Correct.

11 Q Okay. I just want to focus on the first time he left
12 the room when he came back you were laying on the table?

13 A Yes. In my bra and my underwear with a sheet that
14 didn't cover me much.

15 Q Okay. And had you taken your glasses off at that
16 point ?

17 A Yes, I took my glasses off and I really can't see
18 much without them.

19 Q Do you know what your prescription is?

20 A No, but it's not good.

21 Q It's a big number?

22 A A big number and -- yes.

23 Q Okay. And was there -- what was the light like in
24 the multi-function room for this type of treatment?

25 A It was dim.

26 Q And was there soft music playing?

27 A I'm not sure.

1 Q Okay. And at some point, Dr. Wang came back into the
2 room and started placing needles into your body?

3 A Yes.

4 Q And did he do that for approximately 15 minutes?

5 A Yes.

6 Q And where did he place the needles?

7 A He placed needles in my pubic area, down my arms and
8 legs, there were a few in my face. And I felt -- I was
9 uncomfortable with where they were.

10 Q Okay. The sensation of -- this was your first time
11 having acupuncture ?

12 A Yeah. I never had acupuncture before, I didn't know
13 what to expect in terms of the experience.

14 Q Okay.

15 A It wasn't explained to me.

16 Q And the sensation of having needles in you, is that a
17 unique -- was that a unique sensation to you?

18 A Yeah, I've never had it before.

19 Q How did you like it?

20 A I didn't like it, I didn't particularly like it. And
21 I don't like that I was not able to move for fear of needles
22 going through my skin. You know, I just -- I didn't like
23 it.

24 Q Okay.

25 A Now I really don't like it.

26 Q When you -- describe that sensation of when you tried
27 to move how it feels with the needles in your skin?

28 A Well, it feels like if you raise your arm -- if I

1 raise my arms a little bit I would feel piercing. And I was
2 afraid that, if I raised any higher, that the needles would
3 go through my skin.

4 Q It's an unpleasant sensation?

5 A It's unpleasant.

6 Q Okay.

7 A I did not like it.

8 Q Some people like it though, right?

9 A I guess.

10 Q Okay.

11 A But not me.

12 Q And you've heard some descriptions of you being sort
13 of calmed when the needles were in, was that your
14 recollection of how you felt?

15 A I didn't feel calm.

16 Q All right. So now -- and then after the needles were
17 in and you remember they were in your pubic area, they were
18 in your face --

19 A Uh-huh. Yes.

20 Q -- do you remember if they were in your feet or not ?

21 A I believe they were in my feet.

22 Q Okay. And we've heard some testimony about that. Do
23 you know if you remember that or you just heard it at the
24 trial?

25 A I'm not sure.

26 Q And then Dr. Wang left the room for a second time,
27 right?

1 A Yes.

2 Q And did he say anything to you about the heat lamp in
3 between the time that he came back in the room the first
4 time and left the second time?

5 A No.

6 Q And when Dr. Wang left the room the second time we
7 know five minutes later, it's been the evidence, that the
8 lamp was in contact with your toe, right?

9 A Yes.

10 Q I want to focus on the timeframe in between the time
11 when he left the room and you felt the -- and your toe was
12 burned, okay?

13 A Uh-huh.

14 Q So when Dr. Wang left the room, what was the first
15 sensation that you remember noticing?

16 A Smell of burning hair.

17 Q Okay. at that point, did you feel a painless but
18 increased heat on your foot?

19 A Yes.

20 Q And did that feeling, the smell of the hair and the
21 feeling of some increased heat, change in character at some
22 point?

23 A Yes, a few seconds after I noticed I felt the heat
24 increasing, it got excruciating. And -- indescribable,
25 awful, shocking.

26 Q And what did you do at that point when it became
27 extremely painful and shocking?

28 A I called out for help.

29 Q Did you attempt to kick -- move your feet?

1 A I did try to move my foot. I found that whatever was
2 burning me, it was impossible to remove my foot, it was like
3 it was lodged in and I could not -- I could not get it out.

4 Q Okay. And we know now it was the lamp, right?

5 A Yes.

6 Q Yes?

7 A Yes, yes.

8 Q But at the time you didn't know if your foot was
9 caught in the lamp?

10 A Correct.

11 Q And when you called out, do you remember how you
12 called out?

13 A Help me. I need help, help me.

14 Q Okay. And was that in a loud voice?

15 A It was -- yeah, I mean I was burning. I had to be
16 loud. I was all alone.

17 Q And did Dr. Wang immediately respond?

18 A No, he didn't respond.

19 Q Did he eventually respond?

20 A He eventually responded but by the time he came in I
21 was -- it was an excruciating pain. And it just seemed like
22 he should have come in sooner.

23 Q All right.

24 A He should have heard me.

25 Q All right. And then once he did come in, what
26 happened next?

27 A Well, he noticed that the lamp was on my foot and he

1 A I don't remember. I believe that it was in a
2 wheelchair. And then I was carried to Dr. Wang's car.

3 Q Okay. And on the way to the hospital, were you able
4 to call anybody?

5 A Yes, Dr. Evans called Acky and I was screaming for
6 her to get her butt to the hospital and hurry up and get
7 there fast because I was in a lot of pain and I was -- yeah.

8 Q And did you ask to have a cigarette?

9 A I did. I wanted a cigarette, I asked for a
10 cigarette. Which seems -- I wanted a cigarette after that.
11 You know, I just --

12 Q Okay.

13 A I really wanted one.

14 Q And the -- Dr. Wang described you as very calm in the
15 car when he was in your care, is that your recollection?

16 A I was not calm, I was crying and I was screaming for
17 Acky and I was nowhere near calm.

18 Q All right. And you were taken to the Stamford
19 Emergency Room, is that right?

20 A Yes.

21 Q And from there, there began a two and a half year
22 long experience of you caring for this injury, is that
23 right?

24 A Yes.

25 THE MONITOR: The last part of the question,
26 sir?

27 Q Two and a half year long experience of you caring for

1 this injury. You had four surgeries?

2 A Yes.

3 Q Multiple skin grafts?

4 A Yes.

5 Q Countless doctors' visits?

6 A Yes.

7 Q Painful wound care?

8 A Yes.

9 Q Wound vacs?

10 A Yes.

11 Q There was some talk of you losing your toe at some
12 point?

13 A Yes.

14 Q There was an exposed bone at some point?

15 A Yes.

16 Q There was infections and medications?

17 A Yes.

18 Q All right. I'm not going to go through all that with
19 you because it's in the records, your medical records, and
20 we don't need to do that. But I do need to go through some
21 of the pictures that you took of your foot.

22 A Okay.

23 Q And you took a lot of pictures of your foot --

24 A Yes.

25 Q -- is that right?

26 A Yes.

27 Q Why did you do that?

28 A I did it because I couldn't believe that going for
29 acupuncture and getting a third-degree burn would happen.

1 ATTY. MCELLIGOTT: This is Plaintiff's Exhibit
2 90. Thank you, Your Honor.

3 Q So, this is almost -- almost a year after the
4 incident?

5 A Yes.

6 Q And is this what your foot looked like almost a year
7 after the incident?

8 A Yes.

9 Q Was it still painful to walk on a year after the
10 incident?

11 A Yeah.

12 Q Are you back to work at this point?

13 A I'm not sure.

14 Q Do you recall during the two-and-a-half-year period
15 of recovery from the injury walking at work and feeling
16 pain?

17 A Yes.

18 Q All right. So, fast-forwarding to 2012, this is
19 Plaintiff's Exhibit 91, 10139. Now we're a little more than
20 two years after the incident, is this what your foot looked
21 like approximately two years -- a little more than two years
22 after the incident?

23 A Yes.

24 Q And then in August of 2012, let's see Plaintiff's
25 Exhibit 92, you stubbed your toe and got an infection, do
26 you remember that?

27 A Yes. I didn't feel it. I didn't realize until I saw

1 the blood.

2 Q Did you not feel yourself stub your toe?

3 A I -- I -- I knew I stubbed my toe, but I -- I didn't
4 know it was bleeding.

5 Q And do you have, as you sit here today, and as your
6 toe was in August -- in August of 2012, do you have normal
7 sensation in your foot?

8 A No.

9 Q What does it feel like on a daily basis?

10 A Every day is different. There's soreness on the tip
11 of the toe. There's soreness at the base of the toe.
12 There's some areas that I have no feeling. My nail is
13 sometimes -- it -- it gets -- it bothers me. And I don't
14 know from one day to the next how it's going to feel.

15 Q So, do you have altered sensation as you sit here
16 today?

17 A Yes.

18 Q Do you have pain some days?

19 A Yes.

20 Q Do you have pain when you walk long distances?

21 A Yeah.

22 Q Is it unpredictable what's going to hurt and what's
23 not when you use your foot?

24 A Yes. I -- yes.

25 Q All right. So, I want to go to medical record --
26 Plaintiff's Exhibit 5, 0524, and just highlight this visit.
27 And this is from when you went in after you stubbed your

1 Q All right.

2 A I -- yeah.

3 Q All right. So, fast-forward to Plaintiff's Exhibit
4 93, this is three years later, and this is how your toe
5 looked in 2015. And has there been any improvement -- well,
6 first of all, is that correct?

7 A Yeah.

8 Q And has there been any improvement in the appearance
9 of your toe since 2015?

10 A No.

11 Q And Plaintiff's Exhibit 94, a more recent picture
12 from a different angle. And this shows -- does your -- do
13 you have scarring going from your toe all the way up the
14 dorsum of your left foot?

15 A Yeah.

16 Q Do you have scarring on your calf from where the
17 graft sites were taken from?

18 A Yes.

19 ATTY. MCELLIGOTT: All right. So, that's enough
20 with the pictures. Thank you.

21 Q So, we talked about your life before this incident,
22 we talked about your job. You still work; right?

23 A Yes.

24 Q Is your job in any way more difficult based on this
25 injury?

26 A Yeah.

27 Q And how is it more difficult?

1 A I'm certainly slower in my gait and my -- my foot is
2 sore, my toe is sore. And so I would need to take my shoe
3 off usually, and it's just hard to get around.

4 Q But you still get around; right?

5 A I get around.

6 Q And you just work through whatever problems you're
7 having; correct?

8 A Yes. I have to work.

9 Q All right. And what about -- you talked about your
10 activities. You like to travel?

11 A Uhm-hum.

12 Q You still travel; right?

13 A Yes.

14 Q And you just brought Acky down to Florida a few
15 months ago; right?

16 A Yeah.

17 Q Are you prevented from enjoying it the same way you
18 did before?

19 A Yeah.

20 Q Why? Explain that to the jury, please.

21 A Acky lives in Naples. And when we went to walk
22 toward the pier, I wasn't sure that I would be able to make
23 it without -- and be able to come back to the car. When I
24 take walks, that's what happens. I -- I am hesitant to --
25 to go too far because I have to be able to come back.

26 Q Okay. When do you think about your injury?

27 A Every day. All the time.

1 Q And we talked about you had to be dragged outside to
2 go for walks; is that right?

3 A Yes. Acky.

4 Q Is it more -- so, it's not like you're the most out
5 -- you were the most outdoorsy person before; right?

6 A Right.

7 Q But you did do it when you got dragged out; is that
8 fair?

9 A Correct.

10 Q And are you still as willing to do that?

11 A No. I'm hesitant because I don't know -- I don't --
12 I -- I don't -- I can't trust how my toe is going to feel,
13 so I'm hesitant to go.

14 Q Okay. And I'm almost done, I just want to ask you
15 about one thing. And that's we heard Dr. Wang's story about
16 how you hugged him at the ER and said it's not your fault.
17 Were you in court for that testimony?

18 A I remember.

19 Q Had you ever heard that story before you heard Dr.
20 Wang tell it on the stand?

21 A I've never heard that story. That did not happen,
22 and I was really surprised that he would say that.

23 ATTY. MCELLIGOTT: Your Honor, I have no further
24 questions for this witness at this time.

25 THE COURT: All right. Well, it's almost 3:30.
26 I know that you've been -- you've been in there most
27 of the time, but most of the people here, other than

1 A When I smelled the burning hair, there was no heat.

2 Q There was no heat. All right. And you hadn't
3 engaged in any major movement?

4 A No.

5 Q And you hadn't moved your foot?

6 A No.

7 Q And you had -- did there -- after you smelled the
8 burning hair, did you, within a period of time after that,
9 begin to feel more heat?

10 A Yes.

11 Q And the heat that you felt, did you know where it was
12 coming from?

13 A No.

14 Q By the way, this treatment was on April 22nd, 2010.
15 Do you remember whether the room was cold or warm?

16 A No.

17 Q You don't have any recollection. Do you remember
18 seeing a heater in the room?

19 A No.

20 Q You don't remember feeling cold while you were in the
21 room, do you?

22 A I don't remember.

23 Q So you began to feel this heat and you thought this
24 was what acupuncture was, is that right?

25 A I didn't know. I've never had acupuncture so I
26 wasn't sure.

27 Q You weren't sure --

1 A Correct.

2 Q And during that time that you were feeling -- you
3 smelled the burning hair and you felt the heat on your left
4 foot, you didn't move your foot, did you?

5 A I'm not sure.

6 Q You didn't engage in any major movement?

7 A I didn't feel heat at that moment.

8 Q After you felt the heat though, did you move your
9 foot?

10 ATTY. MCELLIGOTT: Objection -- asked and
11 answered. She said she's not sure.

12 THE COURT: Okay.

13 ATTY. MOORE LEONHARDT: Okay, I'll move on.

14 THE COURT: All right.

15 Q When was the first time you felt the heat on your
16 left foot?

17 A A few second after I smelled the burning hair.

18 Q And when you felt the heat on your left foot, did you
19 feel any physical contact with anything at that point first
20 moment when you were feeling the heat?

21 A No.

22 Q And after you felt the heat, and had smelled the
23 burning hair, had you heard any sound like a thump?

24 A No.

25 Q Had you heard any sound that would indicate to you
26 that there was some mechanical movement of the lamp?

27 ATTY. MCELLIGOTT: Objection -- foundation.

1 THE COURT: Overruled. If you can answer it.

2 A Can you ask me, please, again?

3 Q Yes. Before you felt the heat -- let me strike that.

4 When you first smelled the burning hair, before you
5 felt the heat, had you ever heard a sound like a thump?

6 A No.

7 Q Had you heard any sound that would indicate to you
8 that there was some mechanical movement of the lamp?

9 A No.

10 Q And it was quiet the whole time you were in the room,
11 is that right?

12 ATTY. MCELLIGOTT: Objection to form.

13 A I'm not sure.

14 ATTY. MCELLIGOTT: Timeframe.

15 ATTY. MOORE LEONHARDT: Okay.

16 THE COURT: The entire time she was in the room.

17 ATTY. MCELLIGOTT: Yeah, I know. She was in the
18 room while she was screaming in pain also, so I need
19 a timeframe on that.

20 THE COURT: All right.

21 PM: Object on the statements, Your Honor.

22 ATTY. MOORE LEONHARDT: Your Honor --

23 THE COURT: All right. Counsel --

24 ATTY. MCELLIGOTT: Your Honor --

25 THE COURT: Counsel, no. The objection is
26 overruled. Can you answer the question?

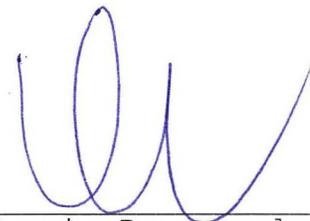
27 Q It was quiet the whole time you were alone in the

NO: FST-CV-12 6013562 S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
 : STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : DECEMBER 7, 2017
P.C., ET AL

C E R T I F I C A T I O N -- Page 1 - 59

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 7th day of December, 2017.

Dated this 23rd day of January, 2019 in Stamford, Connecticut.



Carrie Provenzale
Court Recording Monitor

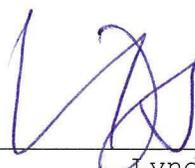
NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 7, 2017
ET AL

C E R T I F I C A T I O N

Page 60 - 121

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on December 7, 2017.

Dated December 8, 2017 in Stamford, Connecticut.



Lynda Scott
Court Recording Monitor

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 7, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages 122 through 138 are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 7th day of December, 2017.

Dated this 8th day of December, 2017, in Bridgeport, Connecticut.

Colleen Birney
Court Recording Monitor

Handwritten signature
OCR
2-1-19

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : DECEMBER 7, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages 139-165 are a true and correct transcription to the best of my ability of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 7th day of December, 2017.

Dated this 7th day of December, 2017 in Bridgeport, Connecticut.

Amanda Staron
Court Recording Monitor

Amanda Staron OCA
2-1-19

NO: FST-CV 12-601-3562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH ET AL : DECEMBER 7, 2017

Pages 166 - 220

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and accurate electronic copy of a true and correct transcription, done to the best of my ability, of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 7th day of December, 2017.

Dated this 9th day of December, 2017 at Stamford, Connecticut.

Paul J. McKenna
Court Recording Monitor

Paul J. McKenna OCR
2-1-19

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. ET : DECEMBER 12, 2017
AL

**BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE
AND JURY PANEL**

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

Representing the Plaintiff:

ATTY. SEAN MCELLIGOTT
ATTY. MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant Center for Women's Health P.C.:

ATTY. DAVID ROBERTSON
ATTY. KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street, Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant Health Body World Supply Inc.,
AKA The WABBO Company:

ATTY. PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By: Pipina Plakopitas
Transcribed By:
Carrie Provenzale
Pipina Plakopitas
Lynda Scott
Paul McKenna
Court Recording Monitors
123 Hoyt Street
Stamford, Connecticut 06905

1 **S I M O N E W A N M O R A N**

2 Having been previously sworn, did testify as follows:

3 MS. MORAN: Simone Wan Moran. 163 --

4 THE MONITOR: Can you spell the last name?

5 MS. MORAN: M-o-r-a-n. 163 Edgehill Road,
6 Fairfield.

7 THE MONITOR: Can you just go near the
8 microphone, I can't hear you.

9 MS. MORAN: Sure. 163 --

10 THE COURT: Okay. You don't have to lean into
11 the microphone. Just -- because that creates
12 distortion.

13 MS. MORAN: Oh, that's right.

14 THE COURT: Just talk into the mic.

15 MS. MORAN: 163 Edgehill Road, Fairfield,
16 Connecticut, 06824.

17 THE COURT: All right. I'm just going to remind
18 you, you're still under oath from last week. All
19 right. Counsel.

20 ATTY. MCELLIGOTT: Thank you, Your Honor.

21 **DIRECT EXAMINATION BY ATTY. MCELLIGOTT:**

22 Q All right. Ms. Wan Moran, before we broke for the
23 day, we were talking about acupuncturists' knowledge with
24 respect to TDP lamps. And first of all, are acupuncturists
25 generally aware that TDP lamps get very hot?

26 A Yes, they are.

27 Q And are acupuncturists generally aware that TDP lamps

1 A Okay.

2 Q And you owned a CQ-36 style lamp at some point in
3 your career?

4 A Yes, I did.

5 Q Okay. And you testified at your deposition about
6 your use of that lamp, correct?

7 A Yes, I did.

8 Q And it sounds like your lamp, if you tighten down the
9 set screws on the lamp it could be locked in place?

10 A Yes, it would prevent it from lowering to a point
11 that -- until it didn't. And then I got rid of it.

12 Q Okay. And I want you to assume that we had testimony
13 from two mechanical engineers in this case that plaintiff's
14 exhibit 1 can't be locked down in that same fashion by
15 tightening the screws, okay?

16 A Okay. Understood.

17 Q So it sounds like your lamp which you agree was of a
18 slightly different design from plaintiff's exhibit 1 --

19 A I mean, it looked exactly the same but if you're
20 telling me that it's different, it's different.

21 Q What I'm asking you the assume is true, that this
22 lamp can't be locked down by tightening the screws that's
23 different than the one you have, right?

24 A I guess so.

25 Q So with respect to your CQ-36 lamp what was your
26 experience with that lamp?

27 A In the beginning it was fine and then I would notice

1 when I would move it I would see the articulating arms start
2 to lower so I would have to tighten the screws to make sure
3 that the tension was good and it wouldn't fall.

4 Q Okay. And when did you do that with respect -- in
5 relationship to each patient treatment?

6 A I would do it before every patient treatment

7 Q Okay. So before every patient treatment, you would
8 tighten the screws and lock the lamp in place?

9 A Yes. I would check the lamp and if I felt like it
10 had the propensity to fall, I would tighten the screws.

11 Q Okay. And that checking, was that something you did
12 before every patient?

13 A Before every patient, before every time I used it.
14 Sometimes if I even moved the lamp I would check it again.

15 Q And I want -- so the first step in terms of your
16 practice when using the CQ-36 lamp was to check the tension
17 in the device, correct?

18 A Yeah. Uh-huh.

19 Q All right.

20 THE COURT: That's a yes?

21 MS. MORAN: Yes.

22 **BY ATTY. MCELLIGOTT:**

23 Q And -- all right. So I want you to assume that Dr.
24 Wang testified that he also had a routine for inspecting and
25 checking plaintiff's exhibit 1 when he owned it, okay?

26 A Okay.

27 Q And to avoid confusion I want you to ignore this

1 thing about tightening screws because that had a different
2 function on this lamp than your lamp. Okay.

3 A Okay.

4 Q So just focusing on the first two. He testified that
5 would check the tension in the device by moving the lamp
6 heads up and down and that he would gently shake the lamp to
7 see if the lamp heads moved, okay?

8 A Okay.

9 Q Is that the type of test that the standard of care
10 requires in using this type of lamp before every patient
11 treatment?

12 ATTY. ROBERTSON: I'm just going to object.

13 "This type of lamp", we're talking apples and oranges
14 between the two kinds of lamps.

15 ATTY. MOORE LEONHARDT: I join in the objection,
16 Your Honor.

17 MS. MORAN: Can you --

18 ATTY. MCELLIGOTT: I've established what a CQ-36
19 style of lamp is so I can incorporate CQ-36 style
20 into the question, if (indiscernible).

21 THE COURT: All right.

22 ATTY. MCELLIGOTT: Okay.

23 **BY ATTY. MCELLIGOTT:**

24 Q So with respect to the testing of the device that's
25 required by the standard of care. As an acupuncturist using
26 a CQ-36 in 2010 you were required to check the tension on
27 the device by moving the heads up and down and also to

1 gently shake the device to see if the heads moved?

2 ATTY. ROBERTSON: I still object. I do not
3 believe that defines the lamp that we're talking
4 about based on all the evidence in this case.

5 ATTY. MOORE LEONHARDT: Join in the objection,
6 Your Honor. And the lamp has already been
7 distinguished as different so the underlying
8 foundation is improper.

9 THE COURT: All right. The objection is
10 overruled. Can you answer the question?

11 A Yes. With this style lamp you need to check the
12 tension for the articulating arm and then make sure when it
13 moves -- or move it to check if it has the propensity to
14 fall. In between every patient.

15 **BY ATTY. MCELLIGOTT:**

16 Q Okay. And so the first step is to test it in the way
17 you just described, right?

18 A Yeah. Either one first.

19 Q Okay. And for the lamp that you have -- well, first
20 of all after you check it, there are one of two
21 possibilities; either it's loose or it's fine. Is that
22 true?

23 ATTY. ROBERTSON: I'm just going to object.
24 Leading.

25 Q Well, what are the two possibilities after you
26 perform these two tests on the lamp?

27 A It either stays where it is or it falls, it lowers.

1 Q Okay. All right. And with the lamp that you had, if
2 it lowered, you would lock it down by tightening, right?

3 A Yes. I would tighten like every screw.

4 Q Okay. And I want you just to know you can't do that
5 with this lamp that two mechanical engineers have studied,
6 you can't do that.

7 A Okay.

8 Q So in the situation where you do the tests and the
9 lamp fails the test and there's no way to adjust it to get
10 it to pass the test, what does the standard of care require
11 when the test of the device fails?

12 A To not use it on a patient, to take it out of service
13 so that it wouldn't cause harm.

14 Q Okay. And these lamps cost \$92?

15 ATTY. ROBERTSON: I'm just going to object.

16 It's leading -- I don't know --

17 **BY ATTY. MCELLIGOTT:**

18 Q Do you know --

19 ATTY. ROBERTSON: In this case it might have.

20 THE COURT: I --

21 ATTY. MCELLIGOTT: Well, let me see. Can I see
22 Plaintiff's Exhibit 16.

23 (Pause)

24 THE COURT: All right. The Clerk is telling me
25 16 is not a full exhibit so please take it off. It's
26 not 16, I'm not sure -- I think you're talking
27 about -- oh, it is what you said.

1 ATTY. MOORE LEONHARDT: Yes, Your Honor.

2 THE COURT: All right. Counsel, your next
3 question, please.

4 **DIRECT EXAMINATION BY ATTY. MCELLIGOTT (Continued):**

5 Q Ms. Wan Moran, if Dr. Wang had done a test on the
6 device at any time prior to using the device on Ms. Kissel
7 and the device failed the test, did the standard of care
8 require him to take it out of service at that time?

9 A Yes.

10 Q And why is that?

11 A So that if it had the propensity to fall it wouldn't
12 fall while -- during treatment.

13 Q And talk about what an acupuncturist has to do after
14 a test when there is evidence of a propensity, would you
15 agree with that?

16 A Yes.

17 Q Now I want to talk to you about when the test has to
18 be done on a CQ-36 style lamp, okay?

19 A Okay.

20 Q Dr. Wang testified that he did the test once at the
21 beginning of each day covering his four patients or three
22 patients for that day. Is that sufficient under the
23 standard of care?

24 A No, I don't believe so.

25 Q Why not?

26 THE COURT: You've got to keep your voice up,
27 please.

1 licensed engineer.

2 Q Okay. And the - I think in some of the questions
3 that have been asked, you, by Attorney McElligott, you
4 acknowledge the way this lamp functions is different from
5 the way you lamp functions, right, in terms of tightening?

6 A That's what they say.

7 Q So can we agree that when using a TDP lamp that it's
8 appropriate under the standard of care to place the lamp at
9 12 to 18 inches from the patient?

10 A Yes, if it's stable.

11 Q That's - that distance is commonly understood to be
12 the safe distance to place the lamp head from the patient,
13 right?

14 A Correct.

15 Q And so it's anywhere in that range, 12 to 18 inches?

16 A Correct. That's 16 to 18?

17 Q Okay. All right. So you don't think it might be as
18 low as 12; you think it's more 16 to 18?

19 A If I recall correctly.

20 Q If you look at your deposition at page 152, line 21,
21 I think you told me 12 to 18.

22 A Oh, okay.

23 Q I'm not sure if you're disagreeing with that or
24 you're just not sure.

25 A Just - I believe you.

26 Q So you think that that - and any - that seems
27 reasonable to you from what you've experienced using DTP?

NO: FST-CV-12 6013562 S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : DECEMBER 12, 2017
P.C., ET AL

C E R T I F I C A T I O N -- Page 1 - 61

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 12th day of December, 2017.

Dated this 23rd day of January, 2019 in Stamford, Connecticut.


Carrie Provenzale
Court Recording Monitor

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, : DECEMBER 12, 2017
P.C., ET AL

C E R T I F I C A T I O N - Pages 62-91

I hereby certify the foregoing pages (62-91) are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 12th day of December, 2017.

Dated this 13th day of December, 2017 in Stamford, Connecticut.


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Court Recording Monitor

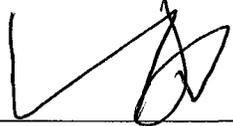
NO: FST-CV12-6013562-S : SUPERIOR COURT
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C E R T I F I C A T I O N

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Dated December 13, 2017 in Stamford, Connecticut.



Lynda Scott
Court Recording Monitor

NO: FST-CV 12-601-3562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH ET AL : DECEMBER 12, 2017

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C E R T I F I C A T I O N

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Dated this 13th day of December, 2017 at Stamford, Connecticut.

Paul J. McKenna
Court Recording Monitor
Paul J. McKenna OCR
2-1-19

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
V. : OF STAMFORD/NORWALK
: AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 13, 2017
ET AL

**BEFORE THE HONORABLE KENNETH POVODATOR, JUDGE
AND JURY PANEL**

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

Representing the Plaintiff:

ATTY. SEAN MCELLIGOTT
ATTY. MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant Center for Women's Health P.C.:

ATTY. DAVID ROBERTSON
ATTY. KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street, Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant Health Body World Supply Inc.,
AKA The WABBO Company:

ATTY. PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By: Carrie Provenzale
Transcribed By:
Lynda Scott
Carrie Provenzale
Melodie Moss
Paul McKenna
Court Recording Monitors
123 Hoyt Street
Stamford, Connecticut 06905

1 **S I M O N E W A N M O R A N**

2 Having been previously sworn, did testify as follows:

3 **CROSS-EXAMINATION BY ATTY. ROBERTSON (Continued):**

4 Q Before we get back into it, Ms. Moran, I know we
5 had --

6 THE COURT: One moment, please. Just to remind
7 you you're still under oath.

8 MS. MORAN: Thank you.

9 Q I have the original transcript from your deposition
10 which, I am going to hand up to you.

11 A Thank you.

12 Q And I think it's on the full size pages so --

13 A Thank you.

14 Q -- if you have other questions, you should be able to
15 see --

16 A Great.

17 Q -- it without your glasses.

18 THE COURT: All right. Before you ask your
19 first question, I normally try to make sure the
20 monitor has your full name and address including
21 spelling so I'm sure if this monitor has it. So if
22 could give her your name and address spelling your
23 last name, please.

24 MS. MORAN: Simone Wan Moran. Do you want me to
25 spell that?

26 THE MONITOR: M-o-a-r-e-a-n.

27 MS. MORAN: And then it's W-a-n.

1 ATTY. MCELLIGOTT: Thank you, Your Honor.

2 BY ATTY. MCELLIGOTT:

3 Q What did the standard of care require of Dr. Wang
4 when this lamp lacked tension?

5 ATTY. MOORE LEONHARDT: Objection, Your Honor,
6 for the same underlying reason that we discussed
7 yesterday.

8 THE COURT: All right.

9 ATTY. MOORE LEONHARDT: And I would like to ask
10 that the jury be --

11 THE COURT: All right. The objection is
12 overruled.

13 ATTY. MOORE LEONHARDT: -- dismissed.

14 ATTY. ROBERTSON: I just for the record object
15 as well.

16 ATTY. MCELLIGOTT: You have ruled, Your Honor.

17 ATTY. MEADE: For the record, I have the same
18 objection.

19 BY ATTY. MCELLIGOTT:

20 Q Go ahead.

21 ATTY. MEADE: Thank you.

22 A To assure that the lamp was stable and wouldn't fall
23 on the patient.

24 ATTY. MCELLIGOTT: Okay. Thank you. No
25 further questions.

26 ATTY. ROBERTSON: I have nothing further.

27 ATTY. MOORE LEONHARDT: Nothing further, Your

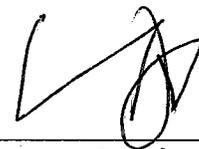
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C E R T I F I C A T I O N

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I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on December 13, 2017.

Dated December 14, 2017 in Stamford, Connecticut.



Lynda Scott

Court Recording Monitor

NO: FST-CV-12 6013562 S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
 : STAMFORD/NORWALK
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C E R T I F I C A T I O N -- Page 85 - 124

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 13th day of December, 2017.

Dated this 23rd day of January, 2019 in Stamford, Connecticut.



Carrie Provenzale
Court Recording Monitor

FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : DECEMBER 13, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages (125-184) are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 13th day of December, 2017.

Dated this 13th day of December, 2017 in Stamford,
Connecticut.



Melodie Moss
Court Reporter

NO: FST-CV 12-601-3562-S : SUPERIOR COURT
KISSEL, JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
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C E R T I F I C A T I O N

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Dated this 14th day of December, 2017 at Stamford, Connecticut.

Paul J. McKenna
Court Recording Monitor

Paul J. McKenna ocr
2-1-19

NO: FST-CV12-6013562-S : SUPERIOR COURT
KISSEL JUDITH : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD CONNECTICUT
CENTER FOR WOMEN'S HEALTH P.C. : DECEMBER 14, 2017
ET AL

**BEFORE THE HONORABLE KENNETH POVODATOR JUDGE
AND JURY PANEL**

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

Representing the Plaintiff:

ATTY. SEAN MCELLIGOTT
ATTY. MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER PC
350 Fairfield Avenue
Bridgeport Connecticut 06604

Representing the Defendant Center for Women's Health P.C.:

ATTY. DAVID ROBERTSON
ATTY. KEITH BLUMENSTOCK
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855 Main Street Suite 1100
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Representing the Defendant Dr. Reed Wang:

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67 Holly Hill Lane
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AKA The WABBO Company:

ATTY. PAUL MEADE
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One Goodwin Square
225 Asylum Street
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Lynda Scott
Pipina Plakopitas
Rebecca Raveis
Colleen Birney
Court Recording Monitors
123 Hoyt Street
Stamford Connecticut 06905

1 J E N N I F E R B R E T T

2 Was hereby sworn and did testify under oath as follows:

3 THE CLERK: Thank you. Please state your name
4 and address for the record.

5 DR. BRETT: My name is Jennifer Brett. My
6 address is 998 Nichols Avenue in Stratford,
7 Connecticut.

8 THE COURT: Can you spell your last name,
9 please?

10 DR. BRETT: B- as in Boy - r-e-t-t.

11 THE COURT: All right. Thank you. Counsel.

12 ATTY. ROBERTSON: Good afternoon, Dr. Brett.

13 DR. BRETT: Good afternoon.

14 **DIRECT EXAMINATION BY ATTY. ROBERTSON:**

15 Q Can you tell the ladies and gentlemen of the jury
16 what your current occupation is?

17 A I'm currently the director of the Acupuncture
18 Institute at the University of Bridgeport.

19 Q And for how long have you held that position?

20 A I've held that position since the inception of the
21 Institute in 2001.

22 Q And can you give me just -- give the jury just a
23 little bit of an idea what your duties and responsibilities
24 are in that position?

25 A As the director of the Acupuncture Institute, I
26 oversee the faculty that teach acupuncture and related
27 practices. I supervise in the clinic. I teach certain

1 **BY ATTY. MCELLIGOTT:**

2 Q And would you consider using a TDP lamp as a space
3 heater to be a non-therapeutic use of the lamp?

4 ATTY. MEADE: Objection, Your Honor. Relevance.

5 THE COURT: Sustained.

6 Q Okay. So let's get back to -- you teach the safety
7 class at UB, right?

8 A That's correct.

9 Q And you teach your students that the lamps are
10 supposed to be used by practitioners to warm the patient or
11 a specific area of the patient, right?

12 A Correct.

13 Q You teach your students that the TDP lamps consist of
14 a heating element on an adjustable arm that's used over a
15 patient's skin, right?

16 A Correct.

17 Q You teach your students that the heating element in
18 the lamp may reach a temperature that will burn a patient,
19 correct?

20 A Yes.

21 Q And you teach your students that it is imperative
22 that a TDP lamp be monitored carefully when in use, correct?

23 A Correct.

24 Q And you teach your students that unexpected movements
25 of the heating element must be prevented when using a TDP
26 lamp, correct?

27 A That language is in the teaching manual, yes.

1 Around the 2006 timeframe, in connection with your meetings
2 with the Council of Colleges of Acupuncture and Oriental
3 Medicine, you became aware of some discussions about heat
4 lamps dropping slowly after they were positioned, correct?

5 A There were some discussions along those lines, yes.

6 Q Okay. And right around 2009, there were additional
7 discussions, isn't that true?

8 A We have lots of discussions in that group, yes.

9 Q Okay. And you had some additional discussions in
10 2009 about heat lamps dropping after they were positioned,
11 correct?

12 A Yes, I think those were ongoing discussions, yes.

13 Q Alright. And the discussions were that the lamps
14 were moving down, correct?

15 ATTY. MEADE: Objection, Your Honor.

16 Again, it's not based on -- there's no
17 scientific basis for this aspect of the testimony.

18 THE COURT: I am going to overrule the objection
19 at this time. Next question.

20 Q The discussion amongst the council in the 2006 to
21 2009 timeframe was about TDP lamps changing position down,
22 correct?

23 A Yes, we were hearing a couple stories along those
24 lines, yes.

25 Q And it was a topic of -- that people wanted to talk
26 about from a safety perspective, correct?

27 A Yes.

1 Q And the reason for that is everyone in the council
2 knows that these lamps get very hot, correct?

3 ATTY. ROBERTSON: I'm going to object. Everyone
4 in the --

5 THE COURT: Next question.

6 Q The reason -- it was generally known on the council
7 that these lamps get very hot, correct?

8 A They get hot, yes. They provide heat.

9 Q And it was known on the council that if the heat lamp
10 came in contact with skin it could cause serious problems,
11 correct?

12 A Anything hot?

13 THE COURT: You have to move the microphone.

14 Q The council was aware -- members of the council were
15 generally aware that if the heat lamp came into contact with
16 a patient's skin it could cause serious problems, correct?

17 A I think anything hot so I am going to say yes,
18 generally.

19 Q Okay. And people at the college discussed that in
20 connection with this discussion about heat lamps changing
21 position without anyone intending it to happen, correct?

22 A Yeah, we were talking about burns in general. There
23 were other burn issues that had come up at the same time,
24 yes.

25 Q Okay. And one of them was heat lamps lowering
26 without anyone intending it to, yes or no?

27 A Yes, there was some stories along those lines, yes.

1 safe practices with respect to TDP lamps is that you want
2 your students to use safe practices, correct?

3 A Yes.

4 Q Okay. Another reason why you teach your students
5 about safety use of TDP lamps is that you want your students
6 to comply with the standard of care, correct?

7 A That's another reason, yes.

8 Q Okay. So some -- so are all of the elements that you
9 teach related to standard care?

10 A No.

11 Q Are some of the elements that you teach related to
12 standard of care?

13 A Yes.

14 Q So I'm going to go through the elements and I will
15 try to be clear about which things are standard of care and
16 which aren't; okay?

17 A Okay.

18 Q So you teach them that the lamps get hot. That's
19 something they have to know as part of the standard of care,
20 right?

21 A Yes.

22 Q You teach them that some lamps may slowly lower
23 during the course of a treatment resulting in a burn over
24 the area being warmed. That is something you need to be
25 aware of to comply with the standard of care, right?

26 A Indirectly, yes.

27 Q Okay. You teach them that mechanical failure of the

1 heat lamp itself may occur during treatment allowing the arm
2 and heating element to rapidly descend near or on to the
3 patient's skin. That is something -- well, first of all,
4 that is what you teach them, correct?

5 A Again, I don't directly teach that. It's part of
6 their reading in the textbook, yes.

7 Q Okay. And that something that they need to be aware
8 of in order to comply with the standard of care?

9 A Since I have never seen that happen, I don't have a
10 quick answer for your question.

11 Q Is the answer you don't know?

12 A The answer is I don't know.

13 Q Okay. Is that something you think it's a good idea
14 for your students to be aware of?

15 ATTY. MEADE: Objection, Your Honor.

16 How does it being a good idea have to do with
17 the standard of care?

18 THE COURT: Next question.

19 Q Okay. How about this you teach your students that to
20 prevent a burn, TDP lamps should be carefully checked for
21 defects before use, correct?

22 A Yes.

23 Q And that is standard of care, right?

24 A Yes.

25 Q Okay. That was standard of care in 2010?

26 A Yes.

27 Q And standard of care now, correct?

1 Q Okay. It would be a violation of the standard of
2 care for acupuncturists in 2010 to use a lamp that he knows
3 is unsteady, correct?

4 A Yes. If he's observed a problem with it, he should
5 not be using it, yes.

6 Q Well, can you track it? How is he to know that? If
7 a practitioner knows that a lamp has a propensity to lower
8 inadvertently in 2010 and continues to use it, that
9 practitioner has violated the standard of care, correct?

10 ATTY. MEADE: Objection, your Honor. Lack of
11 foundation.

12 ATTY. ROBERTSON: I join the objection.

13 ATTY. MOORE-LEONHARDT: I'll join, your Honor.

14 THE COURT: Overruled. Can you answer the
15 question?

16 A Could you define propensity?

17 Q Sure. Well, let me just ask it to you in a way that
18 might be a little more familiar. All right. If an
19 acupuncturist knew that a heat lamp had a propensity to
20 spontaneously lower, would it be a violation of the standard
21 of care for him to continue using that lamp and treating his
22 patients in 2010?

23 ATTY. MEADE: Same objection.

24 ATTY. ROBERTSON: Same objection. Lack of
25 foundation.

26 ATTY. MORE-LEONHARDT: Same objection.

27 THE COURT: Same ruling. Can you answer the

1 question?

2 A I think if an individual lamp is known to have that
3 problem you would not be in the standard of care to continue
4 to use it.

5 Q Okay. Thank you. And, by the way, initially placing
6 the lamp less than 12 inches from the skin, that's also a
7 violation of the standard of care in 2010, correct?

8 A Yes.

9 Q If you don't check periodically to make sure the lamp
10 hasn't moved during a treatment, that's a violation of the
11 standard of care, correct?

12 A Yes.

13 Q And an acupuncturist must communicate to the patient
14 the presence of a heat lamp to comply with the standard of
15 care, correct?

16 A When -- they have to know it's there, yes.

17 Q And if a patient calls out and an acupuncturist
18 doesn't respond right away when there's a TDP heat lamp in
19 use, that's a violation of the standard of care, correct?

20 A Yes.

21 Q If an acupuncturist doesn't carefully check a TDP
22 lamp for defects before use, that's a violation of the
23 standard of care, correct?

24 A Before use for the day, yes. You know, before any
25 use?

26 Q So, I know you wanted to say that it was sufficient
27 for somebody to check it at the beginning of the day so long

1 A That's true.

2 Q But your opinion based on your review of the records
3 was that Doctor Wang was not using it for a therapeutic
4 purpose at all on Ms. Kissel, correct?

5 A I didn't see any notes about the therapeutic use,
6 correct.

7 Q And in fact you concluded based on all the
8 information you had he was using it as a space heater,
9 correct?

10 A It would appear that way, yes.

11 Q Okay. And you haven't been asked to obviously offer
12 an opinion as to whether or not Ms. Kissel called out for
13 Doctor Wang during the procedure, correct?

14 A I have not been asked that question, correct.

15 Q Okay. But you did testify that if an acupuncturist
16 fails to respond to a patient that calls for help, that's a
17 violation of the standard of care, correct?

18 A Correct.

19 Q Okay. So would you agree with me that on April 22nd,
20 2010 if Ms. Kissel called out for help and Doctor Wang
21 didn't respond immediately, that he violated the standard of
22 care?

23 A Yes.

24 Q Thank you. I have no further questions.

25 THE COURT: Any further follow-up to this?

26 ATTY. MEADE: To his, yes. To counsel's
27 questions.

1 that.

2 THE COURT: I'm not sure it's necessary because
3 it's part of the case.

4 ATTY. MOORE LEONHARDT: Well, Your Honor, we
5 disclosed Dr. Brett as our expert as well. And I --
6 the Center's attorney called her and I did have an
7 opportunity to examine her. But I do think that it's
8 important for the jury to understand that we're also
9 joining in on the presentation.

10 THE COURT: Is there --

11 ATTY. MCELLIGOTT: Well, I --

12 ATTY. MOORE LEONHARDT: There's no prejudice for
13 me to say that.

14 THE COURT: Is there an objection?

15 ATTY. MCELLIGOTT: Well, there's no objection.
16 The sort of objection in the breach is I -- I adopt
17 her testimony as well.

18 THE COURT: Well, it's -- you already rested, so
19 there's a different context there.

20 ATTY. MOORE LEONHARDT: Yeah. Exactly.

21 ATTY. MCELLIGOTT: Well, then I move to reopen
22 and adopt her testimony.

23 THE COURT: All right. Do you want -- anybody
24 have any problem with both Counsel saying we both
25 adopt Dr. Brett's testimony? I mean, it really goes
26 to the back bench there because the two of them are --
27 - I'm not sure --

1 ATTY. MEADE: I don't, Your Honor.

2 THE COURT: I mean --

3 ATTY. ROBERTSON: The testimony is in. I don't

4 --

5 THE COURT: Yeah. Again, I'm not sure that it's
6 necessary. But to the extent that Counsel want to
7 say we're adopting it as part of our case, I have no
8 problem with that. I don't see any prejudice to
9 anyone. I don't see any error. So I'll allow it,
10 both sides.

11 All right. Anything else?

12 ATTY. ROBERTSON: Just one other thing. I do
13 want to just mark the DVD for ID as well.

14 THE COURT: Sure.

15 ATTY. ROBERTSON: We marked the transcript, but
16 just the DVD just to make a record.

17 THE COURT: All right. Pardon me? What number
18 is that going to be?

19 THE CLERK: 412, Your Honor.

20 THE COURT: All right. As soon as you're ready,
21 let's bring in the jury.

22 Is it something I need to know about or --

23 ATTY. BLUMENSTOCK: No.

24 ATTY. MOORE LEONHARDT: No. I don't think so,
25 Your Honor.

26 THE COURT: Then don't tell me.

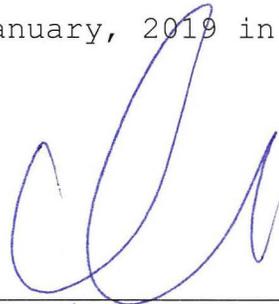
27 ATTY. MOORE LEONHARDT: Don't go looking for

NO: FST-CV-12 6013562 S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT OF
STAMFORD/NORWALK
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C E R T I F I C A T I O N -- Page 1 - 60

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 14th day of December, 2017.

Dated this 23rd day of January, 2019 in Stamford, Connecticut.



Carrie Provenzale
Court Recording Monitor

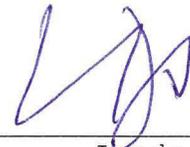
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KISSEL JUDITH : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
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ET AL

C E R T I F I C A T I O N

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I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case heard in Superior Court Judicial District of Stamford/Norwalk at Stamford Connecticut before the Honorable Kenneth Povodator Judge on December 14 2017.

Dated December 15 2017 in Stamford Connecticut.



Lynda Scott

Court Recording Monitor

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C E R T I F I C A T I O N - Pages 117-146

I hereby certify the foregoing pages (119-148) are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 14th day of December, 2017.

Dated this 15th day of December, 2017 in Stamford, Connecticut.


Pipina Plakopitas
Court Recording Monitor

NO:
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JUDITH KISSEL : JUDICIAL DISTRICT OF
STAMFORD/NORWALK

v. : AT STAMFORD, CONNECTICUT

CENTER FOR WOMEN'S HEALTH,
P.C., ET AL. : DECEMBER 14, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct excerpt transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Stamford, Connecticut, before the Honorable Kenneth Povodator, Judge and a jury, on the 14th day of December 2017.

Dated this 15th day of December, 2017 in Bridgeport, Connecticut.

Rebecca Raveis
Court Recording Monitor

Rebecca Raveis OCR
21.15

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, P.C. : DECEMBER 14, 2017

C E R T I F I C A T I O N

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Colleen Birney
Court Recording Monitor

Colleen Birney OCR
2.1.19

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : DECEMBER 19, 2017
P.C., ET AL

BEFORE THE HONORABLE KENNETH POVODATOR,
JUDGE AND JURY

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

Representing the Plaintiff:

ATTORNEY SEAN MCELLIGOTT -- ORDERING PARTY
ATTORNEY MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant
Center for Women's Health P.C.:

ATTORNEY DAVID J. ROBERTSON
ATTORNEY KEITH BLUMENSTOCK -- ORDERING PARTY
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street
Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant
Health Body World Supply Inc., aka The WABBO COMPANY:

ATTORNEY PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By:
Carrie Provenzale

Transcribed By:
Carrie Provenzale

Court Recording Monitor
123 Hoyt Street
Stamford, Connecticut 06905

1 constantly tightening screws and bolts in the device.

2 He had this -- it's a type of tension to a device
3 that is kind of I think unique. And so you have to
4 ask yourself, is this something that somebody does on
5 a device that is working perfectly and that is
6 totally fine or is this something that somebody does
7 on a device they know is imperfect, but they are
8 trying to stretch a little more life out of it.

9 And there are two elements to this maintenance
10 routine that I think are -- stand out to me as
11 totally inconsistent with this idea he had no idea
12 the thing could come down.

13 And it's these two things. So I asked him:

14 Q So you checked the tension on the device and you did
15 that in two ways; one is you manipulated the heads up and
16 down; correct?

17 A Correct.

18 Q And the second is you testified that you gently shook
19 the device to see what would happen, right?

20 A Gently, yes.

21 And then I asked him again:

22 Q Just so it's clear, the first part of your inspection
23 and maintenance routine, you checked the tension on the
24 device by moving the heads up and down; correct?

25 A Correct.

26 Q And then you gently shoved to see if the heads moved,
27 correct?

1 A Correct.

2 And I so I look at this, he's doing this in 2010
3 and I ask myself, if he had no idea that the tension
4 on the device and the loss of tension on the device
5 could cause it to come down inadvertently, why on
6 earth is he bumping it, shaking it, and shoving it?

7 Right. Why would you do that if you had no idea
8 that that could cause the lamp heads to come down?

9 Why would you do that every single time you set
10 it up?

11 I mean those two tests, this is just my
12 argument, Judge tells you, you know, disregard what
13 the lawyers say, it's your evidence -- it's the
14 evidence that controls, but I think those two tests,
15 they really put the lie to the notion that, oh, I
16 have no idea. I had no idea that this could happen.

17 The next thing to put -- again, not dispositive,
18 we're putting it on the scale. The next thing to put
19 on the scale is Dr. Wang's own testimony that he
20 noticed some wear over the two years that he owned
21 it.

22 The next thing we have is the testimony Dr. Popp
23 and Dr. Vallee that a reasonable user would notice
24 the gradual failure and the testimony of the
25 distributor that you would have expected Dr. Wang to
26 have noticed it within the two years.

27 So let's put all the evidence on the scale that

1 question, it's more likely you are going to get a
2 precise answer.

3 All right. Here we go.

4 A JUROR: Excuse me. I am sorry. Can we just
5 move that microphone because I can't really see you?

6 A JUROR: Thank you.

7 THE COURT: Okay. It is now my duty to charge
8 you as to the law in this case and I would ask you to
9 please listen carefully to the instructions which I
10 am about to give you.

11 Under our system of judicial procedure it is the
12 jury's task and sole responsibility to pass upon the
13 disputed facts and to ascertain where the truth lies.

14 It is the responsibility of the judge as the
15 presiding officer of the trial to rule upon the
16 admission of evidence during the process of the
17 trial, and, at the conclusion of the trial, to give
18 you, the jury, the principles of law which apply to
19 the case.

20 However, I repeat, by way of emphasis, that you
21 are to be the sole judge of the facts in this case.

22 Later in the charge I may refer briefly to some
23 of the evidence brought out during the trial of the
24 case. My chief concern regarding the facts in the
25 case is to refer to them insofar as its necessary to
26 make clear to you the application of the rules of law

1 which are relevant to this case, but whether I refer
2 to the evidence or not it is your recollection of the
3 evidence not mine or counsel's which is to guide you
4 in deciding this case.

5 Also, should I refer to certain facts in the
6 case and not to others, you are not to think that I
7 mean thereby particularly to emphasize the facts I
8 speak of or to limit your consideration to them.
9 Should I overlook any evidence you will supply it
10 from your own recollection; should I incorrectly
11 state any evidence, you will correct my error by
12 applying your own recollection of the facts.

13 I likewise point out to you that the remarks of
14 counsel in closing argument do not constitute
15 evidence. If, in those remarks, counsel stated any
16 facts which do not comport with your recollection of
17 the facts, you should be governed by your own
18 recollection.

19 Furthermore, the sums of money as damages
20 articulated by counsel in closing arguments are not
21 evidence, but only arguments, and the determination
22 of the amount of damages to be awarded, if any, is
23 solely the function of the jury.

24 If you believe that during the course of the
25 trial, the Court has expressed or intimated any

1 opinion as to the facts in this case, or if by
2 anything I have said, or by a tone of voice, or by
3 any critical remark I may have made, you believe I
4 hold an opinion as to the merits of either parties'
5 case, actually any parties' case, or that I favor any
6 side, or any attorney, or any witness, you are to
7 disregard it.

8 I may not and I do not involve myself in the
9 merits of the case. Nor should you draw or attempt
10 to draw any inferences from the questions I have
11 asked - the sole purpose for my questions was to make
12 sure that you, in performing your function, had a
13 clear understanding of the evidence.

14 My questions are in no way indicative of the
15 importance of the subject matter of my inquiries.

16 To repeat then, you are the sole judges of the
17 facts. However, it is essential that you accept and
18 act upon the principles of law which I give to you as
19 controlling upon you - just as the Court will accept
20 your finding of the facts as controlling upon it.

21 This then is your function - you, the jury, are
22 responsible for the determination of the facts and
23 you will apply to those facts the law as given to you
24 by the Court, and that combination of the facts - as
25 you find them - and the law - as I shall give it to

1 you - will determine the verdict that you are to
2 render in this case.

3 Concerning the conduct of the trial, let me say
4 that there have been occasions for the attorneys to
5 confer with the Court out of your hearing and on
6 occasion the Court has excused you from the room so
7 that a point of law or an objection might be argued

8 In such situations, you should not feel
9 slighted. Don't speculate on what was being
10 discussed, and don't have any resentment towards the
11 attorney who requested that you be excused. These
12 procedures are necessary in the interests of justice
13 and to expedite a trial.

14 Also during the trial, there may have been
15 objections by counsel to court rulings. You should
16 have no resentment towards any of the attorneys who
17 raised any such objections.

18 Also, a few remarks on the evidence. You are to
19 consider only such evidence as was admitted, and if
20 some evidence was given but was stricken from the
21 record, or some evidence was offered and refused, you
22 must not consider it and you must dismiss it from
23 your minds.

24 Any evidence that I have told you to disregard -
25 for any reason - should not be considered by you for

1 any purpose. Nor should any inference be drawn from
2 any questions, the answer to which has been ordered
3 stricken by the Court.

4 Evidence in General: To repeat somewhat, you
5 are to consider only such evidence as was admitted.
6 If some evidence was given but was stricken from the
7 record, or some evidence was offered and refused, you
8 must not consider it and you must dismiss it from
9 your minds.

10 You should not draw any inferences from any
11 questions, the answers to which has been ordered
12 stricken by the Court.

13 Some evidence was admitted for a limited purpose
14 only. During the course of the trial, if I told you
15 that such evidence was being admitted for a limited
16 purpose which I explained, then you must consider it
17 for that purpose and no other.

18 You are to determine what the facts are by
19 careful consideration of all the evidence presented,
20 based solely upon the evidence presented in the
21 courtroom, giving to each part of the evidence the
22 weight you consider it deserves. When I say
23 evidence, I include the following:

24 Testimony by witnesses in court, including what
25 you may have observed in any demonstrations they

1 presented during their testimony; exhibits that have
2 been received into evidence as full exhibits,
3 including any pictures or documents that are full
4 exhibits; facts that the parties have stipulated to;
5 facts that I have told you are to be taken as true by
6 judicial notice; facts that I instructed you are
7 deemed admitted as a consequence of pleadings and
8 other papers filed with the Court.

9 Testimonial evidence includes what was said on
10 direct examination and what was said on cross
11 examination, without regard to which party called the
12 witness.

13 There are a number of things that you may have
14 seen or heard during the trial which are not evidence
15 and which you are -- which you cannot rely on as
16 evidence in deciding whether a party has satisfied
17 his or her burden of proof. For example:

18 Statements made by lawyers, including statements
19 made both in their opening statements and in their
20 closing arguments, are not evidence; questions
21 themselves; it is the answer, not the question or the
22 assumption made in the question, that is evidence -
23 particularly if the question was not answered due to
24 my sustaining an objection to it; the fact that a
25 party has filed a claim or a defense in court is not

1 evidence that proves the claim or the defense is
2 true; testimony or exhibits that were offered but
3 refused or stricken by me or that I told you to
4 disregard must not be relied upon as evidence in
5 resolving the case; testimony or exhibits that I told
6 you were to be used only for a particular purpose,
7 cannot be considered as evidence for any other
8 purpose; exhibits marked for identification which
9 were not admitted as full exhibits, because they are
10 not evidence.

11 Demonstrative evidence, which was used to assist
12 a witness in explaining his testimony-- my apologies.

13 Something slipped in. All right. Let me start
14 again.

15 Demonstrative evidence which was used to assist
16 a witness in explaining his testimony: The
17 testimony, of course, is evidence, but the pictures
18 and models used are not evidence but may be
19 considered to the extent they help you in
20 understanding the testimony of a witness.

21 At this point, I must address Exhibit 1, the
22 lamp that was used on April 22, 2010. As I believe I
23 told you earlier in the trial, the parties agree that
24 as of the time of trial in 2017, the lamp is not in
25 the same condition that it was in at the time it left

1 the manufacturer and was then sold to Dr. Wang in
2 2008 and/or at the time that it was used in
3 connection with the treatment of the plaintiff on
4 April 22, 2010.

5 Therefore, you are not to attempt to conduct any
6 experiments with the lamp in the jury room in an
7 attempt to simulate what did or did not happen on
8 April 22, 2010.

9 The parties may not agree on what changes there
10 are, when they occurred or why they occurred.
11 Nonetheless, because the exhibit is not in the same
12 condition as it was -- as it was in at the time it
13 was used for the treatment of the plaintiff, you may
14 not use it in any experiment or in any other attempt
15 to recreate events of April 22.

16 Charge as a whole: I instruct you not to single
17 out any sentence or individual point or instruction
18 in my charge and ignore the others; you are to
19 consider all the instructions as a whole and regard
20 each in the light of all the others.

21 You are to follow my instructions and
22 conscientiously apply the law as I give it to you, to
23 the facts as you find them in order to arrive at your
24 verdict.

25 If you should have a different idea of what the

1 law is or even what you feel it ought to be, you must
2 disregard your own notions and apply the law as I
3 give it to you.

4 The parties and the Court rely on having claims
5 decided according to particular legal standards that
6 are the same for everyone. Those are the standards I
7 will give you and that you must follow.

8 To the extent that -- to the extent that any
9 attorney may have said something about the law that
10 differs from what I tell you, you will dismiss from
11 your minds what he or she may have said to you.

12 You must decide this case based only on the law
13 that I furnish to you. You must not single out any
14 particular instruction or give it more or less
15 emphasis than any other, but rather must apply all of
16 my instructions on the law that apply to the facts as
17 you find them.

18 The order in which the instructions are given
19 has no significance as to their relative importance.

20 The fact that I am instructing you on both
21 liability and damages should not be taken by you as
22 any indication as to how the Court would decide
23 liability. Rather, my charge including -- includes
24 both liability and damages because I must give you
25 instructions on all the issues in the case at this

1 time.

2 You will reach the issue of damages only if you
3 first have found that plaintiff has proved that one
4 or more of the defendants is liable, under the rules
5 I am giving to you.

6 The parties: Two of the parties to this
7 proceeding are corporate entities and two are people,
8 one of whom claims to have been injured.

9 Under our system of laws, all parties are to be
10 treated equally, and you should not favor either side
11 because of its status or out of sympathy. The
12 determinations you are required to make are to be
13 made without regard to status of any party.

14 One of the parties -- pardon me. One of the
15 entities sued, Health Body World Supply, Inc.,
16 generally has been referred to as WABBO, and the
17 Court will use that same designation in referring to
18 that defendant.

19 The plaintiff has claimed that, based on its
20 relationship with Dr. -- defendant Wang, defendant
21 Center for Women's Health, P.C. is liable to the
22 plaintiff to the same extent that you find that
23 defendant Wang is liable to the plaintiff.

24 The Center has acknowledged that, under a
25 concept known as apparent agency, its liability to

1 the plaintiff will be determined by your
2 determination of issues relating to the claimed
3 liability of Dr. Wang.

4 Therefore, in the context of the malpractice
5 aspects of my instructions, I generally will refer to
6 Dr. Wang as the defendant, but you should understand
7 that any determination relating to Dr. Wang also will
8 be applicable to the Center.

9 The pleadings: In a civil case the parties have
10 to set forth in a written statement their version of
11 the facts upon which they base their claim. The
12 first pleading is the statement of the plaintiff and
13 is called the complaint.

14 The plaintiff sets forth the facts of her case
15 and asks for a certain legal remedy in this
16 complaint.

17 In this case, there are different theories and
18 different claims asserted against different
19 defendants, and it I will start by very briefly
20 summarizing them.

21 The plaintiff has asserted a professional
22 malpractice claim against defendant Wang, based on
23 his acupunctural services rendered to the plaintiff.

24 The plaintiff has asserted a product liability
25 claim against WABBO.

1 More particularly, the plaintiff claims that
2 defendant Wang, an acupuncturist, was negligent in
3 providing services to her, what is commonly referred
4 to as medical malpractice.

5 In particular, the plaintiff claims that
6 defendant Wang failed to exercise that degree of care
7 and skill ordinarily and customarily utilized by
8 acupuncturists under the circumstances, specifically
9 focusing on the use of a heat lamp.

10 She also claims that defendant Center was
11 responsible for that conduct, which I have already
12 covered, as well as -- let's just skip that.

13 I have already covered that by discussion of the
14 parties.

15 As a result, the plaintiff claims that she
16 sustained third degree burns to her left foot and
17 toes with associated permanent deformity, pain, and
18 loss of sensation.

19 She also claims to have sustained a loss of
20 enjoyment of life's activities.

21 Defendant Wang has denied any negligence - that
22 Dr. Wang committed medical malpractice - and as to
23 the injuries plaintiff claims to have sustained, he
24 denies and leaves the plaintiff to her proof as to
25 the specifics of the injuries and the consequences.

1 The defendant also asserts claims that the
2 plaintiff was negligent in her conduct, and that that
3 negligence either reduces or eliminates any possible
4 legal responsibility to the plaintiff.

5 The plaintiff, in turn, denies the defenses
6 asserted against her.

7 The plaintiff also has asserted a claim against
8 defendant WABBO, claiming that the heat lamp used by
9 Dr. Wang was unreasonably dangerous and defective.
10 The plaintiff claims the same injuries and
11 consequences in this portion of the lawsuit.

12 WABBO denies that the product was defective, and
13 also asserts that the plaintiff's own conduct was
14 negligent and contributed to her injuries. It also
15 claims that Dr. Wang's conduct was a cause of the
16 injury, and that the conduct of the plaintiff and of
17 Dr. Wang serve to reduce or eliminate any
18 responsibility that it may have.

19 Again, as to the injuries plaintiff claims to
20 have sustained, defendant WABBO denies and leaves the
21 plaintiff to her proof as to the specifics of the
22 injuries and the consequences.

23 As to the defenses asserted based on her own
24 conduct and that of Dr. Wang, the plaintiff denies
25 these allegations.

1 That is a summary of the pleadings, and the
2 pleadings provide a general outline or contour of the
3 issues you will be deciding.

4 I will go into greater detail in a few minutes.
5 Actually probably tomorrow.

6 The plaintiff's allegations in her complaint
7 limit her right to recover. The plaintiff cannot
8 recover for something that is not alleged; she is
9 limited by the allegations of the complaint, giving
10 them a reasonable scope.

11 This, then, is a case in which both liability
12 and damages are in issue under two theories and as
13 against three defendants; your task is to determine
14 the extent, if any, to which each defendant is
15 liable, and the amount of damages, if any, the
16 plaintiff is entitled to recover.

17 Direct and circumstantial evidence: Generally
18 speaking, there are two types of evidence from which
19 a jury may properly find the truth as to the facts of
20 the case.

21 One is direct evidence - such as the testimony
22 of an eyewitness. The other is indirect or
23 circumstantial evidence, that is, inferences which
24 may be drawn with reasonable certainty from proven
25 facts.

1 An inference is a deduction of fact that may
2 logically and reasonably be drawn from another fact
3 or group of facts established by the evidence.

4 Let me give you an example of what I mean by
5 direct evidence and circumstantial evidence. If
6 you're looking out a third floor window and you see
7 smoke rising outside the window, that is direct
8 evidence that there is smoke outside.

9 It is also circumstantial evidence that there is
10 a fire of some sort below the window.

11 As a general rule, the law does not distinguish
12 between direct and circumstantial evidence. The law
13 requires the jury to find the facts in accordance
14 with the preponderance of all the evidence in the
15 case, both direct and circumstantial. Direct and
16 circumstantial evidence should be treated equally.

17 It follows that in considering the evidence; you
18 are not limited to what the witness says but may draw
19 reasonable inferences from facts which you find have
20 been proven.

21 You should be careful to avoid resorting to
22 sympathy, speculation, conjecture or guesswork -
23 under the guise of relying on circumstantial evidence
24 - in order to determine critical facts in the case.

25 Sympathy, speculation, conjecture, and guesswork

1 should play no role in your deliberations.

2 Burden of proof: In a civil action, the
3 plaintiff bears the burden of proof as to its claims.
4 It has the burden of proving every essential element
5 of the case by a preponderance of the evidence.

6 To prove by a preponderance of the evidence
7 means to prove that something is more likely so than
8 not so. In other words, a preponderance of the
9 evidence means enough evidence, considering all the
10 evidence in the case when considered and compared, to
11 produce in your minds that what is sought to be
12 proved is more likely true than not true.

13 Preponderance of the evidence means evidence
14 that has more convincing force than that opposed to
15 it. Conjure up in your minds the image of the scales
16 of justice, starting off evenly balanced - what is
17 sometimes called equipoise.

18 If, on a particular issue, the scale is tipped
19 out of equipoise, that is ever so slightly in favor
20 of the plaintiff, then you should find in favor of
21 the plaintiff on that issue.

22 If the evidence is so evenly balanced that you
23 are unable to say that the evidence on either side of
24 an issue preponderates, your finding on that issue
25 must be against the party who had the burden of

1 proving it.

2 You should consider all of the evidence bearing
3 upon every issue regardless of who produces it.
4 Remember no burden rests upon any defendant to
5 disprove any of the plaintiff's allegations and it is
6 not the responsibility or duty of a defendant to
7 disprove any such allegations.

8 However, the defendants have asserted defenses,
9 and as to those defenses, they do have the burden of
10 proof. The plaintiff does not have the burden of
11 disproving those defenses.

12 Credibility of witnesses: In weighing the
13 evidence, you may use the tests you would ordinarily
14 use in determining the truth of matters important to
15 you in everyday life.

16 You shall consider the demeanor of the witnesses
17 on the stand; any interest which they may have in the
18 outcome of the case; any bias or prejudice for or
19 against any party; their opportunity to observe; any
20 reason to remember or forget; the inherent
21 probability of their story; its consistency or lack
22 of consistency; and whether or not their story is
23 supported or contradicted by other credible evidence.

24 It is not the number of witnesses who testify or
25 the quantity of the evidence that counts, but the

1 nature, quality, and accuracy of the evidence that
2 controls.

3 You should carefully scrutinize all the
4 testimony given, the circumstances under which each
5 witness has testified, and every matter in evidence
6 which tends to indicate whether a witness is worthy
7 of belief.

8 Consider each witness' intelligence, motive,
9 state of mind, demeanor, and manner while on the
10 stand. You are the sole arbiter of what testimony is
11 to be believed and what is to be rejected.

12 You may also bear in mind that if you should
13 find that any witness has deliberately testified
14 falsely on any material point, you may take that into
15 consideration in determining whether he or she has
16 testified falsely on other points.

17 Simply because you find that a witness has not
18 testified accurately with respect to one fact, does
19 not necessarily mean that he or she is wrong on every
20 other point.

21 A witness may be honestly mistaken on one point
22 of his or her testimony and be accurate on others.
23 But if you find that a witness has deliberately lied
24 on any material point, it is only natural that you
25 should be suspicious of his or her testimony on all

1 points; under those circumstances you may disbelieve
2 his or her entire testimony according to your own
3 sound judgment.

4 Expert testimony -- or pardon me -- expert
5 witnesses: We have had in this case the testimony
6 of expert witnesses. Expert witnesses are people
7 who, because of their training, education, and
8 experience, have knowledge beyond that of the
9 ordinary person.

10 Because of that expertise in whatever field they
11 happen to be in, expert witnesses are allowed to give
12 their opinions.

13 Ordinarily, a witness cannot give an opinion
14 about anything, but rather is limited to testimony as
15 to the facts in that witness's personal knowledge.
16 The experts in this case have given opinions.

17 However, the fact that these witnesses may
18 qualify as experts does not mean that you have to
19 accept their opinions. You can accept their opinions
20 or reject them.

21 In this case, you heard testimony from experts
22 including Jennifer Brett, Simone Wan Moran, Victor
23 Popp, Tae Ho Kim, and Glenn Vallee.

24 In the jury room, you will have medical reports
25 and/or medical records of doctors and other health

1 care providers. Connecticut law allows the
2 submission of physicians' medical reports in lieu of
3 live -- of their appearance in court.

4 Therefore, you should draw -- pardon me --
5 therefore, you should not draw any unfavorable
6 inferences from the lack of live testimony by any
7 medical care provider.

8 An expert witness may state an opinion in
9 response to a hypothetical question. A hypothetical
10 question is one in which the witness is asked to
11 assume that certain facts are true and to give an
12 opinion based on those assumptions.

13 The value of the opinion given by an expert in
14 response to a hypothetical question depends upon the
15 relevance, validity, and completeness of the facts he
16 was asked to assume.

17 The weight that you may give to such an opinion
18 will depend on whether you find that the facts
19 assumed were proven, and whether the facts relied on
20 in reaching the opinion were complete, or whether
21 material facts were omitted, or whether material
22 facts were not considered.

23 Like all other evidence, an expert's answer to a
24 hypothetical question may be accepted or rejected, in
25 whole or in part, according to your best judgment.

1 No matter what may be the expertise of a
2 particular witness who states to you an opinion upon
3 a fact in a case, it is still subject to review at
4 your hands. His or her opinion need not be binding
5 upon you.

6 It is for you to consider in the light of all
7 other evidence and using your best judgment and
8 determine what weight you will give to it.

9 In weighing the testimony, you should apply to
10 this person the same general rules that you apply to
11 all witnesses, insofar as it relates to interest in
12 the case, bias, and so forth.

13 In addition, you will determine for yourself
14 whether this witness is possessed of particular --
15 pardon me -- peculiar or specialized knowledge and
16 experience in the field on which his testimony is
17 founded.

18 You may ask yourself the following questions
19 among others that may occur to you:

20 What specialized skill and knowledge does he or
21 she possess?

22 What training and experience has he or she had
23 in his or her field?

24 What opportunity and how much time has he or she
25 had to analyze and study the matters about which he

1 or she is testifying?

2 Has he or she produced a rational and reasonable
3 basis in support of his or her opinion which has been
4 ventured here in this case?

5 Is the basis in support of his or her opinion
6 reasonable and logical?

7 These are the considerations among others that
8 may occur to you to which you will address yourself
9 in arriving at the weight, if any, to be given to
10 expert testimony.

11 I should note that experts are allowed to rely
12 on information from a range of sources, including
13 information not otherwise offered as evidence. Just
14 because an expert relied upon information does not
15 make the information admissible or credible; and just
16 because an expert declined to rely upon information
17 does not make the information not credible.

18 Rather, it is for you to determine the weight,
19 if any, to be given to evidence, and in evaluating
20 the testimony of an expert, you are entitled to
21 consider the quality of the information relied upon
22 by the expert in determining the weight, if any, to
23 give to that expert's opinions.

24 There was some testimony relating to the fees
25 charged by one or more experts for appearing in court

1 and/or testifying. That information was not offered
2 in connection with any claim of damages; the fact
3 that a party was required to pay, and the amount that
4 a party was required to pay, should play no role in
5 determination of any damages you may award.

6 The information was offered for purposes of
7 credibility and transparency - other than for
8 possible use in evaluating the credibility of an
9 expert and his or her opinion, the fee charged for
10 appearing in court should play no role in your
11 deliberations.

12 What I said before about credibility in general
13 applies equally here. It is not the number of
14 witnesses who testify or the quantity of the evidence
15 that counts, but the nature, quality, and accuracy of
16 the evidence that controls.

17 To put it another way, what is important is the
18 extent to which you find the testimony worthy of
19 belief, in the context of all of the other testimony
20 and evidence presented to you.

21 All right. This was where I was thinking about
22 stopping, but I think I am going to -- it's what, 20
23 after? I think I am going to go into the malpractice
24 part then.

25 I am going to go into some of the substantive

1 stuff I thought we'd get to tomorrow, get it done a
2 little earlier.

3 Negligence/Malpractice: In general -- pardon me
4 -- in general terms, negligence is the failure to
5 exercise reasonable care under the circumstances.
6 Reasonable care is defined as the care that would be
7 used by a person of ordinary prudence in the same
8 situation as the defendant.

9 The test is objective, not subjective.
10 Therefore, the standard is not how a party in fact
11 behaved, but rather how an ordinarily prudent person
12 under the circumstances in which the party found
13 herself or himself, would have behaved.

14 As I mentioned earlier, plaintiff claims that
15 the defendant was negligent in that defendant failed
16 to exercise that degree of care and skill ordinary
17 and customarily utilized by acupuncturists in
18 providing care, specifically care related to use of a
19 heat lamp as an adjunct to acupuncture treatment.

20 She further alleges that as a direct and
21 proximate result of the acts and/or omissions of the
22 defendant, the plaintiff was injured and sustained
23 damages.

24 The legal duty that a healthcare provider, such
25 as Dr. Wang, owes to a patient, such as Judith

1 Kissel, has been established by our legislature.

2 We have a statute which provides that "[i]n any
3 civil action to recover damages resulting from
4 personal injury . . . in which it is alleged that
5 such injury resulted from the negligence of a health
6 care provider ... the claimant shall have the burden
7 of proving by a preponderance of the evidence that
8 the alleged actions of the healthcare provider
9 represented a breach of the prevailing professional
10 standard of care for that healthcare provider. The
11 prevailing professional standard of care for a given
12 healthcare provider shall be that level of care,
13 skill, and treatment which, in light of all relevant
14 surrounding circumstances, is recognized as
15 acceptable and appropriate by reasonably prudent
16 similar healthcare providers."

17 In this case, Dr. Wang was an acupuncturist.
18 The prevailing professional standard of care that
19 applies to him is the level of care, skill, and
20 treatment which, in light of all relevant surrounding
21 circumstances, is recognized as acceptable and
22 appropriate by a reasonably prudent acupuncturist.

23 This standard applies to both diagnosis and
24 treatment. In order to establish liability, the
25 plaintiff must prove by a fair preponderance of the

1 evidence that Dr. Wang's conduct represented a breach
2 of the prevailing professional standard of care that
3 I have just described.

4 The standard of care is the standard prevailing
5 at the time of the treatment in question. The
6 treatment in question occurred in 2010.

7 An acupuncturist such as Dr. Wang is held to the
8 same prevailing professional standard of care
9 applicable to acupuncturists across the nation. For
10 this reason, the particular state in which an expert
11 witness has practiced is unimportant.

12 You should consider the testimony of all the
13 experts who have testified in light of their
14 familiarity or lack of familiarity with the standard
15 of care to which I have referred.

16 A physician does not guarantee a good medical
17 result. A poor medical result is not, in itself,
18 evidence of any wrongdoing by the healthcare
19 provider.

20 The question on which you must focus is whether
21 the defendant has breached the prevailing
22 professional standard of care.

23 Conversely, the benchmark for your decision must
24 be the prevailing standard of care that you find to
25 have been proven, and not some ideal level of conduct

1 that one might strive for.

2 As I have already mentioned, the plaintiff has
3 the burden of proving by a fair preponderance of the
4 evidence that Dr. Wang's conduct represented a breach
5 of the prevailing professional standard of care.

6 Under our law, the plaintiff must prove this by
7 expert testimony. More specifically, she must
8 establish through expert testimony both what the
9 standard of care is and that defendant's conduct
10 represented a breach of that standard.

11 Finally, plaintiff must establish that the
12 breach of that standard of care was the proximate
13 cause of the injuries that she claims - generally
14 that requires expert testimony unless the causative
15 link is sufficiently obvious to a lay person that
16 expert testimony is not required.

17 The plaintiff claims that defendant Wang was
18 negligent in that he did not adequately protect
19 plaintiff from contact with a heat lamp during her
20 acupuncture procedure; did not properly place heat
21 lamps during the acupuncture procedure such that the
22 lamps remained a safe distance from the plaintiff;
23 left the plaintiff unattended during the course of
24 the acupuncture procedure and failed promptly -- all
25 right. Let me start again -- left the plaintiff

1 unattended during the course of the acupuncture
2 procedure and failed to promptly respond to her cries
3 for help while she was being burned by the heat lamp;
4 failed to utilize a safe heating system during the
5 acupuncture procedure that would not contact the
6 plaintiff and/or cause burns to the plaintiff.

7 These claims are self-explanatory; the issue is
8 whether the plaintiff has proved that Dr. Wang acted
9 in one or more of these ways and whether such conduct
10 as you find to have been proved constitutes a breach
11 of the applicable standard of care.

12 In this regard, you should note that the
13 plaintiff is not claiming that Dr. Wang's selection
14 and purchase of the lamp in 2008 was unreasonable,
15 and you should not consider his purchase of the lamp
16 as part of the claim of malpractice directed to Dr.
17 Wang

18 Also, in a claim based on negligence, such as
19 the malpractice claim against Dr. Wang, subsequent
20 conduct that was or may be perceived to have been
21 remedial or corrective in nature, is not admissible
22 to prove negligence or culpable conduct in connection
23 with the injury.

24 Therefore, evidence that Dr. Wang took any
25 remedial or corrective measures after the incident on

1 April 22, 2010, including the disposal of the two
2 lamps he had purchased from WABBO, may not be used as
3 evidence that he was negligent, or had any
4 consciousness of guilt.

5 The plaintiff need not prove that the defendant
6 failed to use the required care, skill, and diligence
7 in all the ways claimed or alleged.

8 It is enough if the plaintiff proves one or more
9 of the allegations of negligence, provided the
10 plaintiff also proves that such negligence was a
11 legal cause of harm to the plaintiff.

12 In a few minutes, I will -- or probably tomorrow
13 -- I will tell you about the forms I will be giving
14 you.

15 One of the forms asks a series of questions, and
16 the first question relates to standard of care. In
17 this case, both sides have offered expert evidence
18 relating to the standard of care.

19 Only the plaintiff has the burden of proof on
20 that issue, but you should consider all of the
21 evidence presented on that issue, in determining
22 whether the standard of care has been established by
23 a preponderance of the evidence.

24 It is because the burden of proof is on
25 plaintiff to establish the standard that the question

1 is framed in terms of whether she proved it, but you
2 need not rely solely on the evidence she presented in
3 determining whether the appropriate standard has been
4 proved.

5 I am hesitant to get into the product liability
6 piece. It's going to -- that's going to run a little
7 bit late. So I think this is an appropriate time to
8 break.

9 Again, we are going to finish this up tomorrow
10 starting around 10:00 o'clock. You probably will be
11 starting deliberations by 11:00 or maybe sooner than
12 that, but again, it depends on how fast these go.

13 So we may not -- again, we don't always start on
14 time. So if we don't start on time, I don't know,
15 but the point is, you probably will have it -- I
16 can't imagine a circumstance in which you wouldn't
17 have -- start deliberating before lunch.

18 So you're -- you're -- it's going to be in your
19 hands. And the reason I am saying that is, please, I
20 keep imploring you, don't reach any conclusions. It
21 is so close to being your hands where your job will be
22 to find conclusions, to reach conclusions.

23 So don't do any research, try to avoid any
24 opinions as to where the outcome is going to be at
25 this juncture. Hold off 18 hours. I mean we are

NO: FST-CV12-6013562-S

: SUPERIOR COURT

JUDITH KISSEL

: JUDICIAL
DISTRICT
OF STAMFORD/NORWALK

v.

: AT STAMFORD, CONNECTICUT

CENTER FOR WOMEN'S HEALTH
P.C., ET AL

: DECEMBER 19, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Stamford, Connecticut, before the Honorable Kenneth B. Povodator, Judge, on the 19th day of December, 2017.

Dated this 22nd day of January, 2018 in Stamford, Connecticut.



Carrie Provenzale
Court Recording Monitor

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH : DECEMBER 20, 2017
P.C., ET AL

BEFORE THE HONORABLE KENNETH POVODATOR,
JUDGE AND JURY

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

Representing the Plaintiff:

ATTORNEY SEAN MCELLIGOTT
ATTORNEY MATT BLUMENTHAL
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing the Defendant
Center for Women's Health P.C.:

ATTORNEY DAVID J. ROBERTSON
ATTORNEY KEITH BLUMENSTOCK
HEIDELL PITTONI MURPHY & BACH, LLP
855 Main Street
Suite 1100
Bridgeport, Connecticut 06604

Representing the Defendant Dr. Reed Wang:

ATTY. MARY ALICE MOORE LEONHARDT
MOORE LEONHARDT & ASSOCIATES, LLC
67 Holly Hill Lane
Greenwich, Connecticut 06831

Representing the Defendant
Health Body World Supply Inc., aka The WABBO COMPANY:

ATTORNEY PAUL MEADE
HALLORAN & SAGE, LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

Recorded By:
Pipina Plakopitas

Transcribed By:
Pipina Plakopitas
Court Recording Monitor
123 Hoyt Street
Stamford, Connecticut 06905

1 Number one, some of these paragraphs are used
2 in not just this case. Some things are very clearly
3 tailored to this case. Some are more generalized and
4 I adapt things. Occasionally when I adapt things,
5 if I know for example there is only a male or only a
6 female expert, I may use a singular pronoun he or
7 she. And sometimes I forget or miss changing
8 everything to he or she if there is both. So that is
9 one of the things I sometimes catch while I am
10 reading and change. So if I said he and it's he or
11 she, it's not intended to be singular in that sense.

12 Also, I sometimes say in my charge, I didn't put
13 it in this one there are areas that come up in the
14 charge that sometimes I will repeat in detail,
15 sometimes I will just simply cross reference. When I
16 cross reference something, I am not deemphasizing it.
17 I am just simply trying to save time rather than
18 going through.

19 So for example, I have spoken about something
20 called proximate cause. Proximate cause is a concept
21 that I will say on a number of occasions. Rather
22 than explaining it in detail each time, I may just
23 say it once. Conversely I may say something more
24 than once. I am not intending to put undue influence
25 or emphasis on it.

26 In fact, you heard yesterday there are a couple
27 of places where I inadvertently said something twice.

1 The point is if something is said more than once it's
2 not intended to be that it's more important. It just
3 simply means it comes up more than once. And if I
4 cross reference something, don't treat that as if
5 it's de-emphasizing it. It's simply a way of trying
6 to avoid having to say the exact same thing two or
7 three times when it might be a page, a page and a
8 half or more of an explanation so I may just have a
9 brief cross reference to it. I just want you to
10 understand that I am not emphasizing or de-
11 emphasizing anything in that fashion.

12 Alright, I am going to pick up where I left off.
13 And I think I just concluded yesterday with the
14 malpractice part and was about to get to the product
15 liability part, so this is the product liability
16 part.

17 The plaintiff claims that defendant WABBO is
18 liable to her under a Connecticut statute known as
19 the Connecticut Product Liability Act. The
20 plaintiff's specific allegations of defects and
21 inadequate preventive measures include claims that
22 WABBO placed the lamp into commerce, namely sold it
23 to Dr. Wang, despite the absence of any warning
24 affixed to the lamp concerning the heat plate's
25 potential to cause harm and/or injury; the
26 negligently-designed and/or manufactured condition of
27 the lamp due to the failure to include adequate

1 locking devices to prevent unintended lowering; the
2 failure to provide a user manual or instructions for
3 use with the lamp or on its website; and/or the
4 failure to place a heating shield of some sort in
5 front of the heating plate.

6 In order to prove a claim under the Connecticut
7 Product Liability Act, the plaintiff must prove all
8 of the following things:

9 The first element to be proven is that the
10 defendant was engaged in the business of selling the
11 product.

12 Defendant WABBO is a product seller if it is in
13 the business of selling the product, whether as a
14 wholesaler, distributor or retailer, and I don't
15 believe that the status of WABBO as a product seller
16 is in dispute. If the plaintiff proves the other
17 elements of a product liability claim, as I am about
18 to instruct you, and if you find that the defendant
19 is a product seller, it is liable to any person
20 injured by the product, not just to the person or
21 entity to whom it originally sold the product.

22 The second element to be proven is that the
23 product was in a defective condition unreasonably
24 dangerous to the consumer or user.

25 A product is unreasonably dangerous as designed
26 if, at the time of sale, it is defective to an extent
27 beyond that which would be contemplated by the

1 ordinary consumer. In determining what an ordinary
2 consumer would reasonably expect, you should consider
3 the usefulness of the product, the likelihood and
4 severity of the danger posed by the design, the
5 feasibility of an alternative design, the financial
6 cost of an improved design, and the ability to reduce
7 the product's danger without impairing its usefulness
8 or making it too expensive.

9 The third element to be proven by the plaintiff
10 is that the defect caused the injury for which
11 compensation is sought. [SEP]

12 The fourth element to be proven is that the
13 defect existed at the time of sale. [SEP]

14 The fifth element to be proven is that the
15 product was expected to and did reach the consumer
16 without substantial change in condition. [SEP]

17 With respect to the second element, some further
18 explanation is required. A product is in a defective
19 condition unreasonably dangerous to the consumer or
20 user if:

21 A reasonable alternative design was available
22 that would have avoided or reduced the risk of harm
23 and the failure to use that alternative design
24 renders the product unreasonably dangerous. In
25 considering whether there is a reasonable alternative
26 design, you must consider the feasibility of the
27 alternative. Relevant factors which you may consider

1 to determine whether the product is unreasonably
2 dangerous include, but are not limited to, the
3 ability of the alternative design to reduce the
4 product's danger without unreasonably impairing its
5 usefulness, longevity, maintenance and esthetics,
6 without unreasonably increasing cost and without
7 creating other equal or greater risks of danger; or
8 to this entire paragraph that I just said.

9 The design of the product was manifestly
10 unreasonable in that the risk of harm so clearly
11 exceeds the product's utility that a reasonable
12 consumer, informed of those risks and utility, would
13 not purchase the product. Relevant factors that you
14 may consider include, but are not limited to, the
15 magnitude and probability of the risk of harm, the
16 instructions and warnings accompanying the product,
17 the utility of the product in relation to the range
18 of consumer choices among products and the nature
19 and strength of consumer expectations regarding the
20 product, including expectations arising from product
21 portrayal and marketing. In this regard, the
22 consumer is Dr. Wang. [REDACTED]

23 With respect to the claim of inadequate warnings
24 and instructions, the issue is whether the product
25 could not be used safely by the ordinary consumer
26 without adequate instructions or warnings.

27 You must decide whether a warning was necessary

1 and, if it was, whether the warning was adequate. In
2 deciding whether a warning was necessary, you may
3 consider:

4 the likelihood that the product would cause the
5 harm suffered by the Plaintiff;

6 the ability of the product seller to anticipate
7 at the time the product seller put the product into
8 the stream of commerce that the expected product user
9 would be aware of the risks involved in using the
10 product and the nature of the potential harm;

11 the technological feasibility and cost of
12 warnings and instructions.

13 A product seller has a duty to warn of hidden
14 dangers in the use of a product in the ordinary,
15 customary way. A product seller also has a duty to
16 warn of dangers that may result from misuse of a
17 product if the misuse is of a type that the product
18 seller reasonably should foresee.

19 A product seller does not have a duty to provide
20 a warning as to a danger that is obviously involved
21 in the customary, ordinary use of the product or that
22 is obviously present if the product is misused.

23 A product seller is not liable for failure to
24 warn of risks that were not known to it or that it
25 could not reasonably have foreseen at the time it put
26 the product into the stream of commerce.

27 Where the product seller has provided a warning,

1 it may still be liable if the warning provided is not
2 adequate to advise the ordinary user of the nature
3 and extent of any danger associated with the
4 reasonably anticipated use, or with the reasonably
5 anticipated misuse of the product. In assessing
6 whether the warning that has been provided is
7 adequate, you should consider whether the danger is
8 one that is obvious to a user and whether the warning
9 is placed with proper prominence in relation to the
10 risk to which the warning applies. To be adequate, a
11 warning must be devised to communicate with the
12 person best able to take or recommend precautions
13 against the potential harm.

14 A product seller that provides an adequate
15 warning is entitled to presume that such a warning
16 will be heeded by the user, and if the product is
17 safe for use so long as the warning is heeded, the
18 product is not defective. A product seller is not
19 liable for failure to provide a warning if the user
20 is aware of the danger at the time of the use.

21 I previously instructed you that in connection
22 with a claim of negligence, subsequent remedial or
23 corrective conduct cannot be considered as probative
24 of negligent conduct. However, in a product
25 liability case against a product seller, evidence of
26 subsequent measures taken after the occurrence of the
27 injury, which would have made the injury less likely

1 to occur, is admissible to prove the existence of a
2 product defect. Therefore, in the product liability
3 case against WABBO, you may consider evidence of
4 subsequent design modifications if they are shown to
5 be related to claimed defects.

6 In order to prevail on her product liability
7 claim against WABBO, the plaintiff must prove each of
8 the elements I have described. If she has failed to
9 prove each and every one, then she has not
10 established a product liability claim against
11 defendant WABBO. However, this requirement applies
12 to the elements I have described as elements of a
13 product liability claim; with respect to the specific
14 claimed deficiencies and dangerous qualities of the
15 lamp, she only needs to prove that at least one such
16 deficiency or hazard satisfies all of those
17 requirements.

18 Proximate cause

19 In order to recover from a defendant, plaintiff
20 must prove that defendant's conduct was, in fact, a
21 proximate cause of the injuries sustained by the
22 plaintiff. With respect to the malpractice claim,
23 the proof generally must be based on expert
24 testimony, unless the causative link can be discerned
25 by a layperson without the need of expert assistance.

26 Before reaching the issue of proximate cause,
27 you must first consider the more general issue of

1 factual causation. A cause in fact is an actual
2 cause. The test for cause in fact is, simply,
3 "Would the injury have occurred in the absence of
4 defendant's negligence?"

5 If your answer to this question is "yes" that
6 the injury would have been sustained without regard
7 to defendant's conduct, then defendant's negligence
8 was not a cause in fact of the plaintiff's injuries,
9 as the injuries would have been sustained anyway. If
10 the answer is "no" then you have determined that the
11 conduct was a cause in fact of the injuries sustained
12 by plaintiff.

13 Proximate cause means that there must be a
14 sufficient causal connection between the act or
15 omission alleged and any injury or damage sustained
16 by the plaintiff. An act or omission is a proximate
17 cause if it was a substantial factor in bringing
18 about or actually causing the injury. That is,
19 if the injury or damage was a direct result or a
20 reasonably probable consequence of defendant's act or
21 omission, it was proximately caused by such an act or
22 omission. In other words, if an act had such an
23 effect in producing the injury that reasonable
24 persons would regard it as being a cause of the
25 injury, then the act or omission is a proximate
26 cause.

27 In order to recover damages for any injury,

1 plaintiff must show by a preponderance of the
2 evidence that such injury would not have occurred
3 without the defendant's alleged misconduct. If you
4 find that the plaintiff complains about an injury
5 which would have occurred even in the absence of
6 defendant's conduct, or that defendant's conduct is
7 not causally connected to the incident, you must find
8 that defendant did not proximately cause that injury.

9 Under the definitions I have given you, wrongful
10 conduct can be a proximate cause of an injury if it
11 is not the only cause, or even the most significant
12 cause of the injury, provided it contributes
13 materially to the production of the injury, and
14 thus is a substantial factor in bringing it about.
15 Therefore, when a defendant's wrongful conduct
16 combines together with one or more other causes to
17 produce an injury, such wrongful conduct is a
18 proximate cause of the injury if its contribution to
19 the production of the injury, in comparison to all
20 other causes, is material or substantial.

21 When, however, some other cause (or causes)
22 contribute(s) so powerfully to the production of an
23 injury as to make the defendant's contribution to the
24 injury merely trivial or inconsequential, then that
25 defendant's misconduct must be rejected as a
26 proximate cause of the injury, for it has not been a
27 substantial factor in bringing the injury about. Or

1 to put it another way, if you find that the plaintiff
2 would have suffered the same physical consequences
3 and limitations, whether or not the defendant had
4 acted as he did, then that conduct would not be a
5 proximate cause of the plaintiff's injuries. It is
6 your responsibility to determine which, if any, of
7 the injuries and damages claimed by plaintiff were
8 proximately caused by the conduct of a defendant.

9 Counsel, come sidebar, please.

10 (SIDEBAR)

11 THE COURT: I am not mechanically reading this
12 and this is a more substantial change than I had to
13 make, so some of these things I don't ask counsel I
14 do have a fly but this one I wanted to make sure they
15 understood what I was about to do. I apologize for
16 that interruption. Let me start.

17 To the extent that you find that the plaintiff
18 has proven by a preponderance of the evidence that
19 the malpractice of defendant or the defective product
20 was a or the proximate cause of the injuries and
21 damages claimed to have been sustained by the
22 plaintiff, as I have defined "proximate cause" for
23 you -- I actually had it there. I missed it. I
24 corrected something that didn't need to be corrected.

25 Alright, let me read it the way it was
26 originally written in. That's the problem, I am not
27 reading ahead. Let me start again with that

1 paragraph.

2 ATTY. MCELLIGOTT: You do need the A or The
3 which you caught the first time.

4 THE COURT: Pardon me?

5 ATTY. MCELLIGOTT: You need A or The before
6 proximate cause which you caught already, right?

7 THE COURT: Yes.

8 My apologies for the unnecessary correction.

9 Alright, to the extent that you find that the
10 plaintiff has proven by a preponderance of the
11 evidence that the malpractice of defendant was a
12 proximate cause of the injuries and damages claimed
13 to have been sustained by the plaintiff, as I have
14 defined "proximate cause" for you and/or that the
15 defective product caused such injuries and damages,
16 you are to proceed to determine the issues as to
17 the amount of damages, after first considering the
18 defenses that have been asserted by the parties.

19 The Defenses.

20 You will consider the defenses raised by each
21 defendant only if you first conclude that that
22 defendant is liable under the instructions I have
23 given you.

24 The malpractice claim; and these are the
25 defenses.

26 In the malpractice portion of this case,
27 defendant Wang has filed a special defense alleging

1 that the plaintiff's injuries were legally caused by
2 the plaintiff's own negligence. The defendant must
3 prove the elements of this special defense by a
4 preponderance of the evidence. Specifically, the
5 defendant must prove that the plaintiff was negligent
6 in one or more of the ways specified in the special
7 defense and that such negligence was a legal cause of
8 any of the plaintiff's injuries.

9 Generally speaking, with respect to a claim
10 of negligence, a party is under the obligation to
11 exercise the care which a reasonably prudent person
12 would use under the circumstances. This applies to a
13 plaintiff with respect to a defense which is commonly
14 called contributory or comparative negligence.

15 A plaintiff is negligent if the plaintiff does
16 something which a reasonably prudent person would not
17 have done under similar circumstances or fails to do
18 that which a reasonably prudent person would have
19 done under similar circumstances.

20 Defendant Wang claims that the plaintiff failed
21 to act as a reasonably prudent person would once her
22 foot came into contact with the heat lamp; and/or
23 failed to act as a reasonable person would to notify
24 Defendant Wang that her foot had come into contact
25 with the heat lamp. These allegations are
26 essentially self-explanatory. To establish that the
27 plaintiff was negligent, it is not necessary for the

1 defendant to prove all of these specific allegations.
2 The proof of any one of these specific allegations is
3 sufficient to prove negligence.

4 If you conclude that the plaintiff was also
5 negligent, and that her own negligence was a
6 proximate cause of her injuries, then it will be
7 necessary for you to determine the relative levels of
8 responsibility. In a situation where the negligence
9 of both the plaintiff and a defendant were proximate
10 causes of the injury-causing incident, plaintiff's
11 right to recovery would be based on the percentage of
12 negligence attributable to the defendant, but only
13 if the plaintiff was not more at fault than the
14 defendant; if plaintiff's degree of responsibility
15 was greater than that of the defendant, then the
16 plaintiff cannot recover any damages.

17 Here is an example to make the rule clear: If
18 the plaintiff is determined to have been 20% at fault
19 and a negligent defendant 80% at fault, the plaintiff
20 would be entitled to recover 80% of her damages. If
21 the percentages were to be reversed, with plaintiff
22 80% at fault and the defendant 20% at fault,
23 plaintiff would be more at fault than the defendant
24 and therefore would be entitled to recover no
25 damages. If the plaintiff is determined to have been
26 50% at fault and the defendant 50% at fault, then the
27 plaintiff would recover 50% of her damages.

1 Just as a further example, suppose the
2 plaintiff's total damages were \$100. If the
3 plaintiff was 30% at fault and the negligent
4 defendant was 70% at fault, the plaintiff would
5 recover 70% of \$100, or \$70 from the defendant. The
6 plaintiff would thus not receive payment for the part
7 of her damages caused by her own negligence.
8 Obviously, the numbers used are just for the sake
9 of an example. I could have used 10,000 or 10
10 million dollars.

11 The product liability claim; again I am talking
12 about defenses. It's a different rule.

13 If you find that defendant WABBO -- pardon me.
14 If you find defendant WABBO liable under the
15 instructions I just gave you, based upon findings
16 that its product was defective and that the defect
17 was a proximate cause of the plaintiff's alleged
18 injuries, you must go on to consider the defendant's
19 special defense of comparative responsibility. To
20 establish this defense, the defendant must prove by a
21 fair preponderance of the evidence that the plaintiff
22 and/or Dr. Wang bears at least partial responsibility
23 for the plaintiff's injuries because the plaintiff
24 and/or Dr. Wang engaged in negligent conduct of the
25 kind alleged in the special defense and such conduct,
26 like the defendant's defective product, was also a
27 proximate cause of those injuries.

1 Under our law, the plaintiff's recovery of
2 damages for injuries proximately caused by a
3 defective product is not barred if such injuries are
4 also shown to have been caused by the plaintiff's own
5 negligent conduct or the conduct of another party.
6 Instead, in such circumstances, her award of damages
7 must be diminished by a percentage representing the
8 measure of her own responsibility for those injuries
9 compared to the combined responsibility of all
10 parties who have been shown to bear some
11 responsibility for those injuries.

12 If the defendant persuades you that the
13 plaintiff and/or Dr. Wang engaged in negligent
14 conduct of the sort here alleged, and further that
15 such conduct proximately caused the injuries she
16 complains of in this case, then you must go on to
17 determine the percentage of responsibility she
18 personally must bear for those injuries, determined
19 as a percentage of the combined responsibility of all
20 parties found responsible for those injuries in this
21 case.

22 Here, the defendant has alleged that the
23 plaintiff bears at least partial responsibility for
24 her own alleged injuries by engaging in the following
25 acts of negligent misconduct, which he claims to
26 have been -- pardon me, which he claims to have
27 proximately caused those alleged injuries: she moved

1 her foot and/or other body parts in such a manner as
2 to cause the lamp to come into contact with her foot,
3 when she knew or should have known that it was unsafe
4 to do so; failed to act as a reasonable person would
5 to move her foot from contact with the heat lamp;
6 and/or failed to act as a reasonable person would to
7 notify defendant Wang and/or other persons that her
8 foot had come into contact with the heat lamp.

9 Under our law, a person engages in negligent
10 conduct when he or she fails to act as a reasonable
11 person would act, under the circumstances. The
12 allegations are self-explanatory. The burden on the
13 defendant is to prove that the plaintiff failed to
14 act as a reasonable person in one or more of these
15 respects, and that such failure to act reasonably was
16 a proximate cause of her injuries. In determining if
17 the defendant has proved this causation element of
18 its claim of comparative responsibility, you must
19 apply the same general instructions on proximate
20 causation which I previously gave you.

21 Defendant WABBO also claims that the negligent
22 conduct of Dr. Wang was responsible, in whole or in
23 part, for the plaintiff's injuries. In particular,
24 defendant WABBO claims that Dr. Wang used the subject
25 heat lamp in a manner inconsistent with the normal
26 use and application of the product as reasonably
27 anticipated by the manufacturer or seller; failed to

1 follow and undertake the precautions a reasonably
2 careful user of the lamp would ordinarily take under
3 the circumstances then and there existing, including,
4 but not limited to, placing the head of the heat lamp
5 in extremely close proximity to the plaintiffs foot;
6 failed to monitor or attend to the first-party
7 plaintiff during the course of the acupuncture
8 procedure and failed to promptly respond to the
9 situation; failed to follow the ordinary and
10 customary standards of the acupuncture profession
11 with regard to the use of the subject heat lamp.

12 Again, the defendant need not prove all of these
13 allegations, but must prove at least one, and must
14 also prove that such claimed negligence was a
15 proximate cause of the plaintiff's injuries for the
16 conduct of Dr. Wang to be considered in connection
17 with the product liability aspect of this case.

18 If the defendant persuades you by a fair
19 preponderance of the evidence that the plaintiff
20 and/or Dr. Wang engaged in conduct that proximately
21 caused her alleged injuries, you must next determine
22 the comparative responsibility of all parties for
23 those injuries. The comparative responsibility of
24 each party who is shown to have been responsible for
25 the plaintiff's proven injuries must be determined by
26 assigning him or her a percentage of the combined
27 responsibility of all parties you find to be

1 responsible for such injuries, totaling 100%.
2 Because comparative responsibility is a special
3 defense, defendant WABBO bears the burden of proving
4 the extent of proportionate responsibility of the
5 plaintiff and Dr. Wang for the plaintiff's injuries,
6 expressed as a percentage of the combined
7 responsibility of all parties whose responsibility
8 for such injuries has been proved at trial.

9 In determining the comparative responsibility of
10 the parties for the plaintiff's alleged injuries, you
11 must consider, on a comparative basis, both the
12 nature and the quality of each party's proven
13 conduct. Factors for assigning percentages of
14 responsibility for each party whose legal
15 responsibility has been established include the
16 nature of the party's risk-creating conduct,
17 including any awareness or indifference with respect
18 to the risks created by the conduct and any intent
19 with respect to the harm created by the conduct, as
20 well as the strength of the causal connection between
21 the party's risk-creating conduct and the harm. The
22 nature of a responsible party's risk-creating conduct
23 includes such things as how unreasonable the conduct
24 was under the circumstances, in light of the extent
25 to which it deviated from the standard applicable to
26 it in this case; the circumstances surrounding the
27 conduct; each party's abilities and disabilities; and

1 each party's awareness, intent, or indifference with
2 respect to the risks. The comparative strength of
3 the causal connection and the harm depends on how
4 attenuated the causal connection was, the timing of
5 each person's conduct in causing the harm, and a
6 comparison of the risks created by the conduct and
7 the actual harm suffered by the plaintiff. Your
8 task, after considering the responsible parties'
9 proven conduct in light of these factors, is to
10 assign to each party a percentage representing
11 his/her/its proportion of the combined responsibility
12 of all parties for the plaintiff's proven injuries,
13 with the total of such individual percentages of
14 responsibility equaling 100%.

15 I am going to skip from my script here for a
16 moment. I suspect there might be a little bit of a
17 panic going on in some minds.

18 You are going to get a copy of this. I didn't
19 say this earlier because I am concerned that if you
20 hear that you're going to get a copy, you are not
21 going to listen. So I didn't want you to be in too
22 panicky a mode so I am now telling you, you will be
23 getting a copy of this as closely corrected as
24 possible. But I do want you to continue listening.
25 The goal was to make sure you listen but again, I try
26 to balance the need to get you to listen with I don't
27 want you to be overwhelmed by all that I have said

1 and the concern that gee, how am I going to keep this
2 all straight.

3 So I am going to continue reading at this point.
4 Please try to pay attention even though I am reading,
5 even though you are going to have it.

6 Damages.

7 The plaintiff is entitled to recover full
8 compensation for all damage proximately resulting
9 from the wrongful conduct of any or all of the
10 defendants whether under a theory of professional
11 negligence or product liability if the plaintiff has
12 proven that the defendant was legally responsible and
13 if the plaintiff establishes the required proximate
14 cause connection between the defendant's conduct and
15 the injury or damages sustained and proven.

16 You have considerable latitude in determining
17 compensatory damages. If the plaintiff is entitled
18 to damages, she is entitled to fair, just and
19 reasonable compensation. Compensatory damages are
20 intended to compensate the plaintiff for her losses,
21 and are not to be awarded in an effort to punish a
22 defendant. You must attempt to put the plaintiff in
23 the same position, as far as money can do it, that
24 she would have been in had the defendant or
25 defendants (as appropriate) not caused her injuries.

26 Plaintiff has the burden of proving her
27 entitlement to recover damages by a fair

NO: FST-CV12-6013562-S : SUPERIOR COURT
JUDITH KISSEL : JUDICIAL DISTRICT
 : STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
CENTER FOR WOMEN'S HEALTH, : DECEMBER 20, 2017
P.C., ET AL

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 20th day of December, 2017.

Dated this 16th day of January, 2018 in Stamford, Connecticut.



Pipina Plakopitas
Court Recording Monitor

NO: FST-CV12-6013562S

JUDITH KISSEL

: JUDICIAL DISTRICT
OF STAMFORD/NORWALK

V.

: AT STAMFORD, CONNECTICUT

CENTER FOR WOMEN'S HEALTH
P.C., ET AL

: SEPTEMBER 6, 2018

BEFORE THE HONORABLE KENNETH POVODATOR

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

Representing the Plaintiff:

ATTORNEY SEAN MCELLIGOTT
ATTORNEY NICO GURIAN
Koskoff Koskoff and Bieder, PC
350 Fairfield Avenue
Bridgeport, CT 06604

Representing the Defendant:

ATTORNEY DAVID J. ROBERTSON
ATTORNEY KEITH BLUMENSTOCK
Heidell Pittoni Murphy & Bach, LLP
855 Main Street - Suite 1100
Bridgeport, CT 06604

Representing the Defendant Dr. Reed Wang:

ATTORNEY MARY ALICE MOORE LEONHARDT
Moore, Leonhardt & Associates, LLC
67 Holly Hill Lane
Greenwich, CT 06831

ATTORNEY WESLEY HORTON
Horton, Dowd, Bartschi & Levesque PC
90 Gillett Street
Hartford, CT 06105

Representing the Defendant
Health Body World Supply, Inc., AKA The WABBO Company:

ATTORNEY PAUL MEADE
Halloran and Sage, LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06103

Recorded/Transcribed By:
Lisa Franchina
123 Hoyt Street - 3rd Floor
Stamford, CT 06905

1 ATTY. MCELLIGOTT: And I'd like the -- I'd like
2 the record to reflect that Attorney Horton wrote my
3 recommendations for law school and has never once,
4 you know, expressed any regret, although I'm sure
5 [Inaudible].

6 ATTY. HORTON: Thank you.

7 THE COURT: Recess.

8 **(RECESS)**

9 THE COURT: All right, be seated, everyone.

10 All right. Now we're moving on to 426. Four
11 twenty-six was filed by defendant re: Wong. Who is
12 going to speak --

13 ATTY. HORTON: I will, Your Honor. I need Judge
14 Karazin's decision.

15 Good morning again, Your Honor, again Wesley
16 Horton for Doctor Wong. Back in 2012, Judge Karazin
17 decided the motion to dismiss and the -- the
18 important paragraph is on page eight.

19 Without taking a position on the viability of
20 the language at issue in *Votre*, which is an Appellate
21 Court decision that had some dictum on the subject.
22 This Court holds, in the absence of any Appellate
23 authority to the contrary, that to the extent that
24 the written opinion letter existed prior to the
25 commencement of this action, then this Court, in
26 exercising its discretion, may deny the defendant's
27 motion to dismiss.

1 And consider the written opinion letter that is
2 attached to the amended complaint. So that's the
3 basis of its decision with no Appellate authority on
4 point.

5 And I understand it's a very high test for one
6 Judge to overrule another one. I believe it's met in
7 this case by the Peters case. The Peters case, in
8 June of this year, an Appellate Court decision, the
9 opinion letter was by a board certified doctor. But
10 the opinion didn't say that he was board certified.

11 And after the statute of limitations had run,
12 the -- the plaintiff asked to amend it to indicate
13 that. And the Appellate Court said no. And I simply
14 read the last sentence of the opinion, or the last
15 two sentences.

16 Regardless of the fact that procedure a
17 plaintiff elects to employ to cure a defect in an
18 opinion letter filed in accordance with 52-190A.
19 That procedure must be initiated prior to the running
20 of the statute of limitations.

21 Otherwise, the sole remedy available will be to
22 initiate a new action if possible, pursuant to 52-
23 592. And so that leaves only the question, what's
24 the distinction between not saying I'm board
25 certified, and not providing the opinion at all.

26 And I say there's no distinction and therefore
27 it's an Appellate course that was not in existence at

1 the time. And now we know what the answer is.
2 Unless it's distinguishable, the motion to reconsider
3 should be granted, and the motion to dismiss should
4 be granted. Thank you.

5 THE COURT: Any of the other defendants want to
6 be heard?

7 ATTY. ROBERTSON: Not -- not me, Your Honor.

8 ATTY. HORTON: No, Your Honor.

9 ATTY. MCELLIGOTT: Attorney Horton has been kind
10 enough to share his copy of Judge Karazin's decision
11 with me. My turn?

12 THE COURT: Yes.

13 ATTY. MCELLIGOTT: Thank you, Your Honor.

14 So Judge Karazin based his decision on the *Votre*
15 *versus County Obstetrics and Gynecology Group PC*.
16 Decision 113 Conn. App. 569. Which is direct on
17 point. It's still good law. Not mentioned in the
18 new authority cited by the defendants.

19 And there is a distinction in the case law
20 between filing of a defective letter and attempts to
21 carry it after the statute of limitations have
22 passed. And the failure to file an adequate letter
23 by inadvertence.

24 In other words, you can't amend a letter after
25 it's filed but if it exists prior to the filing and
26 just isn't attached to the complaint. And then it is
27 attached. That is a different issue and that's the -

1 - the Votre Court is the Court that addressed that
2 issue.

3 So there is no basis for reconsideration of the
4 Court's decision. It's procedurally improper, again,
5 under Practice Book section 11-12. Motions to
6 reargue are supposed to be within 20 days. Again,
7 we're in the situation of, it's not new authority --

8 THE COURT: No, but if it were -- if it were
9 truly new authority.

10 ATTY. MCELLIGOTT: If Votre was overruled, I
11 would imagine that there would be some mechanism to
12 bring it up --

13 THE COURT: I'm not -- I'm not talking about --

14 ATTY. MCELLIGOTT: Yeah.

15 THE COURT: -- I mean, we can get into the whole
16 issue of the Appellate Court often saying -- almost
17 always saying, we do not overrule prior decisions.
18 We've got to do them by panel.

19 I mean, there's lots of stuff in there but the
20 question is, if in fact is new or implicitly
21 overruled, but in some fashion is a break. Because
22 Judge Karazin in the excerpt cited -- quoted, said,
23 there is no Appellate authority. So -- now whether
24 he felt Votre was different in some fashion, I'll
25 take a look -- I know I looked at this when it first
26 hit my desk.

27 But I figured I'd listen to your arguments to --

1 to sharpen what the issues are. But if it's new law
2 -- you're right. If -- if it doesn't change the law
3 then -- then -- then it's an improper motion to
4 reargue, but it's not even re-argument. It's simply
5 trying to say that this case is something different.

6 But of it is new, then I'm not constrained in
7 that fashion.

8 ATTY. MCELLIGOTT: Judge, so, just to clarify
9 Judge Karazin opinion -- Judge Karazin's opinion,
10 what he said was the Appellate Court had addressed
11 this question directly. And then he quoted the
12 following language.

13 Given the fallibility existing in the legal
14 profession -- just pause and absorb the truth of that
15 statement. It's possible that a written opinion of a
16 similar healthcare provider existing at the time of
17 commencement of an action, might be omitted through
18 inadvertence.

19 In such a scenario, it certainly may be within
20 the discretion, area and power of the Trial Judge to
21 permit an amendment, to attach the opinion. And in
22 doing so, deny a pending motion to dismiss. Such a
23 discretionary action would not be a variant for the
24 purpose of 52-190A to prevent groundless lawsuits
25 against healthcare providers.

26 And then Judge Karazin went on to catalogue a
27 split in the Superior Court cases about Votre. And

1 then he said, just assuming there is no *Votre*, I'm
2 still going to decide it this way.

3 So that -- that's sort of way he -- he
4 approached it. I think it's the correct decision.
5 There's no new Appellate authority bearing on that
6 particular question. And so there's no basis for re-
7 argument even if it were timely. Thank you, Judge.

8 THE COURT: All right. Again, 30 second
9 response.

10 ATTY. HORTON: I'll take 30 seconds --

11 THE COURT: I'll give you 45 if you think that's
12 better.

13 ATTY. HORTON: No, I'll try to take 30 seconds.

14 That was -- *Votre* was dictum which is Judge
15 Karazin was looking at other trial Court decisions.
16 And it was also questioned in the Bennett case that
17 he mentioned which is a Connecticut Supreme Court
18 case.

19 Because what happened in that case, in *Votre*, is
20 there -- the -- it wasn't just an inadvertent failure
21 to file it on time. It didn't exist in that case.
22 So basically the language that he's relying on is
23 from the, you know, saying -- but if it did exist, we
24 would allow it to do, which I agree is on point but
25 it's on point dictum.

26 And so I would just -- one other point I would
27 like to make, Your Honor, and that is how -- this

1 case is obviously going up by an appeal by either
2 side I would expect. And I would simply urge that,
3 however you rule on the motions earlier today, that,
4 you know, both motions be ruled on provisionally.

5 Even if one is dispositive. I would urge --
6 because otherwise, there's going to be a motion for
7 articulation on the appeal because there will be an
8 appeal and cross appeal in that situation. So I -- I
9 would urge Your Honor to rule on -- on the motion to
10 dismiss and also rule on the merits.

11 Thank you very much. I have nothing further.

12 ATTY. MCELLIGOTT: Um, I'm --

13 THE COURT: Again, you look like you're ready to
14 --

15 ATTY. MCELLIGOTT: -- sorry, I -- I didn't quite
16 --

17 THE COURT: -- to jump out so I'll let --

18 ATTY. MCELLIGOTT: I didn't quite absorb that so
19 -- what -- can you say that again, Wes, I'm sorry.

20 ATTY. HORTON: Sure.

21 THE COURT: What he's trying to -- he's trying
22 to say that sometimes the Judge will say, let's say
23 hypothetically, taking things in reverse order. If I
24 were to say that Judge Karazin, while well
25 intentioned, based on this recent case, was in error,
26 and therefore I am dismissing the malpractice case.

27 Many Judges might say, having dismissed the

1 malpractice case, there is no need to address whether
2 or not causation was established because the case
3 never should have been tried. Which leaves open the
4 problem of, well, if the Appellate Court says the
5 case shouldn't have been dismissed, we then have a
6 problem where we now have an unresolved issue so it
7 may have to come back for articulation.

8 Or maybe somebody is going to say, I want
9 articulation for exactly that reason because I'm
10 concerned that if the motion to dismiss is reversed
11 having been granted, then we're left with an
12 incomplete record as to what the issue is on the
13 other issue.

14 Is that essentially what you're --

15 ATTY. HORTON: Yes, Your Honor.

16 THE COURT: So that -- that's --

17 ATTY. MCELLIGOTT: Okay.

18 THE COURT: -- so he's saying, please, just --
19 let's just -- and again, I'm a firm believer in, you
20 know, let's get everything done. Occasionally there
21 might be situations where I say, I don't need to
22 reach an issue but counsel is urging me not to take
23 the no need to reach an issue approach for the
24 reasons stated.

25 ATTY. MCELLIGOTT: Okay, so one thing, Judge, is
26 just, I guess my view of the procedure would be if
27 Your -- if Your Honor is going to grant this motion

1 to reargue, which is the only motion before Your
2 Honor, then the motion to -- then the substantive
3 motion be filed and briefed and we -- and we come
4 here.

5 THE COURT: Okay, so you -- okay, this is what I
6 raised at the -- at the outset. Whether -- whether
7 it's just dealing with -- I mean, whether it's --
8 that's why I asked --

9 ATTY. MCELLIGOTT: There's no --

10 THE COURT: -- whether it's going to be
11 substantive argument. And I gathered you were saying
12 that, yes, it can be a substantive argument.

13 ATTY. MCELLIGOTT: Yes, Your Honor, but not --
14 I'm not agreeing -- by saying I can -- I can
15 substantively argue the motion to reconsider, I'm not
16 agreeing that the motion to reconsider should be
17 granted. Far from it.

18 I don't think there's any basis to reconsider
19 Judge Karazin's decision.

20 THE COURT: All right. Well, if -- are you
21 asking for an opportunity to file something in
22 writing?

23 ATTY. MCELLIGOTT: No, Judge, I'm -- I'm
24 requesting that you deny the motion to reargue.

25 THE COURT: I know. But if I don't -- again, a
26 motion to reargue has two steps. Do I reconsider in
27 the first place. And if I do reconsider, what do I

1 do with the reconsideration? In other words, if the
2 threshold is am I even going to listen?

3 ATTY. MCELLIGOTT: Right.

4 THE COURT: And I -- and that's why I said at
5 the outset, I probably should have been clear that
6 I'm -- I'm listening. So, not -- this is not -- this
7 is more to the merits.

8 ATTY. MCELLIGOTT: Well, I guess I'm unclear. I
9 -- so -- so --

10 THE COURT: When -- when a Judge hears a motion
11 to reargue, very often you will see a Judge say
12 something along the lines of, the motion to reargue
13 is granted with respect to the
14 reargument/reconsideration. But denied as to any
15 substantive relief.

16 Or, it's granted as to the motion to -- to
17 reargue/reconsider. And the following relief is
18 granted. Or, I decline to hear the motion -- to
19 consider the motion to reargue because you haven't
20 met the standards of a motion to reargue.

21 You're simply asking for a second bite at the
22 apple. You haven't articulated any basis on which I
23 should even think about revisiting. So you have that
24 kind of a spectrum.

25 ATTY. MCELLIGOTT: Okay.

26 THE COURT: And that's why I said at the outset,
27 it really -- I really should have focused on that.

1 We're talking about the substantive. And that's why
2 I asked you whether you're prepared to talk about the
3 substantive.

4 If you want to file something in writing listing
5 what you think is why I shouldn't be reconsidering it
6 at all. Again, we have counsel originally saying
7 these things could have been raised earlier. But
8 I'll give you an opportunity if you think you've been
9 somewhat hampered by my inarticulateness in terms of
10 saying what I was going to be listening to, or
11 expecting to be listening to today.

12 Again, I'm trying to give everyone a fair shot
13 to tell me what they think about procedural and
14 substantive.

15 ATTY. MCELLIGOTT: Judge, I'm going to have to
16 insist on the procedure that I don't need a written
17 opposition to the motion to reargue. I feel like
18 I've covered that sufficiently with my oral argument.

19 But if the Court is grant a motion to reconsider
20 Judge Karazin's decision from 2012, I would assume
21 defendants would want an opportunity to brief the
22 current -- you know, whatever the current law is on
23 Votre. And I would want the opportunity to brief
24 that and respond as well.

25 THE COURT: Well, they're -- they're basically
26 arguing that Peters is -- is it. I mean, it's, you
27 know, it's -- that -- that -- that says --

1 ATTY. MCELLIGOTT: Even though it doesn't --

2 THE COURT: -- it.

3 ATTY. MCELLIGOTT: -- mention Votre.

4 THE COURT: No, but that's their argument.

5 Their argument is Peters is it.

6 ATTY. MCELLIGOTT: I under -- I understand. But

7 --

8 THE COURT: Well let me ask what -- what defense
9 counsel -- to the extent that counsel is saying there
10 should be some, perhaps, written presentation of the
11 inter-relationship between Peters and prior Appellate
12 level decisions. Rather than just simply saying,
13 here's Peters and QED, we win.

14 ATTY. HORTON: If -- if Mr. McElligott wishes to
15 submit something on that, I have no objection.

16 ATTY. MCELLIGOTT: No --

17 THE COURT: Do --

18 ATTY. MCELLIGOTT: Judge, I'm not being clear.
19 I believe the Court should deny the motion to
20 reargue/reconsider on the fact -- on the basis of the
21 defendant just simply not having met their burden of
22 proving that reargument is appropriate in these
23 circumstances.

24 THE COURT: Does it -- does it --

25 ATTY. MCELLIGOTT: I think that should be the
26 basis of the decision.

27 THE COURT: Okay, the -- the --

1 ATTY. MCELLIGOTT: And --

2 THE COURT: -- answer is, I think Peters raises
3 enough of a legal issue that it warrants revisiting.
4 The -- the -- one of the -- if I recall correctly,
5 they reargue, they say, the Court has misapplied
6 something, missed something, has misinterpreted a --
7 a principle of law, a controlling principle of law.

8 This goes to whether there's a controlling
9 principle of law that's changed, or has been clearly
10 -- the claim is, this clearly says, clearly says,
11 that Judge Karazin was wrong. I mean, that's the
12 gist.

13 I mean, I'm not -- I'm not -- obviously no
14 personal dispersions to Judge Karazin. But they're
15 saying, this reflects that he was wrong. And it was
16 -- it was a matter of, and I think I said, that he
17 looked at cases going both ways and he decided that
18 it was okay to go this way.

19 He didn't think it was controlling authority.
20 You're saying there was controlling authority.
21 They're saying that whatever Votre was before Peters
22 is clearer in saying no. And, you know, if you want
23 to have an opportunity -- I -- I think it's -- it's
24 far more substantial than a lot of motions to
25 reargue, I see.

26 And I think there's a clear, legal issue. And
27 it's clearly going to be addressed at the Appellate

1 level. And it's being raised now. And I think it
2 warrants some consideration at this point.

3 ATTY. MCELLIGOTT: Judge, it's a two -- it's a
4 two paragraph single piece of paper requesting
5 permission to file the second motion to reconsider
6 and attaching a case. That's it.

7 THE COURT: All right. But that's why --

8 ATTY. MCELLIGOTT: So --

9 THE COURT: -- started at the beginning saying
10 whether we're going to get into the substantive or
11 not.

12 ATTY. MCELLIGOTT: Well, Judge, we only get into
13 the substantive if you grant permission for them to
14 file a second motion to reconsider. And then -- and
15 then it's reconsidered and then -- I mean, am I
16 missing --

17 THE COURT: All right. That -- but that's why I
18 said at the outset. If we're going to get into the
19 substantive then that's beyond the first stage.

20 ATTY. MCELLIGOTT: Well I don't -- well I don't
21 think it is because I think the motion for --

22 THE COURT: All right.

23 ATTY. MCELLIGOTT: -- permission to file a
24 second --

25 THE COURT: All right. The -- all right. If
26 you want to do it that way we'll -- I'm granting the
27 motion for -- for reargument. When do you want to --

1 ATTY. MCELLIGOTT: Well Judge, that's not even -

2 -

3 THE COURT: -- have --

4 ATTY. MCELLIGOTT: -- what's being asked for.

5 The motion is for permission to file a second motion
6 to reconsider.

7 THE COURT: All right.

8 ATTY. MCELLIGOTT: So if Your Honor is granting
9 that motion over my objection, then we'll -- we'll
10 proceed with that motion --

11 THE COURT: All right.

12 ATTY. MCELLIGOTT: -- once they file it.

13 THE COURT: I -- I'm not going to insist on
14 sixteen different pleadings just to get to the point
15 of addressing it on the merits. I am granting motion
16 -- I'm granting permission to file the substance of
17 the reargument.

18 I'm granting permission to reargue. I'm
19 granting permission to reargue. I thought the -- the
20 reason I said at the very outset, the distinction
21 about substantive, was because whether we're going to
22 actually get to the substantive issue.

23 You're saying you need -- you don't think that
24 it's proper to deal with it at this time. All right.
25 I'm saying, we're going to have -- I'm granting
26 permission for there to be reargument. If you want
27 to have briefing on the merits of the reargument, I

1 will allow -- you -- you tell me how much time you
2 need. And you tell me how much time you need and
3 we'll schedule it for argument on October 1?

4 ATTY. MCELLIGOTT: All right. Well, I think --

5 THE COURT: I'm not looking at the paper
6 anymore. I'm dealing with the practical. I have
7 two, four, six, seven attorneys sitting in the
8 courtroom.

9 We've -- this -- this was scheduled a month ago
10 for, I think originally, August 13th. And then
11 August 13th was not available for I forget what
12 reasons. So we rescheduled it for today. So we've
13 have the notion that something is going to be
14 happening today.

15 And simply, the fact that something was called
16 motion for permission to file. That's, perhaps,
17 technically correct. But again, at some point, I'm
18 not going to have them file a motion to reargue which
19 I then have to grant the motion to reargue. At which
20 point we then get to the issue of what are the
21 merits.

22 ATTY. MCELLIGOTT: Okay.

23 THE COURT: I wanted to get to the merits. I
24 thought we got to the merits. If you're saying we
25 didn't get to the merits, or you didn't have an
26 adequate opportunity, that's fine. We'll -- we'll
27 come back on October 1. We'll deal with the merits

1 on October 1. And you can file any --

2 ATTY. MCELLIGOTT: Let me just think.

3 THE COURT: -- objection you want procedurally
4 or substantively. But at some point --

5 ATTY. HORTON: Your --

6 THE COURT: -- I want to cut to the chase and
7 get the issue decided.

8 ATTY. MCELLIGOTT: All right. Let me just see
9 if I can understand where we're at for a second.

10 THE COURT: I mean --

11 ATTY. HORTON: Your Honor, I've said everything
12 I have to say.

13 THE COURT: Okay.

14 ATTY. HORTON: I have nothing else to say.

15 THE COURT: Okay, I -- I -- I understand. And
16 that's -- and -- and I sort of invited it by --
17 again, my preliminary comment about substance -- and
18 the fact that a motion to reargue has a couple of
19 different aspects to it. And I wanted to know
20 whether we're getting to the substantive.

21 If counsel is saying we need more time, or he
22 needs more time to get to the substantive, I'll give
23 him the time. I'm not going to hamstring anybody.
24 Because, again, he didn't expect it. He had -- he
25 had to do this on the fly, so to speak.

26 I understand. I'm not going to -- but I do want
27 to get to the substance.

1 ATTY. MCELLIGOTT: Okay, so -- let's do it this
2 way. Noting my objection to the motion for
3 permission to file a second motion to reconsider.
4 Noting my objection to the motion to reconsider
5 itself which has been just sort of assumed that this
6 is both documents.

7 THE COURT: Yes.

8 ATTY. MCELLIGOTT: Understanding that those two
9 motions have been granted, I -- with respect to the
10 substance, I am fine incorporating my argument that I
11 made before as to substance --

12 THE COURT: Yeah, I --

13 ATTY. MCELLIGOTT: -- and maintain an
14 opposition, which is fine.

15 THE COURT: -- mean, it -- it --

16 ATTY. MCELLIGOTT: I hate this -- I just -- I
17 just need to be clear about -- I don't worry about
18 the substance and -- and that sort of thing. With
19 the certainty of an appeal, I just get concerned
20 about procedural issues. And I try to be aware of
21 them.

22 THE COURT: And -- and the answer is, this would
23 be an appeal issue either way.

24 ATTY. MCELLIGOTT: True.

25 THE COURT: And again, it's a pure legal issue.
26 It's not a matter of expanding the record. It's
27 simply saying, the law has changed. That's what

1 they're saying. You're saying, no, it's not really a
2 change.

3 And if it's not really a change, then there's no
4 -- nothing on the substance. But there's clearly, at
5 least, a potential -- this is not the kind of thing,
6 well, gee, you didn't listen to me the first time,
7 I'd like to say it a second time hoping if I say it
8 two, three, four times maybe it'll eventually sink
9 it.

10 This is something where there is a new legal
11 authority being cited. Claimed to be controlling.
12 And that is a proper basis for reconsideration,
13 rearguing, whatever you want to call it. It's not --
14 and again, we are in an awkward-ish -- awkwarder, to
15 create a word, situation of, I didn't hear the
16 argument.

17 I didn't write the decision. Judge Karazin is
18 recused from the case. Therefore, it -- since I was
19 the trial Judge on the trial, the -- I'm the natural
20 successor to that issue. So, I mean, it -- it's
21 simply a matter of, I want to get it done.

22 The case has been languishing at this -- in this
23 limbo post-verdict long enough. I want to get it
24 done and over with.

25 ATTY. MCELLIGOTT: I understand.

26 THE COURT: And I'm not trying to rush it.

27 ATTY. MCELLIGOTT: No.

1 THE COURT: But I'm trying to get -- make -- you
2 know, at some point, it's let's -- let's move on.

3 ATTY. MCELLIGOTT: And the more I think about
4 it, it doesn't really matter.

5 THE COURT: That's -- that's the point. That's
6 the point. It's simply a matter of --

7 ATTY. MCELLIGOTT: Thank you, Your Honor. I'm
8 sorry, I'm a little --

9 THE COURT: That's the point. I mean, somebody
10 is asking me to reconsider something. If it's really
11 wrong, I'm going to say it's wrong. If it's a toss-
12 up, I'm probably not going to, you know, because if -
13 - if Judge Karazin ruled this way and there's nothing
14 clearly showing that he was wrong, then I'll probably
15 leave it the way it is.

16 But I mean, it's simply a matter of let's move
17 on --

18 ATTY. MCELLIGOTT: I got it.

19 THE COURT: -- and have a final -- before the
20 whole -- everything gets shipped up to Hartford so to
21 speak.

22 ATTY. MCELLIGOTT: Got it. Thank you, Judge.

23 THE COURT: Anything else?

24 ATTY. HORTON: So we -- so we don't need to come
25 back on October 1st then?

26 THE COURT: I --

27 ATTY. HORTON: Okay. I wanted to make sure.

1 ATTY. MCELLIGOTT: Thank you.

2 THE COURT: Anybody else have anything to say?

3 Questions? Comments?

4 ATTY. MOORE LEONHARDT: No, Your Honor.

5 THE COURT: All right. Thank you.

6 ATTY. MCELLIGOTT: Thank you, Your Honor.

7 THE COURT: Court is in recess.

8 **X X X X X**

NO: FST-CV12-6013562S

JUDITH KISSEL

: JUDICIAL DISTRICT
OF STAMFORD/NORWALK

V.

: AT STAMFORD, CONNECTICUT

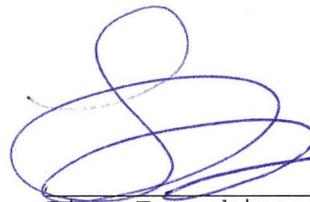
CENTER FOR WOMEN'S HEALTH
P.C., ET AL

: SEPTEMBER 6, 2018

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Kenneth Povodator, Judge, on the 6th day of September, 2018.

Dated this 26th day of September, 2018, in Stamford, Connecticut.



Lisa Franchina
Court Recording Monitor

Connecticut General Statutes Annotated
Title 52. Civil Actions
Chapter 926. Statute of Limitations (Refs & Annos)

C.G.S.A. § 52-584

§ 52-584. Limitation of action for injury to person or property caused by negligence, misconduct or malpractice

Effective: October 1, 2019

[Currentness](#)

No action to recover damages for injury to the person, or to real or personal property, caused by negligence, or by reckless or wanton misconduct, or by malpractice of a physician, surgeon, dentist, podiatrist, chiropractor, advanced practice registered nurse, hospital or sanatorium, shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of, except that a counterclaim may be interposed in any such action any time before the pleadings in such action are finally closed.

Credits

(1949 Rev., § 8324; 1957, P.A. 467; 1969, P.A. 401, § 2, eff. Oct. 1, 1969; [2019, P.A. 19-98, § 26, eff. Oct. 1, 2019.](#))

[Notes of Decisions \(406\)](#)

C. G. S. A. § 52-584, CT ST § 52-584

The statutes and Constitution are current through the 2019 January Regular Session and the 2019 July Special Session.

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