

Mirkovich, David L. 2018-07-12

Designation List Report



Mirkovich, David L.

2018-07-12

Plaintiff Affirmatives

00:14:02

TOTAL RUN TIME

00:14:02



MIRK_PR - Mirkovich, David L. 2018-07-12

DESIGNATION	SOURCE	DURATION	ID
4:05 - 4:07	Mirkovich, David L. 2018-07-12	00:00:03	MIRK_PR.1
	4:05 Q. All right. Would you state your full name		
	4:06 for us for the record again?		
	4:07 A. David Mirkovich.		
5:03 - 5:05	Mirkovich, David L. 2018-07-12	00:00:06	MIRK_PR.2
	5:03 Q. Yes. Do you understand that you have been		
	5:04 sworn in to tell the truth under penalty of perjury?		
	5:05 A. Yes, I do.		
26:15 - 26:19	Mirkovich, David L. 2018-07-12	00:00:16	MIRK_PR.3
	26:15 Q. In terms of your employment history after		
	26:16 graduating college, first full-time job, what did		
	26:17 you do?		
	26:18 A. I worked with a speed reading company as a		
	26:19 teacher and salesperson.		
26:20 - 26:21	Mirkovich, David L. 2018-07-12	00:00:04	MIRK_PR.31
	26:20 Q. And who was the employer?		
	26:21 A. Lane & Associates.		
26:22 - 26:23	Mirkovich, David L. 2018-07-12	00:00:04	MIRK_PR.32
	26:22 Q. And for, approximately, what period of		
	26:23 time did that employment last?		
26:24 - 27:02	Mirkovich, David L. 2018-07-12	00:00:11	MIRK_PR.30
	26:24 A. Seven -- seven years.		
	26:25 Q. What was the last title, if you recall,		
	27:01 that you achieved at Lane & Associates?		
	27:02 A. Part owner.		
27:05 - 27:16	Mirkovich, David L. 2018-07-12	00:00:31	MIRK_PR.4
	27:05 Q. And, approximately, when was it that you		
	27:06 left Lane & Associates?		
	27:07 A. In '77.		
	27:08 Q. And what was --		
	27:09 A. I'm sorry. 1977.		
	27:10 Q. Thank you. And at that juncture what was		
	27:11 the next full-time employment that you had?		
	27:12 A. A division of Xerox called Cheshire.		
	27:13 Q. Spell that for me.		
	27:14 A. C-h-e-s-h-i-r-e.		
	27:15 Q. And what was the nature of the business?		
	27:16 A. Selling mailing equipment.		

MIRK_PR - Mirkovich, David L. 2018-07-12

DESIGNATION	SOURCE	DURATION	ID
27:25 - 28:13	Mirkovich, David L. 2018-07-12 27:25 Q. All right. I'll try it again. 28:01 How long did you stay with Xerox? 28:02 A. With the -- can I interject and not answer 28:03 your question? 28:04 Q. Sure. Absolutely. 28:05 A. The company was bought and sold by two 28:06 others. 28:07 Q. All right. That helps. So let's play 28:08 that evolution through -- 28:09 A. Okay. So I stayed with -- 28:10 Q. -- up until the last purchase. 28:11 A. There you go. 28:12 Q. How long was that? 28:13 A. '94, 1994.	00:00:21	MIRK_PR.5
29:05 - 29:13	Mirkovich, David L. 2018-07-12 29:05 Q. And in 1994 what was the next employer 29:06 that you had? 29:07 A. Myself. 29:08 Q. Self-employed? 29:09 A. Yes. 29:10 Q. Did you have a DBA or a business? 29:11 A. Yes. 29:12 Q. What was the name? 29:13 A. MDL & Associates.	00:00:13	MIRK_PR.6
29:21 - 29:24	Mirkovich, David L. 2018-07-12 29:21 Q. And what was the nature of 29:22 MDL & Associates' business? 29:23 A. Consulting business for saving companies 29:24 money in their mailing business.	00:00:10	MIRK_PR.7
30:09 - 30:16	Mirkovich, David L. 2018-07-12 30:09 Q. How long did you operate MDL & Associates? 30:10 A. Until 2002, January of 2002. 30:11 Q. And where were you employed next at that 30:12 time? 30:13 A. Somatics. 30:14 Q. And you've been employed by Somatics 30:15 since? 30:16 A. Since.	00:00:26	MIRK_PR.8

MIRK_PR - Mirkovich, David L. 2018-07-12

DESIGNATION	SOURCE	DURATION	ID
31:23 - 32:01	Mirkovich, David L. 2018-07-12 31:23 Q. When you were hired in 2002 at Somatics, 31:24 what title, if any, did you have at that point in 31:25 time? 32:01 A. Sales manager.	00:00:11	MIRK_PR.9
33:11 - 33:19	Mirkovich, David L. 2018-07-12 33:11 Q. What was the next title that you had while 33:12 employed with Somatics? 33:13 A. I cannot answer your next title. I can 33:14 say my current title is general manager. 33:15 Q. Okay. When did you become general manager 33:16 of Somatics, best estimate? 33:17 A. And you're absolutely right. It's an 33:18 estimate. No. I can't estimate. Somewhere in -- 33:19 before 2010.	00:00:33	MIRK_PR.10
48:08 - 48:10	Mirkovich, David L. 2018-07-12 48:08 Q. All right. How many employees currently 48:09 at Somatics? 48:10 A. Three.	00:00:05	MIRK_PR.11
49:07 - 49:09	Mirkovich, David L. 2018-07-12 49:07 Q. Was it always just about three, or was 49:08 there a period where that fluctuated? 49:09 A. About three is an answer. Yes.	00:00:07	MIRK_PR.12
62:16 - 63:06	Mirkovich, David L. 2018-07-12 62:16 Q. All right. And at that point in time -- 62:17 apologies for going backwards a little bit -- the 62:18 MedWatch events that came to your attention during 62:19 that period of time were which? Which events from 62:20 MedWatch did you become aware of? 62:21 A. The vast, vast majority were the minor 62:22 skin burns that were reported. There was one other 62:23 wacko -- that's a bad term to use. There was one 62:24 other listing that was not a minor skin burn. 62:25 Q. And what was that? 63:01 A. That's where a no-named individual, with 63:02 no medical information or hospital information, 63:03 posted that she had suffered memory loss and things 63:04 along those lines, but without any credible evidence 63:05 of events. It was just -- in today's language, she	00:01:13	MIRK_PR.13

MIRK_PR - Mirkovich, David L. 2018-07-12

DESIGNATION	SOURCE	DURATION	ID
139:18 - 139:25	63:06 posted a blog. Mirkovich, David L. 2018-07-12	00:00:34	MIRK_PR.14
	139:18 Q. Since taking the position with Somatics in 139:19 2002, have you ever learned that ECT was formerly 139:20 known as shock therapy? 139:21 A. I'll answer that question a little bit 139:22 differently than you proposed it. Have I ever 139:23 learned that it was defined or referred to as shock 139:24 therapy? Defined, no. Referred to as shock 139:25 therapy, yes.		
140:14 - 141:12	Mirkovich, David L. 2018-07-12	00:01:24	MIRK_PR.15
	140:14 Q. Any reason to believe there was a 140:15 difference between what was formerly referred to as 140:16 shocked therapy versus what's now referred to as 140:17 electroconvulsive therapy? 140:18 A. I do not know what was referred to as 140:19 shock therapy. I can give you a little bit of 140:20 history, if that's what you're looking for. 140:21 Q. Sure. What have you learned? 140:22 A. I have learned that back in '36 or '37 -- 140:23 as in 1936 or 1937 -- the first electroshock therapy 140:24 was given, and it turned out to be successful. Then 140:25 I learned that between 1937 and the 1960s, if you 141:01 want to call it shock therapy or electroconvulsive 141:02 therapy or seizure therapy -- I will not label it 141:03 shock therapy, as you did -- was performed without 141:04 anesthesia, was performed in psychiatric hospitals, 141:05 without patients' approvals, et cetera. 141:06 Obviously today things have greatly 141:07 changed, where medication is administered, the 141:08 patient is put to sleep, muscle relaxants are used, 141:09 square pulse waves versus sign waves, et cetera, 141:10 et cetera. So to answer your question are there 141:11 differences, whether it's called shock therapy or 141:12 early electroconvulsive therapy, yes.		
159:13 - 159:20	Mirkovich, David L. 2018-07-12	00:00:32	MIRK_PR.16
	159:13 Q. So, for example, if Dr. Swartz or 159:14 Dr. Abrams became aware of a death that was alleged 159:15 to be caused by ECT treatment, but the description 159:16 called it shock therapy -- all right -- and		

MIRK_PR - Mirkovich, David L. 2018-07-12

DESIGNATION	SOURCE	DURATION	ID
	159:17 Dr. Abrams or Swartz decided that term alone 159:18 rendered it not requiring an investigation or 159:19 report, would you agree with that? 159:20 A. No.		
159:24 - 160:06	Mirkovich, David L. 2018-07-12 159:24 Q. In terms of your sales capacity, I would 159:25 expect at some juncture and now over time you've 160:01 learned more and more and more about how the machine 160:02 works and how you sell it to be different than your 160:03 competitors. Is that a fair statement? 160:04 A. I would hope so. That's a fair statement. 160:05 Q. Okay. What is your understanding of the 160:06 mechanism of ECT treatment, as to why it works?	00:00:31	MIRK_PR.26
160:07 - 160:15	Mirkovich, David L. 2018-07-12 160:07 A. I'm smiling at you. You used the term 160:08 "mechanism." To this day, my understanding is no 160:09 one on this earth understands the real mechanism of 160:10 why it works. 160:11 Q. And that includes Dr. Abrams and 160:12 Dr. Swartz -- 160:13 A. Yes. 160:14 Q. -- as far as you know? 160:15 A. As far as I know.	00:00:22	MIRK_PR.27
166:20 - 167:09	Mirkovich, David L. 2018-07-12 166:20 Q. There's a phrase that I saw a few places 166:21 in the web page. I'm going to read it. It's as 166:22 follows. It's in italics at some of the end of some 166:23 the pages. It says: Please note that nothing in 166:24 this website constitutes or should be construed as a 166:25 claim by Somatics, LLC, that confusion, cognitive 167:01 impairment, or memory loss (short-term, long-term, 167:02 recent, remote, transient, or persistent) cannot 167:03 occur as the result of ECT. 167:04 Did you know that was on your web page? 167:05 A. On the web page? No. I know it's in our 167:06 literature. I know it's in our instruction manual. 167:07 Q. Do you know why? 167:08 A. Yes. Those are known common side effects 167:09 of ECT.	00:00:53	MIRK_PR.17

MIRK_PR - Mirkovich, David L. 2018-07-12

DESIGNATION	SOURCE	DURATION	ID
167:10 - 167:13	Mirkovich, David L. 2018-07-12 167:10 Q. In terms of your role in the sales of 167:11 Somatics' ECT devices, are you aware of any specific 167:12 disclosures that Somatics, LLC, devices, when used, 167:13 run the risk of permanent memory loss?	00:00:23	MIRK_PR.33
193:10 - 193:21	Mirkovich, David L. 2018-07-12 193:10 Q. What's your understanding of the seizure 193:11 threshold meaning with regard to ECT? 193:12 A. Seizure threshold is tried to be obtained, 193:13 the first treatment with a patient, by going with 193:14 the lowest dose of energy to create a seizure. The 193:15 general rule is start low and gradually work up. 193:16 The general rule, which, once again, I am not a 193:17 doctor. This is -- what the hell -- we can't call 193:18 it a guess. What do we call it? 193:19 Q. Speculation? 193:20 A. Speculation based upon information I've 193:21 learned over 17, 16 years.	00:00:43	MIRK_PR.18
194:17 - 194:22	Mirkovich, David L. 2018-07-12 194:17 Does the efficacy of an ECT treatment 194:18 require a dose above the seizure threshold? 194:19 A. My general understanding is yes. 194:20 Q. And why is that, as far as you know? Why 194:21 do we need a dose more than that would bring upon a 194:22 seizure?	00:00:27	MIRK_PR.19
194:25 - 195:08	Mirkovich, David L. 2018-07-12 194:25 Q. If you know. 195:01 A. I don't know. 195:02 Q. Fair enough. 195:03 A. I'm not a medical doctor. I have been -- 195:04 never mind. 195:05 Q. All right. In your travels, in your 195:06 17 years in the industry with Somatics, have you 195:07 gained any understanding of what the electricity 195:08 does to the brain cells?	00:00:19	MIRK_PR.28
195:12 - 195:18	Mirkovich, David L. 2018-07-12 195:12 A. What I've learned I thought I explained 195:13 earlier. So we'll repeat what I tried to say 195:14 earlier. Electricity goes into the brain. It	00:00:22	MIRK_PR.20

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	195:15 affects the neurons and their firing, so the firing 195:16 of the neurons, which is an electrical reaction to 195:17 the electricity, which creates chemicals and somehow 195:18 does magic.		
196:03 - 196:16	Mirkovich, David L. 2018-07-12	00:00:49	MIRK_PR.21
	196:03 Q. Using that response and that backdrop for 196:04 my next question, what's your understanding of why a 196:05 seizure needs to be involved if just the electricity 196:06 changes the neurons? 196:07 A. I don't know. 196:08 Q. So has anyone ever explained to you why a 196:09 seizure is necessary or beneficial or part of the 196:10 process? 196:11 A. Has anyone ever explained that to me? No. 196:12 Have I listened to conversations that say if a 196:13 seizure occurs and if it generalizes, then that will 196:14 have beneficial outcomes, efficacy? What the heck 196:15 that means, I do not know. I know the words, but 196:16 I'm not a medical doctor.		
205:21 - 206:23	Mirkovich, David L. 2018-07-12	00:01:16	MIRK_PR.22
	205:21 Q. In your sales travels, are you aware of 205:22 the maximum voltage that can be utilized by a 205:23 Thymatron device? 205:24 A. Yes. 205:25 Q. What would that be? 206:01 A. Ninety-nine -- wait a minute. Voltage? 206:02 450 volts, plus or minus 8 percent. 206:03 Q. What's the variance result from? 206:04 A. I beg your pardon? 206:05 Q. What's that variance, plus or minus 206:06 8 percent, a result of? What variables come into 206:07 play for that 8 percent differential? 206:08 A. The amount of current, the amount of 206:09 pulses, the amount of pulse width, the amount of 206:10 frequency. 206:11 Q. And are you aware, again just in your 206:12 travels, as to the maximum amperage that can be 206:13 delivered by a Thymatron? 206:14 A. I'm pausing because I'm trying to think. 206:15 Maximum amperage?		

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DESIGNATION	SOURCE	DURATION	ID
	206:16 Q. Correct.		
	206:17 A. Yes. .90, plus or minus 5 percent.,		
	206:18 .90 amps.		
	206:19 Q. And what variables, if any, that you're		
	206:20 aware of create that plus or minus 5 percent		
	206:21 variation?		
	206:22 A. The frequency, the hertz, and the power		
	206:23 coming out of the wall.		
206:24 - 207:05	Mirkovich, David L. 2018-07-12	00:00:18	MIRK_PR.34
	206:24 Q. As I understand it, there's a difference		
	206:25 in the limits of the joules in the states versus		
	207:01 other countries. Is that an accurate statement?		
	207:02 A. Very accurate.		
	207:03 Q. What's the U.S. limit, if you're aware?		
	207:04 A. Ninety-nine joules, plus or minus the		
	207:05 tolerances.		
229:08 - 229:17	Mirkovich, David L. 2018-07-12	00:00:33	MIRK_PR.23
	229:08 Q. Are you aware of any testing that has been		
	229:09 accomplished by Somatics with regard to the measure		
	229:10 of the heat change caused by Somatics' ECT devices		
	229:11 within the brain?		
	229:12 A. No.		
	229:13 Q. Are you aware of any testing that's been		
	229:14 accomplished by Somatics with regard to the measure		
	229:15 of any movement of the brain caused by ECT devices		
	229:16 and Somatics?		
	229:17 A. No.		

Plaintiff Affirmatives	00:14:02
TOTAL RUN TIME	00:14:02