

Mr. Burgos sustained would prevent him from working in the field of construction?

A I do not believe he can return to construction because he has limited use of the wrists, and that includes not only motion, but the ability to grip. When you grip, you can actually see how it forces your hand down onto your wrist, which produces pain when you have this type of fracture. So, in fact, I have a note in here that I just noted that he was having difficulty even lifting an object. He had tried to grip a hammer at one point and couldn't do that, which goes along with this type of injury, so I don't believe he can lift machinery, I don't believe he can lift tools. I certainly don't want him climbing ladders and things like that with his hip limitations, but also with his gripping limitations, as he tries to climb the rungs or pull on ropes and things like that.

Q Doctor, do you have an opinion, with a reasonable degree of medical certainty, as to whether or not Mr. Burgos would need future medical care?

A Yes, I believe he will need future medical care and I believe, again, that he should have physical therapy. We have been trying to get authorization for that. I believe he will need hip injections in the future, I believe he will need continued medication in the future and I believe he will need at least one, if not two, wrist fusions and one, if not two, hip replacements.

Q Will he need to be followed by an orthopedist, whether it be yourself or some other orthopedist, for any period of time into the future?

A I think he will need to be followed probably for the rest of his life. Surely certainly once you have a hip replacement you make a yearly visit regarding the wear and tear across the hip. It is a good procedure, but it is only metal and plastic but it can fatigue and break and it has to be monitored.

Q I want you to assume that there is evidence in the record that Mr. Burgos has pain, when he walks long distances, in his hip; has groin pain when he walks up and down stairs; has pain in his hands activity related, the more activity he does, the more pain that he has. Are those symptoms of pain consistent with the injuries that you described he sustained?

A Yes, absolutely.

Q Now, Doctor, when you talked about the future medical care, do you have an opinion, with a reasonable degree of medical certainty, as to what the reasonable and customary costs for that medical care would be? And, first, let me start with the future treatment following by an orthopedic surgeon, as you mentioned, for the rest of his life.

A Orthopedic visits to a physician, depending on how long the patient is seen or what type of visit it is, are generally from 75 to \$250, it's a big range. Usually the type of visit that I was talking about at least once a year after a hip replacement is probably a \$150 visit.

X-rays need to be taken, which is another 150 to \$200. And, again, that's about once a year once the hip replacement is done.

Physical therapy: A course of physical therapy is generally six weeks, twice a week, so 12 visits, and those are, in today's charges, about 100 to \$150 a visit.

Oral medications generally run between 90 and \$120 a month for anti-inflammatory medications or the type of narcotic pain medications he has been using. He uses the narcotics very infrequently, so it's probably a smaller cost than I just said, but it varies depending on his pain.

Wrist fusion surgery is about 7,500 to \$8,000 for the surgical cost, depending on what implants are put in, metal plates and screws, certain types of metal plates and screws.

There is an anesthetic cost of about \$1200 for the actual surgery. There is a hospital cost of about 2,800 to \$3,500 for the hospital stay, and then physical therapy following that surgery which, again, would be a course of physical therapy.

Hip replacement surgery, total package is about 28 to \$32,000.

Q And, Doctor, did you -- do you have invoices for the services of your office as part of your office records, as well?

A I don't think I do. I don't think I have those with me. I don't believe I do.

Q Do you have a recollection of what the cost of your services were over the past two-and-a-half years for your treatment of Mr. Burgos?

A I do not. I had that sitting on my desk this morning and I didn't get that. I just had it printed out this morning, but I don't recall what it was. I don't have that cost. I can get that to you.

THE COURT: It can be put in at a later date by certified medical records from his office. You may have to do it.

MR. MADONNA: Thank you, Judge.

Thank you very much, Doctor.

THE COURT: Could I have the lawyers up, please.

Jurors, take a five-minute break before cross-examination.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exited the courtroom, at which time a short recess was declared and taken.)

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: Okay, cross-exam.

CROSS-EXAMINATION BY

MR. LAMBERT:

Q Hello, Dr. Kaplan. My name is Ed Lambert, and I represent one of the defendants in the case.

A Yes.

Q Our paths have never crossed before; have they?

A You and I, no.

Q No.

You brought with you your file here today.

A Right.

Q And it's been marked into evidence, I believe.

A Right.

Q And I noticed at the end of that file there is an EMG study?

A Yes.

Q Was that done by some doctor in your office?

A That was done by Dr. Boppana, B-O-P-P-A-N-A.

Q Is that in your file because either you asked for it or your neurologist in your office requested that this study be done?

A That's correct.

Q Did you get approval from whoever you need to get these approvals from to have that done?

A I believe so, yes.

Q And what EMG study did that -- what portion of the body was that EMG study done of?

A That was of the ulnar and median nerve. Miguel was having some irritation of the nerves, and so to rule out a syndrome called carpal tunnel syndrome or ulnar tunnel syndrome, we did an EMG. They were normal, meaning there was no --

Q I didn't get to that.

A Oh, I'm sorry. Go ahead.

Q I asked you what study was done.

A An EMG of the upper extremities.

Q And am I correct that the EMG is some type of diagnostic tool that can be utilized to see if there is any nerve problems?

A It is used specifically to see if there is any nerve damage either from pressure or laceration or injury to the nerve. It doesn't show all nerve problems, as you say. It doesn't show irritation of the nerve.

Q Doctor, forgive me. I am not in your field and my terms may be unartful at times.

A That's why I was clarifying.

Q Good. I'm glad you do.

The studies were done when?

A That study was done 7/8/05.

Q That's how long after the accident, approximately?

A Approximately three years, four years.

Q Now, am I correct your testimony today is that you opine, from your treatment of him, that you see progressive conditions developing in the wrist and have seen that progressive degeneration in the wrist areas?

A That's correct.

Q But yet the nerve conduction or the EMG study that you had performed is showing a normal findings?

MR. MADONNA: Objection.

THE COURT: Objection sustained.

You said that the study was of the ulnar and the median nerve; right?

THE WITNESS: Correct.

THE COURT: Was the ulnar and median nerve injured in his original injury?

THE WITNESS: No. That's the point of doing the test. He was having progressive symptoms which were felt to be from deterioration in the wrist, which is accompanied with inflammation. The median nerve runs through this -- these two bones here (indicating). This is the carpal tunnel. And when you have a fracture of the radius, you can often have irritation associated with that, which are one of the signs of inflammation and arthritis, and that alone can irritate [he nerve. But that's different from having carpal tunnel, which is what we were trying to rule out.

Carpal tunnel, we can simply release a ligament and fix the problem. This is not something, unfortunately, that can be fixed that easily.

Q But the test did show you that there is no nerve irritation being generated in the wrist?

MR. MADONNA: Objection, your Honor.

THE COURT: He can answer that question.

A I think what I said was there is no damage to the nerve, no pressure on it. But the study doesn't just show irritation. It can't show symptoms of inflammation and things like that because the electrical flow down the nerve is the same. It's not blocked off, as you would see in carpal tunnel.

Q At one point -- strike that.

You also indicated that you felt, in relation to Miguel's hip area, that he is having -- and I murder these medical words -- iliosacral problems, generally?

A Sacroiliac pain.

Q Is the sacroiliac pain also a nerve-related pain?

A Well, all pain is nerve-related pain. That's how we feel things, through our nerves. But that's not the source of the pain. That's like saying is a headache nerve-related pain. Yeah, it's nerve-related pain but it is not the source of the pain.

Q Let me ask you this, Doctor, on that point: Did you conduct any EMGs of his lower extremities, the leg involved of the hip?

A No, there would be no purpose to do that. I'm not sure why you are asking me.

THE COURT: Why would there be no purpose?

THE WITNESS: A nerve conduction study shows pressure or injury to a nerve. I don't find any pressure or injury to a nerve. Generally, lower extremity nerve conduction studies are done when you think you have a herniated disk or something like that. That's not the type of injury that we are talking about here, so I wouldn't --

Q Well, Doctor, didn't you, in your direct testimony, talk about the fact that Miguel is complaining of, recently, lower back pain?

A That's a very different item than a specific diagnosis of a herniated disk or something like that. He does not have symptoms of a herniated disk. He has got back pain and the back pain is associated with this area of the sacroiliac joint, which is an area that can be disrupted by this type of fracture or by the dissection needed to put the plate on the ilium.

Q Doctor, can you tell me what the term "radiculopathy" means?

A That means pain radiating into the lower extremity down a nerve root, meaning a nerve that comes out of the back and travels down the leg. And the radiculopathy refers to the radiating pain in a nerve root and is generally caused by either irritation of a nerve in the back, a herniated disk, a fracture or some other abnormality that puts pressure on a nerve.

Q And with respect to the fractures that Mr. Burgos received or sustained with respect to the hip, has it caused any type of nerve damage or nerve problems that are causing any type of radiculopathy to his leg?

A I don't believe he has symptoms of a radiculopathy, that's correct.

Q Have you, with respect to his complaints of lower back pain, ordered or made authorization, request for authorization to do EMGs or nerve conduction studies of his lower extremities?

A No, I have not.

Q Is there any reason why, with having a neurologist on staff, you haven't done that?

A Yes. Because tests are done for specific reasons. Not just because someone hurts in a certain area.

My reason for ordering a nerve conduction study of the Lower extremity would be if he had symptoms of radiculopathy, pain radiating down the legs, that I felt was from a disk or fracture or some injury to the nerves of the low back, the lumbar nerves. I don't believe he has that.

Q Well, Doctor, would you take a look at your report of May 19th, 2005; specifically the last page, Page 4.

A Okay.

Q In the second-from-last paragraph --

A Right.

Q -- I believe you wrote or signed -- I don't know if it's you or Dr. Crone. If I may read it: A severe permanent disability is present --

THE COURT: You can't read it. It's not in evidence.

Q Isn't this part of your -- maintained in your file that's in evidence?

A Yes.

MR. LAMBERT: This is part of --

THE COURT: Okay, then you can read it.

Q (Reading): A severe permanent disability is present and expected to progress over time. Surgery will be required in the future for salvage of the wrist. Post-traumatic arthrosis of the hips is going to require total hip and arthroplasty in the future,

as well.

A Yes.

Q (Reading): Intermittent courses of physical therapy are strongly encouraged to maintain functional activity level at the wrist and hip. Recommendation is for two times a year three times a week for six weeks. Electrodiagnostic studies are warranted to evaluate peripheral neuropathy.

What does that last sentence mean, "electrodiagnostic studies are warranted to evaluate peripheral neuropathy"?

A A neuropathy -- anything you put "pathy" after indicates an abnormality of that structure, so a neuropathy is a problem with a nerve.

If you refer three paragraphs ahead of it, it says peripheral neuropathy bilateral wrists. This is in may. We indicated that he should have the EMG of the wrist, which he had two months later in July, and that's what that refers to.

Q And that EMG that you are referring to, the study that you had, showed normal findings?

A That's correct.

Q Norma] findings means no nerve problem?

A That's not at all that it means. As I have said three times, it means no pressure on the nerve, no interruption of the electrical flow. It doesn't show when there is irritation of the nerve, which is what we feel is going on here, but you have to rule out other causes.

Q What about that sentence there, "electrodiagnostic studies are warranted to evaluate peripheral neuropathy;" doesn't that also include the hip and lower extremity regions?

A It doesn't say anywhere in this report, sir, that there is any peripheral neuropathy in the lower extremities. It refers to where it says peripheral neuropathy at the bilateral wrist.

Q You weren't going to investigate whether or not the hip fractures were causing any neuropathies to the leg?

A He has no symptoms of neuropathy of the legs.

Q What about his complaint of lower back pain?

A That's lower back pain. That is not a radiculopathy and it is not a neuropathy.

Q Doesn't it usually normally lead to radiculopathy if it's related to a fracture or if it's related to an arthritic or arthrosis condition that's developing?

MR. MADONNA: Objection.

Form, at the least.

THE COURT: It's a compound question, at best.

A The answer to all of those questions is no. There is --

THE COURT: He has to rephrase the question.

Q At any time, Doctor, in your long treatment of Miguel Burgos, have you ever found any neurological deficits of any sort?

A It depends on your definition of "deficits." We have found complaints that are related, I believe, to irritation of the median nerve because of injuries to the wrist, where the wrist has subsided a bit and there is inflammation about it. I don't believe there is any interruption in the nerve flow, meaning there is no pressure on any of the nerves, or pinched nerves, in layman's terms, and I don't believe he has a radiculopathy, which is a nerve root problem in the back.

I believe a majority of his problems are what I described, the arthritic problems that I described before.

Q But am I correct that you would then agree that any of these arthritic problems that you see developing have not progressed to cause any type of nerve impingement, nerve irritation or anything that's related to neurology?

MR. MADONNA: Objection.

THE COURT: That's so many levels.

I'll let him answer because he can do a good job. Objection overruled.

Go ahead.

A Number one, you included irritation. I have said several times I do believe he has irritation of the median nerve that is giving him the symptoms of numbness and tingling in his fingers occasionally.

Q Okay, let me stop you right there. But it has not shown up on any diagnostic objective tool?

THE COURT: For the third time, he said that -- objection sustained. I am just leaving it at that.

MR. LAMBERT: Exception.

THE COURT: What he keeps saying is that you can't show on that kind of a test. All that shows is interruption. It doesn't show something that's been -- what's your word?

THE WITNESS: Irritated.

It's like when someone has nerve -- a headache. That's nerve mediated pain. That's irritation.

Q Doctor, you told us you have been treating him conservatively and that you recommended that he takes those certain physical therapy at home or somewhere else?

A Yes.

Q Have you asked him if he has been performing that?

A His home therapy?

Q Yes.

A Yes.

Q What does it consist of?

A IL consists of range-of-motion exercises. We give out sheets of exercises for people who can do home exercises. Basically, it's range of motion of the hip and wrist and it's a step-wise sheet.

Q How would any formal physical therapy differ in any way from what you have told him to do and what you say he is

doing?

A Well, at a physical therapy location where there is a physical therapist with the patient who evaluates him, the physical therapist can do what's called passive range of motion, meaning the joints are stretched beyond what the patient can do by himself.

The physical therapists have access to certain times of machines, including heat, ice, diathermy, which is a machine that sends certain medications like steroids and things deep into the tissues.

So, there are a number of things that therapists do that you can't do on your own. And it's supervised, so the therapist can guide you along.

Q But the exercise program that you have given Mr. Burgos does attempt to reach the same goals; correct?

A Certainly the goal is the same, sure.

Q And am I correct that you have noticed, since the accident, that he has progressed in range of motions, generally, both for the wrist and the hip?

A Since the time of the accident?

Q Yes.

A Well, at the time of the accident I would assume his wrist range of motion was nil, as was his hip, because of the fracture, and then they are put back together. So, certainly he has progressed some, but he has a loss.

Q Now, also with the conservative treatment, have you been prescribing or recommending that he takes any particular type of vitamin supplements or nutritional supplementation?

A No, I haven't. I believe that --

Q Any reason why not?

A Yes, because I believe that if people eat a reasonable American diet, that you get most of the nutrition that you need. Certainly, his bones have healed. There is nothing that I would recommend that I believe would work to replace cartilage or things like that.

Q You just stated that you believe that his bones have healed.

A Absolutely.

Q And that is to draw your analogy to an apple that is removed from the tree needs blood supplementation to stay healthy and heal; is that correct, that analogy you drew?

A Is what correct?

Q The apple that was removed from the tree --

THE COURT: Your saying that his bones healed, is that the same about the analogy that you removed the apple and the apple withered without the blood supply? That's what he is asking. If you don't understand --

A I think maybe you didn't understand what I was saying.

Q Wait a minute.

A The bones have grown together.

Q Your analogy with respect to the apple was, as I understood it, to be that it needs blood --

A Correct.

Q -- for the bone to get nutrition.

A That's correct.

Q But you will not or have not authorized or recommended or prescribed any vitamin supplementation or anything to improve his nutrition for his bones?

THE COURT: Objection sustained.

MR. LAMBERT: Exception.

Q With respect to the injury to Mr. Burgos face, I believe you indicated or stated that it had no orthopedic consequence.

A At this point, that's correct. In the long-term.

Q Does it have any neurologic affect?

A I don't know the answer to that. I have not been treating that.

Q Has Mr. Burgos made complaints with respect to his face or the fracture of his facial bones?

A I believe he has made complaints regarding headaches and I think at one point what was called concussion-type symptoms, but, again, it's not something I have been treating. It's really outside of the orthopedic area

Q A fracture of the face is outside of the orthopedic area?

A That's correct. That is, as I said, a plastic surgery and maxillofacial surgery.

Q Have you referred him to anyone?

A No, the bone healed. I don't believe he needs --

Q But you said he is making complaints of headaches that you believe might be related.

A That's correct.

Q You indicated also that you felt that the relevance of the height with respect to a fall has some significance to you as to diagnosis, but it's not, what did you say, not overwhelmingly significant to you?

A Yes. What I was trying to say, and maybe I'll say it again better this time, is that a fracture like this of the hip requires a good deal of force. I think the difference between whether it takes 15 feet versus 16 feet versus 17 feet is not documented. So, I can't tell you exactly how much force it takes from a fall to break a hip.

Q From your review of the St. Vincent's medical records that are in your file, did you see evidence in there of what was reported to be the height from which he fell?

A Not that I recall, but if you would like to direct me to something, I would be glad to look at it.

Q Do you recall seeing in there a fire department EMT accident --

A Yes.

Q Did that particular document have information as to the reported height of the fall?

A I did not -- I do not see the report of the height of the fall reported here.

MR. LAMBERT: May I approach, your Honor?

THE COURT: Yes.

Q Apparently, from your file, a photocopy was not fully made and I believe the Court's file has the full record.

THE COURT: Can I have all the lawyers Up, please.

(Whereupon, a sidebar discussion was held off the record out of the presence of the jury)

Q Doctor, I have removed a page from Plaintiff's Exhibit 4 in evidence.

THE COURT: It is the full fire report. Please take a look at it now.

You can see that it says that the construction worker states that the fall was six to ten feet. Does that make a difference at all in your diagnosis of either of the two injuries, of either the hip or the wrist?

THE WITNESS: No. Again, I believe that both of those heights could cause it. Certainly, I have been looking through the record, as you all have been, and in the record it says multiple times 10 to 15 feet in the hospital record.

THE COURT: The St. Vincent's record?

THE WITNESS: In the St. Vincent's record.

So, there is clearly some discrepancy on the height of the fall, but --

Q And in those references in the St. Vincent's record, those are either nurses' reports of the plaintiff's statements --

MR. MADONNA: Objection.

THE COURT: Objection sustained.

Q But there are references throughout, you just stated, throughout the St. Vincent's records about the height of the fall?

A Yes.

Q Is there anything --

A But there is a big discrepancy in those.

Q Is there anywhere where it's more than, let's say, 15 feet?

A I think most of the time it says 10 to 15 feet that I am seeing here in just going through them quickly.

Q Doctor, you also testified today, with respect to the wrist, possible future wrist surgeries, that he may need, I believe you

described it, as fusions of the wrist?

A Yes.

Q But it would be your preferred treatment that he only have one?

A If he can tolerate it. Certainly from a functional standpoint, you would rather have one wrist that could flex. It may not be possible because, again, these will progress and get worse over time.

Q But also, when you were summing up at the end about the expenses that he may face in the future for medical costs, et cetera, you projected fusions of both wrists.

A That's correct.

Q But that would be against your preferred treatment?

A Listen, I would prefer that he had not had any surgery, but you have to do what is right for the patient and so preferred, I would rather him have one wrist fusion, but he may need two.

MR. LAMBERT: No other questions.

Thank you.

MS. BROWN: Nothing.

MR. MADONNA: Thank you.

REDIRECT EXAMINATION BY

MR. MADONNA:

Q Doctor, I want to bring up a couple of things that were brought up with regard to the nerve conduction study and the symptoms that Mr. Burgos was complaining about on your visit.

First of all, there is a field of neurology just as there is a field of orthopedics; correct?

A That's correct.

Q And the field of neurology is the study of the nervous system of the body; correct?

A Yes.

Q And in some instances, the two fields overlap most often in the area of spinal column injuries; correct?

A Well, also peripheral injuries, because a lot of fractures can cause injuries to the nerves, but there is a lot of overlap.

Q Now, in diagnosing and planning for a course of treatment for Mr. Burgos as you did at your office, can you explain to the jury how you clinically determined what your plan of treatment is going to be? Do you take note of his symptoms and plan a course of treatment?

A Absolutely. We treat patients according to their symptoms. Now, we -- not only according to their symptoms in that we like to plan and do some preventive medicine, but if someone is complaining about numbness and tingling of the fingers, in a

case like this there are several things that can cause that numbness and tingling of the fingers. You can have development of carpal tunnel syndrome, you can have irritation because of inflammation in the tissues that lie in close proximity to each other. In this case, it would be the wrist joint and the median nerve.

I would never say to someone, "Well, you have got tingling in your fingers. We have got to do an operation to release that carpal tunnel" without first checking it out. And I think in a case like this, I think you need to check it out to prove one way or the other, and that's what we did. We asked him to have an EMG. We asked for approval to do an EMG, and that was done. It was approved.

Q And what were the result of the EMG?

A It was normal, which means that there is electrical flow down the nerve in a normal way, so there is no need to do a rearrangement of his anatomy. You don't have to open up the carpal tunnel. You don't have to incise or cut the ligament to free the nerve.

Q So that test ruled out a neurological cause for the symptoms that he was -- a neurological injury for the symptoms that he was complaining about?

A That's correct. It ruled out a neurological problem that needed to be addressed with surgery. That can be treated with anti-inflammatory medication. He may need injections, but he takes ibuprofen quite frequently and that is certainly the first line of treatment for this.

Q Now, the back pain that you testified Mr. Burgos complained about, was that something that was constant or was that something that was activity related, as well?

A I believe that's activity-related pain. Again, it's in a joint and you can actually exacerbate it by putting his hip in certain positions or pushing on this area of the sacroiliac joint, and that's joint pain.

Q Did that pain have a neurogenic -- a neurological injury causing it, as well, from what you -- withdrawn.

Did you have an opinion as to whether or not that back pain was coming from a neurological injury as opposed to a musculoskeletal injury?

A Yes, I did.

Q And what is that opinion?

A It's not a neurologic injury that's causing that pain. The question that was asked was was it neurologically mediated and I said all pain is. That's how you feel pain, through your nerves. But it's the supporting structures of the joint and the nerves sends the signal back to the brain and says this hurts.

Q Saying this bone and this muscle hurts?

A That's right.

MR. MADONNA: Thank you, nothing further. Recross?

MR. LAMBERT: No.

THE COURT: Thank you. You are excused.

(Whereupon, the witness was excused and retired from the witness stand.)

THE COURT: We are going to take a witness out of turn. Instead of taking the plaintiff, the defendant has a doctor who he is

calling and we will take him out of turn before the plaintiff completes his case.

(Brief pause.)

THE CLERK: Remain standing, please. Raise your right hand.

DR. EBENEZER KOJO ESSUMAN, called as a witness herein, after having first been duly sworn, was examined and testified as follows:

THE CLERK: State your name.

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