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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CIVIL TERM : PART

-----X
MAURICE ANTHONY JACOBS,

Plaintiff,

- against -

JOSE A. FERNANDEZ AND DIAMOND
EQUIPMENT CORP.,

Defendants.

-----X
Index No. 10016/11

360 Adams Street
Brooklyn, New York
September 17, 2013

B E F O R E : HONORABLE ANN PFAU,
Justice (and a jury)

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

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Linda Sigman, CSR
Senior Court Reporter

1 THE COURT: Okay. Why don't we begin? Even
2 though the jury is not here, was an issue.

3 Ms. Branch, ready?

4 MS. BRANCH: I am, your Honor.

5 THE COURT: Yesterday Mr. Ochiogrosso raised
6 an issue with regards to expert witness' information
7 and as I understand it which Mr. Occhiogrosso, your
8 application was that the document is the 3103(D) should
9 preclude Dr. Bayne from being entertained as an expert
10 because this could have -- page contains
11 misrepresentations as to his credentials. Is that --

12 MR. OCCHIOGROSSO: Yes. I believe, your
13 Honor, without going into the entire argument again,
14 that as I mentioned, this is the one and only
15 disclosure we get of his purported expertise and it's
16 incurably defective on its face and I know it's now a
17 Court exhibit. I don't know what number, but for the
18 record, I know the disclosure we received is a Court
19 exhibit.

20 THE COURT: And when you say incurably
21 defective, what do you mean?

22 MR. OCCHIOGROSSO: I mean, that the nature
23 of the proposed disclosure is so materially
24 misrepresented, in that he's held out to be a
25 biomechanical engineer who is duly licensed to practice

1 in the State of New York and near of those things is
2 true.

3 THE COURT: Right.

4 MR. OCCHIOGROSSO: And, that's what's
5 posited as his expertise and before you ever look at
6 his report or his CV; on that basis alone, it's a
7 material representation as to his expertise and it
8 spells out exactly why he could never come in and
9 testify under the mantle of that expertise.

10 THE COURT: Mr. DeVito, you want to address
11 this issue?

12 MR. DEVITO: Again, as I said yesterday,
13 that was a typographical error on our part. It's a
14 form 3101 exchange.

15 However, it's our office's practice to also
16 exchange the report of the expert which is not normally
17 required by the CPLR and the report along with the CV
18 correction and that gave sufficient notice.

19 Plaintiff's counsel had the report I think
20 almost a year and they were able to research Dr.
21 Bayne's background as evidenced by the very detail and
22 research they did in their brief so there's really no
23 surprise and I don't believe there's any prejudice and
24 I think that doctor -- the court should adhere to its
25 original ruling and allow a voir dire out of the jury's

1 presence and Court make the determination at that time.

2 THE COURT: All right. Thank you, Mr.
3 DeVito.

4 I am going to adhere to my original decision
5 and we will voir dire Dr. Bayne on the 23rd as we have
6 already scheduled.

7 I think the standard for the 3103(D) is if
8 there is a problem with it and all sorts of different
9 problems, it is a question whether it is willful and
10 condemnatory and whether its prejudicial. Whether or
11 not it's willful, I think, is irrelevant at this point.

12 You received it along with the doctor's CV
13 and a copy of the report. Clearly you knew who this
14 purported expert is; were able to identify him, so I
15 can't find that there is any prejudice to the plaintiff
16 because of what is contained in the expert exchange
17 information.

18 Therefore, we'll have Al a voir dire of Dr.
19 Bayne.

20 MR. OCCHIOGROSSO: Thank you. Most
21 respectfully, exception, your Honor.

22 THE COURT: Your exception is noted.

23 MR. DEVITO: Judge, two other issues.

24 THE COURT: Yes, go ahead.

25 MR. DEVITO: On the record and you know, I

1 guess we can deal with the first one later or now but
2 the first was about Dr. Klein's office records. I gave
3 the Court and counsel a copy of the Wilson vs. Bodine
4 case which basically says, you know, the Second
5 Department, narrative reports are not normally
6 admissible and, you know, we would continue with that
7 position and ask that those narrative reports contain
8 Dr. Klein's file, not be admitted to the jury.

9 THE COURT: As I understand when we talked
10 about this yesterday, it was agreed that the two sides
11 would go through the file and take out what is
12 inappropriate and if there was a problem with it, you
13 would let me know.

14 You haven't done that yet, right?

15 MR. DEVITO: We haven't had an opportunity
16 to do that and I can't say for sure that we'll still
17 disagree on the issue so maybe we can discuss it later.

18 THE COURT: I think so.

19 MR. DEVITO: At the end of the day.

20 My second issue is I have the plaintiff's
21 Second Supplemental Verified Bill of Particulars, I'd
22 like to mark as a Court exhibit. I have an oral motion
23 in liminae which I think the Court should limit the
24 testimony of Dr. Richter on three regards based on the
25 record that is in evidence so far but if I can mark

1 this and give you a copy so I can call your attention
2 to a few items?

3 THE COURT: Sure.

4 This is the 3103(D) plaintiffs asked to be
5 marked as a Court exhibit.

6 THE COURT: Okay.

7 MR. DEVITO: If I may continue?

8 THE COURT: Yes.

9 MR. DEVITO: So, Judge, if you turn to the
10 second page of that, of what we marked as a Court
11 exhibit, originally dated June 22, 2012 and I would ask
12 the Court to focus on item H which is my main concern,
13 although I have a couple of other points.

14 Yesterday when Dr. Klein was on the stand he
15 testified he could not testify with a reasonable degree
16 of medical certainty that the plaintiff would need
17 future surgery in this case.

18 He basically said well, might be, might not
19 be, but he never stated that Morris Jacob would need
20 surgery in the future with a reasonable degree of
21 medical certainty.

22 In fact, I think during the direct exam he
23 conceded that he couldn't say that and one of the
24 purported items and main purported item is that this
25 Dr. Richter is going to testify that, to the cost of

1 future surgery and talk about future surgery, and since
2 its speculative and there's not a foundational basis
3 that the plaintiff is going to need it with certainty,
4 I think it would be unduly prejudicial to the defense
5 to have this doctor talking about a future surgery, you
6 know, of \$60,000 with future costs of \$96,000, when the
7 standard of proof of reasonable degree of medical
8 certainty has not been met and then, my sub-arguments
9 would be as to D, C and D, B, C and D; B being pain
10 specialist.

11 There has been no testimony from anybody I
12 believe so far that Mr. Jacobs saw a pain specialist
13 and item C, physical therapy, I don't believe -- there
14 has been very limited testimony about physical therapy
15 and D, in terms of medication, Dr. Klein, he didn't
16 prescribe any medication so I would also, the same
17 reasons, basically as item H requests that the doctor
18 be precluded from talking about those items.

19 Mr --

20 THE COURT: Mr. Occhiogrosso, let's start
21 with H.

22 MR. OCCHIOGROSSO: Actually, that's not what
23 Dr. Klein's testimony was yesterday.

24 What Dr. Klein's testimony was, was that his
25 opinion to a reasonable degree of medical certainty is

1 based on his experience treating patients with this
2 exact same surgery; that some need future surgery, and
3 some don't, and his opinion to a reasonable degree of
4 medical certainty is that Maurice Jacobs is more likely
5 than not going to need future surgery.

6 THE COURT: Yeah, that was the language I
7 wrote down; was more likely than not but can't say for
8 sure.

9 MR. OCCHIOGROSSO: So his opinion is offered
10 to a reasonable degree of medical certainty as is
11 required and his opinion, that is more likely than not,
12 is the ultimate standard of proof that we have to meet
13 and further, your Honor, that's Dr. Klein's opinion.
14 To try and precluded Dr. Richter from testifying about
15 things that are in his report before he's testified
16 clearly our, our intention is to offer him as an expert
17 so he can therefore offer his own opinions based on
18 review of treatment records and based on an examination
19 of Maurice Jacobs so his own expertise will be tested
20 on cross-examination here.

21 THE COURT: Mr. DeVito, anything?

22 MR. DEVITO: It's still speculative. Not
23 more likely than not is not a reasonable degree of
24 medical certainty and Dr. Richter is not, he's a life
25 care plan specialist, not a treating doctor.

1 In fact, in the opening statement Mr.
2 Occhiogrosso said there was only one treating doctor
3 and that doctor is Dr. Klein so, you know Dr. Richter
4 didn't treat him; just saw him.

5 THE COURT: And what is -- sorry, just, what
6 is Dr. Richter's expertise?

7 MR. OCCHIOGROSSO: Dr. Richter is an
8 imminently qualified expert in physical medicine and
9 rehabilitation; actually admitting at Stanford and
10 Harvard trained. His qualifications will be before the
11 Court momentarily and there's really no issue as to Dr.
12 Richter's expertise in this area and, as far as the
13 argument about the standard of proof, I think we
14 already covered that.

15 THE COURT: Yeah, I think that's right. I
16 think there is enough evidence come in that there is a
17 possibility that future surgery will be needed so with
18 regard to subsection H, I'm going to allow the evidence
19 to come in as to the cost of the surgery, and if, if
20 this expert opines on the need for the surgery, that's
21 something you can cross-examine this witness on.

22 MR. DEVITO: Okay.

23 THE COURT: And your next -- sorry, if you
24 have something to say, say it to the Court.

25 MS. BRANCH: I was asking him a question

1 because he's making the argument. I wasn't sure if he
2 knew the answer, your Honor. I wasn't --

3 MR. OCCHIOGROSSO: Your Honor --

4 THE COURT: Let's have one on each side.

5 MS. BRANCH: That's why I'm talking to him,
6 not --

7 I apologize.

8 MR. OCCHIOGROSSO: If I -- I beg the Court's
9 forgiveness. I don't think I properly explained what
10 else I was saying when I referred to Dr. Richter's
11 qualifications. I think as to the remainder of the
12 heard items that Mr. DeVito put before the Court, B, C
13 and D, what I was trying to say is that based on his
14 expertise, he can offer an opinion to a reasonable
15 degree of medical certainty as to whether Maurice
16 Jacobs would benefit from these treatments, modalities
17 from this moment on.

18 THE COURT: Mr. DeVito?

19 MR. DEVITO: I think -- I still say he's not
20 a treating doctor and he didn't, you know, not the
21 surgeon. He didn't recommend surgery; only saw Mr.
22 Jacobs twice so I don't believe he should be allowed,
23 should be allowed to opine on the need for surgery.

24 I mean, I take no exception to your ruling
25 that you're going to allow it but, you know, as to the

1 cost, but I don't think he can give an opinion as to
2 the need for it, if he only saw him twice. He wasn't
3 the surgeon and he didn't treat him.

4 THE COURT: Well, very often the expert who
5 opines as to future issues with regards to ones medical
6 care, is not the treating doctor, correct, right?

7 MR. DEVITO: Sometimes, yes, your Honor.

8 THE COURT: Yeah, so, I think it's an issue
9 of credibility. You have experts who are going to be
10 saying different things. It's up to the jury to weigh
11 credibility and the expertise and certainly subject to
12 your capable cross-examination so I'm going to allow,
13 to allow expertise with regard to subdivision B, C and
14 D which I think are the remainder of your objections
15 and your exception is noted.

16 MR. DEVITO: Note my exception.

17 THE COURT: Anything else?

18 MS. BRANCH: No, your Honor.

19 THE COURT OFFICER: Jury entering.

20 (The jury entered the courtroom and the
21 following occurred:)

22 THE COURT: Jurors, welcome. Please be
23 seated. Courtroom may be seated. Thank you for being
24 so prompt.

25 We all very much appreciate it and we're

1 going to continue this morning with the plaintiff
2 presenting testimony in his case.

3 Mr. Aranki?

4 MR. ARANKI: Your Honor, thank your Honor.

5 On behalf of Maurice Jacobs, we call Dr. Edwin Richter.

6 THE COURT OFFICER: Thank you.

7 DR. E-D-W-I-N F. R-I-C-H-T-E-R III having
8 been first duly sworn, testified as follows:

9 THE CLERK: Name and address for the record.

10 THE WITNESS: Dr. Edwin F. Richter, 166 West
11 Broad Street, Stamford. Connecticut.

12 THE CLERK: Thank you.

13 THE COURT: Mr. Aranki, if you I'd like to
14 inquire.

15 MR. ARANKI: Thank you.

16 DIRECT EXAMINATION

17 BY MR. ARANKI:

18 Q Good morning, Dr. Richter.

19 A Good morning.

20 Q Doctor, if you would, if you would first give us
21 your educational background?

22 A Yes. I attended college at Harvard, graduating
23 from Harvard University with a degree in biology with honors
24 in 1983.

25 I then went to New York University of Medicine,

1 graduated there with an M.D. in 1987.

2 I then started my internship and residency
3 training, post-graduate training in my field of physical
4 medicine and rehabilitation or physiatry. That consisted of
5 rotating internship at Tisch Hospital and Bellevue Hospital,
6 with rotations in neurology, neuro-surgery, orthopedics and
7 internal medicine.

8 I then did three years of residency training,
9 again, at NYU; mostly at the Rusk Institute which is the
10 rehab institute of New York University School of Medicine in
11 New York University Medical Center but also with rotations
12 at Bellevue, the Manhattan VA Hospital, Hospital for Joint
13 Diseases and Goldwater Hospital.

14 I completed my residency in 1991 and I became
15 board certified in my field in 1992.

16 Q Thank you, Doctor.

17 And, the Rusk Institute, can you tell us about
18 that, that Institute, and its reputation in the medical
19 community?

20 A Yes. Rusk Institute is one of the oldest and
21 largest rehabilitation institutes in the world. It has
22 trained the largest number of physiatrists which is what
23 we're called; doctors in rehabilitation medicine of any
24 institution, and it is nationally and world wide.

25 Q How long were you at the Rusk Institute?

1 A Well, I did my four years of training there and
2 then I stayed on through 2005 as a physician treating
3 patients there but what we call an attending physician.

4 I was promoted to being the associate clinical
5 director of the Rusk Institute and served in that capacity
6 for several years as well as several other administrative
7 responsibilities within the Rusk Institute, such as being
8 the director of the first floor service, chair of the
9 quality review committee and chairman of the Utilization
10 Review Committee and also served academically as a member of
11 the faculty.

12 I was an associate professor of rehabilitation
13 medicine at NYU School of Medicine.

14 Q Are you licensed to practice medicine?

15 A Yes.

16 Q In which state?

17 A New York and Connecticut.

18 Q When did you obtain those licenses?

19 A New York was in 1989 and Connecticut was 2005.

20 Q You indicated before that you are board certified
21 in physical medicine rehabilitation.

22 Can you tell what it means to be board certified?

23 A Yes. You have to complete an accredited residency
24 and in my field you take a written test your senior year and
25 if you pass it, which I did, then the next year you're

1 qualified to take an oral exam. You have to have
2 recommendation from two doctors who themselves are board
3 certified and then you then have to, in our case, fly out to
4 the Mayo Clinic to take an oral exam and after I passed that
5 exam, I was recognized as being board certified, meaning, I
6 had more than just the minimum expertise to call myself a
7 specialist but to say that I had academic accomplishment in
8 the field.

9 Q And, Doctor, do you have any hospital affiliations
10 and privileges right now?

11 A Yes, I do.

12 Q Which hospitals?

13 A Well, my academic affiliation is still with New
14 York University School of Medicine and I still do teaching
15 there.

16 My clinical work, my patient care as well as my
17 administrative work is at Stamford Hospital in Stamford,
18 Connecticut. I'm the director of the division of
19 rehabilitation medicine, and the medical director of the Van
20 Munching Rehabilitation Unit which is a 17 bed inpatient
21 unit within the hospital and I also maintain a private
22 practice at the address I mentioned previously in an office
23 building that is physically attached to the hospital but
24 where I see my outpatients.

25 I also rotate through the charity care clinic that

1 that hospital runs as well.

2 Q Do you hold any teaching positions and have you
3 had any teaching responsibility in any of the places that
4 you've been?

5 A Yes. I do ongoing teaching at Stamford Hospital
6 for the medical and surgical residents there and I continue
7 to do teaching primarily at NYU, although I do give lectures
8 at State University of New York, for example, but I
9 regularly give lectures at NYU such as at their annual
10 review course.

11 Q What do you do?

12 A A variety of subjects. I've taught on orthopedic
13 problems, neurological problems, brain injury, amputees.
14 Those are different types of patients that we physiatrists
15 treat because what we do is try and rehabilitate people with
16 disabling conditions.

17 Q And, who do you teach these things to?

18 A It varies. Sometimes medical students or in some
19 cases even optometry students frequently, to interns and
20 residents, doctors in training and also to doctors who are
21 in practice because we are required to do what we call
22 continuing medical education; to get a certain number of
23 credits every year to show we are staying current in our
24 field.

25 I'm one of the doctors that teaches my colleagues.

1 Q Have you ever been published in medical
2 literature?

3 A Yes, I have.

4 Q What areas?

5 A Over 50 publications in total, including several
6 book chapters and I've also co-edited one textbook.

7 Q Have you ever received any honors or awards in
8 your field?

9 A Yes; as a resident I was recognized at Rusk
10 Institute for outstanding performance by a resident and I've
11 been named a top doctor by New York Magazine, Stamford Marks
12 Ranch magazine, U.S. News and World Report and a few other
13 magazines as well as being named a top doctor in America by
14 Castle Connolly.

15 Q Your medical specialty is physical medicine and
16 rehabilitation?

17 A Yes.

18 Q And can you please tell us what that is,
19 generally?

20 A We're trying to help people with disabling
21 conditions. Disabling means something that prevents the
22 person from functioning like they normally would so, this
23 can take on a variety of roles that we may be working to
24 alleviate pain, or to increase strength or to increase a
25 person's ability to take care of themselves.

1 Typical patients that we take care of on the
2 inpatient unit, would be people with major fractures, such
3 as hip fractures; people who have had spine surgery, people
4 with strokes or brain injuries, people with amputations.

5 In the outpatient office, we continue to see some
6 of those patients for their outpatient follow up but the
7 majority of the patients that my colleagues or I see in the
8 office as physiatrists would be typically people with back
9 pain, neck pain, some neurological problems like carpal
10 tunnel.

11 Q When was the last time you participated in
12 treating a patient?

13 A Yesterday.

14 Q And when are you next scheduled to treat patients?

15 A Tomorrow.

16 Q How many days a week do you spend caring for your
17 patients?

18 A I would say five to seven, pretty much every week
19 day and then a colleague and I alternate weekends covering
20 the hospital.

21 Q Is your training include reading diagnostic
22 studies?

23 A Yes, I do that every day.

24 Q Are you trained in the performance of EMGs?

25 A Yes.

1 Q Can you tell us what an EMG is?

2 A Yes, EMG is short for electromyogram and it's a
3 test that has two parts.

4 One is where we're giving mild electric shocks
5 over nerves and recording the responses.

6 The other part is using a small needle attached by
7 a wire to the machine. We're putting that into different
8 muscles and monitoring their response of how the muscle
9 reacts when we place the needle into the muscle. It's a
10 test for nerve problems and also certain muscle diseases.
11 Typically, what we're looking for are signs for denervation,
12 reduced nerve supply because of a problem with the nerve.
13 It could be a nerve being compressed somewhere in the body;
14 such as a wrist in carpal tunnel, a nerve being compressed
15 as it exits the spine; typically the neck and back.

16 Q Is an EMG a subjective or objective test?

17 A Objective. We are comparing the results to
18 published standards. We don't have to ask a patient
19 anything. The patient doesn't need to speak your language.
20 We can even do it on an unconscious patient, if we have to.

21 Q Other than your medical practice, have you had
22 occasion during the course of your career to testify in
23 court like you're doing today?

24 A Yes, I have.

25 Q Can you approximate how many times you testified

1 in court?

2 A A little over 70.

3 Q 70?

4 A Yes.

5 Q And, have you been called to testify in court for
6 plaintiffs and defendants?

7 A Yes.

8 Q Approximately how many times have you testified in
9 court for -- on the defense side?

10 A I'd say about 25.

11 Q And have you also been retained by defendants to
12 consult with them on cases that didn't go to court?

13 A Yes.

14 Q Where you just provided reports or examined their
15 clients; examined plaintiffs for them?

16 A Yes.

17 Q And, approximately how many times have you done
18 that?

19 A That would be over a hundred.

20 Q And have you also testified in court on behalf of
21 plaintiffs?

22 A Yes.

23 Q And about how many times have you done that?

24 A About 45.

25 Q Have you also consulted -- have you also been

1 retained to consult with attorneys on behalf of plaintiffs
2 on a case where you also didn't testify in court?

3 A Yes.

4 Q And how many times would you say you've
5 approximately done that?

6 A That's probably a few hundred times.

7 Q Have you ever testified for an individual that was
8 being represented by the firm that I work for Block, O'Toole
9 and Murphy?

10 A Yes.

11 Q Approximately how many times have you done that?

12 A That, I believe, is about eleven times.

13 Q Have you ever -- you also examined and prepared
14 reports for individuals that were being represented by my
15 firm where you didn't come in and testify in court?

16 A Yes.

17 Q And would you be able to say how many times you've
18 done that, approximately?

19 A Probably about forty or so.

20 Q Have you ever testified in a case which I was the
21 attorney?

22 A Yes.

23 Q And that -- the last time was not too long ago
24 correct?

25 A Yes.

1 Q Did you speak with myself and Mr. Occhiogrosso
2 about this case before testifying today?

3 A Today, not at all.

4 Q Before today's date?

5 A Yes.

6 Q And, did -- how did we speak; on the phone, in
7 person?

8 A We spoke on the phone for a few minutes.

9 Q And, how many times did we speak?

10 A Just that one time.

11 Q If you weren't here today, would you be seeing
12 patients?

13 A Yes.

14 Q And are you being compensated for your time here
15 today away from your practice?

16 A Yes.

17 Q And how much are you being compensated?

18 A \$3,500.

19 Q And, were you also compensated for examining Mr.
20 Jacobs, reviewing various medical records and preparing a
21 report?

22 A Yes.

23 Q And how much did you get compensated for that?

24 A \$1,050.

25 Q And, did you also obtain additional records from

1 us, review them and prepare a supplemental report?

2 A Yes.

3 Q And were you compensated to for doing that?

4 A Yes.

5 Q How much?

6 A That was \$350.

7 Q Now Dr. Richter, did there come a time where my
8 office asked you to conduct examination of the plaintiff,
9 Maurice Jacobs?

10 A Yes.

11 Q Relative to the accident that he had of
12 August 16 --

13 A Yes.

14 Q When you examine someone in connection for
15 litigation like Mr. Jacobs, what generally are you
16 evaluating for?

17 A Well, when I'm examining them, I'm looking for
18 signs of anything that's going to be disabling to that
19 person.

20 In other words that's something that's preventing
21 that person from functioning the way they should. I'm
22 evaluating for any evidence of pain, decreased strength,
23 decrease motion or otherwise decreased ability to perform
24 normally.

25 Q Did you prepare a report subsequent to your

1 examination of Mr. Jacobs?

2 A Yes.

3 Q And, do you have that report with you?

4 A Yes, I do.

5 MR. ARANKI: Your Honor, can, with the
6 Court's permission, can Dr. Richter refer to his report
7 while testifying? Can we mark it for identification?

8 THE COURT: Yes, let's mark it for
9 identification and he can refer to it.

10 I believe it would be 15 for identification.

11 THE COURT OFFICER: Yes, Judge.

12 THE COURT: Go ahead.

13 Q Do you recall when you examined Mr. Jacobs?

14 A Yes.

15 Q When was that?

16 A February 14, 2012.

17 Q Was that the only time you examined him?

18 A Yes.

19 Q And prior to examining him, Mr. Jacobs, did my
20 office provide you with copies of medical records and
21 diagnostic reports for you to review?

22 A Yes.

23 Q And what records -- did you review those records?

24 A Yes.

25 Q What records did you review?

1 A The ambulance call report, Mt. Sinai Hospital of
2 Queens records, Hospital for Joint Diseases, Physicians
3 Medical Rehabilitation Associate records, Dr. Klein's
4 records, Dr. Steigeiss' records, Dr. Klein's operative
5 report, a number of x-ray reports from April 25, 2011,
6 cervical MRI report from May 4, 2011, lumbar report May 4,
7 2011, June 6/11 lower extremity EMG report, June 16, '11
8 upper extremity EMG report, and a 7/27/11 cervical spine MRI
9 report.

10 Q What do the MRI with regard to cervical spine,
11 what do they show?

12 A Regarding the cervical spine, there were multiple
13 levels of disk herniations, most notably at C 3-4 level, was
14 a large herniation contacting the C-4 nerve root on the
15 right side. Also some disk protrusions at C 4-5, C 5-6 some
16 bulges at C 6-7 and C 7-T11 -- one rather.

17 Q Did you also -- you also reviewed an upper
18 extremity EMG report, correct?

19 A Yes.

20 Q What did that show?

21 A Right C 6 meaning cervical level six
22 radiculopathy.

23 Q And can you tell us what radiculopathy is?

24 A Yes. That means a disorder of the nerve root.
25 The spinal cord flows down from the neck down toward the

1 back and nerves branch off of it at each level in between
2 the bones of the spine and we call each of those by a letter
3 and a number.

4 In this case "C" stands for cervical pertaining to
5 the neck and this is the sixth one down, suggesting that
6 that nerve root is being impaired or impinged upon so that
7 you're not getting normal supply from the nerve to the
8 muscles that were tested in that EMG test.

9 Q And, do you have copies of the records that you
10 reviewed with regard to Mr. Jacobs here in court today?

11 A Yes.

12 Q And, is it your practice in the regular course of
13 business to maintain the records that you're provided with
14 regard to a particular patient for whom you've done an
15 evaluation?

16 A Yes.

17 Q Did you list in your report all the records that
18 you reviewed?

19 A Yes.

20 Q Now, during your evaluation of Mr. Jacobs, did you
21 take a medical history?

22 A Yes.

23 Q Well, what is a medical history?

24 A Medical history is an interview where a doctor or
25 other health care provider interviews a patient and asks

1 them directed questions about what happened to them, what
2 sort of treatment they had or what treatment is ongoing for
3 them, getting a list of their symptoms.

4 Q Now, at that time when you examined Mr. Jacobs,
5 did he mention an accident that he was in from 16 years
6 prior?

7 A Not at the initial visit.

8 Q And, were you subsequently provided with medical
9 records relating to the treatment he had from that 1996
10 accident?

11 A Yes.

12 Q And did you review them?

13 A Yes, I did.

14 Q During the examination of Mr. Jacobs, did he make
15 any physical complaints?

16 A Yes, he did.

17 Q What were they?

18 A He described having neck and back pain with his
19 neck pain being more severe.

20 He described the neck pain as radiating to his
21 right arm or running down into his right arm and he
22 described that cold weather and motion increased that pain.

23 Q Did you also discuss his livelihood?

24 A Yes.

25 Q What do you recall or what do you see in your

1 report that he talked about?

2 A He described working, doing photography and
3 individual photography. He is described going on site.

4 Instead of someone working in a studio, he would
5 go out into the field and bring large cameras to do what he
6 described as editorial work. That was his description.

7 Q And, during your examination of Mr. Jacobs, did
8 you conduct a physical examination of him?

9 A Yes.

10 Q And, are your findings from your examination in
11 your report that you have in front of you?

12 A Yes.

13 Q And, please describe your examination and your
14 findings?

15 A I start by observing the person. He appeared to
16 be well involved in a normal general health. He did not
17 appear to be in acute distress but did he appear to be in
18 discomfort when he moved his neck.

19 I noticed his gait. His walking was steady as he
20 walked in and out of the room.

21 I looked at his scar. I measured it at
22 5 centimeters, in the front of his neck horizontal, was a
23 well-healed scar.

24 I looked at the muscles in the back of the neck on
25 either side of the spine; we call them paraspinal muscles,

1 there was tenderness and spasm.

2 Tenderness means, when I press on it, it hurts and
3 I'm pressing to a degree, not normally would hurt a person.

4 Spasm is what I feel as I feel the muscle.

5 Normal muscles have a certain amount of tone
6 unless they're paralyzed, in which case we call them
7 flaccid.

8 The other extreme is if there's excessive tone,
9 muscles may be in spasm where they're really tightened up
10 and I was able to feel notably abnormal tightness or spasm
11 in his muscles on the back of the neck.

12 I measured range of motion.

13 We know that different joints are supposed to have
14 a normal range of motion so that I can, call this extending
15 my elbow and I would call this flexing my elbow and, as a
16 rehabilitation doctor physiatrist, one of the things we
17 learn is how to measure those motions.

18 I measured his cervical rotation. That's the
19 ability to turn the head like this, from left to right and
20 he could do 40-degrees bilaterally. That's only about half
21 the normal range.

22 He could extend 25-degrees. Extend is looking up.
23 He could only flex 25-degrees. Flex is bending forward.

24 Those are both, also, about half the normal ranges
25 of motion.

1 I did a test called Spurlings. That's where I
2 both, turn and tilt the head so it turned and tilting the
3 neck at the same time. That was positive on both sides
4 meaning it caused pain; not only in the neck but also to run
5 down into his arm.

6 I checked sensation, ability to feel.

7 I checked that with a couple of devices including
8 a filament which is a skinny piece of plastic as well as
9 with a tuning fork for vibration sense. It was decreased on
10 the right; most notably in what we call C-4 territory, the
11 territory that would correspond to the C-4 nerve root and to
12 a lesser degree, C-3 and C-5 territories, grip strength
13 which I tested three times in each hand to make sure it was
14 consistent; was 60 pounds on the right, and 70 pounds on the
15 left which is within the normal range but somewhat less than
16 I would expect for an otherwise, fairly, healthy and robust
17 gentleman his age.

18 His motor power; I test his muscle power against
19 my resistance was generally normal in the arms, except for
20 the right deltoid. Deltoid, this muscle on the side of the
21 shoulder that mostly is used for this motion, bringing the
22 arm away from the body.

23 That one I graded at four minus where his other
24 muscle I grade as five. Five is normal. That was decreased
25 vs. normal.

1 Again, particularly for a gentleman his size and
2 age.

3 I looked at his lower back, tenderness and spasm
4 of the lumbar paraspinal muscles in the lower back. His
5 lumbar range of motion was intact.

6 He could move to the normal extent but it was
7 painful for him.

8 I also did a straight leg raise testing where I
9 raised the leg while he was either sitting or lying down,
10 positive at 50-degrees.

11 There was some weakness of the muscle that raises
12 the big toe. We call that the EHL. That was four plus and
13 some decrease in sensation in the L-5 territory on the left,
14 in his left leg.

15 Q Just to go back, you indicated that you found a
16 spasm at the cervical area, correct?

17 A Yes.

18 Q And, is the finding of spasm an objective or
19 subjective finding?

20 A That's objective. That's what I'm feeling with my
21 hands.

22 Q And what is the significance of finding a spasm in
23 someone's cervical spine?

24 A Well, when we look at muscles, we're looking at
25 tone and we look to see normal tone. If it's decreased or

1 increased there's something abnormal going on.

2 In the case of spasm, this is typically what goes
3 on when there is recurrent pain. It's thought to be a
4 defense mechanism of the body that just, as you would
5 tighten up your belly muscles if you thought someone was
6 going to punch you in the belly, it's a defensive reaction.
7 Because of the ongoing neck pain, these muscles are
8 tightening up to try and protect the area.

9 Q I want to ask you about the cervical range of
10 motion that you found. You said that the findings were
11 50 percent of normal?

12 A Yes.

13 Q And how did you measure his range of motion in his
14 cervical spine?

15 A I use a devices, we use a goniometer. It's
16 basically two arms, two pieces of plastic with arms that can
17 move backwards and forward and they're graduated so I can
18 measure degrees of motion with the goniometer.

19 Q Is this 50 percent limitation of range of motion
20 you found in the cervical spine when you examined Mr.
21 Jacobs, would you classify that as permanent to a reasonable
22 degree of medical certainty.

23 MR. DEVITO: Note my objection.

24 THE COURT: Yes, your objection is
25 overruled. Go ahead.

1 A Yes.

2 Q And, the 50 percent limitation range of motion
3 that you found in the cervical spine, would you also
4 classify that limitation as significant?

5 A Yes.

6 Q Now, we had talked a couple minutes ago about some
7 additional records that were provided to you to review,
8 correct?

9 A Yes.

10 Q And what records were provided to you sometime
11 this year, correct?

12 A Yes.

13 Q What records were they?

14 A There was an MRI report from June 4th of 1996
15 pertaining to the cervical spine. It described a C 5-6
16 degenerative disk disease with central herniated nucleus
17 propulsus. In other words disk herniation at C 5-6
18 described there.

19 June 4, 1996 lumbar spine MRI findings included
20 some straightening which may reflect muscular spasm and disk
21 bulging L 3-4 through L 5-1

22 June 7, 1996, thoracic spine MRI which was normal.

23 There was some billing records of a Dr. Slamowitz.

24 There's a report Dr. Monshon which pertained to
25 injury to the jaw.

1 Some records of Richard Greenwald, MMT which would
2 be a massage therapist.

3 There was a bill for a lower back support and a
4 TENS unit which is an electrical device for treating pain.
5 I believe that's it.

6 Q And all of these records go back approximately 16
7 years ago?

8 A Yes, these were all 1996 or so.

9 Q And, after reviewing those records, did you then
10 find you needed to change anything that you had indicated in
11 your initial report?

12 A No, I did not.

13 Q Now, going to ask you to assume a few things and
14 then I'm going to ask you a question. Okay, Doctor?

15 A Yes.

16 Q I want you to assume Mr. Jacobs testified on
17 April 16, 2011 he was operating a vehicle, was stopped at a
18 stop light, felt an impact to the rear of his vehicle which
19 caused his body to move backwards and then forward and his
20 head may or may not hit the headrest, okay?

21 I want you also to assume Mr. Jacobs testified he
22 felt a second impact to the rear of his vehicle which again
23 caused his body to move backwards, forward and again, his
24 head may or may not have hit the headrest in that second
25 impact.

1 Assume that he testified, Mr. Jacobs testified,
2 this impact to the rear of his vehicle by a dump truck
3 pushed his vehicle forward approximately one hundred feet.

4 I want you to also assume that the collision by
5 the truck was a low speed collision.

6 Also, Doctor, please assume that he complained to
7 EMTs at the scene of the accident to pain to his neck, head
8 and back, that he was taken by ambulance to the emergency
9 room where he made the same complaints.

10 Assume his neck complaints continued; that he
11 underwent a course of physical therapy and his neck pain and
12 radiation in the upper extremities was not relieved.

13 Also assume that he eventually had a diskectomy
14 and fusion surgery, to his cervical spine, at C 3-4 and that
15 just prior to; assume prior to the accident he was
16 asymptomatic in his neck, feeling no pain restrictions or
17 range of motion, limitations, okay?

18 A Yes.

19 Q Now, based on these assumptions, medical history,
20 of Mr. Jacobs, examination performed on him, his complaints
21 at that examination reviewing all of his medical records,
22 diagnostic reports from the subject accident and from the
23 prior accident that you reviewed from 1996, do you have an
24 opinion within a reasonable degree of medical certainty
25 whether the accident of April 16, 2011 caused serious

1 physical injury to his cervical spine?

2 MR. DEVITO: Note my objection; improper
3 foundation for the opinion.

4 THE COURT: Your objection is overruled.

5 A Yes.

6 Q What is that opinion?

7 A That that accident as described did cause serious
8 and permanent injury.

9 Q Do you have an opinion within a reasonable degree
10 of medical certainty whether the accident from April 16,
11 2011 caused Mr. Jacobs to require the medical treatment that
12 he underwent; physical therapy, doctors visits and the
13 cervical surgery of November 8, 2011?

14 MR. DEVITO: I have the same objection to
15 this line of questioning.

16 THE COURT: Okay. Your objection is
17 overruled.

18 A Yes.

19 Q What is that opinion?

20 A That it did require those treatments as described.

21 Q Now, also, Doctor, please assume that prior to
22 this accident Mr. Jacobs was able to do all of the functions
23 of daily living and worked as a professional photographer
24 with no restrictions; including carrying two pretty heavy
25 cameras; we can see examples on counsel table right there,

1 over his shoulders and sometimes his neck, to ten hours at a
2 time.

3 Now, in your opinion, to a reasonable degree of
4 medical certainty can Mr. Jacobs perform those job duties
5 now carrying these cameras for that long?

6 A No.

7 Q Why not?

8 A Because that puts a significant amount of strain
9 on his cervical spine, on his neck. It's the basic physics
10 of the weight of the camera and the need for him to move his
11 head and neck during the course of that work that he would
12 just not be able to keep up with.

13 Q Based on everything that we've discussed would he
14 be able to hold a light weight hand held remote control
15 device?

16 A Yes.

17 Q Now, based on the records that you reviewed, do
18 you have an opinion to a reasonable degree of medical
19 certainty as to whether Mr. Jacobs had a prior traumatic
20 insult to his cervical spine?

21 A Yes.

22 Q And what is your opinion?

23 A Yes, he did.

24 Q I'm talking about prior to the accident of
25 April 16, 2011?

1 A Yes.

2 Q And did this prior accident from 1996 cause a
3 permanent injury to his cervical spine?

4 A It likely did cause a permanent injury in that
5 there was a disk herniation and I need to look at the MRI to
6 get the exact level; C 5-6 level, so, in terms, in terms of
7 an injury, yes, did cause an injury. It did not cause any
8 disability.

9 Q Did the, based on the record you reviewed
10 regarding prior accident, did it cause any permanent injury
11 to the surgical level in this accident, the C 3-4 level?

12 A No.

13 Q And, what is the basis for that opinion?

14 A Because that level was not injured as per the MRI
15 done after the 1996 accident but before the 2011 accident.

16 Q And, in your opinion, to a reasonable degree of
17 medical certainty, did the prior accident from 1996 cause
18 the need for the surgery to the C 3-4 level that he had
19 subsequent to the April 16, 2011 accident?

20 A No.

21 Q And why do you say that?

22 A First of all, in terms of the radiology evidence,
23 there was no sign that there was an injury at that level and
24 also, clinically, he was able to function for approximately
25 15 years including doing the work with his cameras at full

1 duty so he wasn't walking around for the last 15 or 17 years
2 with that large disk herniation as C 3-4 level that
3 necessitated the surgery.

4 Q And, are you familiar with the term degenerative
5 changes?

6 A Yes.

7 Q What does that means?

8 A It's really --In the medical sense it refers to
9 the wear and tear that every day life puts on the bones and
10 joints of the body.

11 If you have a joint that bears weight, then as you
12 go through the day, you're putting a certain amount of
13 weight from whatever part of your body is supporting and if
14 it moves, it's also having a certain amount of friction so
15 our joints, over time, will show it; whether it's a surgeon
16 looking at someone in the operating room or more commonly if
17 someone is looking at an x-ray or MRI, you can see certain
18 signs of wear and tear, where things are not in the same
19 shape you would expect in a healthy 20 year old person.

20 Q Now Doctor, did Mr. Jacobs, based on what you
21 reviewed, did Mr. Jacobs have any of this wear and tear in
22 his cervical spine prior to the accident that we're here
23 for, April 16?

24 A Let me look again. At the C 5-6 level, yes, he
25 did.

1 Q And, was it a normal or abnormal level of wear and
2 tear for a person who is 40 years old?

3 A That's expected. Age 40 you would expect some
4 wear and tear, especially at that level.

5 Q Now, how would the effects after traumatic insult
6 to the body such as getting hit in the rear a dump struck,
7 different for someone with some pre-existing degeneration in
8 the cervical spine compared to say someone who is 14 years
9 old; doesn't presumably have any degeneration?

10 MR. DEVITO: Note my objection again.

11 Foundation.

12 THE COURT: I understand that but your
13 objection is overruled.

14 Go ahead.

15 A Well certainly the more wear and tear that someone
16 has had in life, the more susceptible that body part is
17 going to be to injure when it is subject to a sudden trauma.

18 Q Now, Doctor, do you have an opinion within a
19 reasonable degree of medical certainty as to whether Maurice
20 Jacobs, as a result of the April 16, 2011 accident, suffered
21 a significant limitation of a body, function or system?

22 A Yes.

23 Q And what is your opinion?

24 A That he did suffer such a significant limitation.

25 Q What is the basis for your opinion?

1 A Based on my review of the records, looking at the
2 treatment that he had with the MRI and operative findings
3 were, looking at the treating doctors examining findings,
4 taking my own history and looking at my own examination
5 findings, and putting those things all together, with what
6 we call clinical correlation, they all support that
7 conclusion.

8 Q And, is that significant limitation permanent?

9 A Yes.

10 Q And, do you have an opinion also within a
11 reasonable degree of medical certainty whether Maurice
12 Jacobs suffered as a result of the April 16, 2011 accident,
13 a permanent consequential limitation of use of a body, organ
14 or member?

15 A Yes.

16 MR. DEVITO: Note my objection; calls for a
17 conclusion and also foundation.

18 THE COURT: Okay. Your objection is noted
19 but you can go ahead.

20 A Yes.

21 Q And, what is the basis for that? What is the
22 answer to the question?

23 A Could you repeat the question, please.

24 Q Yes. Do you have an opinion within a reasonable
25 degree of medical certainty as to whether Maurice Jacobs

1 suffered, as a result of the accident of April 16, 2011, a
2 permanent consequential limitation of use of a body, organ
3 or member?

4 A Yes, I do and the basis is in part on examination
5 findings, partly on reported history, and also simply on the
6 knowledge he's had this surgery, this cervical spine fusion
7 which in and of itself is going to limit his range of motion
8 and function.

9 Q Now Doctor, I want you to assume that a doctor for
10 the defense is going to testify that Mr. Jacob's condition
11 and medical treatment following the accident of April 16,
12 2011 including the cervical surgery that he underwent was
13 solely as a result of a pre-existing degenerative condition
14 and not related to the accident of April 16, 2011.

15 Would you agree with that opinion?

16 MR. DEVITO: Again, note my same objection.

17 THE COURT: Could you come up for one
18 second.

19 (Discussion off the record.)

20 (The discussion off the record concluded and
21 the following occurred in open court:)

22 THE COURT: Rephrase that question.

23 MR. ARANKI: Sure, your Honor.

24 Q Dr. Richter, prior to testifying today did we also
25 provide you with reports of doctors that were served on

1 behalf of defendants?

2 A Yes.

3 Q And, do you recall in those reports, Dr. Goldstein
4 giving the opinions that the medical treatment Mr. Jacobs
5 condition and the surgery that he underwent as a result of
6 the accident, were as a result of pre-existing condition and
7 not as a result of the injuries he sustained from this
8 accident?

9 MR. DEVITO: Note my objection. Medical
10 exchange.

11 THE COURT: Sorry, I didn't --

12 MR. DEVITO: Lack of medical exchange on the
13 issue.

14 THE COURT: It's okay. Objection is
15 overruled.

16 A Yes.

17 Q Would you agree with their opinions?

18 A No.

19 Q Why not?

20 A We have to look at the chain of events. We have
21 an otherwise healthy 40 year old man who is working
22 full-time, doing demanding work; demanding work in terms of
23 his neck and his cervical spine; who then sustains an
24 accident and then seeks treatment initially, day of the
25 accident. He's brought by ambulance to a hospital and

1 treated but then he goes on to start seeing doctors and
2 therapists and getting treatment.

3 Now certainly, 40 year old man probably does have
4 some degenerative changes in his neck but he would not
5 necessarily suddenly start seeking treatment without some
6 new development happening; that would not be the typical
7 course whereas we know he did have an accident, he did seek
8 both immediate and then sustained medical care and it
9 logically flows from there; flows from there.

10 Q Doctor, do you have an opinion within a reasonable
11 degree of medical certainty as to what if any medical care
12 Maurice Jacobs will need stemming from the injuries he
13 suffered from the April 16 accident from now until the rest
14 of his life?

15 A Yes.

16 Q And did you list those in your report?

17 A Yes.

18 Q And can you tell us, I'm going to take you one by
19 one through them.

20 Tell us what he'll need starting with the first
21 one?

22 A Sure.

23 Q Go ahead.

24 A First area would be continued medical care,
25 continuing to see doctors. This would include a spine

1 specialist, four to six times a year. Cost for those visits
2 would be \$150 per visit, and a pain specialist; four to six
3 times a year, also cost about \$150 per visit.

4 Q Let me stop you for a second. Visit with the
5 spine specialist, why do you say he'll need that.

6 A He needs ongoing monitoring, to monitor his
7 neurological status, to monitor his range of motion, to
8 monitor the degree of spasm, to keep track of progression of
9 changes in his cervical spine, to review imaging studies as
10 needed; to send him for testing or treatment.

11 Q And the 150 per visit, where do you get that
12 figure from?

13 A We have access to data bases with the rate of
14 charges for physicians for different types of services such
15 as the office visit, what we call evaluation and management
16 or E & M visits so we can access a typical cost in this area
17 for doctor visits.

18 Q And the visit with the pain specialist, you also
19 said was \$150 a visit, correct?

20 A Yes.

21 Q And, do you get that from the same data base?

22 A Yes.

23 Q And why do you give the opinion that he'll need
24 future visits with the pain specialist?

25 A Because his pain is not going to get better and

1 there is a significant likelihood of it actually getting
2 worse so he'll need management in terms of medication or
3 potentially even injections.

4 Q And what is the next modality you indicated he
5 needs?

6 A Physical therapy, averaging 30 to 36 sessions per
7 year. Doesn't mean he would have exactly that many every
8 year but on an average; 30 to 36 per year and average cost
9 of those is \$125 per session.

10 Q Would it change your opinion if you learned that
11 he has not had 30 to 36 physical therapy sessions per year
12 since his accident?

13 A No.

14 Q Why not?

15 A Because it's not all that long a time since he had
16 the accident and he is relatively healthy otherwise; young
17 man, will take time for some of these progressions to
18 develop or the exacerbation of his symptoms to develop.

19 Q And, the next thing, item you indicated he would
20 need would be what?

21 A Pain medication, at least comparable to what he's
22 taking currently which is the hydrocodone which would, could
23 average \$60 per month and Tramadol costs an average of \$90
24 per month.

25 Q And currently, Mr. Jacobs wasn't taking any

1 prescription medication. Would that change your opinion as
2 to whether he would need it at some point in the future?

3 A No.

4 Q Why not?

5 A Similarly to the reason for the physical therapy;
6 that it isn't all that long since his injury or since his
7 surgery and that it takes time for these progressions and
8 deteriorations to follow.

9 Q And are there diagnostic studies you indicated he
10 would need as well?

11 A Yes, he would need monitoring of his cervical
12 spine. This would be with an MRI, every two to three years,
13 and that costs about \$1,500 per MRI.

14 Q Why would you say he would need that?

15 A Because he has had damage to his neck. He had
16 major surgery to his neck and we need to monitor for either
17 changes of the fusion itself or even more commonly, changes
18 at the adjacent levels.

19 Q And, please continue?

20 A Also cervical spine x-ray for similar reasons, 250
21 to \$300 every two to three years, and also follow up EMGs of
22 the cervical and upper extremity muscles every two to three
23 years. That also costs 1500 each time and that's to monitor
24 the neurological status of the neck and the muscles that are
25 supplied by nerves coming out of the neck.

1 Q And again Doctor, the cost that you're giving for
2 these future treatments that Mr. Jacobs is going to need,
3 where do you get that?

4 A The cost in terms of physical therapy are
5 accessible to me, both through my own hospital and through
6 the local practices and in terms of the diagnostic testing,
7 again, through both my own hospital, where my cases, also my
8 practice and I can access the data base, what other
9 physicians charge for EMG.

10 Q And did you also give, have opinion as to the need
11 for any future surgery?

12 A Yes.

13 Q And what is that?

14 A That there is significant need for additional
15 surgery within ten to fifteen years in his cervical spine
16 and again this is because of the risk of progression of
17 disease adjacent levels and the overall cost would be fifty
18 to \$70,000.

19 Q And, Doctor, you're not a surgeon, correct?

20 A Correct.

21 Q You don't do cervical spine fusions or
22 diskectomies?

23 A No.

24 Q Can you give us a basis for why you were giving
25 that opinion, despite the fact you're not a surgeon

1 yourself?

2 A Yes. I certainly don't do the surgery but I do
3 treat patients, both before and after the surgery so, you
4 asked me earlier this morning, when I last treated patients
5 and I said yesterday, several of the patients on my
6 inpatient unit are people who have had cervical or lumbar
7 spine surgery.

8 Just last week I saw a patient in the office who
9 I'm referring for a follow up MRI --

10 MR. DEVITO: Note my objection to this
11 testimony on that issue. It's irrelevant.

12 MR. ARANKI: It's the basis for his opinion.

13 THE COURT: One of you has to speak at a
14 time for us to maintain the record.

15 MR. DEVITO: My objection is that what
16 happened to someone else is irrelevant as to Mr.
17 Jacob's condition.

18 MR. ARANKI: Your Honor, his entire
19 knowledge and experience to form the basis for the
20 opinion he's giving in answer to the question I asked.

21 THE COURT: No, I think -- I am going to
22 strike that last part of the answer. If you want to
23 rephrase the question, you can go ahead.

24 MR. ARANKI: Okay.

25 Q I believe you answered. I believe you answered

1 the question.

2 Now, did you also give an opinion as to any
3 further treatment to his lumbar spine?

4 A Yes.

5 Q What was that?

6 A Well, of course the doctor visits. They would
7 also be asking him about his lower back at the same time as
8 his neck. I would anticipate that he needs a follow-up
9 lumbar spine, MRI every two to three years also at a cost of
10 1500 and follow up lumbar paraspinal muscle and lower
11 extremity EMG; also costing \$1,500 every two to three years.

12 Q And, Doctor, what is your opinion within a
13 reasonable degree of medical certainty as to what the cause
14 was for the necessity of the future treatment that we just
15 went over?

16 A The 2011 motor vehicle accident.

17 Q In addition do what we discussed about future
18 treatment, did you also give an opinion in your report about
19 ANY limitations that you would impose on Mr. Jacobs based on
20 his physical condition?

21 A Yes.

22 Q And what were those?

23 A He should avoid frequent cervical or neck motion,
24 avoid overhead lifting. He should avoid bending or twisting
25 his lumbar spine; avoid lifting over 20 pounds occasionally.

1 Q And what's the reason -- what's the reason for,
2 that you gave?

3 A All of those activities that I described put a
4 strain on his neck or his back and would accelerate the
5 process by which he can deteriorate.

6 Q And, finally, Doctor, all the opinions that you
7 gave here today, are they within a reasonable degree of
8 medical certainty based upon your training, knowledge
9 expertise, your evaluation of Mr. Jacobs and review of his
10 records from both the subject accident and the prior
11 accident?

12 MR. DEVITO: Note my earlier objection to
13 those certain items which I objected to.

14 THE COURT: Yes. Your objection is noted.
15 You can go ahead.

16 MR. ARANKI: Thank you. Subject to any
17 redirect your Honor, no further questions.

18 THE COURT: Thank you. Why don't we take a
19 five minute break now. Good time to give a jury and
20 everybody a break and we'll reconvene in five minutes
21 and begin the cross-examination and, Doctor, you can
22 step down.

23 (The jury exited the courtroom and there was
24 a brief pause in the proceedings.)

25 THE COURT: On the record.

1 MR. ARANKI: It's come to our attention
2 yesterday that Dr. Richter was served with a subpoena.

3 THE COURT: Maybe the doctor can step out
4 while we do this.

5 THE WITNESS: Sure.

6 THE COURT: Go ahead.

7 MR. ARANKI: Served with a subpoena in his
8 office in Connecticut.

9 Obviously not proper service of an out of
10 state subpoena. To my understanding wasn't so ordered.
11 I never even saw it because we weren't given a copy of
12 it and also, from what he's told me about what they're
13 asking for, it contains -- they're asking for billing
14 records relating to prior cases he worked on for our
15 office. That is unduly invasive and completely
16 irrelevant, especially since we've already discussed
17 the fact that he's testified for our firm before and
18 so, I would ask, I don't know if Mr. DeVito is planning
19 on questioning him about that particular subpoena in
20 his cross examination but I would ask that be
21 precluded.

22 THE COURT: And Mr. DeVito is that the only
23 topic of the subpoena?

24 MR. DEVITO: That was the only topic. I
25 mean, it was within 75 miles of the courthouse,

1 Stamford, Connecticut. That's the only topic in there
2 and I don't know if he brought the records or not.

3 THE COURT: And why are they relevant?

4 MR. DEVITO: To show that he's testified and
5 worked for Block, O'Toole before on numerous occasions.

6 THE COURT: Is there something -- I mean,
7 you can inquire about it but is there any new
8 information because it has already been brought out
9 that he testified for plaintiffs in general and for
10 their firm. What are you seeking to bring out?

11 MR. DEVITO: Those items, but, if the Court
12 prefers I can do it without mentioning a subpoena, if
13 he didn't bring any records. If he did bring records
14 I'd like to see him and ask him a question about it.

15 THE COURT: I'm trying to see why the
16 specific billing records are relevant to your inquiry,
17 as far as his prior.

18 MR. DEVITO: To see how much he charged for
19 prior reports and testimony.

20 THE COURT: I'm sorry. That's my confusion,
21 why is the fact that he testified -- I see is relevant
22 and that's fine. You can inquire as to that but as to
23 the amount he charged, why is that relevant? I'm
24 asking you to enlighten me.

25 MR. DEVITO: Amount he charged because I

1 think it has some impact to show he's earning some
2 substantial income working primarily for one law firm.

3 THE COURT: You can certainly inquire about
4 that but I don't think that is the billing records. I
5 mean, you can ask him those questions.

6 MR. DEVITO: I'll examine him without
7 reference to the subpoena, if the Court wants.

8 I won't mention it.

9 THE COURT: It's the billing records, I
10 don't think the specific --

11 MR. DEVITO: I won't bring up the billing
12 records.

13 THE COURT: Thank you.

14 MR. ARANKI: Thank your Honor. And the
15 billing records --

16 MR. DEVITO: I don't have them.

17 THE COURT: That's what Mr. DeVito --

18 MR. DEVITO: When were you paid for
19 testifying on this case --

20 MR. ARANKI: The entire subpoena is off
21 limits.

22 THE COURT: It sounds like it because it
23 sounds to me like the only topic of the subpoena were
24 the specific billing records and I don't think the
25 amounts contained in the billing records are relevant

1 to this inquiry.

2 MR. DEVITO: Okay, I won't refer to it.

3 THE COURT: Thank you.

4 MR. ARANKI: Thank you.

5 THE COURT: Just to be clear you can inquire
6 as to his prior work for this firm and generally
7 proportionally as far as his income.

8 MR. DEVITO: Sure. I'll follow up based on
9 questions Mr. Aranki asked him.

10 THE COURT OFFICER: Jury entering.

11 (The jury entered the courtroom and the
12 following occurred:)

13 THE COURT: Please be seated as you come in.
14 When the jurors are seated the courtroom can be seated.
15 Thank you.

16 Courtroom may be seated, and Mr. DeVito, if
17 you'd like to inquire you may.

18 MR. DEVITO: Thank you.

19 Your Honor, counsel, good morning jurors.

20 CROSS EXAMINATION

21 BY MR. DEVITO:

22 Q Good morning, Doctor.

23 A Good morning.

24 Q You and I haven't met before today, correct?

25 A Correct.

1 Q Now, turning your attention back to the things we
2 discussed this morning, you testified that you only examined
3 the plaintiff once and that was in March, 2012, correct?

4 A Yes, sir.

5 Q You didn't examine him this morning --

6 A Correct.

7 Q You didn't examine him when Block and O'Toole sent
8 you those records from the 1996 accident, correct?

9 A Correct.

10 Q Okay. So, my question is this. Earlier you
11 mentioned that you looked at the 1996 records and you said
12 that you saw herniation at C 5-6 from that accident. I
13 think you described it as a traumatic insult from accident,
14 is that correct?

15 A Yes.

16 Q Okay. So now, assuming that from that time up
17 until just before this accident that we're here to talk
18 about today, happened in April of 2011, that Mr. Jacobs was
19 an active guy, that he was traveling internationally, that
20 he was doing things; mountain climbing, climbing on trucks,
21 carrying around two of these big heavy cameras; you know,
22 strapped on his shoulders for a number of years before.

23 Would'n't that also accelerate the degeneration of
24 that disk, C 5-6?

25 A Yes.

1 Q Wouldn't also adjacent level disks possibly
2 degenerate by those activities as well?

3 A Yes.

4 Q By doing the types of things you told him not to
5 do in the future, correct?

6 A Yes.

7 Q Now, turning to the earlier part of your direct
8 examination you testified that you testified for Block and
9 O'Toole approximately 11 times before a court like this,
10 correct?

11 A Yes.

12 Q For life care plans?

13 A Yes.

14 Q And each of those times were you paid about the
15 same fee, \$3,500?

16 A Yes.

17 Q And, each of those cases you also had to issue a
18 report for about a thousand dollars, is that correct?

19 A Yes.

20 Q So that's, that was a substantial earning that you
21 did receive for doing those things?

22 A Yes.

23 Q And you also testified that there were about 40
24 cases that you worked on where you just issued a report for
25 about a thousand dollars?

1 A Yes.

2 Q Substantial amount of income?

3 A Yes.

4 Q When you testified earlier about, you looked at
5 your first report which was issued shortly after the
6 examination of March 2012, correct?

7 A Yes.

8 Q And you testified about the MRI reports and you
9 mentioned about the C 3-4 disk an injury, correct?

10 A Yes.

11 Q But, you did not review any MRI films to give that
12 opinion, correct?

13 A Correct.

14 Q And during the direct exam of Mr. Aranki, you also
15 mentioned radiculopathy as a nerve disorder, correct?

16 A Yes.

17 Q You say it was caused by the accident but
18 radiculopathy can also be caused by degenerative disk
19 disease pressing on a nerve, isn't that correct?

20 A Yes.

21 Q Now, I'd like to turn your attention to your first
22 report and remind you about some of your testimony.

23 You talked about a number of different tests and
24 exams that you did regarding your examination of the
25 plaintiff, correct?

1 A Yes.

2 Q So, I don't remember them all but you mentioned
3 that you observed his gait; you observed his scar, you
4 measured his cervical range of motion.

5 Are those all correct?

6 A Yes.

7 Q And you gave certain opinions about those, right?

8 A Yes.

9 Q But in your report, you did not mention any of
10 those tests, is that correct, in your report dated March 24,
11 2012?

12 A No. These are all in the report. I was referring
13 to my report as I testified earlier.

14 Q Well, you mentioned using a goniometer, correct?

15 A Yes.

16 Q Did you mention the goniometer in the report?

17 A In the report, no. That was in response to Mr.
18 Aranki asking me how I did the measurement.

19 Q And you didn't mention the scar in the report
20 either?

21 A Yes, I do, I refer to a 5-centimeter anterior
22 cervical scar.

23 Q Okay. That is correct.

24 Now, are you familiar with the Waddell test?

25 A Yes.

1 Q Can you explain to the jury what the Waddell test
2 is?

3 A It's a set of tests designed to determine if
4 someone is basically faking or trying to simulate an injury.

5 Q And when you examined the plaintiff you didn't
6 perform that test?

7 A I performed elements of that. I don't label it as
8 Waddell test. When I do my straight leg raising I do that
9 seated and supine, meaning lying down as well as seated, in
10 order to test for that type of simulation. I do the
11 compression test, where you push down on someone's shoulders
12 gently and ask if it's hurting their back; knowing you're
13 not giving enough force to hurt them.

14 Q Answer the question. Did you, did you discuss or
15 mention the Waddell test or result of such a test in your
16 report?

17 MR. ARANKI: Your Honor, he's trying to
18 answer the question.

19 THE COURT: Yes, I think it was answered.

20 Q But, the word Waddell test is not to be found in
21 either report, correct?

22 A No.

23 Q Nor the outcome of such a -- nor the outcome of
24 such a test. And when you did this first report, is it
25 correct that you didn't have any of the 1996 records?

1 A Yes.

2 Q Did you not have June 1996 MRI report?

3 A No.

4 Q You didn't have the lumbar spine report of 1996?

5 A No.

6 Q Billing records of Dr. Slamowitz?

7 A No.

8 Q You didn't have Dr. Monshon's report?

9 A No.

10 Q And you didn't have any of the records about the
11 massage therapist, lower back support or the TENS unit,
12 correct?

13 A Correct.

14 Q What is a TENS unit? What do you do with that?
15 Can you briefly explain that?

16 A Sure. TENS unit is a small box which attaches to
17 wires and you put a couple of electrodes on the relevant
18 part of the body; can be used for many different body parts
19 that are in pain. Gives a very gentle electrical stimulus,
20 that the person can rarely perceive but it's used to block
21 the pain.

22 Q Why would he use it in 1996?

23 A For treatment of pain.

24 Q And, when you, you said you took a history of the
25 plaintiff, correct?

1 A Yes.

2 Q And, when you took the history, he didn't tell you
3 1996 accident he was hit in the rear a Coca Cola truck,
4 correct?

5 A Correct.

6 Q He didn't tell you he was with another person,
7 correct?

8 A Correct.

9 Q And he didn't tell you where that other person
10 after that, that he committed --

11 MR. ARANKI: Objection. It's completely off
12 the reservation.

13 THE COURT: I couldn't hear it, so --

14 MR. ARANKI: Can we --

15 THE COURT: Both come up and tell me.

16 (Whereupon, an off the record discussion was
17 held.)

18 THE COURT: Objection is sustained and the
19 last question will be stricken.

20 If you want to go ahead, Mr. DeVito.

21 MR. DEVITO: Yes, I'll continue. Thank you.

22 THE COURT: Thank you.

23 Q Doctor, when you're doing a history, you have to
24 take your patient, the plaintiff, at his word, correct?

25 A Yes.

1 Q Patient at his word. And the disk we're talking
2 about, C-3, C-4, that's next to the C 4-5 disk in the spine,
3 adjacent?

4 A C4-5 is adjacent to the 3-4.

5 Sorry. Maybe I misheard the question.

6 THE COURT: Repeat the question because --

7 Q Sure. The disk that the plaintiff claims in this
8 accident was C3-4.

9 Isn't it correct that that's adjacent to, to
10 adjacent disks C 5-6?

11 A No, there's another one between the two.

12 Q It's after that one?

13 A Yes.

14 Q The next one?

15 A Yes.

16 Q And you gave some opinions about after you
17 reviewed Dr. Goldstein's report?

18 A Yes.

19 Q But you didn't mention that in your -- in any
20 written report, correct?

21 A No, I just saw those very recently.

22 Q And who showed them to you?

23 A They were sent to me by email from the law firm of
24 Block, O'Toole and Murphy.

25 Q So, as you were retained by Block, O'Toole and

1 Murphy to do their life care plan for Mr. Jacobs, correct?

2 A Yes.

3 Q And in fact, you wrote your report, first report
4 to Milagros Ortiz at their office?

5 A Yes.

6 Q Who is that?

7 A I believe she's a paralegal.

8 Q And this was based on the claims in plaintiff's
9 case and the fact that he's claiming this fusion surgery,
10 correct?

11 MR. ARANKI: Objection, your Honor.

12 THE COURT: Yeah, maybe you can restate
13 that.

14 MR. DEVITO: Okay.

15 Q I'll withdraw the question.

16 Doctor, I want you to assume that Dr. Klein
17 testified that the way the surgery was performed in this
18 case was a fusion with some bone inserted and a plate
19 inserted, is that okay?

20 A Sure.

21 Q And, Dr. Klein testified that that's the routine
22 way that these operations are done now.

23 Would you agree with that?

24 A Yes.

25 Q Now, does anybody who has this type of surgery

1 need a life care plan?

2 MR. ARANKI: Objection; what everybody
3 needs.

4 THE COURT: If you can rephrase it, keep
5 it --

6 Q Are there -- Doctor, are there people who have
7 their surgery and don't need a life care plan?

8 MR. ARANKI: Objection.

9 THE COURT: That is okay.

10 A Written life care plan, no; not everyone needs a
11 written life care plan.

12 Q Are you familiar with Payton Manning?

13 A Yes.

14 MR. ARANKI: Objection.

15 Q Did he have?

16 THE COURT: Objection is sustained.

17 Q Now, you knew at the time that you did this report
18 that the plaintiff had a lawsuit, correct?

19 A Yes.

20 Q And you new that based on your experience
21 testifying for Block and O'Toole at some point you'd be
22 called to testify before you met Mr. Jacobs, is that
23 correct?

24 A Yes.

25 Q And, in fact, as you testified earlier, you worked

1 for them several times before, approximately 11 times,
2 correct?

3 A Yes.

4 Q So, when you were retained by them and other
5 plaintiff's counsel when they call you as a witness you know
6 you have to draft a life care plan that maybe discussed in
7 court, correct?

8 A Yes.

9 Q And, and you know when you're retained in these
10 situations the life care plan is to maximum the person's --
11 clients recovery, correct?

12 A Yes.

13 Q And when you saw the plaintiff on March 24, 2012,
14 did you go to his house?

15 A No.

16 Q Where did you see him?

17 A In my office in Stamford.

18 Q So he was sent to see you at your office in
19 Stamford?

20 A Yes.

21 Q Other than that visit and to may be perhaps today
22 in court, that's the only time you saw the plaintiff,
23 correct?

24 A Yes.

25 Q You never went on any trips with him?

1 A No.

2 Q You never spent a whole day with him to see what
3 his life was like, correct?

4 A No.

5 Q And now, before you met with Mr. Jacobs you
6 reviewed as just discussed earlier, some of his medical
7 reports, correct?

8 A Yes.

9 Q They were sent to you by Block and O'Toole?

10 A Yes.

11 Q And then you issued your report?

12 A Yes.

13 Q Okay. That is after you met with him in March of
14 2012, correct?

15 A Yes.

16 Q Now, initially when you gave that March of 2012
17 report, you gave the opinion of the life care plan and the
18 various expenses and items that you testified to earlier in
19 that first report, correct?

20 A Yes.

21 Q But you didn't have the 1996 records when you did
22 that, correct?

23 A Correct.

24 Q So then all that time goes by in 2012, that nine
25 months goes by in 2012 and seven months goes by in 2013 and

1 then when the case gets close to trial in July, you got sent
2 the 1996 records, correct?

3 A Yes.

4 Q And you don't change your opinion because of those
5 records, correct?

6 A Correct.

7 Q I'd like to refer you back to March 2012 report,
8 take you through a few things here.

9 You mentioned the ambulance call report, correct?

10 A Yes.

11 Q Reviewed that?

12 A Yes.

13 Q And you mentioned what plaintiff's alleged
14 complaints were in that report, correct?

15 A Yes.

16 Q But you did not mention anything else?

17 A No.

18 Q You didn't mention anything about the EMTs
19 observations or any other material that was in the ambulance
20 call record, correct?

21 A No.

22 Q Now, on page two of the report you mention that
23 you reviewed Dr. Klein's records and diagnosis; he was the
24 surgeon who testified yesterday, is that correct?

25 A Yes.

1 Q And you didn't mention anything about another
2 surgeon, correct?

3 A I mentioned Dr. Steiger as well.

4 Q But not another surgeon who performed surgery, you
5 didn't mention Dr. Bloom, did you?

6 A No.

7 Q Did you review Dr. Bloom's record?

8 A I don't believe so; unless that is --

9 Q Did you bring your office records with you?

10 A Yes, I did. That's what I'm looking at.

11 Q Did Block and O'Toole send you Dr. Bloom's
12 records?

13 A I don't see a Dr. Bloom.

14 Q Did you know that Dr. Bloom was another surgeon
15 who performed part of the doctor's surgery?

16 A Oh?

17 Q Performed part of Mr. Jacob's surgery?

18 MR. ARANKI: Objection to the form. Not
19 accurate.

20 THE COURT: If you can rephrase it, counsel.

21 MR. DEVITO: Sure.

22 Q Are you aware of Dr. Bloom assisting in Mr.
23 Jacob's surgery?

24 A No.

25 Q Are you aware?

1 A My apology. I do see in Dr. Klein's operative
2 note that he described Dr. Bloom performed the soft tissue
3 exposure of the neck.

4 Q Okay. Well, are you aware that Dr. Bloom gave a
5 pre and post-operative diagnosis of degenerative disk
6 disease based on the surgery?

7 A No.

8 Q Can I show you something?

9 A Sure.

10 MR. OCCHIOGROSSO: Respectfully ask in the
11 future, if something goes by counsel's table before it
12 goes to the witness so we know what it is.

13 THE COURT: Yes, please.

14 Q So, is it fair to say there was another surgeon
15 involved in the surgery?

16 A Yes.

17 MR. ARANKI: Objection.

18 Q And that that surgeon's opinion was there was
19 degenerative disk disease?

20 A Yes.

21 Q Then, if the plaintiff in this case, if his
22 conditions were caused by degenerative disk disease, then he
23 wouldn't need a life care plan for this lawsuit, isn't that
24 correct?

25 A He would still need.

1 MR. ARANKI: Objection your Honor.

2 THE COURT: Yeah, could you rephrase it?

3 Q Well, if his injuries were caused by degenerative
4 disk disease, then he would need a life care plan but not
5 because of this claimed accident, correct?

6 MR. ARANKI: Objection.

7 THE COURT: Yeah, come up.

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

10 THE COURT: Thank you.

11 Mr. DeVito, either rephrase the question or
12 move along; whatever you choose.

13 Q So, Doctor, based upon the other, knowing about
14 the other surgeon and what he said, would you change your
15 opinion?

16 A No.

17 Q Now, in your first report, you mention the
18 history, correct?

19 A Yes.

20 Q And you spoke with the plaintiff about what he
21 told you?

22 A Yes.

23 Q And you asked him a question and he gave you
24 answers, correct?

25 A Yes.

1 Q And, you have to take his word?

2 A Yes.

3 MR. ARANKI: Objection, asked and answered.

4 THE COURT: It's all right.

5 Q And there was no mention of the 1996 accident at
6 the time of the first report?

7 MR. ARANKI: Objection. We already covered
8 this, your Honor.

9 THE COURT: You're going somewhere?

10 MR. DEVITO: I'm moving to the next
11 category.

12 THE COURT: Go ahead.

13 A Yes.

14 Q Now, turning to your report after the history, the
15 March 24, 2012 report, I think it's on the bottom, in fact,
16 the last line of the second page, you wrote he has been out
17 of work since the accident, is that correct?

18 A Yes.

19 Q So, plaintiff didn't tell you that shortly after
20 the accident that he went to work in the state of Alabama as
21 a photographer and he got there on an airplane. He didn't
22 share that with you?

23 MR. ARANKI: Objection.

24 THE COURT: It's okay.

25 MR. ARANKI: Wasn't the testimony.

1 Q Did he tell you that patient worked in another
2 state and took an airplane trip to get there shortly after
3 the accident?

4 A No.

5 Q Did he tell you that he took an airplane to China
6 to do a photography job sometime after the accident and
7 before his surgery?

8 A Not that I recall, no.

9 Q And he didn't tell you that after his surgery,
10 flew to Italy to do a photo shoot either, correct?

11 A Correct.

12 Q Because that, those would be significant and you
13 would have put it in your report, correct?

14 A Yes.

15 Q In speaking to the plaintiff, you didn't know him
16 other than as a referral from Block and O'Toole, correct?

17 A Correct.

18 Q Now, you also did a physical exam and we talked
19 about some of those items earlier?

20 A Yes.

21 Q And in your report I think there was also on the
22 second page, you described Mr. Jacobs as well developed and
23 well nourished in appearance, correct?

24 A Yes.

25 Q And so when physicians speak is it fair to say

1 somebody who looks healthy and fit --

2 A Yes.

3 Q And does he look pretty much the same today?

4 A Yes.

5 Q Then after examining him, you said he needed a
6 life care plan, correct?

7 A Yes.

8 Q And your decision to say that was based upon in
9 part of the records sent to Block and O'Toole and relied
10 upon what Mr. Jacobs told you, correct?

11 A Yes.

12 Q Let's talk about some of your conclusions.

13 One thing I'd like to note in your report, you
14 mention the plaintiff had two years of college when you met
15 with him and when you spoke with him for a short time.

16 So, would it be fair some say you found him to be
17 a reasonably intelligent person?

18 A Yes.

19 MR. ARANKI: Objection.

20 THE COURT: It's okay.

21 Q And don't you think somebody with reasonable
22 intelligence, college education, could figure out what
23 medical treatment they need for themselves?

24 MR. ARANKI: Objection, your Honor.

25 THE COURT: Yeah, that one is sustained.

1 Q Or is it just that you are consulting to Block and
2 O'Toole to maximize his presentation in court?

3 MR. ARANKI: Objection. He's continuing
4 ahead objectionable question.

5 MR. DEVITO: I think it's fair.

6 THE COURT: The line of inquiry is
7 appropriate but that question, I'm going to sustain the
8 objection.

9 Q Did you render your opinion based upon the records
10 and requests of Block and O'Toole?

11 A Based upon the records and my history and my exam
12 as well.

13 Q And as you said earlier, you understand this is
14 going to be used in court to maximum any recovery for the
15 plaintiff, correct?

16 A Oh --

17 MR. ARANKI: Objection.

18 A I thought when you said recovery before you were
19 talking about clinical recovery. There would be a plan to
20 maximize his clinical recovery.

21 Q No, monetary.

22 A No, sorry, I misunderstood. No, that's not my
23 concern.

24 Q So, wouldn't you think somebody who -- do you have
25 an opinion about somebody who consulted with a lawyer before

1 they consulted with a doctor after an accident, was more
2 concerned about maximizing their recovery than getting
3 better; would you agree with that?

4 MR. ARANKI: Objection your Honor.

5 THE COURT: Sustained.

6 Q Can't people find doctors without needing a
7 lawyer?

8 MR. DEVITO: Objection.

9 THE COURT: Sustained.

10 Q Would your conclusion about your life care plan;
11 do you state various modalities and items that you say that
12 the plaintiff would need in the future, correct?

13 A Yes.

14 Q And would your opinion change if it were
15 testified to that the surgery was successful?

16 A No.

17 Q And you wouldn't change your opinion about needing
18 a pain specialist if the plaintiff never saw a pain
19 specialist before or after he saw you?

20 A No.

21 Q And you wouldn't change your cost estimate
22 regarding prescription medication if you knew that the
23 treating doctor, Dr. Klein's, didn't prescribe any
24 medication for him?

25 A No.

1 Q Now, have you assisted Mr -- plaintiff, Mr. Jacobs
2 in terms of getting any of these modalities; correct? You
3 haven't referred him to any specific agencies for physical
4 therapy or any of the items he discussed, correct?

5 A Correct.

6 Q In fact, you didn't treat Mr. Jacobs at all. You
7 only saw him on that one occasion, correct?

8 A That's right.

9 Q And if there were any future surgery, you have no
10 way of knowing, other than what surgery Mr. Jacobs has had,
11 you have no way of knowing how that may come out, correct?

12 A Correct.

13 Q So if there was some future surgery and it came
14 out very successful, then it might obviate the need for any
15 of the items that you described, correct?

16 A Possible.

17 Q And, in making these conclusions about costs in
18 the future and what not, you didn't mention anything about
19 the affordable care what the press calls Obama Care?

20 MR. ARANKI: Objection. Objection.

21 There is --

22 THE COURT: That is sustained.

23 MR. OCCHIOGROSSO: Are you kidding me?

24 Q Now, are you aware that the plaintiff saw Dr.
25 Klein in August, this past August of 2013 and that Dr. Klein

1 issued a report?

2 A Not that I recall, no.

3 Q And you didn't review that report?

4 A Don't think so.

5 Q Okay, so, if Dr. Klein said in that report that
6 overall, he thought Mr. Jacobs was doing pretty good, you
7 wouldn't change your opinion about any of the things you
8 said, correct?

9 A Correct.

10 MR. DEVITO: I have no further questions
11 Your Honor.

12 MR. ARANKI: Just a couple of things, your
13 Honor.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MR. ARANKI:

17 Q Dr. Richter, the records that our office provided
18 you to review included the surgical stay, correct?

19 A Yes, it did.

20 Q Which includes Dr. Bloom's report?

21 A Yes, it does.

22 Q Now, we went through on direct that Mr. Jacobs did
23 have some wear and tear to his cervical spine prior to this
24 accident?

25 A Yes.

1 Q If someone has that kind of wear and tear to their
2 spine and then there's a superimposed trauma on top of that,
3 can that due to a pre-existing degenerative --

4 MR. DEVITO: Judge, object to that as beyond
5 the scope of the cross. My objection is that's beyond
6 the scope.

7 THE COURT: Yes, I understand your
8 objection. I'm just looking. I am going to sustain.

9 Q Your Honor -- I mean, Doctor, Dr. Richter, sorry,
10 did Mr. Jacobs -- Mr. DeVito went through the fact Mr.
11 Jacobs didn't mention to you that he had worked a couple of
12 times after the accident; correct?

13 A Yes.

14 Q Now, did Mr. Jacobs ever tell you that after the
15 accident, he was able to carry these cameras without
16 assistance to help him on these jobs?

17 A No.

18 MR. ARANKI: No further questions.

19 Thank you.

20 THE COURT: Mr. DeVito?

21 MR. DEVITO: No further questions. Thank
22 you, your Honor.

23 THE COURT: Thank you, Doctor. You may step
24 down.

25 (witness excused.)

1 MR. OCCHIOGROSSO: Your Honor, it's our
2 understanding while we do have another witness, based
3 on scheduling that was worked out outside the presence
4 of the jury, that it's more prudent we make that
5 witness available tomorrow morning so the defendants
6 can call a witness this afternoon.

7 THE COURT: And your witness is ready this
8 afternoon, is that correct?

9 MS. BRANCH: Yes.

10 THE COURT: 2:00 o'clock?

11 MS. BRANCH: Yes.

12 THE COURT: All right. We're going to take
13 a break now from hearing testimony because of
14 scheduling so, you will be free to enjoy your lunch and
15 we will reconvene at 2:00 o'clock and again, I had
16 mentioned to you when we opened that sometimes we go
17 out of order because of the convenience and scheduling
18 issues which is involved in the witnesses. While we're
19 presenting the plaintiff's case at this time, the fact
20 is you're going to hear from the defendants, just to
21 accommodate the scheduling of their witness.

22 Enjoy your lunch. See you 2:00 o'clock and
23 we'll reconvene.

24 THE COURT OFFICER: All rise.

25 (jury leaves the courtroom.)

1 THE COURT: Thank you. Courtroom can be
2 seated. Off the record.

3 (Whereupon, an off the record discussion was
4 held.)

5 (A luncheon recess was taken.)

6 (After the luncheon recess, the following
7 occurred:)

8 ***

9 A F T E R N O O N S E S S I O N .

10 (The trial continued.)

11 THE COURT: Ready for the jury?

12 THE COURT OFFICER: All rise, jury entering.

13 (The jury entered the courtroom and the
14 following occurred:)

15 THE COURT: Welcome back, jurors. Please be
16 seated.

17 Hope you enjoyed the beautiful weather
18 outside. Courtroom can be seated.

19 As I just remind you, as I explained to you
20 this morning, we're going to go a little bit out of
21 turn in that we're interrupting the plaintiff's
22 presentation of evidence with one of the witnesses for
23 the defense.

24 Ms. Branch, would you like to call your
25 witness?

1 MS. BRANCH: Yes, defense calls Dr. Ashok
2 Anant to the stand.

3 DR. A-S-H-O-K A-N-A-N-T having been first
4 duly sworn, testified as follows:

5 THE CLERK: State your name and address for
6 the record.

7 THE WITNESS: First name Ashok, okay, and
8 the last name is Anant.

9 Address is 104 Duncan Road, Staten Island,
10 New York, 10301.

11 THE CLERK: Thank you.

12 THE COURT: Miss Branch?

13 MS. BRANCH: Thank you, your Honor.

14 DIRECT EXAMINATION

15 BY MS. BRANCH:

16 Q Good afternoon, Dr. Anant.

17 A Good afternoon.

18 Q Will you please tell the jury a little bit about
19 your background.

20 A I'm a neurosurgeon. I've been in practice since
21 1982.

22 I was trained in Downstate Medical Center in
23 Brooklyn, New York. That's where I did my residency.

24 Prior to that I did my medical school in India. I
25 did three years of surgical residency and then went on to

1 neurosurgery which is a five-year training program.

2 I graduated out of the residency in 1982.

3 Then, I was working in the State University of New
4 York for two years in Brooklyn, in the Department of
5 neurosurgery.

6 Then, I started practice in 1984 at Maimonides
7 Medical Center. I was there for 18 years, almost 20 years.
8 I was chief of neurosurgery at Maimonides for ten years and
9 in 2001, I went to Lutheran Medical Center which is a
10 hospital in Brooklyn, trauma center, and I'm currently chief
11 at Lutheran Medical Center for the last 11 to 12 years.

12 Q Doctor, what type -- can you tell the jury a
13 little bit about the trauma center at Lutheran Hospital?

14 A It's a level one trauma center which means we get
15 serious accidents coming in all the time.

16 At the hospital I manage the Neurosurgery
17 Department.

18 I'm also in charge of two committees. One is the
19 Ethics Committee in the hospital --

20 MR. OCCHIOGROSSO: Objection. He was asked
21 about the trauma center, your Honor.

22 THE COURT: Let's -- answer the question
23 about the trauma center and then you can go on.

24 Q Doctor, I'll ask you about your present
25 affiliations but, can you tell the jury a little bit about

1 the trauma center, what type of trauma center is it?

2 MR. OCCHIOGROSSO: Asked and answered.

3 THE COURT: That's all right.

4 A Level one trauma center which means we get serious
5 trauma.

6 Q Okay. Are you licensed to practice medicine in
7 the State of New York?

8 A Yes.

9 Q Are you board certified?

10 A Yes.

11 Q Now, how long have you been board certified?

12 A I was board certified in 1983.

13 Q Since you were board certified in 1983 do you have
14 to re-certify every year?

15 A No, I don't have to re-certify. Answer is no.

16 Q Can you explain to the jury why you don't have to
17 re-certify?

18 A Physicians who took their boards in 1980's do not
19 have to re-certify.

20 I think after 1995 onwards, if you became board
21 certified in 1995 onwards, every five years you have to
22 re-certify with the American Board of Neurological Surgery.

23 Q What are your present affiliations?

24 A I am presently Chief of neurosurgery at Lutheran
25 Medical Center, Brooklyn, New York.

1 Q What is your responsibility as Chief of
2 neurosurgery at Lutheran Hospital?

3 A I manage the three other neurosurgeons. I do
4 quality assurance for the Department which means that we go
5 through all the monthly patients that were seen that were
6 operated upon and comment upon any problems.

7 I manage the Ethics Committee in the hospital.

8 Q Are you on any other committees?

9 A I also manage Pathology Committee in the hospital.

10 Q And what is the Pathology Committee?

11 A Pathology, we review all surgical slides, you know
12 pathology reports to make sure that the reports are accurate
13 and the specimens are received and processed properly.

14 Q Doctor, what is your specialty in the field of
15 medicine?

16 A Neurosurgery.

17 Q Can you tell the jury a little bit about what a
18 neurosurgeon does?

19 A Neurosurgery, we take care of problems in the
20 brain and the spine and the spine includes the neck, middle
21 of the back which is called the thoracic spine and the
22 lumbar spine.

23 Q And you've been a neurosurgeon roughly around 30
24 years?

25 A Since 1982.

1 Q Have you performed any spinal surgeries?

2 A Yes.

3 Q How many spinal surgeries have you performed
4 during your career?

5 A Can't be exact but it's over 5,000.

6 Q And what type of spinal surgeries did you perform
7 over the years?

8 A A lot of the surgeries of the lower back
9 consisting of removal of disks, spinal fusions. I did a lot
10 of neck surgery; both from the front and the back, for
11 disks, for spinal cord compression, for fractures.

12 Q Do you, during your 30 year tenure, have you
13 treated patients?

14 A Yes.

15 Q And did you treat patients for spinal injuries?

16 A Yes.

17 Q Did you treat patients for spinal injuries for
18 accidents?

19 A Yes.

20 Q As a result of accidents?

21 A Yes.

22 Q And have you treated patients as a result of
23 degenerative disk disease?

24 A Yes.

25 Q Have you ever testified in court before?

1 A Yes.

2 Q And, Doctor, you know, I meant to ask you this
3 before. You and I have never met before today, is that
4 correct?

5 A Yes.

6 Q And the first time we met was about an hour ago?

7 A Yes.

8 Q Is that right? And you never handled any cases on
9 behalf of the law firm of Brody and Branch, is that right,
10 before testifying here today?

11 A Yes.

12 Q Have you ever handled any cases for the law
13 offices of Edward Garfinkel?

14 A I might have done some examinations of patients
15 but I don't -- I don't think I've been in court.

16 Q Do you still perform spinal surgeries?

17 A I do perform surgery but I, since I stopped
18 operating four years ago as a primary surgeon because of
19 health issues.

20 Q And have you testified on behalf of plaintiffs and
21 defendants in your career?

22 A Yes.

23 Q How many times have you testified on behalf of
24 defendants?

25 A I believe twice or three times.

1 Q And how many times have you testified on behalf of
2 plaintiffs.

3 A Sorry, it's the other way around.

4 Q Okay.

5 A For, in answer to your first question, I testified
6 maybe about eight times, somewhere between five and eight
7 times and for plaintiffs, about two or three times.

8 Q And have you ever been deemed an expert by the
9 Supreme Court of the State of New York?

10 A Yes.

11 MS. BRANCH: At this time, your Honor, I
12 offer Dr. Anant as an expert in the field of
13 neurosurgery.

14 MR. OCCHIOGROSSO: No objection.

15 THE COURT: Please proceed.

16 Q Dr. Anant, you were asked to examine Maurice
17 Jacobs regarding this litigation, correct?

18 A Yes.

19 Q And you were asked to provide medical, to review
20 medical records provided in this litigation?

21 A Yes.

22 Q And, you were asked to appear in court today?

23 A Yes.

24 Q You were also asked to evaluate, examine Mr.
25 Jacobs?

1 A Yes.

2 Q And were you compensated for the work that you
3 were asked to do?

4 A Yes.

5 Q How much were you compensated?

6 A For coming to court today it was \$16,000 and for
7 the independent, for the examination and report preparation,
8 I'm not sure of the exact figure, but it's in the regoin of
9 \$1500, \$2,000.

10 Q If you weren't here today, would you be doing
11 something else?

12 A Yes.

13 Q And would that be something related to your
14 practice or to your responsibilities?

15 A Yes.

16 Q When did you evaluate Mr. Jacobs?

17 A I saw Jacobs for the first time May 22, 2012.

18 Q And when you saw Mr. Jacobs, did he provide a
19 history to you with respect to why he was seeing you?

20 A Yes.

21 Q What history did he tell you? What information
22 did he give you?

23 A He told me that he was 40 years old and that he
24 had an automobile accident on April 16, 2011. He was a
25 driver.

1 He said the air bag did not go off. He was
2 wearing a seat belt. He did not have a head injury. He did
3 not lose consciousness.

4 He complained of head and neck pain after the
5 accident, at the scene of the accident.

6 He was taken to Mt. Sinai Hospital Queens by EMS
7 and he was treated and released from there.

8 There's other components to the history; if you
9 want me to go through it.

10 Q Let me ask you, let me stop you there for a
11 second.

12 Did Mr. Jacobs tell you how the accident happened
13 when you spoke to him on May 22, 2012?

14 A No. This is the only information that I have.

15 Q Did he tell you what vehicles were involved in the
16 accident when you saw him on May 22, 2012?

17 A No.

18 Q Now, did Mr. Jacobs arrive or come to your office
19 alone?

20 A He was accompanied by a paralegal from his
21 attorney's office.

22 Q And was that person present through the entire
23 evaluation?

24 A I believe so.

25 Q How long was your evaluation of Mr. Jacobs?

1 A I don't recall, the exact number of minutes.

2 Q Can you tell the jury what you did with respect to
3 your evaluation of Mr. Jacobs?

4 A I first talked to him to get the history.

5 Then I was able to obtain information regarding
6 his past medical history. Then we ask him about the
7 medications he's taking at this time.

8 We go into social history which is essentially
9 whether he smokes cigarettes, drinks alcohol.

10 We do a neurological examination.

11 I then review the records.

12 Q Now, when you saw Mr. Jacobs on May 22, 2012, did
13 he make any specific complaints?

14 A He said that after the accident, he had neck pain
15 and stiffness that went to both shoulders. He said that the
16 physical therapy that he had did not help and then he went
17 for surgery and that after the surgery he said he's not
18 feeling much better after the surgery and he period to have
19 neck pain.

20 He did say his hands are fine. He did not
21 complain of any problems with his lower back.

22 He stated that he was walking well, and he's able
23 to walk for long distances.

24 He did say he had difficulty carrying equipment.

25 Q And did he tell you what did he did for a living?

1 A He was a photographer, freelance.

2 Q Now, did he tell you whether or not he was still
3 working at the time of his evaluation?

4 A He said he had gone back to work.

5 Q Now, Doctor, after you took the history from the
6 plaintiff, did you actually perform a physical examination
7 of Mr. Jacobs?

8 A Yes.

9 Q Can you tell the jury what you did?

10 A I examined Mr. Jacobs. We go through a
11 neurological examination. We examine the head and something
12 called the cranial nerves which is all the nerves supplying
13 the face and the head and that was normal.

14 We look at the upper extremities and lower
15 extremities and muscle strength I found was normal.

16 There was no signs of spinal cord injury.

17 I measured his range of movement of the neck and
18 he was able to flex and extend his spine reasonably well.

19 I have the numbers here.

20 His lower extremity, examination of his legs, he
21 had normal strength, normal reflexes, normal sensation.

22 I checked his walking and he had no limp.

23 I essentially found that he was neurologically
24 normal.

25 Q Doctor, did you do a Hoffman test?

1 A Yes. His Hoffman sign was negative.

2 Q What is a Hoffman test? What is the Hoffman test?

3 A It's a test that tests the movement of the finger,
4 you know, where you have to flip up the finger and if you
5 get a passive contraction of all the fingers, it's a sign of
6 spinal cord disturbance. That means if he had an injury to
7 his spinal cord, the Hoffman sign should be positive.

8 Q Now, Doctor after you evaluated Mr. Jacobs, did
9 you come to an opinion -- did you come to any conclusions
10 based upon your evaluation?

11 A After reviewing the records I have, I issued a
12 report with my conclusions.

13 Q Let me ask you this, Doctor. Let me withdraw that
14 question and re-ask this.

15 Did you, you reviewed records that were part of
16 the evaluation and examination of Mr. Jacobs?

17 A Yes.

18 Q And you also performed a physical examination of
19 him?

20 A Yes.

21 Q And based upon those two things you came to a
22 conclusion or a finding regarding those records in your
23 examination, correct?

24 A Yes.

25 Q What were your findings?

1 A Well, I found that he was complaining of residual
2 neck pain after he had undergone surgery. He was still
3 complaining of pain.

4 I found no objective evidence of a pinched nerve.
5 It's something we call cervical radiculopathy or lumbar
6 radiculopathy. I found no evidence that he was having pain
7 shooting down his arms or his legs.

8 I found no evidence of spinal cord injury.

9 He was -- I did not think he had any functional
10 limitations in terms of daily living and I stated that he
11 was able to return to work as a photographer.

12 Q Did you find any evidence of trauma to his spinal
13 cord as a result -- did you find any evidence of trauma to
14 his spine as a result of his accident on April 16, 2011 in
15 your evaluation?

16 A This evaluation I reviewed the MRI reports and the
17 reports suggested that in the neck, Mr. Jacobs had multiple
18 disk herniations at 3-4, 4-5, 5-6.

19 There were even some problems at 6-7. There was no
20 fracture. There was no -- the bones were not out of place.
21 There was no subluxation. There was no evidence of bleeding
22 around the spine. There was no evidence what we call
23 instability so I did not think he had an injury to the
24 structure of the spine.

25 I thought he had a cervical sprain as a result of

1 the accident.

2 Q Now, Doctor, you issued another report after your
3 May 22, 2012 report, is that correct?

4 A Yes.

5 Q Why did you do that?

6 A Well, when I got the first set of the records I
7 did not get the x-rays so I wanted to look at the pictures
8 and then at that point we issue a second report.

9 Q Did you eventually or did you review x-rays, MRIs
10 after you issued this first report?

11 A Yes.

12 Q And did you review them?

13 A Yes.

14 Q Are you trained to review x-rays and MRIs and
15 interpret them?

16 A Well, I've been doing it for 30 years. Every time
17 we take a patient for surgery, we have to look at the
18 pictures ourselves.

19 Q After you reviewed the MRIs and the x-rays that
20 you received, did your opinion change with respect to your
21 findings in the May 22, 2012 report?

22 A My opinion was, in fact, what I've written here is
23 what we find in the neck on the MRI pictures is primarily
24 degenerative, primarily long standing slowly progressive
25 changes, at multiple levels; not at just 3-4, but 3-4, 4-5

1 and 5-6 and a little bit at 6-7 and this represents what we
2 call cervical spondylolysis which is another name for, you
3 know, low grade arthritis in the neck.

4 He had disk bulges at various spots, even at C3-4
5 he had a disk bulge.

6 I did not see any disk that had broken out and was
7 hitting the nerves.

8 Q Doctor, did you have an opinion based upon your
9 review of the MRIs, and the x-rays, do you have an
10 opinion -- withdrawn.

11 Did you formulate an opinion of whether or not the
12 plaintiff sustained a traumatic injury? Let me rephrase
13 that. I'm sorry.

14 Do you have an opinion based upon a reasonable
15 degree of medical certainty based upon your review of the
16 MRIs, whether or not the plaintiff sustained a traumatic
17 injury to, traumatic spine injury as a result of his
18 accident on April 16, 2011?

19 A My report was that the accident itself did not
20 produce an objective injury to the neck or lower back.

21 My opinion now is that he probably had a neck
22 sprain because he complained of pain after the accident.

23 Q Doctor, there was some MRI films that were
24 admitted into evidence during this litigation.

25 Will you be able to look at the MRI films and

1 explain to the jury what you saw and how you came to your
2 opinion?

3 A Yes.

4 Q Going to show you two slices of film and you tell
5 me which ones would aid you and explain it to the jury how
6 you determine, how you determine that the plaintiff did not
7 have any trauma as a result of the accident on April 11.

8 MR. OCCHIOGROSSO: Objection. He didn't say
9 he didn't have trauma. He just said he had a cervical
10 strain.

11 THE COURT: Rephrase it.

12 MS. BRANCH: I'll rephrase it.

13 THE COURT: Set it up there and also --

14 MR. OCCHIOGROSSO: May I, your Honor?

15 THE COURT: Sure.

16 Q Dr. Anant, would you explain to the jury what
17 they're looking at?

18 THE COURT: Sorry, before you begin that,
19 maybe you can identify what it is that he's looking at.

20 Q Dr. Anant, Plaintiff Exhibit Ten in evidence your
21 Honor?

22 THE COURT: Thank you.

23 A Can I go ahead?

24 THE COURT: She's going to ask the question.

25 Q Can you please explain to the jury what you're

1 looking at?

2 A I'm looking at one image of the MRI cervical
3 spine. There may be 40 or 50 images. We're looking at one,
4 a side view and this is the front and this is the back and,
5 it's as if you've taken a slice right through the center of
6 the body in a vertical way and you're looking at it from the
7 side.

8 Q Doctor, do you see any abnormalities in the
9 plaintiff's spine in the film that you're looking at?

10 A Yes. There's an abnormality, if I counted the
11 vertebra, this is number two. This is number three. This
12 is number four; five, six. Between three and four, there's
13 a black mark, density in the back with some compression at
14 3-4. You don't see much at 4-5 on this particular slice.

15 At 5-6 you see again this black area and this
16 black area. The black areas are bone on MRI. MRI scan most
17 of it is bone with some thickening ligaments and, the disk
18 is between the two bones and this is the disk space.

19 This is what it should look like. It got this
20 white area in the center and this is what we would call a
21 normal disk, okay? There's no bulge back here.

22 Here, you're getting this bone formation behind
23 the spine and this is representative of what we call an
24 osteophyte or cervical spondylosis or it's a degenerative
25 arthritic condition.

1 Q What specifically is an osteophyte?

2 A Osteophyte is a little bony prominence that forms
3 in the back of the spine, okay, and it's a result of usually
4 degeneration of the disk and you can see that the disk here
5 is quite narrowed, compared to other disks.

6 I have only one image to look at. There are many
7 other images but this, this possible interior protrusion is
8 by bone and at the tip of this, is the disk that is normally
9 there, so, as the bone sort of protrudes backwards, it
10 carries a piece of disk with it so this is not, you know,
11 the radiologists, some of them would call this a herniated
12 disk.

13 Other radiologists would call it an osteophyte due
14 to arthritis.

15 Q Doctor, the condition that you're referring to, is
16 that the condition that can be caused by trauma to the
17 spine?

18 A It can be caused by repeated minor trauma from day
19 to day living so, it is something that develops over years.
20 If this was an acute disk herniation from, say a car
21 accident or a fall, you might see several other things. You
22 might see some thickening of the tissues in the front which
23 indicates that there's been damage to the spine in the
24 front.

25 You may see some hemorrhage. You may see, in the

1 back here, that the ligaments are torn. You might, what you
2 should see, like this white tissue area in the center is of
3 the actual disk, okay?

4 If you look at this, this white area is the disk,
5 in between and this is the bone and if you see this white
6 area, doesn't go really far back. It goes back about this
7 much and then the rest of it is this black or dark area
8 which is essentially calcified ligaments and bone.

9 Q Doctor, what date was that film taken?

10 A This was taken 7/26/11.

11 Q Did you have an opinion of whether or not the
12 condition that you're referring to in the MRI film developed
13 before or after April 16, 2011?

14 A What we're seeing here is chronic disease, okay?
15 I mean, there's no fresh acute piece of disk that comes out
16 that I can see that's compressing the spinal cord but I wish
17 I had more images to show you. It's hard to do it just
18 based on one image.

19 MS. BRANCH: We have more images, Dr. Anant.

20 Q Looking at the axial view, would that help you a
21 little bit?

22 A It does help a little bit. I'm assuming that this
23 is taken through 3-4. I don't have the side view with the
24 markers to tell me where it's taken and it shows this bony
25 protrusion here and this is all bone here. You can see the

1 black, dark area is all bone and this is, got the same
2 density as bone and you see this black area, so this is a
3 bony protrusion which we call an osteophyte.

4 This is a more normal area, normal meaning there's
5 still osteophytes here. Slight pressure on the spinal cord
6 here and this maybe one level lower down, I'm not sure of
7 that, based on this film.

8 Q Can you tell from anything on the slide what
9 you're looking at?

10 A This is image four so it's higher and this is
11 image eight so there are four slices between these two; four
12 of them.

13 Q So, that doesn't show the C 3; does the image on
14 top show the C3-4 disk?

15 A I'm assuming it's that. If I have the whole
16 series I can tell you.

17 Q There's no way you can tell from looking at that?

18 A Not from this, no.

19 Q Looking at the other image, Doctor, if there was
20 testimony -- what's an extruded disk?

21 A Extruded disk is where this center piece has
22 broken out and it's lying in front of the spinal cord here
23 or to the side of the spinal cord. That is an extruded --
24 means it sort of comes out and may be completely detached or
25 it's usually a large piece that is lying outside.

1 Q Did you see an extruded disk on the MRI film?

2 A Not on this one particular film, no.

3 Q Did you review a bunch of MRI films in preparation
4 of your evaluation of Mr. Jacobs?

5 A Yes, I did, and it's in my report.

6 Q You can have a seat, Doctor.

7

8 A So, I reviewed the images of the MRI scan of the
9 cervical spine 7/26/2011 which is the same study and I've
10 written that the study indicated osteophytic compression.

11 Q What is osteophytic compression?

12 A Essentially osteophyte is bone on the top, bone on
13 the bottom, with some disk in between which started
14 projecting backwards and you find it in the neck and the
15 lower back and it's a form of arthritic condition, that
16 occurs slowly over years so, I call that osteophytic
17 compression with some right sided prominence. That means it
18 was slightly more to the right side than the left side in
19 the spine, and I've written that sagittal image demonstrates
20 reversal of cervical lordosis at C3-4, means slightly angled
21 at C3-4 and that can be as a result of degenerative change.

22 I say that osteophytic lipping is identified along
23 the margin of C3-4. If you have the C3 bone here and C4
24 here on the bottom corner, there is bone lipping so these
25 bone lips form and they can sometimes get quite large.

1 Q Did you review an operative report from Dr. Klein?

2 A Yes.

3 Q You believe in your operative report of Dr. Klein;
4 do you see any evidence spinal cord injury? Well let me ask
5 you this.

6 What type of surgery did Dr. Klein perform on Mr.
7 Jacobs?

8 A Dr. Klein performed surgery from the front where
9 you go inside, you remove the disk, and in order to get to
10 the osteophyte that we talked about that lip of bone in the
11 back, you have to remove the disk. Otherwise, you can't see
12 that lip, that bony projection.

13 Then he goes and takes instruments and takes out
14 that bony lip. He does not mention in his report that he
15 found a fragment of disk that he took out of the spinal
16 canal.

17 In fact, he doesn't mention that he saw any nerves
18 inside. You know normally you would see two nerves, one on
19 either side. That's sort of important to see when you're
20 removing a disk.

21 If you have a herniated disk, you have to see the
22 nerve behind it to make sure that the nerve is free. He
23 didn't mention the word "dura" which is the covering of the
24 spinal cord which is something you should see if you have
25 gone that far deep.

1 Q Assume that there's been testimony by Dr. Klein
2 that when he performed the procedure on the plaintiff's neck
3 that he removed a herniated disk at C3-4 level.

4 Based upon your evaluation of his report, do you
5 agree with that?

6 A Well Dr. Klein did the surgery.

7 Q Um-hmm.

8 A So you know, I mean this is what he's reporting
9 that he removed a herniated disk, but what he's written in
10 his report, he says that any disk material posterior to the
11 end plates were removed. You have to remove the disk and by
12 the time you remove the disk and see the nerves all the disk
13 is out so, but he doesn't describe seeing -- normally, if
14 you have an extruded disk, you'd see a separate fragment
15 lying in front of the nerve. You would see, sometimes a
16 tear in the disk is held in place by a ligament and if the
17 ligament is torn, the extruded component of disk or the
18 ruptured disk goes through that tear and then forms a mass
19 inside the spine.

20 He doesn't describe that.

21 Q He doesn't describe that in his operative report,
22 correct?

23 A Right.

24 Q Is that his -- is what he describes in his
25 operative report, that is consistent with what his pre and

1 post diagnosis is of the patient?

2 A What he's written as conditions, I mean condition
3 that he operated the surgery for, he says, he calls it
4 herniated disk, with foraminal stenosis.

5 Q Is that consistent with what his narrative --

6 A His narrative does not clearly describe real
7 herniated disk. It describes more the removal of the bone
8 and ligaments.

9 Q Does it also describe the removal of the
10 osteophyte?

11 A Yes.

12 Q And the osteophyte is a degenerative condition?

13 A Yes.

14 Q And the osteophyte would have pre-dated, would the
15 osteophyte have predated the April 16, 2011 accident?

16 A Yes.

17 Q So, is it fair to say that the surgery, the
18 surgery to remove the osteophyte was related to a cervical
19 degenerative disk disease?

20 A Yes.

21 MR. OCCHIOGROSSO: Objection. Leading.

22 THE COURT: Yes, counsel, be careful of your
23 form; all right?

24 Q I just lost my train of thought. I'm sorry.

25 So, did you, in his operative report, does Dr.

1 Klein mention that the surgery was related to cervical
2 degenerative disk disease?

3 A He doesn't mention it but that's what he does. I
4 mean, he doesn't use the words degenerative disk disease.
5 He uses the words herniated disk. When you look at the
6 first page of the report and when you go to the second page,
7 the description is primarily that for osteophyte removal.

8 Q Now, in his report, does Dr. Klein mention if
9 there was another surgeon with him during this procedure?

10 A In his own report, no but there's a second report
11 that I did review from a Dr. Bloom.

12 Q Doctor, would you look at the second page of his
13 report. At the top, I believe -

14 A Yes, oh, yes, he says I will also mention that Dr.
15 Bloom performed soft tissue exposure of the neck.

16 Q Did you see an operative report from Dr. Bloom?

17 A I don't have a recall of that. I think I did, I'm
18 not sure.

19 Q Okay.

20 MS. BRANCH: May I approach the witness?

21 THE COURT: You may.

22 Q I'm going to show you a copy of Dr. Norman Bloom's
23 operative report and what's the date on that report.

24 A 11/8/2011.

25 Q Is that the same date of Dr. Klein's procedure?

1 A It should be, yes.

2 Q And, Dr. Bloom is referring to the procedure
3 involving Mr. Jacobs?

4 A Yes.

5 Q That report, what is his pre and post-operative
6 diagnosis?

7 A Degenerative cervical disk disease.

8 Q Is that consistent with the explanation or the
9 description Dr. Klein's report?

10 A Yes.

11 Q Now Doctor, did you review the emergency room --
12 did you review the ambulance call report with respect to
13 your evaluation of the plaintiff?

14 A Yes.

15 Q Do you recall and if you need the report it's
16 right there.

17 Do you have an independent recollection of what
18 information was contained in the emergency room; I mean, in
19 the ambulance call report?

20 MR. OCCHIOGROSSO: Objection, your Honor.

21 Offered an opinion, not right what's in other medical
22 doctors -- except if he doesn't remember and now has to
23 be shown the document; to read it to the jury who will
24 have their own opportunity.

25 THE COURT: Is there somewhere else you're

1 going with this?

2 MS. BRANCH: Yes.

3 THE COURT: Subject to connection.

4 Q Did you read Dr. Klein's notes with respect to
5 this, to the -- did you read Dr. Klein's notes?

6 A Yes.

7 Q Did what did Dr. Klein say was his diagnosis of
8 the plaintiff?

9 A He diagnosed cervical disk herniation.

10 Q And did he say it was a large cervical disk
11 herniation?

12 A Yes.

13 Q What would you expect to see in terms of the
14 plaintiff's anatomy? What would you expect to see in terms
15 of the plaintiff's anatomy of a person with a cervical --
16 withdrawn.

17 Let me get a minute. I'm overheated right now.
18 Can I have five minutes? Sorry; just five minutes because
19 I'm feeling kind of weak.

20 THE COURT: Let's take a five minute break.

21 MS. BRANCH: I apologize to the Court.

22 THE COURT OFFICER: All rise. Jury leaving.

23 (Whereupon, the jury leaves the courtroom.)

24 (Whereupon, there is a brief pause in the
25 trial.)

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THE COURT: Miss Branch, you okay?

MS. BRANCH: I didn't eat and --

THE COURT: Off the record.

(Whereupon, an off the record discussion was held.)

(Pause in the proceedings.)

THE COURT OFFICER: All rise, jury entering.

(The jury entered the courtroom and the following occurred:)

THE COURT: Thank you. Please be seated.
Courtroom may be seated.

Ms. Branch, if you'd like to continue your examination.

MS. BRANCH: Yes, thank you, your Honor.

Q Dr. Anant, in your review of the medical records, did you find any inconsistencies in the plaintiff's medical treatment?

MR. OCCHIOGROSSO: Objection to form.

THE COURT: Yes, if you can be more specific.

Q Did you review the MRI films of May 5, 2011?

A Yes.

Q What was the findings in that film?

A That film was done in an open scanner and the film

1 said that there was, there were herniated disks at
2 practically every level of the cervical spine so, it reads
3 multi level disk herniation C2-3 through C7-1. That means
4 2-3, 3-4, 4-5, 5-6, 6-7, 7-1 there was abnormalities in the
5 spine and the report does mention stenosis which means
6 narrowing at 3-4 but yet they say that there was larger disk
7 herniation as C4-5. The disk herniation is large at the C4
8 level so many --

9 MR. OCCHIOGROSSO: C4 level? We saying 3-4
10 or C4-5? I don't know what the doctor means. I don't
11 think there's such a thing as C4.

12 A Says here disk herniation is large with a broad
13 right predominant component at C4-5 so the first MRI showed
14 problems, at possibly C4-5 and then the second MRI showing
15 problems at C3-4.

16 First MRI shows problems at C2-3 down all the way
17 down to C7-1 at every disk space.

18 The second MRI done a few months later shows, you
19 know, we reviewed that study with you, and that is reported
20 as showing, it read, showing posterior post-lateral disk
21 protrusion. That means the disk protruding. That means,
22 it's similar to a bulge disks, not really a herniated disk.
23 Radiologists have different ways of describing it but says
24 this is a osteophytic ridge at C3-4.

25 Q Now, did the findings on the MRI on July, 2011 and

1 findings May 2011, was that consistent with the surgery that
2 the plaintiff had in November 2011 by Dr. Klein?

3 A Dr. Klein thought that the major abnormality was
4 at C3-4 so he decided to operate at C3-4.

5 Q And, the C3-4 had osteophyte complex, is that
6 correct?

7 A According to my opinion, yes.

8 Q Now, Doctor, did you review any x-rays, did you
9 review Dr. Huish's report in preparation of your evaluation
10 of Mr. Jacobs?

11 A I reviewed the report and before I prepared my
12 first report but I did not review it today.

13 Q Now, Dr. Huish's records are right there.

14 Can you take a look at them for me? In fact,
15 Doctor, let's start with the -- let's start with the Mt.
16 Sinai records, okay?

17 MR. OCCHIOGROSSO: Your Honor, I don't know
18 if this is an appropriate time but to the extent these
19 records aren't in evidence, we're willing to stipulate
20 them into the evidence at this time.

21 THE COURT: Thank you. Is there anything --

22 MS. BRANCH: I don't mind stipulating them
23 into evidence but first I should have asked him whether
24 or not, we're going to stipulate them into evidence or
25 we can mark it for identification just so he can review

1 them.

2 MR. OCCHIOGROSSO: Fine. Both are fine.
3 We're talking about the Mt. Sinai records; and, Dr.
4 Huish records --

5 THE COURT: Any reason not to have them
6 entered into evidence at this time?

7 MS. BRANCH: No, we can enter them.

8 THE COURT: Okay Dr. Huish and separately
9 Mt. Sinai, Plaintiff's Exhibits.

10 MR. OCCHIOGROSSO: Fine.

11 MS. BRANCH: They go in as plaintiff's
12 exhibits.

13 And the EMT report too.

14 THE COURT: Let's put them in as plaintiffs,
15 makes it easier and let's do them separately, two
16 separate exhibits. I don't know what number we're up
17 to.

18 MR. OCCHIOGROSSO: 16.

19 THE COURT: Thank you. 16 and 17.

20 MR. OCCHIOGROSSO: Thank your Honor.

21 THE COURT: Thank you, counsel. Go ahead.

22 MS. BRANCH: Thank you.

23 Q Doctor, you're looking at Mt. Sinai report or what
24 are you looking at?

25 A Any one you want me to.

1 Q Let's look at Mt. Sinai.

2 A Okay.

3 Q What was the diagnosis in the Mt. Sinai records?

4 A Discharge diagnosis was neck sprain.

5 Q Was that after he was evaluated by the emergency
6 room physician?

7 A Yes.

8 Q And is there any indication that any objective
9 testings were taken at the hospital that day?

10 A He had a CAT scan of his neck.

11 Q Okay. And the date of the records is what date,
12 Dr. Anant?

13 A Date of the record is 4/16/2011.

14 Q Is that your understanding is the date of the
15 accident?

16 A Yes.

17 Q Was there any objective test taken?

18 A He had a CAT scan of his neck which was --

19 Q What were those findings?

20 A Read as normal. Normal meaning there was no
21 fracture or mal-alignment.

22 Q Is that consistent with your opinion?

23 A I have not reviewed the CAT scan myself but
24 according to the report it indicated here there was no
25 evidence of acute cervical injury.

1 Q Is that consistent with your opinion that
2 plaintiff's condition, that plaintiff's condition in the
3 MRIs or plaintiff's condition after the accident is related
4 to, is that related to trauma?

5 A My opinion is that the claimant, I mean the
6 patient, sustained a cervical sprain.

7 Q Okay. And, is there any indication in the
8 emergency room records that he had any, was any evidence of
9 trauma to his neck or back?

10 A Emergency room record indicates no neurological
11 abnormalities. It also states that he was complaining of
12 neck and back pain after the accident. It states that he
13 was walking, he was ambulatory with EMS. That's basically
14 what it says. He reported headache. The head had no signs
15 of trauma. There was no signs of trauma, no signs of trauma
16 to the head.

17 That's basically what it says.

18 Q Okay. Now, can we look at the ambulance call
19 report, sir? In the other exhibit. Do you see it?

20 A Yes.

21 Q Now, sir, assume there was testimony that the
22 plaintiff sustained a serious injury as a result of this
23 accident on 4/16/2011.

24 Do you see an indication where the plaintiff
25 refused immobilization?

1 MR. OCCHIOGROSSO: Objection, your Honor.

2 THE COURT: Yeah, I'm going to sustain the
3 objection.

4 Q Doctor in the records is there an indication that
5 the plaintiff refused immobilization?

6 THE COURT: Counsel, come up for a second.

7 (Whereupon, an off the record discussion was
8 held.)

9 THE COURT: Thank you. Ms. Branch, you want
10 to proceed?

11 MS. BRANCH: Yes.

12 Q Dr. Anant, did you review Dr. Huish's report?

13 A Yes.

14 Q Dr. Huish found the upper extremity examination
15 revealed full range of motion. Is that consistent with Dr.
16 Klein's diagnosis of the plaintiff?

17 A Dr. Klein's examination indicated that the patient
18 had some left-sided weakness in the arm and some left leg
19 weakness.

20 Dr. Huish stated that, for example, on 8/15/2011,
21 he doesn't mention that there's any motor weakness or he
22 doesn't say there's any weakness.

23 On a previous examination, on the 7/20/2011 Dr.
24 Huish found that there was weakness in the left shoulder at
25 the deltoid.

1 Q That is consistent with a condition in his C3-4?

2 A C3-4 disk problem. In fact, when the MRI shows
3 the disk was slightly to the right side or more to the right
4 side, should produce pain about the right shoulder.

5 It very rarely produces pain going down the arms.
6 In my opinion there was no spinal cord injury so the arm
7 weakness and leg weakness, in my opinion, is not related to
8 the abnormality seen at C3-4?

9 The examination by Dr. Huish finds that his
10 weakness was on the opposite side. He said the pain,
11 weakness was on the right side, sorry, on, Dr. Huish finds
12 some weakness on the left side.

13 Ordinarily, if you have a right side disk
14 herniation, you should get symptoms on the right side and
15 not the left side.

16 Q Doctor, was there -- what was Dr. Huish's
17 diagnosis in questions of the plaintiff after his
18 evaluation?

19 A Dr. Huish diagnosed multi-level cervical disk
20 derangement. That means there was abnormality at multiple
21 levels. He found bilateral cervical radiculopathy. He
22 thought there were pinched nerves on both sides.

23 He found multi-level lumbar disk derangement.
24 That means multiple disks in his lower back.

25 He found left-sided pinched nerve in his leg and

1 something called myofacial pain with spasm which essentially
2 means a sprain.

3 MR. OCCHIOGROSSO: Can I ask what date the
4 doctor was just reading from?

5 A 7/20/ 2011.

6 MR. OCCHIOGROSSO: Thank you.

7 Q What was his conclusions after he, his conclusions
8 of the plaintiff's condition after he evaluated him?

9 A His conclusion was that Maurice was still
10 symptomatic with pain. He saw Dr. Klein for a spine surgery
11 consult today and an updated MRI was pending, and he'll
12 follow with Dr. Vallatas for epidural steroid injections.

13 Q Did you review any records that the plaintiff had
14 an epidural injection?

15 A Plaintiff did not have any epidural steroid
16 injections.

17 Q Is there a common sense standard or standard of
18 practice of treating neck pain, whether it's due to injury
19 or due to trauma?

20 A Most cases, when patients comes with neck pain
21 after accidents or trauma, nothing broken, and the
22 neurological examination is stable, the first line of
23 treatment is anti-inflammatory medications, like, you know,
24 Motrin or something stronger that you would take for maybe
25 two weeks, three weeks, four weeks, and if that didn't help,

1 then you would go for physical therapy for maybe six weeks
2 or eight weeks and if that didn't help, third logical step
3 would be to give steroid injections, to try and cut down the
4 pain.

5 Whoever -- if the doctor finds that there is
6 spinal cord compression and problem is urgent, then the
7 surgery should be done quickly to prevent major problems.

8 Q So, in this particular case, the plaintiff went
9 from physical therapy to surgery?

10 A He went -- yes, as far as the records indicate,
11 only treatment he had was initial examination in the
12 emergency room. Then he went for physical therapy very
13 quickly afterwards and then he went for surgery.

14 Q Assume the plaintiff went to Klein on
15 October 28, 2011 which was approximately ten days before
16 surgery on November 8, 2011. Is that consistent with
17 someone who is suffering with symptoms related to a
18 herniated disk at C3-4?

19 A Again, in my opinion, in my opinion, if Dr. Klein
20 found a large disk herniation at C3-4, had planned surgery
21 and was thinking that there was bruising of the spinal cord
22 or some injury to the spinal cord, well, the patient should
23 be instructed to wear a collar to protect his neck and
24 surgery should be scheduled as soon as possible.

25 Q Did you see anywhere in any records you reviewed

1 that anyone provided or recommended that the plaintiff wear
2 a collar?

3 A No.

4 Q Dr. Anant --

5 THE COURT: Mr. DeVito?

6 MR. DEVITO: It's getting a little loud
7 outside.

8 THE COURT: Would you like to close the
9 door?

10 Q Dr. Anant, based upon your review of plaintiff's
11 medical records and your evaluation, do you have an opinion
12 within a reasonable degree of medical certainty as to
13 whether there's a causal relationship between plaintiff's
14 accident on April 16, 2011 and his surgery on November 8,
15 2011?

16 A It's my opinion that the claimant probably needed
17 surgery because of his complaints of pain and based upon
18 what we saw on the MRI pictures, osteophyte and degenerative
19 disk and the compression but I don't think that is related
20 to his automobile accident.

21 Q Why?

22 A Again, you know, we're not, we're not seeing acute
23 disk herniation. We're not seeing a fracture. We're not
24 seeing a disruption of the disk where there's a large
25 fragment that is broken off. We're not seeing a ligamentous

1 injury where the ligament are torn.

2 We're not seeing any signs of instability.

3 All of these things would point to trauma so if
4 you have an acute traumatic accident you would see all these
5 signs. You might even see some hemorrhage on the MRI scans
6 even several months after the accident, you know; tiny bits
7 of hemorrhage that indicate that, you know, significant
8 trauma has occurred. We don't see all that.

9 All we see, all I saw was cervical spondylosis
10 with an osteophyte formation, degenerative disk. There is
11 some compression there so, you know, I think Dr. Klein was
12 probably justified in doing the surgery, you know, you know,
13 especially if the patient was having pain. I think based
14 upon the MRI many surgeons would have operated, that's fine,
15 but I don't think that's related to the car accident.

16 Q Doctor, if there was, assume there was testimony
17 that April 16, 2011 accident, the the plaintiff would not
18 have needed the surgery; do you agree with that?

19 A I think Mr. Jacobs would probably have required
20 surgery at some point, either when Dr. Klein did it or
21 several years down the line because, he's suffering with
22 degenerative problems in his neck. It's not just one disk.
23 It's multiple disks from C2 down to C7. One MRI -- on the
24 first MRI, it appears that the problem was mostly at C4-5.

25 Second MRI, it showed the problem more severe at

1 C3-4 but he got multiple disks in his neck.

2 Also got multiple disks in his lower back. When I
3 saw him he had no complaints referable to his lower back,
4 yet when he saw Dr. Huish and Doctor Klein they found some
5 weakness in the legs which I did not find so, there are some
6 inconsistencies with this, with the management of this
7 patient.

8 I do think he would have come to surgery anyhow;
9 whether he had an accident or not.

10 Q Doctor, do you have an opinion within a reasonable
11 degree of medical certainty of why the plaintiff sustained a
12 permanent loss of use of body, organ, member, function or
13 system as a result of the accident on April 16, 2011?

14 A Based upon my information, he's neurologically
15 intact; he's working. I find no weakness. I've written in
16 my reports I don't find any motor weakness, that is muscle
17 weakness. I don't find any reflex problems. I don't find
18 any sensory problems. He's walking well.

19 I found normal, normal strength in his arms so I
20 don't think he's disabled. I don't think he's functionally
21 impaired.

22 Q Doctor, on that same note do you have an opinion
23 within a reasonable degree of medical certainty of whether
24 plaintiff sustained a permanent consequential limitation of
25 body, organ or member as a result of the accident on

1 April 16, 2011?

2 A My answer is no as a result of the surgery at 3-4
3 a fusion has been done.

4 Now normally when movement of the neck is
5 distributed among all these bones, there are seven bones in
6 the neck. Most of the movement occurs between number one
7 and two, and between number two, between the skull and
8 number one and number one and two. The rest of the spine
9 has about 10 percent of movement so if you do a fusion in
10 most of any normal, most of my patients, who I have operated
11 upon, they have no functional impairment from a one level.

12 If you do a three level, you will find some
13 problems. You might lose about 5 percent of your range of
14 movement because of one level operation, five to 10 percent.

15 Q Would that 5 percent permit the -- would that five
16 percent potential loss, would that prevent the plaintiff
17 from pursuing his occupation as a free-lance photographer?

18 A It should not.

19 Q Do you have an opinion within a reasonable degree
20 of medical certainty of whether the plaintiff is going to
21 need any additional surgery as a result of the accident of
22 April 11, 2011 -- April 16, 2011?

23 A My answer is no, that one area has been fused. He
24 might need surgery at other disks because as we've seen on
25 the MRI he's got problems in his lower -- the lower back has

1 got multiple disk bulges, described. Two MRIs in the neck,
2 multiple disks that are noted as abnormal so he may have
3 other problems with other disks but that is not related to
4 the disk.

5 Q The problems with the other disk, was that related
6 to the April 16, 2011 accident?

7 A It's my belief, no.

8 Q Why? How do you know that?

9 A Well again, when you have an accident producing an
10 injury, I mean, we look for certain things. We look for
11 fractures. We look for bones moving out of position. We
12 look for instability. We look for a large piece of disk
13 that will come out and hitting the nerve. We look for
14 spinal cord injury or nerve injury. I don't find any of
15 these.

16 Q Would you have seen any evidence of that in the
17 Mt. Sinai emergency room records if they existed?

18 A If he had -- I mean he's seen hours after an
19 accident and if he had an injury to the spinal cord,
20 definitely would have picked up something in the emergency
21 room at Mt. Sinai.

22 The CAT scan, you know, showed no major
23 abnormalities. I have not reviewed the scan but I'm sure if
24 the scan is looked at you'd see --

25 MR. OCCHIOGROSSO: Objection. Speculation.

1 THE COURT: Sustained.

2 Q You can finish.

3 MR. OCCHIOGROSSO: No he can't.

4 THE COURT: No, we're going to strike that.

5

6 MS. BRANCH: Oh, the last part?

7 THE COURT: Yes.

8 Q Doctor, the scan showed -- the scan showed --

9 MR. OCCHIOGROSSO: Objection.

10 Q The report --

11 MR. OCCHIOGROSSO: Scan and report are two
12 different things.

13 MS. BRANCH: Let me rephrase.

14 THE COURT: Counsel, rephrase.

15 MS. BRANCH: Okay.

16 Q Dr. Anant, the CAT scan that was taken at the
17 hospital right after the plaintiff's accident, what did it
18 show?

19 MR. OCCHIOGROSSO: Objection. He never
20 looked at it.

21 Q In the record as indicated in the record --

22 A The record indicates there was no acute injury or
23 fracture.

24 Q Okay. And did it give a diagnosis or an
25 impression?

1 A I don't have the official cat scan report in these
2 records.

3 Q But is there anything in the Mt. Sinai record that
4 says the plaintiff sustained an injury to his spine or a
5 spinal injury?

6 A It says he had a cervical sprain.

7 I'm sorry, I did find the CAT scan report.

8 Q Okay.

9 A It says here cat scan of the cervical spine,
10 performed on the date of the accident; C3-4 there's a disk
11 osteophyte complex with bilateral uncovertebral.

12 What that means there is osteophytes, bony lips
13 and the bony lipping going into the side where the nerve is
14 coming out and that is seen, if you have degenerative disk
15 disease, so that's what they find at C3-4 and it says
16 there's moderate right and mild left foraminal encroachment.
17 That means this bony formation is causing a little bit of
18 compression, slightly more on the right side.

19 At C4-5 they are describing a central disk
20 protrusion which is causing mild stenosis. Again,
21 protrusion is a bulge disk.

22 C5-6 they're saying there's a central disk
23 protrusion that cause a mild spinal stenosis.

24 C6-7 they're saying there's a minimal disk bulge
25 without stenosis so what the cat scan is showing is that

1 essentially --

2 MR. OCCHIOGROSSO: Objection to what the cat
3 scan is showing.

4 A The CAT scan report --

5 THE COURT: You have to stick to the report.

6 A Right, the report indicated that these changes are
7 chronic.

8 Q Doctor, do you have an opinion within a reasonable
9 degree of medical certainty of whether the conditions that
10 you observed in the MRIs and on x-rays of plaintiff's neck
11 and back are consistent with that of a 41 year old man who
12 has been engaged in a lot of physical activity including
13 traveling, as a photographer over the years?

14 A I can't answer that question because I can't be
15 specific to that profession.

16 It occurs with many professions.

17 Q Well, physical activity including photography,
18 traveling?

19 A It can. Some people degenerate their spines
20 quicker than others.

21 Q Okay. And finally, Doctor, do you have an opinion
22 within a reasonable degree of medical certainty of whether
23 plaintiff demonstrates any objective disability impairment
24 or spinal injury causally related to the April 16, 2011
25 accident?

1 A Answer is no.

2 MS. BRANCH: Thank you. No further
3 questions.

4 THE COURT: Thank you. Mr. Occhiogrosso?

5 MR. OCCHIOGROSSO: Yes, your Honor. Thank
6 you.

7 CROSS EXAMINATION

8 BY MR. OCCHIOGROSSO:

9 Q Thank you. Good afternoon.

10 A Good afternoon.

11 Q Have you and I ever met?

12 A I don't believe so.

13 Q Would it surprise you to learn that we have?

14 A I don't remember.

15 Q Did you do an examination for a defendant where
16 you examined an individual by the name of Wayne DeJesus at
17 Kohler Goldwater in the last several months?

18 A I recall examining that patient, yes.

19 Q Do you recall that his attorney was present at the
20 time?

21 A His attorney was present.

22 Q That was me. Nice to see you again, Doctor. I'm
23 sorry I didn't leave more of an impression?

24 A Good to see you.

25 Q Doctor, I want to ask you some questions beginning

1 with some of the things contained in your report dated May
2 22 of 2012.

3 First, Doctor I, note that you described your
4 report as an independent neurological evaluation.

5 Do you see where that's written, sir?

6 A Yes.

7 Q Would you agree with me, sir, that's not actually
8 accurate?

9 A You'd have to define your parameters.

10 Q Well, you did this evaluation because you were
11 retained by the defendants in this case to do the
12 evaluation; correct?

13 A Yes.

14 Q So your performance of the evaluation, strike
15 that.

16 When you came to an agreement that you would
17 perform an evaluation for the defendants, it was with the
18 understanding you would be compensated for doing so;
19 correct?

20 A Yes.

21 Q And it be fair to say your performance of the
22 evaluation was dependent on being compensated?

23 MS. BRANCH: Objection, your Honor.

24 THE COURT: He can inquire.

25 A I'm being compensated just like you're being

1 compensated.

2 Q No; something very different. You're a doctor so,
3 there's point in time professionally when you actually treat
4 patients but when you came to an agreement with the
5 defendant in this case to evaluate Maurice Jacobs, that was
6 not one of those instances where you were treating a
7 patient, correct?

8 A That's correct.

9 Q So, what I'm getting paid to do is very different
10 than what your being paid to do, fair to say?

11 A Yes.

12 Q Would you agree with me then, that your
13 neurological evaluation was not independent in this
14 instance?

15 A Oh, it is.

16 MS. BRANCH: Objection, asked and answered.

17 THE COURT: It's all right.

18 Q Doctor, you were not commissioned by the Court to
19 perform this evaluation, were you?

20 MS. BRANCH: Objection, misleading.

21 A Correct.

22 THE COURT: He's allowed loud to lead. This
23 is cross.

24 MS. BRANCH: Misleading.

25 Q And there was, it was not your understanding that

1 the parties had come to an agreement and were requesting
2 your independent neurological evaluation of Mr. Jacobs,
3 right? Yes or no question. Was it your understanding that
4 the parties had come to an agreement and mutually requested
5 that you perform an independent evaluation?

6 A Yes.

7 Q That was your understanding?

8 A Yes.

9 Q That we had that we had agreed that you should
10 evaluate Maurice Jacobs?

11 A The patient is sent to me by a company or a law
12 office for an examination.

13 Q Okay. Now you refer to him as a patient but he's
14 not your patient, fair to say?

15 A Fair to say that, yes.

16 Q When you refer to somebody as the patient, that's
17 you playing the role of treating physician, right?

18 A I'm not a treating physician in this case.

19 Q Okay. Wanted to be clear about that, Doctor.

20 A That's why I say claimant in my report.

21 Q Now, one of the first things that you do in your
22 report is you discuss some of the records that you were
23 given to review, right?

24 A Yes.

25 Q And you talk about the history of how the accident

1 occurred and if you look at the second paragraph, you
2 indicate first of all, that immediately after the accident
3 on April 16, 2011, Mr. Jacobs was complaining of pain to his
4 neck and his head, is that correct?

5 A Yes.

6 Q Did you see any records, did you review any
7 record? Did anyone tell you that moment before the accident
8 he was complaining of pain to his head or his neck?

9 A No.

10 Q Is it your understanding that moment before the
11 accident he was complaining of pain to his head or his neck?

12 A He was not.

13 Q What about the day before?

14 A I didn't review any records prior to his accident.

15 Q You didn't review any records prior to the
16 accident of April 16, 2011?

17 A Only records that I had was reference to an
18 accident in 1996.

19 Q Which you did not consider significant, correct?

20 A There was some MRI abnormalities but you know
21 people have accidents and you know, they live their lives.

22 Q And that accident would have been approximately 15
23 years prior to the accident of April 16, 2011?

24 A Yes.

25 Q And there was nothing in the records you received

1 to suggest that within a period of several months after that
2 accident in 1996, all the way up to the time of this
3 accident, Mr. Jacobs treated with any doctor for any
4 complaints of head, neck or back, fair to say?

5 A I did not receive any such records.

6 Q Did you request of the defendants to provide you
7 with all records they had available so you could give a
8 informative if not fully independent evaluation?

9 A I review the records that are sent to me.

10 Q Did they send you any reports or records
11 suggesting there was treatment between a few months after
12 the '96 accident and up to the time of this accident?

13 A No.

14 Q You indicate in your initial summary of the
15 emergency room records that he was treated and released and
16 told there were no fractures, correct?

17 A Correct.

18 Q And there's no other mention at that point any
19 other findings that you have made as a result of your review
20 of the emergency room records, that's where you finish?

21 A Can you point me to where you are?

22 Q Second paragraph first page, report dated May 22,
23 2012?

24 A This is what the patient or the claimant tells me
25 when I take a history. So there, the first paragraph, first

1 few paragraphs are what the claimant tells me.

2 Q So Maurice Jacobs told you when you discussed this
3 accident with him, that there was no loss of consciousness
4 or head injury?

5 A Correct.

6 Q And he told you that he was treated and released
7 and told there were no fractures?

8 A Correct.

9 Q Now that you had an opportunity to testify about
10 the emergency room records, would you agree with me there's
11 a little more to it than that; fair to say?

12 A The records are about ten, fifteen pages.

13 Q And they include a diagnosis of a cervical sprain
14 within hours of a rear end collision in which Mr. Jacobs was
15 a seated driver, right?

16 A Yes.

17 Q And would you agree with me that's a finding of a
18 traumatic insult to Mr. Jacob's neck?

19 A Yes, sprain is a traumatic insult, yes.

20 Q Next part of the report you say quote
21 "subsequently he developed neck pain with stiffness and pain
22 radiating to both shoulders, right?

23 A Yes.

24 Q In fact, that's not accurate either, is it?

25 A It is accurate, because that's what he told me.

1 He said after the accident, I developed pain, initially in
2 the neck and went to the shoulders.

3 Q But the neck pain was immediate, right?

4 A Sure.

5 Q Didn't subsequently develop neck pain, right?

6 A It was subsequent to the accident.

7 Q Immediately subsequent to the accident?

8 MS. BRANCH: Objection, your Honor,
9 argumentative.

10 THE COURT: He can ask the question.
11 Overruled.

12 A Answer is yes.

13 Q Now, Doctor, would you agree with me that a
14 finding, if you were treating a, treating a patient and they
15 report to you that they had since a traumatic incident neck
16 pain with stiffness and pain radiating into both shoulders,
17 would you agree these are telltale signs of injury to a
18 cervical disk or traumatic injury to a disk?

19 A No.

20 Q If a patient came to you and said they were in a
21 rear end collision as a seat belted driver, and upon impact
22 they felt their body go backwards and forward violently,
23 immediately developed neck pain and head pain and became
24 aware in the days that followed of pain radiating into both
25 of their shoulders; would you not suspect there was injury,

1 traumatic insult to cervical disks? Is that your testimony?

2 MS. BRANCH: Note my objection.

3 A First diagnosis is that of whiplash injury or a
4 cervical strain. Disk herniation, to diagnose a disk
5 herniation, based upon examination requires other findings.

6 Q Because you wouldn't rely on only one thing for
7 that sort of diagnosis, would you?

8 A Yes.

9 Q As a clinician and yourself as a competent and
10 prudent clinician, would you want to look at the whole
11 picture, correct?

12 A Yes.

13 Q That would include what the person's history was,
14 how the pain came about, what was the onset of the pain,
15 correct?

16 A Yes.

17 Q Now, if they said they had localized pain in the
18 neck and it stayed localized in this neck that would be
19 different than if they said the pain started radiating into
20 their shoulders, right?

21 A Yes.

22 Q And, that would lead you to different working
23 diagnosis until you had more information, right?

24 A If the pain persisted, yes.

25 Q And if the pain persisted, and was recalcitrant to

1 conservative treatment like physical therapy modalities,
2 that would be a further indication that there could be a
3 traumatic insult and injury to a cervical disk, right?

4 A Yes.

5 Q When you spoke to Mr. Jacobs initially, had he
6 told you that since the time of the accident he was having
7 difficulty carrying equipment, correct?

8 A Yes.

9 Q And he told you that he worked as a freelance
10 photographer, right?

11 A Yes.

12 Q Now, Ms. Branch just asked you some questions
13 about whether you felt that you could say whether those
14 activities, the activity of, I believe she said traveling
15 and being of a photographer, were those the sort of things
16 that could aggravate his neck, cause injury and I'm
17 paraphrasing here, but I think your response was you don't
18 know that profession well enough to say that, right?

19 A I didn't say that. Similar injuries occur in
20 other professions. It's not peculiar to one profession of
21 being a photographer, but, it depends upon repeated strain
22 that occurs from physical activity.

23 Q You do know Mr. Jacobs never reported in the
24 entire time he was working as a photographer, not once to
25 any doctor, anywhere, that he had discomfort in his neck

1 because of working as a photographer.

2 You do know that, right?

3 A That's what you have told me today.

4 Q Have you seen anything to the contrary?

5 A I have not seen anything.

6 Q Have the defendants provided you with anything to
7 the contrary?

8 A No.

9 Q Okay. May I approach the witness?

10 MR. OCCHIOGROSSO: May I approach the
11 witness?

12 THE COURT: You may.

13 Q I would ask you very carefully, if you would take
14 a moment. I suggest you use two hands. What you're holding
15 in either hand is in evidence and for the record it's one of
16 the cameras that Maurice Jacobs used as a freelance
17 photographer.

18 Could you characterize it as fairly heavy?

19 A Reasonably heavy.

20 Q Would you agree if somebody, in order to do their
21 work in their normal everyday activity had to hold two of
22 those cameras at the same time, strapped to either side of
23 their body, stand on a location for eight or ten hours at a
24 time in order to get the shots they needed, that that would
25 cause strain to somebody's neck, to somebody's body? That's

1 a pretty rigorous activity, fair to say?

2 A Yes, he's been doing it for many years and
3 certainly can produce strain to the neck and lower back.

4 Q Now, Mr. Jacobs also told you that since this
5 accident he was not able to do this anymore, right, without
6 the assistance of somebody else to carry the equipment?

7 A Yeah, he said that he would use an assistant to
8 help him.

9 Q To help carry the equipment?

10 A Assistant in terms of the work that he did, yes.

11 Q To carry the equipment?

12 A Yes.

13 Q Okay. And yet, at the conclusion of your report
14 you say that Mr. Jacobs can return to normal activity,
15 correct?

16 A Yes.

17 Q Now, want you to you change hats and imagine
18 Maurice is a patient and you actually come to know him as a
19 treating physician; not as an expert retained by the
20 defendants in a lawsuit, okay?

21 Did we do that?

22 A Yes.

23 Q Now, let's even go so far to say you performed the
24 surgery on Mr. Jacobs, okay?

25 MS. BRANCH: Note my objection, your Honor.

1 Q Surgery was done in November of 2011, correct?

2 A Yes.

3 Q And now when you see him it's now May of 2012, six
4 months later.

5 A Yes.

6 Q You ask your patient how he's feeling. He tells
7 you, you know what? I can't lift things the way I used to,
8 it hurts my neck to do that.

9 A Yes.

10 Q You're telling me that your patient tells you that
11 and you would tell him don't worry about it, go ahead and do
12 it anyway? That's what you would tell a patient?

13 MS. BRANCH: Objection.

14 THE COURT: Overruled. Go ahead.

15 A Answer is no.

16 Q Okay. Then you answered the question if that's
17 the answer. Thank you.

18 Now, you also, with respect to the period of time
19 in Maurice Jacobs life leading up to the accident of
20 April 16, 2011, in your report, you say he stated that he
21 was relatively asymptomatic until prior to this accident
22 dated April 16, 2011.

23 What do you mean by prior to the accident?

24 A Before the accident he was not symptomatic or he
25 said he was okay.

1 Q Well, that's not relatively asymptomatic. That's
2 completely asymptomatic, right?

3 A Yes, the patient says, stated he was, he didn't
4 have any pain prior to the accident.

5 Q Okay. So if he didn't have any pain, was he
6 relatively asymptomatic as you say in your report or was he
7 asymptomatic?

8 A It's a question of semantics. You can delete the
9 word "relatively".

10 Q But you didn't, correct?

11 A Just the way of dictation, way of preparing
12 reports.

13 Q And when you did a dictation, you prepared a
14 report, and then you reviewed it before you provided it to
15 the defendants, correct?

16 A Yes.

17 Q This report even though it was for a defendant in
18 the lawsuit you, were as every bit careful and conscientious
19 as you would put in a report as if Mr. Jacobs was a patient?

20 A Yes.

21 Q It's not semantics because they're your words,
22 fair to say?

23 A It's my words, yes.

24 Q And you put the words relatively asymptomatic when
25 the man told you he had no symptoms before this accident,

1 right.

2 MS. BRANCH: Objection.

3 THE COURT: Overruled. Go ahead.

4 A It's just my way of using the English language.

5 Q Word just popped into your head at the time?

6 A Not words popping in. I use the word relatively.

7 That means before the accident. He didn't have complaints
8 of pain. He didn't give me a history of treatment for pain.

9 Q And neither did anybody else, right?

10 A Yes, nobody else.

11 Q And then you looked at it after you dictated it at
12 some point your staff, your office, somebody printed it out
13 and gave it to you to read; correct?

14 A Yes.

15 Q Did you sign it?

16 A I believe so.

17 Q That means that that before giving it to the
18 defendants you read and reviewed and saw that you had
19 described it as relatively asymptomatic and you never felt
20 there was a need to take that word out, right?

21 MS. BRANCH: Objection, your Honor.

22 THE COURT: Are we going to move on?

23 MR. OCCHIOGROSSO: As soon as I get an
24 answer.

25 THE COURT: Go ahead.

1 A I didn't pay attention to that record.

2 Q It's a shame.

3 MS. BRANCH: Objection.

4 THE COURT: Yes, we'll strike that comment,
5 please.

6 Q You indicated after describing Maurice Jacobs
7 prior to the accident as relatively asymptomatic, you went
8 on to say in the following sentence that he has no
9 significant medical history, correct?

10 A Yes.

11 Q Now, you did a range of motion testing when you
12 examined Mr. Jacobs, correct?

13 A Yes.

14 Q And you used a goniometer, right?

15 A Yes.

16 Q Now you found that Mr. Jacob's cervical flexion
17 was to 40-degrees; correct?

18 A Yes.

19 Q And normal cervical flexion is 50 degrees, right?

20 A Yes.

21 Q You agree with me mathematically that is a
22 20 percent loss of range of motion in terms of cervical
23 flexion; the ability to bend his head down with his chin
24 towards his chest, right?

25 A Yes.

1 Q You then tested his extension, meaning his ability
2 to move his neck this way, looking upwards; correct?

3 A Yes.

4 Q And you found -- by the way normal is 60 degrees?

5 A Yes.

6 Q You found that Mr. Jacob's ability to extend his
7 neck was limited to 50 degrees, correct?

8 A Yes.

9 Q You agree with me that's approximately a
10 15 percent loss of range of motion?

11 A Yes.

12 Q You say that when you tested his lateral rotation
13 normal, you give a range of 60 to 90 as normal; correct?

14 A Yes, sir.

15 Q Lateral, where do you get that from?

16 A I think it's published material that 60 to 90
17 degrees is the amount of lateral rotation, depending on age.
18 If you examine a 70 year old, you're not going to get to 90
19 degrees.

20 Q I'm just asking where you get that from, Doctor?

21 A I don't recall.

22 Q And you say that Mr. Jacob's lateral rotation is
23 60 out of this broad 60 to 90 range that you laid out?

24 A Yes.

25 Q Now, you also examined Mr. Jacob's lumbar spine,

1 his lower back, correct?

2 A Yes.

3 Q And you indicate in your report that Mr. Jacobs
4 had no complaints of pain and that he had no spasm with
5 respect to his lumbar spine, correct?

6 A Yes.

7 Q You would agree with me that your report is silent
8 as to his cervical spine in terms of pain or spasm?

9 A I've indicated in my report that there's no
10 paraspinal spasm in the neck.

11 Q Do you have a mention anywhere in your report
12 about the pain Mr. Jacobs experienced upon range of motion
13 testing of his neck?

14 MS. BRANCH: Objection, your Honor.

15 A I did not.

16 THE COURT: Overruled.

17 A I did not mention it in my report.

18 Q Now, to be clear, you did review some records from
19 1996, correct?

20 A Yes.

21 Q And among those records there were cervical MRI
22 cervical MRI report, is that right?

23 A Yes.

24 Q You would agree with me that you wouldn't expect
25 that cervical MRI film from 1996 would still be kept by a

1 facility based on recordkeeping rules in New York, right?

2 A Yes.

3 Q But the report doesn't list any findings at the
4 level C3-4, correct, which is the surgical site in this
5 case?

6 A Correct.

7 Q Now, you spoke a little bit on direct examination
8 about an MRI report dated, I believe it's May 4th, 2011.

9 Do you recall that testimony?

10 A Yes.

11 Q And, you talked about that report indicating that
12 there was a large herniation at the level C4-5 and not the
13 level C3-4?

14 A Yes.

15 Q Do you have that report in front of you, Doctor?

16 A If you can give it to me.

17 MR. OCCHIOGROSSO: May I your Honor?

18 THE COURT: You may.

19 Q Doctor there's a portion that I underlined. I
20 would ask if you can read that portion of the report to the
21 jury?

22 A It says C3-4 is a large disk herniation with broad
23 base causing cord impression slightly great on the right
24 than left with central stenosis.

25 MR. OCCHIOGROSSO: May I retrieve the

1 document, your Honor?

2 THE COURT: Yes.

3 MR. OCCHIOGROSSO: Thank your Honor.

4 Q Doctor, would you agree with me that this means
5 that within a week following the accident there is a board
6 certified radiologist finding there is a herniation at C3-4
7 and it's causing cord compression?

8 A It says cord impression but C3-4 disk
9 abnormalities is described in that report.

10 Q When board certified radiologist describes cord
11 impression, referring to the herniated disk pressing into
12 the spinal canal, into the spinal cord?

13 A Radiologists use various terms. If they use the
14 word compression it means it's really pressed upon. I don't
15 really know what they mean by impression. It may mean that
16 it's touching the surface of the spinal cord.

17 Q And, in fact, the disk is touching the spinal cord
18 from the perspective of a neurological surgeon --
19 neurosurgeon, what sort of symptoms might somebody have?

20 A Generally with reference to the spinal cord, no
21 symptoms.

22 Q What if they are symptomatic?

23 A They might have some neck pain.

24 Q And might that neck pain radiate into their
25 shoulders?

1 A It might.

2 Q And what if they had that herniation and it was
3 asymptomatic and they suffered a traumatic insult, could
4 that activate the symptoms of pain?

5 A It could.

6 Q And if the person had these degenerative changes
7 that you discussed and they now suffer a superimposed
8 traumatic insult, could that cause problems from a
9 neurological standpoint?

10 A If you have degenerative spinal stenosis, and you
11 get into an accident, yes, it can cause spinal cord injury.

12 Q Right?

13 A But again, in this case, my findings are that
14 of --

15 Q Doctor, I'm just -- please.

16 A All right.

17 Q And if the symptoms persist, if the person goes
18 through conservative treatments, after initially complaining
19 of neck pain, headache immediately after the traumatic
20 insult, they go through conservative treatments, take pain
21 medication, and the pain persists, does there reach a point
22 when you, as a clinician, be more suspicious there is injury
23 to a disk?

24 A Can you rephrase that question or ask it again?

25 Q Sure. Person has a traumatic incident; let's say

1 a car accident, okay; where their body is thrown backwards
2 and forward violently, twice, okay?

3 Immediate complaints of neck pain where there was
4 no neck pain prior to this traumatic insult; headache, pain
5 persisting. Person starts to treat conservatively, physical
6 therapy, modalities; massage, heat, TENS unit; takes pain
7 medication.

8 Weeks after doing this, now reporting the pain
9 radiating into their shoulders, not getting better.

10 The condition is not getting better.

11 Let's say the patient then comes to you, referred
12 to you by a physical medicine and rehabilitation specialist.
13 Does that happen to you or did it when you were an operating
14 surgeon?

15 A Yes.

16 Q You would get referrals where a doctor who is
17 prescribing physical therapy after the course of physical
18 therapy would say you know what, I was hoping you'd get
19 better but you didn't. I think you should go see Dr. Anant,
20 right?

21 A Yes.

22 Q That happens, that patient now presents to you and
23 you know that's the history, okay. This traumatic insult,
24 and that they now have gone through their course of
25 conservative treatment and the pain has not resolved. In

1 fact, it's gotten worse.

2 Would you be suspicious of an injury to the
3 cervical spine, to the cervical disk?

4 MS. BRANCH: Objection.

5 A Yes.

6 THE COURT: No, he can answer.

7 Q Now, I want to be clear about something because I
8 didn't hear you mention this in your direct testimony.

9 Now, it's your opinion that Maurice Jacobs in the
10 accident that took place on April 16, 2011, aggravated a
11 pre-existing condition, correct?

12 A That was my first report. I mentioned that in my
13 first report.

14 Q Okay. So, you didn't just mention it, that was
15 your professional opinion, right?

16 A Yes.

17 Q Okay. And that was after you examined Maurice
18 Jacobs, correct?

19 A Correct.

20 Q That was after you examined all the materials that
21 the defendants provided to you; correct?

22 A Yes.

23 Q That was after the same careful consideration you
24 would give prior to producing a report for a patient,
25 correct?

1 A No.

2 Q No?

3 A Well, hadn't looked.

4 Q Wait, wait. Hold on. Let me ask you another
5 question.

6 So, what you're saying is when you prepared the
7 report dated May 22, 2012, you did not do so with the same
8 care you would if you were providing a report for a patient
9 you were treating?

10 MS. BRANCH: Objection your Honor.

11 THE COURT: He can answer.

12 A I did not review the x-ray images.

13 Q Answer to my question, that means you were not as
14 careful as you would be if it was a patient because if it
15 was a patient before you produced the report, before you
16 gave an opinion or a diagnosis, you would have looked at the
17 films first, right?

18 MS. BRANCH: Objection your Honor.

19 THE COURT: No, it's okay.

20 A It's not a question of careful or not careful.

21 Q Oh, yes it is, Doctor. Oh, yes it is.

22 MS. BRANCH: Objection.

23 THE COURT: Wait. Counsel, do you have a
24 question? That last comment will be struck.

25 MR. OCCHIOGROSSO: I'm sorry, sorry to

1 interrupt.

2 Q You were explaining about how it was not about
3 being --

4 A It's an incomplete report. That's why I said I
5 want to review the images of the neck and lower back and I
6 would provide an addendum report.

7 Q Okay. Now, at this point, the report that you
8 signed and provided knowing it was going to be provided to
9 Mr. Jacob's attorneys in this case, at that point, you said
10 it was your opinion that the accident of April 16, 2011,
11 aggravated a pre-existing condition in Mr. Jacob's spine;
12 correct?

13 A Yes.

14 Q Cervical spine?

15 A Yes.

16 Q What did you mean when you wrote that?

17 A Well, the MRI studies showed, two MRI reports show
18 he's got disk problems at pretty much every level in his
19 neck, according to the first MRI.

20 According to the second MRI the report itself says
21 he's got osteophytes and a protruding disk but not only at
22 C3-4 but 4-5, 5-6, multiple LEVELS of abnormalities.

23 I would not expect all these abnormalities to
24 occur from a car accident.

25 A lot of these changes are pre-existing and the

1 question, so, my opinion was that I needed to look at the
2 films to provide a proper report.

3 Q But, Doctor, you didn't say in the report my
4 opinion is I can't provide an opinion because I need more
5 information.

6 You said your opinion was that he aggravated a
7 pre-existing condition, right?

8 A Yes, that was my opinion, based upon the
9 information the claimant provided, the patient provided and
10 based upon review of the record.

11 Q So, wasn't just what he said, noted that Maurice
12 Jacobs didn't tell you something, he told you about the work
13 he continued to do. He didn't say I can't work any more, he
14 said now I have to work with an assistant, right?

15 A Yes.

16 Q And he didn't say I've never been in an accident
17 before; he told you about the prior accident, right?

18 A Yes.

19 Q Okay. So now it wasn't based on what he said, it
20 was based on everything you reviewed that you came to the
21 conclusion at that point that he aggravated a pre-existing
22 condition. Please tell me what that means; when you say
23 somebody aggravated a pre-existing condition, from a
24 traumatic event. What does that mean as a neurosurgeon; as
25 a board certified doctor?

1 What does that mean when you say he aggravated a
2 pre-existing condition?

3 MS. BRANCH: Objection.

4 MR. DEVITO: Objection.

5 MR. OCCHIOGROSSO: I'll ask Mr. DeVito not
6 to get up again. We've gone over this.

7 THE COURT: Let's go in the back for one
8 second.

9 (Whereupon, an off the record discussion was
10 held.)

11 THE COURT: Thank you, counsel.

12 Mr. Occhiogrosso, you want to restate your
13 question?

14 Q I believe my question was and please tell me if
15 your recollection is different. I believe I was asking you
16 if you can give us a medical definition of what it means to
17 aggravate a pre-existing condition in a traumatic event.

18 Can you give us a working definition?

19 A Well, if you have multiple disk herniations to
20 your neck or disk bulges or stenosis or osteophytes and you
21 get a neck injury or lower back injury and you know, you get
22 a sprain, sometimes you can herniate a new piece of disk.
23 Sometimes you can fracture your spine but, basically,
24 there's pre-existing disease inside and you've aggravated
25 it. That's what it means.

1 Q And, isn't it true, Doctor, that you can herniate
2 a disk with something as simple as sneezing?

3 A Yes.

4 Q Coughing?

5 A Yes.

6 Q That can cause an injury to a disk, correct?

7 A Yes.

8 Q Now, you mentioned before on direct examination
9 that for your testimony here today you're being compensated
10 at the rate of \$16,000, is that correct?

11 A Yes.

12 Q And is that your half day rate because you came
13 here in the afternoon today?

14 A My full day rate.

15 Q And if, in the event we don't finish and you have
16 to come back tomorrow, are you going to again charge the
17 defendants for your need to come back and finish your
18 testimony?

19 A No.

20 Q What about the reports, you said, said you charge
21 between one and \$2,000 for preparation of a report; is that
22 right?

23 A I don't remember the exact quantity of medical
24 records but it would be based upon number of hours of work.

25 Q And, in this instance, did you charge the

1 defendant for the report that you prepared which is dated
2 May 22, 2012?

3 A Yes.

4 Q Did you charge the defendants for the report you
5 prepared which is dated, I believe it's March 18, 2013 or if
6 I'm wrong, please correct me?

7 A Yes.

8 Q So, you didn't tell the defendants, you know what,
9 not going to charge you for the May 22, one because
10 incomplete; I didn't look at enough records to give you a
11 professional opinion so I'll hold off on charging you.

12 You didn't say that, right?

13 A They sent me --

14 Q Doctor, did you charge them for the May 22 report?

15 A I already answered that question.

16 Q And the answer was yes?

17 A Yes.

18 Q Now, you talked about the operative report a
19 little bit on direct examination, operative report of Dr.
20 Jeff Klein.

21 By the way do you know Dr. Jeff Klein
22 professionally?

23 A He and I were in the same institution 20 years
24 ago.

25 Q Is that a yes?

1 A Yes.

2 Q And do you consider him to be a reputable surgeon?

3 A Yes.

4 Q Do you have any reason to believe he's not?

5 A No.

6 Q Would you agree with me, sir, that you when you
7 used to operate as the lead surgeon, you would never perform
8 a surgery based exclusively on an MRI finding, correct?

9 A Answer is no. Some MRI studies that are so
10 abnormal that you have to recommend surgery.

11 Q You as a clinician, you as a treating doctor when
12 you would make a decision outside of those very rare
13 instances, you would take a whole picture into consideration
14 before you would perform surgery on somebody, right,
15 clinical presentation, history, symptoms and diagnostic
16 testing, correct?

17 A Yes, and also their prior treatments.

18 Q And prior treatment and if they didn't respond to
19 that prior treatment, correct?

20 A Correct.

21 Q The surgeon who does a surgery such as the one
22 done here and there are a couple of exhibits that I believe
23 are only marked for identification but I would ask you,
24 Doctor, if you can indulge me and take a quick look at them
25 and tell me if they fairly show the operation that we're

1 talking about.

2 MR. OCCHIOGROSSO: You want me to put them
3 on the easel?

4 Q Would you consider this a fair portrayal of the
5 surgical procedure that was performed on Maurice Jacobs by
6 Dr. Klein?

7 A Yes and no. Yes because it's the standard
8 operation for the neck. Here it says diskectomy. All these
9 require diskectomy. You cannot do these operations without
10 a diskectomy. The disk automatically comes out and after
11 that you do see the osteophyte and the osteophytes are the
12 back end of there, back end of the bone and that's removed
13 with some instruments and that was what was done for this
14 patient.

15 Q Okay. If you need to approach it, if you need to
16 approach the other one at any point, let me know.

17 Otherwise, I'd ask you most respectfully, if you
18 can retake the witness stand.

19 Now, would you agree with me, would you not, Dr.
20 Anant, that the individual in the best position to view
21 pathology of the operative site is the operating surgeon;
22 correct?

23 A Absolutely, yes.

24 Q The operating surgeon, is looking inside Maurice
25 Jacob's neck while performing the operation; correct?

1 A Yes.

2 Q And that obviously is the bird's-eye-view, right?

3 A Yes.

4 Q Not an MRI, actually looking directly at this
5 man's neck, while he's cut open, right?

6 A Yes.

7 Q Are you aware that Dr. Jeff Klein yesterday told
8 this jury that when he did this operation, he saw extruded
9 soft disk material at C3-4 beyond the end of the vertebral
10 plate, beyond the end.

11 Are you aware of that?

12 A I'm not aware of it but based upon his report he
13 doesn't mention that.

14 Q Just a second to find the report.

15 Do you have his operative report in front of you?

16 A Yes.

17 Q Do you see on the second page of it, page two of
18 three, where it reads quote "any disk material posterior to
19 the end plates were removed using a number 5-0 angled
20 curette.

21 Do you see that?

22 A Yes.

23 Q Now, did you, anywhere in your second report,
24 indicate that you no longer held the same opinion as you had
25 after the first report? In other words, did you, in writing

1 in the report, retract your initial opinion that on the date
2 of this accident Maurice Jacobs aggravated a pre-existing
3 condition in his spine?

4 A I'll tell you what I stated in my second report.

5 Q No, no, no, Doctor. My question calls for a yes
6 or no answer.

7 Did you, in your second report in writing, retract
8 the opinion that you wrote in your first report that on the
9 date of this accident Maurice Jacobs aggravated a
10 pre-existing condition; yes or no?

11 A Yes.

12 Q You did? Can you indicate to me where in that
13 second report you say I am retracting my opinion as stated
14 in my report on May 22, 2012?

15 A I stated in this report that it's my opinion
16 within a reasonable medical certainty that causal
17 relationship between the automobile accident dated 4/16/11
18 and cervical spine degenerative abnormalities at C3-4 is not
19 established. It's my opinion within reasonable medical
20 certainty that cervical disk surgery was performed to
21 correct degenerative abnormalities on the MRI study.

22 Q Now, you can go to the part that says you're
23 retracting the opinion that you wrote in the May 22, 2012?

24 MS. BRANCH: Objection, your Honor. Asked
25 and answered.

1 THE COURT: He can answer.

2 A I have not stated that in my -- stated those
3 words.

4 Q I wanted to be sure.

5 Now, among the materials that you reviewed in
6 connection with your addendum, your second report, and by
7 the way, when you did the second report, did the defendants
8 indicate to you that wait, we have a problem. You said he
9 aggravated a pre-existing condition. If we go forward with
10 that opinion, Doc, we're admitting he got hurt in this
11 accident?

12 Did they tell you that?

13 A No.

14 MS. BRANCH: Objection.

15 A The answer is no.

16 Q Did you ask them?

17 THE COURT: There's an objection. Please
18 wait. Objection is overruled.

19 Q Did you ask them to provide other expert reports
20 up to, their other experts?

21 A No.

22 Q But they did?

23 A The records that I reviewed is listed, mostly MRI
24 reports.

25 Q Well, did you review it or not?

1 A I reviewed one expert report, actually two; one
2 from Dr. Scott Coyne.

3 Q And he's a radiologist?

4 A Radiologist.

5 Q So, to be clear, before you ever wrote the second
6 report, you reviewed what the defendant radiologist had said
7 looking at the same films, right?

8 A Yes.

9 Q Now, you didn't need to do that to arrive at your
10 own professional opinion, did you, Doctor?

11 A Nope.

12 Q You're capable of looking at films and then
13 telling a jury what you think based on your 30 years of
14 experience; correct?

15 A Yes.

16 Q And yet, the first item listed in the records
17 reviewed is Dr. Scott Coyne's radiology review, correct?

18 A Just happens to be the way I listed it.

19 Q Is it the first one or not?

20 A First one, yes.

21 Q And, did you make sure that your findings were
22 consistent with Dr. Coyne's findings before you reduced them
23 to writing?

24 A I reviewed the images and written here I concur
25 with Dr. Coyne's findings.

1 Q So, in other words, after looking at the other
2 defendant's expert report on the same films, you then said
3 you know what? Me too, right?

4 MS. BRANCH: Objection.

5 A No.

6 THE COURT: Overruled.

7 A I looked at the films myself.

8 Q And concurred?

9 A Concurred; agreed with his findings.

10 Q And you would agree with me those findings are
11 different than what the radiologist who initially wrote the
12 report and looked at the films in the course of treatment
13 found?

14 A Right, not that much different.

15 Q Just a little?

16 A Well, it says --

17 Q Just a little?

18 MS. BRANCH: Objection.

19 A It is different.

20 THE COURT: Mr. Occhiogrosso, let him answer
21 the question.

22 A It is different in that Dr. Coyne states that it's
23 primarily degenerative changes and he does not see a disk
24 herniation, per se, of traumatically induced disk herniation
25 and you have two previous MRIs that the patient has had

1 which sort of are inconsistent with each other.

2 Q The prior MRI reports, not your review and not the
3 other expert the defendants paid to review, the ones that
4 were in the course of Mr. Jacob's treatment after this
5 accident, that's where it's reported there's a herniation at
6 C3-4, correct?

7 A Correct.

8 Q Okay. And of course neither you nor Dr. Coyne
9 agree with that, right?

10 A My opinion, I've stated is that it's primarily
11 degenerative with osteophyte formation.

12 Q What is primarily degenerative mean, Doctor?
13 We've talked around this and I've been listening carefully
14 to the way you say things. What do you mean when you say
15 primarily degenerative? Is that different or is that
16 relatively, is relatively degenerative.

17 A I think it's my use of the English language. It
18 is degenerative. You can delete the word primarily.

19 Q Now you can?

20 A Now I can, yes.

21 Q And you talked about, on direct examination, about
22 what you might find or you may find with respect to trauma
23 and what would show up diagnostically; you said may find a
24 fracture of the bone, you may find other things and when you
25 say you might, you may, you, you mean you may not, right?

1 A You may not, yes.

2 Q There are things you may find diagnostically and
3 things you may not and that's part of why you don't rely
4 exclusively on an MRI when you're treating somebody?

5 A Do you want an explanation or yes or no?

6 Q If you can answer it yes or no I think we can --

7 A We look at, for multiple pieces of evidence. We
8 look, we look for fractures. We look for subluxations.
9 We --

10 Q Now --

11 A Hematomas. Let me finish, please. We look for
12 ligamentous injuries. We look for an extruded disk and if,
13 you know, all, if even one of these components are present
14 where there is a fracture or a ligamentous injury where the
15 spine is clearly unstable, then we say, this is traumatic.
16 If the spinal cord was injured, we say it's traumatic.

17 Q Not talking about "we". We're talking about you.

18 A Talking about me, yes.

19 Q Because clearly you don't offer the entire
20 opinion --

21 A Yes.

22 Q When you say "we say, you don't speak of everybody
23 that looks at the same report or films?

24 A Correct.

25 Q Right?

1 A Correct.

2 Q And, you don't speak for Jeff Klein who said
3 Maurice Jacobs could be, did have a herniated disk and he
4 removed extruded soft disk material that was beyond any
5 spurring or any osteophyte. You don't speak for him, right?

6 A I don't speak for Dr. Klein.

7 Q And you don't speak for the Board Certified
8 radiologist who looked at the first MRIs, said there was a
9 herniation at C3-4, right?

10 A Yes.

11 Q You speak for yourself to the extent that you're
12 compensated by the defendants here; correct?

13 A Yes.

14 MS. BRANCH: Objection.

15 THE COURT: We're going to strike that last
16 question and answer.

17 Q Now Doctor, I want to ask your opinion to a
18 reasonable degree of medical certainty.

19 I want to ask you what's more likely true.

20 I want you to assume that the testimony is Maurice
21 Jacobs was 100 percent asymptomatic before the accident of
22 April 16, 2011 in terms of his cervical spine, okay? One
23 hundred percent asymptomatic.

24 A Can you repeat that to me? You want me to assume
25 that?

1 Q Yes. I want you to assume that the following has
2 been testified to before I ask for your ultimate opinion,
3 okay? Assume that Mr. Jacobs testified that he was
4 absolutely asymptomatic before the accident meaning he had
5 no pain in his neck, no limitation in range of motion, no
6 pain going into his shoulders, no weakness in his grips, no
7 pain going down his arms; none of these things, okay?

8 Can you assume that?

9 A I can assume it.

10 Q Can you further assume that on April 16, 2011, he
11 was a seat belted driver in a car; absolutely no forewarning
12 there was going to be an impact to the rear of his car?

13 A Yes.

14 Q And I understand there were no questions, no
15 discussion about the cars involved.

16 I want you to assume the testimony is Mr. Jacobs
17 was sitting in a two-seater, okay, little two-seater Nissan
18 and the car that hit him in the rear with no warning was
19 actually a dump truck, okay?

20 Can you assume that?

21 A Yes.

22 Q Want you to assume Mr. Jacobs said that upon the
23 impact, his head, body went back and forward violently and
24 his head may have hit the headrest and I want you to further
25 assume he said immediately after that there was another

1 impact to the rear where again, his body went back and
2 forward moving violently and his head may have hit the
3 headrest.

4 I want you to assume that immediately after that,
5 Mr. Jacobs reported pain to his neck, pain to his head,
6 okay.

7 He now goes through emergency room care where he's
8 diagnosed with a cervical sprain.

9 He begins conservative treatment within days. The
10 conservative treatment does not resolve his symptoms. In
11 fact, it gets worse.

12 He goes to an orthopedic spine surgeon who finds
13 that he has pain in his neck, painful limited range of
14 motion, weakness in his grip, looks at an MRI film and finds
15 that he sees herniation at C3-4, okay?

16 Then does that surgery. What is more likely than
17 not, that this car accident had nothing to do with the
18 symptoms, with the limitations, with the need for the
19 surgery or that it did, which is more likely?

20 MS. BRANCH: Objection your Honor.

21 Q To a reasonable degree of medical certainty, which
22 is more likely?

23 THE COURT: Overruled. He can go ahead.

24 A Again, as I've stated before, it's my opinion that
25 the claimant did sustain -- that the patient did have, you

1 know, by history, neck sprain cervical sprain. We look for,
2 you know, some kind of objective evidence that there was
3 damage to the disk itself, that causes it to herniate that,
4 causes it to extrude.

5 On the x-rays I don't see it. Dr. Klein's
6 operative report does not mention that there was an extrude
7 fragment that he took out. The patient has no signs of
8 spinal cord injury. He has an EMG test which does not
9 corroborate the level of the disk at C3-4; shows a problem
10 as see 5-6. His MRI shows problems at multiple levels.

11 For that reason you can say all his lumbar disks
12 were due to the accident. I'm saying -- let me finish, so
13 you asked me to explain myself.

14 I mean.

15 Q Actually, I asked you what was more likely than
16 not. I asked you two things which is more likely than not?

17 A So, so --

18 THE COURT: Mr. Occhiogrosso, let him
19 finish his answer.

20 A So, in my opinion, I'm not able to answer your
21 question the way it's been presented to me and I've already
22 explained my position.

23 Q Okay. So then, you can't say whether the accident
24 of April 16, 2011 more likely than not caused aggravation to
25 a pre-existing condition?

1 A It is my opinion --

2 MS. BRANCH: Objection, your Honor.

3 A My opinion that the abnormalities seen on the MRI
4 studies and the surgery is not related to that particular
5 accident because in my opinion, they were pre-existing
6 conditions.

7 Q Now, somebody has pre-existing conditions. Let's
8 say that and to be clear, how many people that sit in this
9 room right now if you took an MRI of their neck would show
10 wear and tear changes in their neck?

11 A 40 percent, 50 percent.

12 Q 40 to 50 percent?

13 A Yes.

14 Q In this room?

15 A Yes.

16 Q Do you recall testifying in the case Salia vs.
17 Greggor in Queens Supreme Court, February 2005?

18 A No, never been at Queens Supreme. I don't recall
19 being at Queens Supreme.

20 Q Do you recall treating a patient by the name of
21 Anna Salia?

22 A No, I don't.

23 Q Do you recall testifying in that case that you
24 would expect the average person age of 40 to show
25 degenerative changes in their spine?

1 A I don't. I don't recall that.

2 MR. OCCHIOGROSSO: If I may have just a
3 second?

4 MS. BRANCH: Note my objection because his
5 answer is not inconsistent; 40 percent maybe under 40.

6 THE COURT: My question, Mr. Occhiogrosso,
7 we have to break at 4:30. Do you have much more to go,
8 and you're going to ask for redirect?

9 MS. BRANCH: One question.

10 Q Is your testimony --

11 THE COURT: Sorry, I had a question for you.

12 MR. OCCHIOGROSSO: I'm trying to wrap up,
13 your Honor.

14 THE COURT: That was my question.

15 Q Your testimony that only 40 percent of the people
16 in this room have degenerative changes in their spine?

17 A Again depends upon the age. If you take older
18 people, number may rise. If you're talking about
19 radiographic abnormalities, abnormalities you see on MRI,
20 it's quite common.

21 Q That's what I'm talking about.

22 In this room, radiographic abnormalities what
23 percentage of the people in this room right now would have
24 them if you took an MRI?

25 A Depends on the age. If you have a young person,

1 chances very small.

2 Q Can you give me a percentage?

3 A Yourself, maybe chance of 10 percent.

4 Q The room as a whole, how many people here, what
5 percentage would have radiographic abnormalities?

6 A I can't answer that question, Judge.

7 Q You can't offer an opinion on average?

8 MS. BRANCH: Objection, your Honor.

9 THE COURT: Counsel, I think he's responded
10 he can't answer the question.

11 Q But, your belief is that Maurice Jacobs did have
12 radiographic abnormalities that predate the accident of
13 April 16, 2011?

14 A Yes.

15 Q Now, radiographic abnormalities are not
16 symptomatic. That's something that shows up on a diagnostic
17 study, right?

18 A Well, sometimes it's symptomatic. Sometimes it's
19 not.

20 Q And if Maurice Jacobs never went to a doctor about
21 it a few months after the '96 accident, zero treatment from
22 then up until this accident, would that tend to corroborate
23 that if he did have radiographic abnormalities that you
24 offered an opinion he had even though you've never seen them
25 because you've never seen an MRI from before this accident,

1 right, if he did have them would that tend to support the
2 position they were asymptomatic?

3 MS. BRANCH: Objection.

4 A Based upon what you're telling me he was
5 asymptomatic before the accident.

6 Q And then would it be fair to say that the accident
7 activated the symptoms?

8 MS. BRANCH: Objection, your Honor.

9 THE COURT: He can answer.

10 A I believe the accident did activate the symptoms.
11 He caught a cervical sprain.

12 Q But your opinion is that Dr. Klein, the operating
13 surgeon, is wrong that there was a herniated disk?

14 A I'm not saying Dr. Klein was wrong. I think the
15 surgery probably was indicated because of the osteophyte and
16 the deformity and the impression of the spinal cord but what
17 I'm trying to say is that I don't think the accident
18 produced that abnormalities.

19 Q Didn't produce the osteophyte, right?

20 A No.

21 Q Anything about someone having an osteophyte that
22 would prevent the disk material from being traumatically
23 herniated?

24 A Neither the x-rays, nor the operative report
25 indicated that there was a traumatic --

1 Q Doctor my question to you is, somebody has
2 osteophytes. Does that mean that cannot traumatically
3 herniate their disk?

4 A Does not mean that.

5 Q And you already told us that Maurice Jacobs had a
6 cervical sprain in the accident, right?

7 A Yes.

8 Q And you also told us that a disk can herniate by
9 something as simple as coughing or sneezing?

10 A Yes.

11 MR. OCCHIOGROSSO: Thank you.

12 MS. BRANCH: Doctor, quick question.

13 REDIRECT EXAMINATION

14 BY MS. BRANCH:

15 Q If plaintiff was carrying these two cameras across
16 his shoulders around his neck prior to the accident, would
17 you expect strain?

18 A I mean it's pretty heavy piece of equipment. If
19 he's been carrying it for ten, 15 years --

20 Q Ten, fifteen years, hours a day?

21 A Yes, he could sprain his neck.

22 Q Plaintiff's testimony that he was 100 percent
23 asymptomatic would not be consistent with carrying such
24 equipment all the time; is that correct?

25 A I can't answer that question because, you know --

1 Q Because plaintiff didn't --

2 THE COURT: Counsel --

3 MS. BRANCH: I'm trying to rush.

4 THE COURT: That doesn't mean you ignore me.

5 MS. BRANCH: Sorry.

6 THE COURT: We're going to strike the last
7 question. You don't put words in his mouth. If you
8 want to rephrase the question, go ahead. We can take
9 five minutes to do it right.

10 Q When counsel asked you if plaintiff carrying these
11 things would cause strain on his back, you agreed, correct?

12 A Yes.

13 Q If carrying these two cameras prior to the
14 accident for hours a day, travel with them, photo shoots,
15 all kinds of angles, would you expect the plaintiff to feel
16 some strain on his back or his neck?

17 A Yes.

18 Q So, plaintiff tells you that he's asymptomatic,
19 that wouldn't be consistent with the fact that he's carrying
20 things on a regular basis that may cause strain on his neck
21 and his back, correct?

22 A Yes and no, because again, I don't have any
23 reports that indicate that he went for treatment for his
24 neck pain prior.

25 Q And we don't know that because plaintiff never

1 told us if he had any treatment before the accident, right?

2 A Yes.

3 THE COURT: I would remind you as to form.

4 Q Plaintiff never told you that he had any problems
5 prior to the accident; correct?

6 A Yes, claimant, the patient said that he did not
7 have problems.

8 Q And we have to go by what the patient says, is
9 that correct?

10 MR. OCCHIOGROSSO: Objection to form.

11 Q Your information is based upon what Mr. Jacobs
12 told you; correct?

13 A Yes.

14 MS. BRANCH: No further questions.

15 MR. OCCHIOGROSSO: Very quickly, your Honor.

16 RE-CROSS EXAMINATION

17 BY MR. OCCHIOGROSSO:

18 Q Not based on what he told you, right, because you
19 got a bunch of records to review, right?

20 A Yes.

21 Q And defendant provided all those records to you,
22 right?

23 A What is your question?

24 Q The defendant provided the records to you that you
25 reviewed, right?

1 A Yes.

2 Q And those included a bunch of records from 1996,
3 right?

4 A I had just the MRI report. I don't have any
5 treatment records.

6 Q They didn't give you any treatment records from
7 1996?

8 A No.

9 Q And nothing else that predates this accident,
10 right?

11 A No.

12 Q You're not relying on Maurice Jacobs exclusively
13 when he said he never went to a doctor because they never
14 gave you a report that would tell you otherwise, right?

15 A I don't have the report in front of me. If you
16 can show me the report so I can tell you --

17 MR. OCCHIOGROSSO: If, if I had them, I
18 would.

19 MS. BRANCH: No further questions.

20 THE COURT: Thank you Doctor. You may step
21 down.

22 (witness excused.)

23 THE COURT: Thank you. That's going to
24 conclude our testimony today and we will take it up
25 again tomorrow at 9:30.

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Have a good evening. Relax. Don't talk about the case. Don't think about it. Leave it here. Enjoy your evening and see you tomorrow morning at 9:30.

(The jury exited the courtroom and the following occurred:)

(The trial was adjourned to September 18, 2013, at 9:30 a.m.)

REPORTER'S CERTIFICATION

I hereby certify that the foregoing is a true and accurate transcript of the proceedings.

Linda Sigman, CSR

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REPORTER'S CERTIFICATION

I hereby certify that the foregoing is a true and accurate transcript of the proceedings.

Linda Sigman, CSR
Senior Court Reporter.