

Dr. Reyfman - Plaintiff - Direct

1 pain was more constant.

2 Q I'm sorry?

3 A His pain was constant. That's going back originally
4 2013, his pain is here, it's only localized in his neck and
5 intermittent.

6 Q It says neck pain 8 out of 10, as of November 4, 2015,
7 correct?

8 A Yes.

9 Q Okay. And just going back to October 15, 2013, isn't
10 it the same?

11 A Again, it's 8 out of 10, yeah, it's the same. The
12 scale is the same.

13 THE COURT: I think what the witness's testimony
14 was, was that the pain is the same, but it's more localized
15 than the November 4, 2015. It's not radiating down the arm,
16 it's localized in the neck.

17 MR. PFLUGER: Okay. Thank you, Judge. It says
18 pain is exacerbated with the neck extension and lateral
19 rotation, and radiates at both shoulders?

20 THE COURT: Where are you reading from, is this
21 11/4?

22 MR. PFLUGER: Yes. 11/4/2015.

23 Q How about the back, sir?

24 A The back, he had lower back pain, with episodes of pain
25 radiating to his left leg and numbness and tingling, left foot.

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1 Pain scale 6 out of 10, which was constant and dull, achy,
2 sharp. Pain worse extending, sitting, bending forward, lifting,
3 twisting and worse at standing and walking causing more leg
4 pain.

5 Q Okay. And comparing that to the October 15, 2013,
6 note?

7 A Slightly better.

8 Q Okay. In what way, sir?

9 A Pain scale 8 out of 10 in 2013, and 2015 it was 6 out
10 of 10.

11 Q Okay. And it was constant, dull, achy, sharp, the
12 pain, correct?

13 A Yes.

14 Q Okay. What was the treatment plan, if any?

15 A The treatment was to restart physical therapy to his
16 neck. He was given prescription for pain medication, also added
17 medication for Neurontin, 300 milligrams. This medication was
18 used for nerve pain to reduce the symptoms and also nerve
19 irritation.

20 Q Okay. Have you formulated an opinion, within a
21 reasonable degree of medical certainty, that the herniations
22 that you told the jury about were causally related, were the
23 competent producing cause of the accident?

24 A Yes, they are.

25 Q Okay. And have you formulated an opinion, within a

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1 reasonable degree of medical certainty, that the care and the
2 treatment and the procedures and injections that were done were
3 caused by the accident of July 27, 2013?

4 A Yes.

5 Q What's your opinion?

6 A They are causally related.

7 Q He was your patient, correct, sir?

8 A Yes.

9 Q Okay. You are not retained by anyone to come and
10 testify, correct?

11 A That's correct.

12 Q And how many times have you testified in the courtroom
13 setting like this?

14 A Usually eight, maybe ten times per year. I have been
15 doing this about four, about five years.

16 Q And of those times that you have testified, on behalf
17 of who?

18 A Only for the patients that I treated.

19 Q How much are you being compensated from being away from
20 your office to come here?

21 A \$400 per hour.

22 MR. PFLUGER: Thank you, sir.

23 THE WITNESS: Sure.

24 THE COURT: You need a ten-minute recess. Ladies
25 and gentlemen of the jury. Let's take a ten minute recess.

Dr. Reyfman - Defendant - Cross

1 Follow the directions of the court officer. Please don't
2 discuss anything among yourselves or anyone else.

3 COURT OFFICER: Jury exiting.

4 (Whereupon the jury exits the courtroom.)

5 COURT OFFICER: You may step down. Don't discuss
6 anything about your testimony with anyone.

7 THE WITNESS: Okay.

8 (Whereupon the witness steps down from the witness
9 stand.)

10 (Whereupon ten minute recess is taken.)

11 (Whereupon back on the record.)

12 COURT OFFICER: Jury entering.

13 (Whereupon the jury enters the courtroom.)

14 THE COURT: Please be seated.

15 (Whereupon the witness returns to the witness
16 stand.)

17 THE COURT: All right. We are going to turn to
18 cross-examination of the witness. Dr. Reyfman, you're
19 reminded you're still under oath.

20 THE WITNESS: Yes, sir.

21 THE COURT: Counsel, you may proceed.

22 MS. WALTERS-HINDS: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MS. WALTERS-HINDS

25 Q Good afternoon, Dr. Reyfman.

Dr. Reyfman - Defendant - Cross

1 A Hi.

2 Q How are you?

3 A Good. And you?

4 Q I'm okay. Dr. Reyfman, how long have you been
5 practicing as a doctor?

6 A Since 2008.

7 Q That's 10, 11 years?

8 A Yes.

9 Q Okay. My math, and how long have you been testifying?

10 A Five years or so.

11 Q Okay. And in the last five years, you've testified
12 eight to ten times a year?

13 A Yes.

14 Q So what's five times eight?

15 A Forty.

16 Q About 40 times. Okay. In the 40 times that you've
17 testified, how many times have you testified for plaintiff's
18 office, Schwitzer and Associates?

19 A About six, seven times.

20 Q Six, seven times. Okay. And in those times, in those
21 40 times, how many times have you testified for Mr. Pfluger
22 specifically?

23 A This is my second time.

24 Q And you only testified for plaintiffs, right?

25 A Yes.

Dr. Reyfman - Defendant - Cross

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1 Q Okay. These are plaintiffs who bring lawsuits,
2 correct?

3 A Patients that I treat.

4 Q Patients that you treat?

5 A Yes.

6 Q Okay. And you have never testified on behalf of the
7 defense side, correct?

8 A That's correct.

9 Q Now, sir, would it be accurate if I say that
10 Mr. Avanesov in the past has testified that he refers about four
11 to five patients to you a month, does that sound about right?

12 A Yes.

13 Q Okay. And you refer patients to him as well?

14 A Yes.

15 Q Okay. In the 40 times that you've testified,
16 approximately how many times has it been where you've been the
17 pain management doctor and he's been a spinal surgeon?

18 A Five to maybe seven times.

19 Q Okay. Are those the same five to seven times or six to
20 seven times that you've been retained by Schwitzer and
21 Associates?

22 A No.

23 Q It's five different plaintiff firm's, correct?

24 A Yes.

25 Q Okay. Do you know how many times that you've been

Dr. Reyfman - Defendant - Cross

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1 retained where you've been the pain management doctor, and
2 Dr. Avanesov has been the spine surgeon and plaintiff's office,
3 Schwitzer and Associates, has been the attorney?

4 A I wouldn't know exactly the numbers. Probably a few
5 times.

6 Q Okay. It would be more than one, correct?

7 A It will be more than one, yes.

8 Q Sir, Dr. Avanesov's office, his Brooklyn office, is on
9 Sheepshead Bay Road; is that correct?

10 A Yes.

11 Q And it's approximately ten minutes from your office,
12 correct?

13 A Yes.

14 Q Okay. From your Coney Island office?

15 A Yes.

16 Q Now, you first saw the plaintiff on October 15, 2013,
17 correct?

18 A Yes.

19 Q And by the way, you mentioned that -- withdrawn. The
20 addresses that are listed on the medical records that are in
21 evidence, those are your Brooklyn addresses, right?

22 A Yes.

23 Q Coney Island Avenue in Brooklyn, New York, correct?

24 A That's correct?

25 Q That's one of them.

Dr. Reyfman - Defendant - Cross

1 A Yes.

2 Q And the other one is 26 Court Street, correct?

3 A Yes.

4 Q On those medical reports it doesn't mention your New
5 York office, correct?

6 A That's correct.

7 Q Do you have a distinct memory of whether Mr. Abreu
8 Depena would travel from the Bronx all the way to Brooklyn to
9 your office, either at 26 Court Street or Coney Island Avenue,
10 or something else?

11 A I don't have distinct memory, but Mr. Depena saw me
12 originally in Eighth Avenue office where I used to work in New
13 York City. And then I believe he saw me at 813 Quentin Road,
14 that's my old address.

15 I used to practice there until about 2015 or so. And
16 the address that displayed in the medical records is the current
17 address where I practice.

18 Q And 813 Quentin Road is also in Brooklyn, correct?

19 A Yes.

20 Q Is that Mill Basin?

21 A No. That's the Midwood section.

22 Q Midwood section. So you first saw the plaintiff on
23 October 15, 2013, correct?

24 A Yes.

25 Q And the accident happened in July of 2013, correct?

Dr. Reyfman - Defendant - Cross

1 A Yes.

2 Q So you don't know what his condition was between
3 July 27, 2013, to October 15, 2013, right?

4 A That's correct.

5 Q You don't know what his condition was in August or
6 September, correct?

7 A Yes.

8 Q Now, when you saw him for the first time, now, by the
9 way, let me go back a little bit. You have in your records that
10 the plaintiff's preferred language is English; is that correct?

11 A Yes, it is.

12 Q That's all over your records, right?

13 A Yes, it is.

14 Q You're saying that's a typo?

15 A It's a default field in EMR. When we put the data, we
16 didn't put drop menu for Spanish.

17 Q You think someone just didn't change it to Spanish or
18 another language?

19 A That's correct. We have medical assistants and
20 midlevel providers that speak Spanish. So, history was obtained
21 to help her interpret.

22 Q Does it say anywhere in the records that he had an
23 interpreter while he was speaking to you?

24 A We have interpreters in our office.

25 Q Does it say that anywhere in the records?

Dr. Reyfman - Defendant - Cross

1 A It does not, correct.

2 Q All right. Now, you saw the plaintiff on October 15th
3 and then again on December 3rd, 2015, correct?

4 A Yes.

5 Q I'm sorry. Let me go back. You first saw him
6 October 15, 2013, and then you saw him for the second time on
7 December 3rd, 2013?

8 A That's correct.

9 Q Okay. And you saw him, again, on December 31, 2013; is
10 that correct?

11 A Yes.

12 Q And then after that, it was on January 21, 2014,
13 correct?

14 A Yes.

15 Q Okay. And Dr. Avanesov is the person that originally
16 referred Mr. Abreu Depena to you, correct?

17 A That's correct.

18 Q If you look at your note on January 21, 2014, you have
19 that he's scheduled to see Dr. Avanesov for surgical
20 reevaluation; is that correct?

21 A Yes.

22 Q Are you the one that referred him back to Dr. Avanesov
23 for surgical reevaluation?

24 A I'm not sure.

25 Q Okay. Then you saw him again on February 11, 2014,

Dr. Reyfman - Defendant - Cross

1 correct?

2 A Yes, I did.

3 Q Okay. And by that time, Dr. Avanesov had determined
4 that he was a surgical candidate, correct?

5 A Yes.

6 Q And you have in your next note from February 25, 2014,
7 that he's scheduled to see Dr. Avanesov, correct?

8 A Yes.

9 Q Okay. And on March 30, 2015, you have a note that says
10 that the plaintiff was referred to Dr. Avanesov for a lumbar
11 percutaneous discectomy; is that correct?

12 A He was referred to me for lumbar.

13 Q From Dr. Avanesov?

14 A Yes.

15 Q Okay. And you conducted that procedure, right?

16 A Yes, I did.

17 Q All right. Is that an out-patient procedure?

18 A Yes.

19 Q Okay. And is he up and walking that same day, or
20 another day?

21 A Usually the same day.

22 Q Okay. And this was, let me go back a little bit. So
23 you saw him on February 25, 2015, and he was scheduled -- let me
24 go back. You saw him on February 25, 2014, let's go back to
25 that date?

Dr. Reyfman - Defendant - Cross

1 A Okay.

2 Q Okay? And that's when you say he's scheduled to see
3 Dr. Avanesov, right?

4 A That's correct.

5 Q Then he went to Dr. Avanesov, are you the one that
6 referred him back to Dr. Avanesov for April, 2014?

7 A Dr. Avanesov requested that we do a discogram procedure
8 and patient returned on February 25, 2014, to obtain the results
9 of the procedure to share with Dr. Avanesov.

10 Q Okay. After he received those results, then he ended
11 up being referred back to Dr. Avanesov to have the lumbar
12 surgery, correct?

13 A Yes.

14 Q Okay. And by the way, he had the surgery on March 22nd
15 -- sorry, April 22, 2014, correct?

16 A Yes.

17 Q Now, would it be accurate, sir, that you didn't see
18 Mr. Abreu Depena for almost a year, you didn't see him from
19 February 25, 2014, until March 30, 2015; is that correct?

20 A Yes, it is.

21 Q Do you know what his level of pain, or what his
22 condition was during that year that you didn't see him?

23 A He described pain at the time of the visit, but he did
24 not describe as to what his condition was prior.

25 Q Okay. So other than when you actually saw him, you

Dr. Reyfman - Defendant - Cross

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1 don't know what his condition was specifically between those
2 dates, other than what he told you?

3 A That's correct.

4 Q But you weren't seeing him every month, correct?

5 A Yes.

6 Q Okay. Do you know whether he went to any other doctors
7 during -- other than Dr. Avanesov that he got the surgery for,
8 do you know if he went to any other pain management doctors for
9 that year?

10 A I'm not aware of any.

11 Q Okay. Have you seen any records that suggests that he
12 went to a pain management doctor for that year?

13 A No, I do not.

14 Q Okay. So he came back to you on March 30, 2015,
15 correct?

16 A Yes.

17 Q Okay. And then after that you saw him about seven or
18 eight more times?

19 A That's correct.

20 Q Okay. And during those seven or eight more times, his
21 pain level went back and forth between a 6 out of 10, 8 out of
22 10, or some variation of that; is that correct?

23 A That's correct.

24 Q Okay. So you next saw him on May 6, 2015, correct?

25 A Yes.

Dr. Reyfman - Defendant - Cross

1 Q Okay. And then again on June 8, 2015?

2 A Yes.

3 Q Okay. And then on July, 2015, July 13th?

4 A Yes.

5 Q And by the way, after you saw him on May 6, 2015, then
6 he was referred back to Dr. Avanesov for a cervical fusion; is
7 that correct?

8 A Yes. It's written in my note.

9 Q Are you the one that preferred him back to Dr. Avanesov
10 for cervical fusion?

11 A I recommended for him to see a specialist to
12 re-evaluate.

13 Q Now, after he had this cervical fusion on May 26, 2015,
14 you saw him for about five or six more times; is that correct?

15 A That's correct.

16 Q Okay. And the last time you saw him was on November 4,
17 2015, correct?

18 A That's correct.

19 Q You don't know what his condition was in 2016 because
20 you didn't see him as a pain management doctor, right?

21 A That's correct.

22 Q You don't know what his condition was in 2017, correct?

23 A Yes.

24 Q You don't know what his condition was in 2015, correct?

25 A That's right.

Dr. Reyfman - Defendant - Cross

1 Q Okay. Now, when he first started going to you, his
2 pain level was an 8 out of 10; is that correct?

3 A Yes.

4 Q And was it your testimony towards the end that at the
5 end when he last saw you on November 4, 2015, that his pain
6 level was also an 8 out of 10?

7 A Yes.

8 Q So the surgeries didn't make any difference, or there
9 was no reason for the surgeries?

10 MR. PFLUGER: Objection.

11 THE COURT: Well...

12 MS. WALTERS-HINDS: I'll withdraw.

13 THE COURT: Sustained.

14 Q Sir, did you see Mr. Abreu Depena at all in 2019, in
15 this year?

16 A No.

17 Q Okay. And as a former patient of yours, you didn't
18 investigate or inquire as to how he was doing; is that correct?

19 A That's correct.

20 Q Did you do anything with him today, other than pass the
21 time of the day?

22 A I'm sorry? No.

23 Q Did you ask him regarding his present condition,
24 whether he was in pain or if he needed any medication?

25 A I did not.

1 MS. WALTERS-HINDS: Thank you, sir.

2 THE COURT: Redirect.

3 MR. PELUGER: No, sir.

4 THE COURT: You may step down.

5 THE WITNESS: Thank you.

6 THE COURT: Let me see both counsel at the sidebar
7 please.

8 (Whereupon discussion off the record.)

9 (Whereupon back on the record.)

10 THE COURT: We are going to adjourn for the day.
11 We will resume tomorrow. Be here at 9:30 please. We will
12 continue with the presentation of evidence. During
13 intermission, do not discuss anything among yourselves or
14 anyone else. Keep an open mind, and see you tomorrow.
15 Please follow the directions of the court officer.

16 COURT OFFICER: Jury exiting.

17 (Whereupon the jury exits the courtroom, and court
18 was adjourned for the day.)

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