

Dr. Mandelbaum - Plaintiff - Direct

1 So it's actually, there's a needle. This is the big
2 needle, goes into the epidural space. These two wires are
3 floated into that space, they are placed within the epidural
4 spine. So kind of sits within, right next to the spinal cord.

5 For the trial, it gets hooked up to an external battery
6 or generator. For the permanent, it gets hooked up to like a
7 pacemaker type of device.

8 And we do the trial and we leave it in, these wires
9 in that space for about five days to a week. We get to see if
10 it helps with the pain.

11 Q Well, what did you do, what does a spinal cord
12 stimulator actually do?

13 A Well, what it does is it generates signals. It's
14 sending an electrical signal through the leads which are on
15 the -- there are actually eight little contacts on here. It can
16 actually be -- it can be programmed to use any of those eight.

17 So you're talking about eight and eight, and there is
18 some companies that make 16 contacts, and it can be programmed
19 to send a stimulation, a little electrical current. In fact,
20 they've done a lot of studies and they actually have done a lot
21 of interesting studies.

22 Recently they've made vast improvements on what kind of
23 current that they give. It stimulates those nerves that are in
24 back of the spinal cord. What you want to do is catch those
25 nerves that are going into the area of pain, and essentially

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1 you're stopping what he feels as pain.

2 Pain signals coming from extremities travel through the
3 spinal cord into the brain, and you are essentially stopping
4 those signals from occurring so they don't feel the pain and
5 hopefully -- what we do expect, or want is at least 50 percent
6 reduction of pain, which is significant to get 50 percent
7 reduction of pain. So by giving that current you can actually
8 help improve his symptoms hopefully dramatically.

9 Q Okay. How much does a spinal cord stimulator cost,
10 just that piece?

11 A This is close to, I think \$38,000, just for the
12 permanent, just for the device itself.

13 Q Okay. And you mentioned you had discussed putting one
14 in his neck and his back?

15 A Correct.

16 Q Okay. How much would it cost for the hospital, that
17 would be done in the OR in the hospital, correct?

18 MS. WALTERS-HINDS: Objection.

19 MR. PFLUGER: I'll withdraw that.

20 Q Where would that spinal cord stimulator be put in, what
21 facility?

22 A It is a surgical procedure. It has to be done within
23 the hospital setting. It is something that's permanently
24 implanted, both the generator usually gets implanted by the butt
25 area.

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1 The wires have to be secured underneath the skin, in
2 the mid-back. They get floated up into the epidural space. It
3 has to be done within the hospital.

4 Q Well, how long does that device last, what's the useful
5 life?

6 A The battery in there, it's a rechargeable battery which
7 he actually can recharge externally through the skin, lasts
8 about ten years, but it depends on usage.

9 Q Okay. How much would it cost to use an operating room
10 in the hospital?

11 MS. WALTERS-HINDS: Objection.

12 THE COURT: Let me see the two attorneys just for a
13 minute.

14 (Whereupon discussion off the record.)

15 (Whereupon back on the record.)

16 Q Just a broad question, he came in the first time
17 November 5, 2015?

18 A '15.

19 Q With pain. Prior to that, before July 27, 2013, I want
20 you to assume that he told the jury, and we've gone over this a
21 bunch of times, that he never had pain in his shoulder, never
22 had any pain in his neck, never had any pain in his back,
23 radiating, no numbness or tingling or anything, and when he
24 comes to you postsurgery, he's complaining about spasm,
25 numbness, tingling, radiating pain down his shoulders, you

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1 mentioned down his arm, also radiating pain down his left leg,
2 correct?

3 A Correct.

4 Q And over the course of that time, you tried different
5 types of treatment to alleviate palliatively the pain, correct?

6 A Correct.

7 Q So, if I ask you, do you have an opinion, within a
8 reasonable degree of pain management certainty, where the
9 accident of July 27, 2013 --

10 MS. WALTERS-HINDS: Objection.

11 MR. PFLUGER: Was the competent producing cause of
12 Mr. Depena's pain?

13 THE COURT: I'm going to sustain that objection for
14 the following reason: Doctor, anything you did was
15 postsurgery, correct?

16 THE WITNESS: Correct.

17 THE COURT: The surgery for the neck was designed
18 to cure the pain in the neck, correct?

19 THE WITNESS: No.

20 THE COURT: It was not designed to relieve pain in
21 the neck?

22 THE WITNESS: It's designed to stabilize the neck.

23 THE COURT: I understand it's designed to stabilize
24 the neck, but the necessity of stabilizing the neck was not
25 a result of the fracture, was it?

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1 THE WITNESS: No.

2 THE COURT: It was the result of herniation,
3 allegedly?

4 THE WITNESS: Correct.

5 THE COURT: Okay. So, they stabilized it because
6 the herniation had created an impingement on the spinal
7 column, correct?

8 THE WITNESS: Correct.

9 THE COURT: And it's impinging the nerves that flow
10 from the upper, in the neck, from the upper spinal column
11 into the shoulders and arms and hands, the upper
12 extremities, correct?

13 THE WITNESS: Correct.

14 THE COURT: Now, the lumbar, on the other hand,
15 controls the lower extremities, correct?

16 THE WITNESS: Correct.

17 THE COURT: All right. So the fusion down there is
18 to stabilize that spinal area so as not to impinge upon the
19 nerve, the cur dis sequoia, the horse's tail, and all the
20 nerves that flow into the leg, the hips, the feet, the
21 knees, whatever, that is below that, correct?

22 THE WITNESS: Yes.

23 THE COURT: And that's what the goal is, is to
24 stabilize it so that the impingement goes away, which is why
25 they clear out the disc. They clean it out so the

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1 impingement stops and they, you know, that's what is
2 supposed to happen.

3 Now, there's also been testimony in this case that
4 he may need the surgery in the future, because the surgery
5 in the lower lumbar region, they didn't get everything that
6 they had to get. The L5-S1 area, they couldn't treat that;
7 L4-L5, yes, they could.

8 But they understood, this is the testimony, you are
9 to assume, they understood that they might have to go back
10 and do it again to resolve the problem. With the neck they
11 said we resolved that problem, but, because the neck is
12 frozen, the neck is immobile now, it will shift the load to
13 adjoining cervical members, bone members, and that will
14 cause degeneration, it's going to cause pain.

15 My point is (1) the issues before the jury here is,
16 what is causing causally related, if anything, to the
17 accident. So, in talking about pain management that occurs
18 after surgery, is pain being treated, is the pain that's
19 being treated, is that the result of surgery, or the result
20 of the accident.

21 That's what the question is. So you need more of a
22 foundation, Counsel, if you want to probe that issue, and
23 you can probe that issue with this witness, if you wish.

24 MR. PFLUGER: I just respectfully have exception to
25 the Court.

Dr. Mandelbaum - Plaintiff - Direct

1 THE COURT: I understand. It's an issue that, we
2 have discussed this in the back, we could put more on the
3 record about this when we are done, you know, it's an
4 important issue.

5 MR. PFLUGER: Respectfully, I would like to put
6 that later on on the record.

7 THE COURT: Didn't I just say that?

8 MR. PFLUGER: That's fine. Sir, I want you to
9 assume that Dr. Avanesov came in and told the jury that it
10 wasn't a successful fusion, at C5-C6, C6-C7 and L4-L5?

11 THE COURT: Have you reviewed the records of that,
12 Doctor?

13 THE WITNESS: I have some, initially reviewed some
14 of his records, yes.

15 THE COURT: Okay. Are you familiar with what he is
16 talking about?

17 THE WITNESS: Yes.

18 BY MR. PFLUGER:

19 Q Okay. How many patients have you seen at Comprehensive
20 Pain Management where they are postsurgery fusions neck and back
21 besides Mr. Depena?

22 A A rough estimate it's over 100.

23 Q Okay. And you treat patients that have not had
24 successful fusions, correct?

25 A Correct.

Dr. Mandelbaum - Plaintiff - Direct

1 Q Okay. And Mr. Depena is one of them, correct?

2 A Correct.

3 Q So the surgeon sends Mr. Depena to you to help
4 alleviate pain, correct?

5 A Correct.

6 Q Okay. I want you to assume that prior to July 27,
7 2013, he had no neck problems, no pain problems, he had no back
8 problems?

9 THE COURT: You said that a number of times.

10 MR. PFLUGER: I did.

11 THE COURT: That's jumping over the issue that I
12 brought to the attention of this doctor. The leap from no
13 pain before the accident, to pain after the surgery, cuts
14 out what is the causative factor.

15 You're asking him to make a determination as to
16 what's the causative factor without any evaluation
17 whatsoever of whether or not the surgery or the imperfection
18 of the surgery is causing the factor.

19 That's what I'm saying. He's not in a position to
20 make that judgment based on what he's got, because he has
21 not treated this individual either before the surgery or at
22 any time before November 5, 2015, which is more than, quite
23 a distance from the last surgery procedure that he had.

24 That's all I'm saying. I understand what your
25 issue is, but he's not at this point, a foundation hasn't

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1 been laid to raise that issue from this witness.

2 You heard that from other witnesses, but at the
3 moment it does not appear to the Court to be this witness
4 who can answer that question.

5 MR. PFLUGER: Yes, sir. Note my exception, I'm not
6 understanding what the Court is saying.

7 THE COURT: Your exception is being noted.

8 MR. PFLUGER: Okay.

9 Q Sir, if a surgery is unsuccessful like Mr. Depena's and
10 as a result of the surgery that was not successful, he is
11 exhibiting pain, and he comes to you for help, and the testimony
12 by Dr. Avanesov is the herniations that he repaired on April 22,
13 2014, and May 26, 2015, were caused by the accident of July 27,
14 2013, I want you to assume that.

15 Do you have an opinion, within a reasonable degree of
16 medical certainty, whether the pain that he came to you with
17 either was the result of the fusion, or the accident, or both?

18 MS. WALTERS-HINDS: Objection.

19 THE COURT: Yes. You can't ask it that way. He
20 wants to know if you can tell us it was the result of the
21 accident and not the result of the surgery, that's the
22 question, Doctor.

23 MR. PFLUGER: Or...

24 THE COURT: No. No. Can you determine, within a
25 reasonable degree of medical certainty, whether the pain

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1 that he felt when seeing you is the result of the accident,
2 or the result of the surgery, can you rule out either one?

3 THE WITNESS: Well, may I speak?

4 THE COURT: You may. That's the question before
5 you.

6 THE WITNESS: When it comes to pain management for
7 someone who had an injury, they have a disc herniation, and
8 there is compression against a nerve, and now your option is
9 to try conservative treatment, or try surgery to decompress
10 the nerve.

11 Regardless whether you decompress the nerve or not,
12 that pain, that nerve damage may be permanent. That may
13 just be there, and surgeons will tell you, your numbness and
14 tingling and sensations in your upper extremities may come
15 back in a year two or three, or may not come back at all.
16 So there's no guarantee that surgery (1) is going to
17 eliminate the pain. Okay.

18 Now, what the surgeon does is they want to
19 stabilize to try to decompress the nerve and stabilize the
20 spine so that nerve doesn't herniate more further and cause
21 nerve compression.

22 So when we see these patients who have no
23 preexisting disease or disorder, there is a syndrome called
24 a postlaminectomy syndrome where everything is free and
25 clear and the nerve is clear, and they still have pain. And

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1 continuation of pain. And unfortunately long-term he may
2 have more degeneration and acceleration of degeneration of
3 the joints and other discs that are adjoining those areas.

4 Whether that fusion failed or not, you know, I can
5 leave it up to the surgeon whether he wants to say whether
6 it failed or not, if he testified that it failed, that's
7 fine. You know, looking at it radiographically, it seems to
8 be in place. But again they are trying to decompress as
9 best they can, whatever nerve they can.

10 Q So just going, we're trying to get everybody timed, all
11 of the notes at 16 and 17, all the office visits, sir, what
12 complaints was he making, just give us...

13 A He always had specific complaints of neck pain with
14 spasm, going into the upper extremities more on the left than
15 the right.

16 He always had complaints of lower back pain with spasm,
17 shooting pain into the left lower extremities, and he always had
18 some left shoulder pain, for which I believe he needs subsequent
19 surgery, and that's his decision.

20 Q Okay. So what about medication, what medication, if
21 any, did you prescribe, or someone in your office?

22 A Correct. So we tried a lot of different medications.
23 We tried, again, I stated before, the Baclofen, which is a
24 muscle relaxant. There was Diclofenac, which was
25 antiinflammatory medication.

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1 He was also started on Neurontin, which the generic
2 name is Gabapentin, and that is an antiseizure medication that
3 helps settle the nerves down for some of the sharp shooting
4 control of the numbness, that helped settle that down. He was
5 also started on Lyrica, which is a newer Gabapentin type
6 medication, also to help nerves settle down.

7 The issue with some of the medication was that he was
8 having side effects, and they can cause sedation and he was
9 having a difficult time because he was trying to return to work
10 during this time, part of this time period.

11 And that actually was very difficult and he was upset.
12 He was still having pain and continued to take some of the pain
13 medication, which was an issue.

14 Q Was that noted in the August 10, 2016, note?

15 A That was noted, yes.

16 Q Okay. And he told you he was driving, wanted to go
17 back to work and start driving?

18 A Correct.

19 Q Okay. Sir, have you formulated an opinion whether
20 Mr. Depena will be incurring future medical expenses?

21 A Yes.

22 MS. WALTERS-HINDS: Objection.

23 THE COURT: With respect to pain treatment?

24 MR. PFLUGER: Yes, sir.

25 THE COURT: I'll allow that. But again, the

ry/f Donald Eisentraut - Plaintiff - Cross

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1 asked the witness if he created it. That's all I asked.

2 THE COURT: No, you asked more than that. You did
3 ask that.

4 Q Sir, is the 2013 statement by Ms. Thomas in this thing?

5 A No, it's not.

6 Q Will you just go to the auto stats, you said?

7 A I just said they are not in there.

8 Q Oh. So the thing you say gave the weight of the
9 ambulance, the auto stat, is not in that folder?

10 A That's correct. In fact, it wouldn't because...

11 Q I'm just asking --

12 THE COURT: He can answer that question.

13 THE WITNESS: The auto stats gave me basic make,
14 and model information on the manufacturer's provided
15 vehicle, which is, in this case it's a cutaway. So all the
16 manufacturers provide is a Ford, gave them a frame, dual
17 rear wheels and a cab.

18 MR. PFLUGER: Sir, it's a "yes or no" question.
19 That's all I asked. Is it in there? You said, no.

20 THE COURT: Sometimes the "yes or no," invites a
21 broader response. I've said this many times.

22 Q When was the last time you looked at this auto stat?

23 A Probably Monday.

24 Q Okay. How many times have you met with defense counsel
25 on this case?

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1 lower back.

2 The cost of the neck injection is \$2,000, plus
3 anesthesia is \$1,000, plus the hospital cost of \$2,000,
4 which includes fluoroscopic guidance. He needs three
5 injections every two years for the rest of his life. We had
6 mentioned the radiofrequency facet, which is a different
7 source of pain.

8 The cost of that is \$2,000, plus \$1,000 for
9 anesthesia, plus the \$2,000 hospital cost once every two
10 years for the rest of his life.

11 This is a rather conservative evaluation of
12 treatment for some of these treatments because they don't
13 necessarily last two years, but conservatively we hope to
14 get two years, but reality it lasts six months to a year.

15 An epidural injection for the lower back, again is
16 a cost of \$2,000, plus the hospital cost of \$2,000, once
17 every two years for the rest of his life. There is also the
18 radiofrequency in the lower back, with the cost of \$2,000,
19 again anesthesia cost of \$1,000, plus \$2,000 hospital cost.

20 There are muscular injections which are what we
21 call trigger point injections, which he actually had, that
22 is a deep muscle injection with something that causes the
23 muscles to relax. It periodically needs to be done.

24 The cost of the injection is \$300, per each
25 injection, and we are talking about one set of injections

Dr. Mandelbaum - Plaintiff - Direct

1 every four months for the rest of his life. There are
2 shoulder injections that we do and have done on him,
3 including steroids that cost \$300 once every 18 months for
4 the rest of his life.

5 There are lubrication injections, which he had done
6 in our office called Orthovisc. The cost is \$400 per
7 injection. Typical injections are a series of three every
8 12 months for the rest of his life.

9 We had discussed, and he does have along the
10 surgical site, it's very tender, which is called basically
11 the scar tissue. Externally that can be injected, and we
12 had to discuss that with him.

13 The cost of that is \$300 twice a year. The
14 physical therapy that he will need periodically at a cost of
15 \$120 once per week for six months, then twice a month for
16 18 months, then ten sessions per year.

17 At this point it will be probably ten sessions per
18 year for exacerbation of pain for the rest of his life. He
19 will need in the future, MRIs of his neck, his lower back
20 and left shoulder just to ascertain what is going on because
21 of further degeneration cost of an MRI is \$1,200 for each
22 site.

23 And he will need an MRI once every five years to be
24 more frequent, depending on exacerbation of pain. What I
25 had mentioned before as far as the spinal cord stimulator

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1 which in the pain management world and they've made these
2 vast improvements on stimulation and the technology behind
3 it. So, it is highly recommended. The cost of a trial,
4 total cost is \$16,550. That's a number that I have worked
5 with.

6 The actual cost of the leads, the leads themselves
7 are \$2,550, for the two leads, plus the surgical fees, plus
8 the anesthesia fees. Again, leads and the total cost of a
9 trial is \$16,550.

10 The permanent implant which is surgically implanted
11 the leads that are placed, plus the generator cost at
12 \$35,600. The surgical fee is approximately \$15,000, plus
13 \$3,000 for anesthesia, and the facility fee, that will vary
14 significantly depending on the hospital, but we're talking
15 40, to \$50,000. So approximately \$103,600.

16 The generator, again that generator may need to be
17 replaced after ten years, because it doesn't last forever.
18 So we're talking about redoing the generator at today's cost
19 is about 32,600 for the generator, plus the surgical fee of
20 \$3,000, plus anesthesia, plus the facility fee.

21 Again there's the replacement which would be ten
22 years down the line, and the whole field as far as
23 stimulator generators is vastly improving. So new
24 generators now are so much better now than they were five
25 years ago. I expect hopefully that will continue.

Dr. Mandelbaum - Defendant - Cross

1 Q Did you recommended that for Mr. Depena?

2 A Yes.

3 MR. PFLUGER: Thank you.

4 THE COURT: Cross-examination.

5 MS. WALTERS-HINDS: Sure.

6 CROSS-EXAMINATION

7 BY MS. WALTERS-HINDS:

8 Q Good morning, Doctor.

9 A Good morning.

10 Q How are you?

11 A Good.

12 Q Your office saw Mr. Abreu Depena for the first time two
13 years and four months after the accident; is that correct?

14 A Correct.

15 Q Okay. And you yourself didn't see Mr. Abreu Depena
16 until December of 2015, which is two years and five months; is
17 that correct?

18 A Correct.

19 Q Okay. And even though your office saw him for the
20 first time two years and four months after the accident when he
21 had surgery to both the cervical and the lumbar, you're able to
22 relate the pain back to the accident; is that correct?

23 A Correct.

24 Q Okay. And your office wasn't the original pain
25 management doctor; is that correct?

Dr. Mandelbaum - Defendant - Cross

1 A That is correct.

2 Q Okay. In 2013 he was going to Dr. Leon Reyfman,
3 correct?

4 A Correct.

5 Q And he did that from 2013 to 2015, correct?

6 A Correct.

7 Q Okay. And during that time your office wasn't seeing
8 him month-to-month as to what his progress was; is that correct?

9 A Correct.

10 Q Okay. But you're able to say that it was an accident
11 from more than two years ago that caused the pain, correct?

12 A Correct.

13 Q Okay. Now, the plaintiff was referred to your office
14 by Dr. Avanesov; is that correct?

15 A Correct.

16 Q Okay. How many patients would you say per month
17 Dr. Avanesov referred to your office in 2015?

18 A Not a lot.

19 Q Not a lot?

20 A No. I barely know him. That's the reality. So, I
21 can't even say how many. I would say it's a handful.

22 Q A handful?

23 A If any.

24 Q If any?

25 A I don't know the answer to that question.

Dr. Mandelbaum - Defendant - Cross

1 Q Okay. How many cases would you say per month that
2 Dr. Avanesov referred to Dr. Thomas?

3 A I have no clue.

4 Q Okay. How many cases will you say that you, your
5 office has appeared in court where you guys have been the pain
6 management doctors and Dr. Avanesov has been the spine surgeon?

7 A Me personally, this is the first one.

8 Q Okay. How about Dr. Thomas, who is not here today?

9 A You would have to ask him.

10 Q Okay. But I can't, he's not here. You are. Is it
11 more than one, is it less than one?

12 A I have no idea.

13 Q You have no idea. Okay. How many cases will you say
14 that your office has testified where it's been Schwitzer &
15 Associates as the attorneys?

16 A Me, personally, five.

17 Q Okay. Five for you, how about Dr. Thomas?

18 A I really don't know. You're asking me a question, you
19 know, do I know he goes to court. He has done most of the court
20 cases in the past. Unfortunately he's ill, so I have -- now
21 I've taken that role.

22 Q Okay. How many, for how many years did he do most of
23 the court cases?

24 A For as long as I have known him working with him.

25 Q Okay. What year periods?

Dr. Mandelbaum - Defendant - Cross

1 A Talking the past 20 years.

2 Q Okay. Has he worked, has he appeared in court for the
3 last 20 years where it's been Schwitzer & Associates as the
4 attorneys?

5 MS. PFLUGER: Objection, Judge.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 Q And in the last 20 years, has it been more than 20
9 times, more than 30 times, something else?

10 A I'm not -- I have no idea because unfortunately when he
11 goes to court, whenever, I'm not aware when he goes to court.

12 Q Okay.

13 A So it's hard for me to give a correct answer to that.

14 Q Okay. And in the times that he goes to court, do you
15 know whether he mostly testifies for Schwitzer & Associates, or
16 another firm?

17 A I do not know. There are many firms that we deal with
18 because, as a pain management physician we do deal with
19 different legal situations. And I personally don't know
20 Schwitzer versus other law firms. Personally, I don't have a
21 personal relationship with any of these lawyers.

22 Q All right. Do you know if Dr. Thomas does?

23 A I don't know.

24 Q Okay. Do you know if Dr. Thomas has a personal
25 relationship with Dr. Avanesov?

Dr. Mandelbaum - Defendant - Cross

1 A I don't believe so, but I do not, no.

2 Q And he's been your partner for over 20 years?

3 A Correct.

4 Q Okay. Now, it was Dr. Thomas that looked at the
5 plaintiff on November 5, 2015, correct?

6 A Correct.

7 Q And the last time that you actually saw the plaintiff,
8 Mr. Abreu Depena was it 6/3/2018?

9 A I believe so, yes.

10 Q Okay. So you haven't personally examined Mr. Abreu
11 Depena for the last six months; is that correct?

12 A Correct.

13 Q I shouldn't say six, probably six or seven months or
14 eight months since we're in February?

15 A The last time that I had seen him, though he's come to
16 our office, and he's been evaluated by the new physician,
17 Dr. Johnson, who's been seeing and evaluating him and actually
18 did his last injection.

19 But we frequently have conferences regarding patients.
20 These situations are discussed. Especially since he's a new
21 physician and doesn't know some of the older patients that we
22 have been seeing for an extended period of time.

23 Q Okay. When he came to your office the first time and
24 saw Dr. Thomas, with regards to his cervical, what was flexion?

25 A It was at 20 degrees.

Dr. Mandelbaum - Defendant - Cross

1 Q Can you show the jury what 20 degrees is?

2 A Yes. So we're talking about flexion of the cervical
3 spine. So if you're talking about a neck that's straight,
4 20 degrees is approximately 20 degree of the height. Normal
5 should be about 40 degrees and he is about 20 degrees.

6 Q Can you show us what flexion is for the cervical for
7 five degrees?

8 A Again, it's tough to say, five degrees is very minimal.
9 We are talking about a tiny amount, 20 degrees obviously is a
10 little bit more.

11 Q Okay. And you would agree with me that these testings
12 are subjective, right?

13 A There is a subjective component to range of motion.

14 Q Okay. And when he was first seen on 11/5/2015, what
15 was his flexion regarding the lumbar spine?

16 A Flexion in the lumbar spine was approximately
17 50 degrees.

18 Q Okay. And the last time he was seen by your office,
19 let's say January 8, 2019, what was the flexion for the
20 cervical?

21 A Flexion of the cervical spine was -- actually it states
22 both 20 and 30 degrees.

23 Q Do you know which one it is? It states both 20 degrees
24 and 30 degrees, which one was it on the last time he visited?

25 A Again, I didn't do the note. My guess is one of them

Dr. Mandelbaum - Defendant - Cross

1 is extension, one is flexion. But because extension is not
2 stated there, that it's a mistype, but regardless, they are both
3 diminished.

4 Q Okay. And how about regarding his lumbar spine, what
5 was flexion?

6 A Lumbar spine flexion was at 50 degrees.

7 Q Now, Doctor, for the times that he came to your office
8 in 2015, between 2015, when he began coming to your office,
9 until he stopped in 2018, he was working, correct?

10 A There was a time period where he started to work, yes.

11 Q Okay. And your understanding of the work that he was
12 doing was that he was driving a taxi; is that correct?

13 A Correct.

14 Q Okay. So, he was driving a taxi in 2016, is that fair?

15 A He started, he went back to work in July of 2016.

16 Q Okay. And he worked when he came to your office, on
17 November 15, 2016, he was still working, correct?

18 A Correct.

19 Q And he was working on January 10, 2017, correct?

20 A Correct.

21 Q And for all the subsequent visits in March of 2017, May
22 of 2017, July of 2017, September 2017, he was still working,
23 correct?

24 A Correct.

25 Q Okay. And it's your understanding that he was also

Dr. Mandelbaum - Defendant - Cross

1 working in 2018 as a taxi driver, correct?

2 A Correct.

3 Q So, Doctor, you discussed with Mr. Abreu Depena on
4 April 11, 2018, about putting a pain stimulator in?

5 A Correct.

6 Q Okay. And you recommended this pain stimulator?

7 A Yes.

8 Q Okay. What level was this pain stimulator for?

9 A Again, it's to help with the pain, both cervical and
10 lumbar, where the lead placement, which is actually interesting,
11 lead placement of a stimulator, and I can go through some of the
12 physiology, it's actually, for instance, the lower back, it gets
13 placed in the thoracic spine at about T-8.

14 What it's doing is actually catching the nerves from
15 the spinal cord that are going into the entire lower extremity.
16 So you're actually able to help with pain for, basically you
17 want to reproduce the sensations in the entire lower extremity
18 which is L3-4, 5, and S1, and you can actually cover it.

19 It's not geared toward a specific nerve. You're geared
20 towards the spinal cord and catching all the nerves that are
21 going into the leg which makes it very unique.

22 Q Got it. Are you aware whether a pain stimulator was
23 recommended at any time before his failed lumbar fusion on
24 4/22/2014?

25 A No.

Dr. Mandelbaum - Defendant - Cross

1 Q Are you aware whether a pain stimulator was recommended
2 for his cervical spine before the failed cervical fusion that
3 was done on 5/26/2015?

4 A No.

5 Q Okay. Do you know why this wasn't recommended?

6 A Because it's not indicated for somebody who has a
7 surgical spine. It's not the first treatment modality. It's
8 usually a last resort modality.

9 Q Okay.

10 A Most of our stimulators are in patients who have
11 already undergone surgery, or surgery is either not indicated,
12 or it's too risky.

13 Q Okay. So, as of right now, Mr. Abreu Depena has been
14 recommended for another lumbar fusion to correct the first
15 failed lumbar fusion; is that correct?

16 A Correct.

17 Q Okay. And as of right now, Mr. Abreu Depena is
18 recommended for another cervical surgery in five to seven years,
19 correct?

20 A Correct.

21 Q Okay. And according to you, he's going to need further
22 injections, MRIs, and future surgeries, correct?

23 A Correct.

24 Q And he's going to need to come to your office for pain
25 management, is it once a month for the rest of his life?

Dr. Mandelbaum - Defendant - Cross

1 A Correct.

2 Q Okay. And how much does it cost for him to come to
3 your office once a month for the rest of his life?

4 A Our office fee is \$200 per office visit.

5 Q Okay. And when he comes, how many times a year is he
6 going to, is he supposed to pay for injections every year?

7 A Again I stated it before, what our recommendations were
8 for future costs as far as what type of injections and how often
9 that he is going to need injections realistically.

10 The idea with these injections is (1) the injections
11 help subside the pain, exacerbation of pain, diminish pain,
12 whether he had surgery or not he'll still need injections.

13 Q Okay.

14 A Even with the surgery he more than likely is going to
15 still continue to have pain. That's why the stimulator comes
16 into play.

17 Q So, sir, he had the lumbar surgery on 4/22/2014,
18 correct?

19 A Yes.

20 Q Okay. And before that surgery, he had pain to his
21 lumbar, correct?

22 A Correct.

23 Q After that surgery, he had pain about the same amount,
24 7 or 8 out of 10, would you agree with that?

25 A Correct. Though I saw him much --

Dr. Mandelbaum - Defendant - Cross

1 Q He had surgery -- withdrawn. He had pain to his
2 cervical spine in 2015, let's say prior to his surgery on
3 5/26/2015, right?

4 A Yes.

5 Q Okay. And subsequent to that in 2015, '16 and '17 he
6 continues to have the pain, correct?

7 A Correct.

8 Q So the surgeries didn't alleviate his pain, correct?

9 A Correct.

10 Q And he will have this pain for the rest of his life,
11 despite the fact that he had a lumbar surgery, a cervical
12 surgery, numerous injections by your office, and he will need
13 all this treatment for the rest of his life at a tremendous
14 cost, correct?

15 A Correct.

16 Q Okay. And your office ended up getting this patient
17 through Dr. Avanesov, correct?

18 A Correct.

19 MS. WALTERS-HINDS: Okay. Thank you.

20 THE COURT: All right. We are going to break for
21 lunch now. You have any questions?

22 MR. PFLUGER: No, sir.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you.

25 (Whereupon the witness is excused.)