

1 COURT OF THE STATE OF NEW YORK
2 COUNTY OF NASSAU : PART 15

3 - - - - - X

4 SALIH KARASU and ANA DE LUCCA KARASU,

Index No.
4428/16

5 Plaintiffs,

6 -against-

7 SECURITY AUTO SALES, INC., SECURITY
8 DCJR, INC., and 345 MERRICK ROAD, LLC,

9 Defendants.

10 - - - - - X

11 15th of March, 2022
12 Mineola, New York

13 B E F O R E : HONORABLE DICCIA PINEDA-KIRWAN

14 Justice and a Jury.

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

16 Plaintiffs:

17 RONALD BURKE, ESQ.
18 Kelner and Kelner
19 7 World Trade Center
20 250 Greenwich Street, Ste. 2700
21 New York, NY 10007

22 Defendants:

23 JAMES A. EDWARDS, ESQ.
24 Ahmuty, Demers & McManus
25 199 Waters Street, 16th Floor
New York, NY 10038

1 THE CLERK: All rise. The Nassau County Supreme
2 Court Trial. Term Part 15 is now in session. The
3 Honorable Diccia Pineda-Kirwan presiding. Be seated. Come
4 to order.

5 In the matter of index number 004428 of 2016.
6 Salih Karasu and Ana De Lucca Karasu against Security Auto
7 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road,
8 LLC.

9 MR. BURKE: Ronald Burke from Kelner and Kelner
10 for the plaintiff.

11 MR. EDWARDS: For the defendant, Security Auto
12 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road,
13 LLC, James Edwards Ahmuty, Demers & McManus.

14 THE COURT: What's your name?

15 MS. EVANOFF: Susan Evanoff, E-V-A-N-O-F-F from
16 IAT Insurance.

17 (Whereupon, a discussion is held off the record.)

18 MR. BURKE: Just want to make a relevancy
19 objection on the admission of the surveillance video.
20 There is no evidentiary purpose because it's not intended
21 to improve. The credibility of the plaintiff because there
22 is one video clip of him mowing his lawn. He's already
23 testified that at that point in time he didn't just mow his
24 lawn for one day. It's a ten minute lawn mower of the
25 front lawn. He did it the entire summer. So showing that

1 video has no evidentiary purpose.

2 THE COURT: I'm asking between I asked you to
3 stipulate to anything and anything you didn't stipulate to
4 I would rule on which I did. So I'm looking.

5 MR. BURKE: We didn't discuss the surveillance
6 tapes with you, Judge. I've agreed that I'm not going to
7 raise an authentication objection, but I do believe on
8 relevancy grounds that they do not show anything that the
9 plaintiff has already testified to he does.

10 MR. EDWARDS: Your Honor, I had multiple
11 conversations with counsel who very clearly stated to me he
12 was not raising any objection he did not distinguish
13 between relevant --

14 THE COURT: That's very nice, but you bring it up
15 to the court if you think if you want me rule it.

16 MR. EDWARDS: I wasn't expecting to be any ruling.
17 Counsel told me he was not going to be objecting to me
18 putting them in. Hearing this right now for the first
19 time.

20 THE COURT: Why didn't you put it in writing then.

21 MR. EDWARDS: I didn't think it was necessary
22 there is the answer.

23 THE COURT: Well you discussed it though you
24 discussed it.

25 MR. EDWARDS: I thought it had some merit. My

1 mistakes for mistrusting what counsel representation was.

2 MR. BURKE: I disagree. I said I wouldn't raise
3 an authentication objection. I said I would not raise any
4 technical issues if investigators who had not taken the
5 video or transferred it to a memory card a SIM card there
6 would be no authentication objections I just have a
7 relevancy objection.

8 MR. EDWARDS: Judge, judge, there is multiple
9 multiple witnesses who have testified about physical about
10 the plaintiffs physical limitations. The surveillance
11 video absolutely relevance to the issue of plaintiffs
12 physical limitations which is his entire case.

13 MR. BURKE: I'm saying that all this video shows
14 is plaintiff doing exactly what he said he can do he can
15 walk it doesn't show him doing jumping jacks or running it
16 doesn't show him doing anything that he testified he could
17 not do.

18 THE COURT: So all these people that are going to
19 be testifying are going to testify as it a video of him
20 motion a lawn.

21 MR. BURKE: Someone's mowing lawn another driving
22 to a restaurant him going in and coming out of a restaurant
23 walking another one is showing him go into King Kullen
24 walks into King Kullen comes out. He already acknowledged
25 that he started doing that in 2016, so I have a relevancy

1 objection.

2 MR. EDWARDS: Judge, I will just again I have to
3 rely on some representations from counsel. Counsel looked
4 me in the face and said he was not objecting to the video
5 going in. He only he wanted the videographer to come in so
6 he can cross-examine. Them that was it. So he told he was
7 not objecting to these going in. I would have been more
8 prepared on this argument if I thought it was going to be
9 raised. Not first time right now.

10 I relied on counsels representation to me that he
11 was raising no objection to the video. Only that he wanted
12 the videographer in to testify and then I got the
13 videographer in to testify. There is absolutely relevant
14 he's claiming highs got physical limitations on things he
15 can and can't do. His physical abilities are absolutely
16 positively relevant to the case and video should go in.

17 The jury can give it whatever weight it wants. It
18 has nothing to do with admissibility it's all a weight
19 argument he can argue whatever he's saying now to the jury
20 about the weight or value of the video, but there is
21 absolutely no legitimate basis to keep this from evidence.

22 THE COURT: All right. Your objection is noted.
23 It's overruled.

24 But counsel next time you come before me anything
25 that you think might be an issue because you know --

1 MR. EDWARDS: I didn't think at all.

2 THE COURT: I'm not saying you did or you didn't,
3 but if it's something you prepare it's great that you get
4 along. I don't even know I would have even looked at the
5 video maybe. But you can --

6 All right. Are we ready? Are they here your
7 witnesses?

8 MR. EDWARDS: Yes, witnesses are here.

9 COURT OFFICER: Jury entering.

10 THE COURT: You may be seated. Welcome.

11 MR. EDWARDS: Judge, can I have this marked for ID
12 before we go on the record.

13 (Defendant's D, E, F marked for ID).

14 MR. EDWARDS: Michael Keute.

15 COURT OFFICER: Witness entering.

16 (Witness enters the court room and takes the
17 witness stand.)

18 THE CLERK: Do you solemnly swear or affirm the
19 evidence you shall give to the court and jury in this case
20 will be the truth, the whole truth and nothing but the
21 truth, do you so swear or affirm?

22 THE WITNESS: Yes, I do.

23 THE CLERK: Please state and spell your full name
24 and address for the record.

25 THE WITNESS: First name, Michael, M-I-C-H-A-E-L.

1 Last name Keute, K-E-U-T-E address 250 Sagamore Hills
2 Drive, Port Jeff Station, New York, 11776.

3 THE COURT: You may be seated.

4 You may inquire. You may take off your mask if
5 you wish.

6 M I C H A E L K E U T E, called as a witness by
7 the plaintiff, having been first duly sworn, was examined
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. EDWARDS:

11 Q. Mr. Keute, are you currently employed?

12 A. Yes.

13 Q. Who are you employed by?

14 A. United Claims Services.

15 Q. What's your occupation?

16 A. I'm field investigator slash private investigator.

17 Q. How long have you been doing that type of field
18 investigator investigation work?

19 A. Seven years.

20 Q. Were you doing that type of work back in May of 2019?

21 A. Yes.

22 Q. Who are you working for back in May of 2019?

23 A. I was working for a company called am any present
24 investigation.

25 Q. In May of 2019 were you an actual employee of omni

1 present or were you a contractor or what was your exact
2 relationship?

3 A. I'm cracked out by omni present so it's 1099.

4 Q. In May of 2019 did you receive assignments from omni?

5 A. Yes.

6 Q. For different social assignments?

7 A. Yes.

8 Q. What was the process by which you would receive an
9 assignment?

10 A. So I would receive a text message from the coordinator.
11 Her name a Lisa. And she would ask if anyone was available to
12 work a specific date and then we would agree or disagree if we
13 could take the shift or not.

14 Q. Did your assignments include surveillance?

15 A. Yes.

16 Q. Did you only do surveillance or did you do other type
17 of investigations?

18 A. For them I only did surveillance.

19 Q. Did there come a time when you were given an assignment
20 with regard to a person named Karasu?

21 A. Yes.

22 Q. How did that assignment come to you?

23 A. So I got a text message asking me if I wanted to work.
24 I said yes then they sent over the address, photograph of the
25 person who was being surveillanced and a description of any type

1 of injuries or anything like that.

2 Q. With regard to Mr. Karasu did you get that information?

3 A. Yes.

4 Q. Were you given some type of description of the nature
5 of the injury or claim?

6 A. Yes, I believe it was he had some type of ankle injury.

7 Q. What did your where were you were you given a like a
8 period of time that you were to conduct your surveillance?

9 A. Yes, we're assigned certain time frames either 6 to 8
10 hours so like 10 to 6.

11 Q. Were you given a location to start your surveillance?

12 A. Yes.

13 Q. Do you recall right now what it where that was?

14 A. The address it was in Wantagh.

15 Q. Was it a home?

16 A. It was a home residential home.

17 Q. To the best of your knowledge was Mr. Karasu home?

18 A. Yes.

19 Q. Did you go to that location that day?

20 A. Yes.

21 Q. And while you were there did you observe Mr. Karasu?

22 A. Yes.

23 Q. And while you were there did you take some video of
24 Mr. Karasu?

25 A. Yes.

1 MR. EDWARDS: Your Honor, may I approach the
2 witness.

3 THE COURT: Sure.

4 MR. EDWARDS: Going to show him the video.

5 THE COURT: Pass it to the court officer.

6 Q. Mr. Keute, was the video that you took at some point
7 reduced to a CD?

8 A. When I turned it in I dropped it through Drop Box then
9 it's handed to you however it's handed to you guys.

10 Q. I'm going to your Honor just for the logistics counsel
11 have and I have agreed that I can use my laptop to show the
12 video rather than the actual CD?

13 THE COURT: Okay.

14 MR. EDWARDS: I'm going to approach the witness.

15 MR. BURKE: Just give us the date please, May?

16 MR. EDWARDS: May 25, 2019.

17 MR. BURKE: If I can look over, judge.

18 THE COURT: Yes.

19 Q. Mr. Keute I'm going to ask you once I play this to just
20 look at the take a look at the video?

21 THE COURT: Counsel just remember to maintain your
22 distance you're getting too close to the jurors.

23 MR. EDWARDS: You will put my mace can on judge.

24 (Video playing).

25 Q. Have you had an opportunity to look at the video, does

1 it fairly and accurately represent the video that took on May
2 25, 2019 of Mr. Karasu?

3 A. Yes, it does.

4 MR. EDWARDS: Judge, I offer defendants exhibit D
5 into evidence.

6 MR. BURKE: No objection more than what was
7 mentioned earlier.

8 THE COURT: Defendants D is in evidence.

9 MR. EDWARDS: I would like to at this time publish
10 that to the jury by playing it on the screen.

11 (Video playing)

12 Q. Mr. Keute, there are a couple of pauses in that video,
13 what would be the reason for those pauses?

14 A. Sometimes when I'm videoing and the person we're
15 watching is coming in my direction because I'm videoing I don't
16 want to break, you know, my cover. So I kind of lower the
17 camera or I shut it off. So I'm not directly in their face
18 especially when we were in such close proximity to each other.

19 MR. EDWARDS: I don't have any questions. Thank
20 you, sir.

21 CROSS-EXAMINATION BY

22 MR. BURKE:

23 Q. Mr. Keute, we know there's 8 minutes of lawn mowing
24 activity but you were there the whole day right?

25 A. Yes.

1 Q. In fact May 25, 2019 you have notes indicating that you
2 arrived at the home of the Karasu's at 6:59 a.m.?

3 A. Yes.

4 Q. These are your notes, right?

5 A. The notes are from the file supervisor who generates
6 the report.

7 Q. But does it accurately reflect what you did and the
8 time you did it?

9 A. Yes.

10 Q. You need that for billing purposes, correct?

11 A. I guess so.

12 Q. So you arrived at seven a.m. and you continued your
13 surveillance on a Saturday a beautiful Saturday correct?

14 A. Yes.

15 Q. And you stayed posted at your location until 3 p.m. in
16 the afternoon?

17 A. Yes.

18 Q. Am I?

19 A. No, that's right.

20 Q. And between seven a.m. and 3 p.m. is 8 hours, true?

21 A. Yes.

22 Q. So 8 hours you showed us 8 minutes of lawn mowing
23 activity correct?

24 A. Yes.

25 Q. So from seven in the morning on a beautiful spring day,

1 sunny, you saw Mr. Karasu leave his home once to mow the lawn
2 right?

3 A. Yes.

4 Q. Can you tell us a little bit about how who gave you
5 your training for how to conduct surveillance?

6 A. I received training from the company I'm with now and
7 also from Omni Present an investigator from Omni Present.

8 Q. So back in May of 2019 Omni was the only organization
9 that trained you?

10 A. Yes.

11 Q. Describe what's the training?

12 A. We do a one on one with an investigator. And we go on
13 as I are surveillance together given tips and tricks on how to
14 follow someone and to video record. And getting the best
15 vantage point.

16 Q. I'm not sure but from looking at that video clip it
17 seems to me that you must have been parked on the same side of
18 the street as Mr. Karasu's home, correct?

19 A. Correct.

20 Q. And were you just one house away parked or two houses
21 away parked?

22 A. I was probably one house away parked.

23 Q. And when you're parked there obviously you're doing
24 this your goal and your training to do this in a way so that the
25 target of whoever your following obviously doesn't become clued

1 into your presence?

2 A. Correct.

3 Q. For fear that they change their behavior, correct?

4 A. Not necessarily.

5 Q. Okay. As you mentioned before you actually paused the
6 filming because you may want to duck down or at least drop your
7 camera so that the subject or target of your surveillance
8 doesn't see you?

9 A. Correct.

10 Q. So you're -- I mean you're conducting what's called
11 surveillance but surveillance because you don't want your
12 presence known to your target?

13 A. Correct.

14 Q. So it would be fair to say then that there are limits
15 to what you do, for example, you wouldn't use some type of a
16 zoom camera to look into the windows or of someone's home or,
17 would you?

18 A. No.

19 Q. What are some of the limits the decency limits that you
20 are sure to avoid intruding on someone's privacy?

21 MR. EDWARDS: Objection.

22 THE COURT: I'm sorry. Could rephrase your
23 question.

24 Q. Describe to us what are the limits of your viewing a
25 target when they are inside their home?

1 MR. EDWARDS: Objection.

2 THE COURT: Overruled.

3 A. So for me it's a personal thing. I wouldn't have -- I
4 would never look into someone's house with my video camera. If
5 they are inside their residence, I'm not going to zoom into
6 their front door, but when they are in the public area or space,
7 you know, in front lawn or at a store or drive away that's when
8 I will take footage.

9 Q. In this case so the only thing that you were able to do
10 is on May 25, 2019 from seven in the morning until 3 p.m. your
11 car was parked two houses away from the Karasu's home?

12 A. Yes, yes.

13 Q. And in all of those seven hours no 8 hours that you
14 were surveilling Mr. Karasu's did you ever see him running or
15 jogging?

16 A. No.

17 Q. Did you see him doing bicycling?

18 A. No.

19 Q. On this beautiful sunny day did you see him go out to
20 the park or visit a friend?

21 A. No.

22 Q. And so is it fair to say that the reason you don't have
23 8 hours of surveillance video, you have 8 minutes, is because
24 there was simply nothing to film?

25 A. So I believe there is more than 8 minutes of footage

1 because --

2 Q. If it's 9, I will accept your representation.

3 A. No, no, I'm just saying there is hours we break down
4 that we show we're still at the residence and there is no
5 activities in those hours. So there is video footage with 7, 8,
6 9, 10 leading up to the time he was outside and following that
7 that there was still no activity he wasn't outside in the front
8 or doing anything.

9 Q. But from looking at the videotape you just showed us
10 this was 8 minutes of lawn mowing?

11 A. Yes.

12 Q. Or do you want to say it was 9?

13 A. No, whatever it was.

14 Q. Now was this -- were there other days that you had
15 Mr. Karasu under surveillance and you just didn't generate any
16 videotape?

17 A. No.

18 Q. Is there do you have any other videotape that you took?

19 A. No.

20 Q. And can we agree that if you saw Mr. Karasu's come out
21 of his home on May 25, 2019 and do something inconsistent with
22 his injuries such as running you surely would have filmed that,
23 wouldn't you?

24 A. Yes, I would have filmed anything that he did when he
25 left his house regardless of what it was.

1 Q. You would have filmed anything he did?

2 A. As soon as we saw him the video camera starts and then
3 he goes back inside is when it stops.

4 Q. So then you have been trained that any time you're
5 following a subject let's say who gets in his car leaves the
6 house, you follow them and are you filming them while you follow
7 them or only when they get to their destination?

8 A. I used to film when I was following them but it got a
9 little unsafe obviously I was driving. So it would be as soon
10 as we followed them to the location they were in and then
11 showing that they were going into that location.

12 Q. And then when they get out of their vehicle lets say
13 they go to supermarket, do you follow them into the store to
14 keep them under surveillance to see what they are doing in let's
15 say a supermarket or a delicatessen?

16 A. Depends on the situation. That wasn't the situation
17 with him.

18 MR. EDWARDS: Objection.

19 THE COURT: Overruled.

20 Q. So then if you follow someone let say to a supermarket
21 and then they go to a doctor's office, would you also, would you
22 film the entire drive of the subject from the supermarket to the
23 doctors office?

24 A. Not anymore I would not film the drive.

25 Q. But then when the subject arrived at the doctors office

1 theoretically would you then video them getting out of the car
2 going in?

3 A. Yes.

4 Q. And would you wait there for them to come out and then
5 resume the filming?

6 A. It depends on the clients request if there was a
7 medical appointment then if they want the us to go in and make
8 sure they went in it's a different situation but that wasn't the
9 situation in this case.

10 Q. How do you know when someone has a medical appointment?

11 A. The client depends there is time when there is IME our
12 assignment is to go and make sure they go to their doctors
13 appointment.

14 Q. So while you're sitting there and let's say on May 19
15 of 2019, are you taking notes of what you have seen the subject
16 doing?

17 A. Written, notes, no.

18 Q. Were you aware that the lawn mower Mr. Karasu's was
19 using -- withdrawn. Do you know whether the lawn mower we see
20 Mr. Karasu's using is a self propelled lawn mower or if it
21 requires someone to push it?

22 A. I have no knowledge.

23 Q. You have no idea?

24 A. No.

25 Q. And so for other than 8 minutes of lawn mowing for this

1 8 hours Mr. Karasu was in his house the whole time you didn't
2 see him doing anything?

3 A. Yes.

4 MR. BURKE: Okay.

5 MR. EDWARDS: I have no redirect, your Honor.

6 THE COURT: Okay. You may step down.

7 MR. EDWARDS: Your Honor, at this time I'd like to
8 call witness Alex Bartoli.

9 COURT OFFICER: Witness entering.

10 (Witness enters the court room and takes the
11 witness stand.)

12 THE CLERK: Do you solemnly swear or affirm the
13 evidence you shall give to the court and jury in this case
14 will be the truth, the whole truth and nothing but the
15 truth, do you so swear or affirm?

16 THE WITNESS: I do.

17 THE CLERK: Could you please state and spell your
18 full name and address for the record.

19 THE WITNESS: Alexandro Bartoli A-L-E-X-A-N-D-R-O
20 B-A-R-T-O-L-I address 21 Vittermore Street, Islip, New
21 York, 11751.

22 MR. EDWARDS: May I inquire, your Honor.

23 A L E X A N D R O B A R T O L I, called as a
24 witness by the plaintiff, having been first duly sworn, was
25 examined and testified as follows:

1 MR. EDWARDS: Good morning.

2 THE COURT: If you feel comfortable, you may
3 remove your mask.

4 DIRECT EXAMINATION

5 BY MR. EDWARDS:

6 Q. Mr. Bartoli, are you currently employed?

7 A. Yes.

8 Q. Who are you currently working for?

9 A. Omni Present Investigations.

10 Q. What type of work do you do for Omni Present?

11 A. Private investigation surveillance.

12 Q. Do you do exclusively surveillance or do you do other
13 type of investigations?

14 A. Whatever they need they need me to do.

15 Q. How long you have you been with Omni Present?

16 A. 12 years.

17 Q. Before Omni Present who do you work for?

18 A. Police Department.

19 Q. What Police Department?

20 A. New York City Police Department.

21 Q. NYPD?

22 A. Yes.

23 Q. How long were you with the NYPD?

24 A. 12 years.

25 Q. Just in general what kind of work did you do with the

1 NYPD?

2 A. Narcotics drug work patrol.

3 Q. Did you when you worked -- so you were working for Omni
4 back in 2019?

5 A. Yes.

6 Q. Did you work at like as a contractor independent
7 contractor or were you a salaried employee of Omni?

8 A. No, like contractor.

9 Q. You were are you would get assignments?

10 A. Yes.

11 Q. From Omni?

12 A. Yes.

13 Q. How did you get your assignments?

14 A. They will come via text message or get phone call we
15 have a job. And you would get like pictures of persons who
16 you're looking for their address and all the pedigree they would
17 have. I would get it. And I would go out look for the person.

18 Q. Did there come a time in May of 2019 when you received
19 an assignment with regard to someone named Salih Karasu?

20 A. Yes.

21 Q. And when you received the assignment were you given as
22 you say the pedigree information a photo?

23 A. Yes.

24 Q. Were you given a location to start your surveillance?

25 A. Yes.

1 Q. And do you recall right now what that location was?

2 A. I don't recall.

3 Q. And but you did on May 26, 2019 did you conduct a
4 surveillance of a Salih Karasu?

5 A. Yes.

6 Q. When you conducted that surveillance did you actually
7 take video of Mr. Karasu?

8 A. Yes.

9 MR. EDWARDS: Judge, your Honor, may I approach
10 the witness.

11 THE COURT: Yes.

12 Q. Mr. Bartoli, I'm going to show you you could see video
13 and all right now I'm going to do once I hit play you're going
14 to just to have the watch the video?

15 A. Okay.

16 (Video playing).

17 Q. Mr. Bartoli, is what you just saw fairly and accurately
18 depict the video that you took of Mr. Karasu?

19 A. Yes.

20 MR. EDWARDS: Judge, I offer defendants exhibit E
21 into evidence.

22 MR. BURKE: Subject to the discussion previously
23 on the record no objection.

24 THE COURT: Mark it.

25 MR. EDWARDS: Judge, may I have permission to

1 publish this to the jury?

2 THE COURT: Yes.

3 MR. EDWARDS: Thank you.

4 (Video playing).

5 Q. Mr. Bartoli, your assignment that day was what was the
6 length of the assignment you were given 8 hours?

7 A. Usually 8 hours shifts.

8 Q. The video that you took is obviously less than 8 hours?

9 A. Right.

10 Q. If you did not observe what's the reason for that?

11 A. For the video.

12 Q. The large period of time when there is no video?

13 A. If you don't see anything there is nothing to really
14 video.

15 MR. EDWARDS: Thank you. I have no other
16 questions.

17 THE COURT: Mr. Burke.

18 CROSS-EXAMINATION BY

19 MR. BURKE:

20 Q. You started your day following Mr. Karasu you showed up
21 at his house at around 8 in the morning?

22 A. He would say.

23 Q. And you stayed with him until four in the afternoon?

24 A. Yes.

25 Q. We just saw about two minutes of video?

1 A. Yes.

2 Q. And just like you say you're not going to film unless
3 there is something to see?

4 A. Correct.

5 Q. So would it be fair to say then that there was really
6 nothing else to see other than Mr. Karasu's going into a
7 restaurant to get food?

8 A. Correct.

9 Q. Actually on that videotape we saw that when he came out
10 of the represent rant he didn't go straight to his car he went
11 to a bench and sat down for some period of time and then got up
12 again?

13 A. I didn't see that I'm sorry.

14 Q. I'd like to have something marked just for purpose of
15 identification?

16 MR. BURKE: I'm go to go show you one page let's
17 please mark just for identification.

18 COURT OFFICER: Plaintiffs 13 marked for
19 identification.

20 Q. As you're looking at it I'm just going to ask you do
21 you recognize that document does it refresh your recollection as
22 to a note that when Mr. Karasu came out of that restaurant he
23 sat down on the bench for a short period of time?

24 A. That I don't recall.

25 Q. But read that and does that refresh your recollection

1 look at 2:01 p.m.?

2 A. Okay.

3 Q. Does that --

4 A. Yes, yes, okay.

5 Q. And does it -- nothing else other than that between the
6 over the 8 hours on Sunday May 26th, 2019, we can agree you
7 didn't see anything that you thought was significant worth
8 capturing other than what was shown to you on the video today?

9 A. That's correct.

10 MR. BURKE: Thank you I have nothing else,

11 MR. EDWARDS: No redirect.

12 THE COURT: You may step down. Thank you.

13 Next witness.

14 COURT OFFICER: Witness entering.

15 (Witness enters the court room and takes the
16 witness stand.)

17 THE CLERK: Mr. Gottlieb, would you raise your
18 right hand please. Do you solemnly swear or affirm that
19 the testimony you are about to give in the case now on
20 trial will be the truth, the whole truth and nothing but
21 the truth so help you God.

22 THE WITNESS: Yes, I do.

23 THE CLERK: Could you please state and spell your
24 full name and address for the record.

25 THE WITNESS: Andrew A-N-D-R-E-W Michael

1 M-I-C-H-A-E-L, Gottlieb, G-O-T-T-L-I-E-B, 2323 Yorktown
2 Street, Ocean Side, New York 11572.

3 A N D R E W G O T T L I E B, called as a witness
4 by the plaintiff, having been first duly sworn, was
5 examined and testified as follows:

6 MR. EDWARDS: May I inquire.

7 DIRECT EXAMINATION BY

8 MR. EDWARDS:

9 Q. Mr. Gottlieb if you could try to as best you can keep
10 your voice up so everyone in the room can hear you?

11 A. Okay.

12 Q. Are you currently employed?

13 A. Yes.

14 Q. Who were you employed by?

15 A. Omni Present on and off.

16 Q. On assignment basis?

17 A. Correct.

18 Q. What's your educational background?

19 A. I have bachelors in history from SUNY Binghamton and
20 I'm currently getting my masters in social work from Stony
21 Brook.

22 Q. So while you're getting your masters in social work
23 you're doing occasional assignments for Omni Present?

24 A. Yes.

25 Q. How far along are you in your masters?

1 A. I have a year another year to go.

2 Q. For how long a period of time had you been doing work
3 for Omni Present?

4 A. On and off for the last five or six years.

5 Q. Have you done that and what's in general when you do
6 work for Omni Present, what type of work do you do for them?

7 A. Surveillance.

8 Q. How long have you been doing that?

9 A. Five or six years.

10 Q. When you started working with Omni Present, did you get
11 any training with regard to doing surveillance?

12 A. I did, yes, I surveilled I shadowed under someone for
13 about a week until I was allowed to go out on my first case
14 alone.

15 Q. In November of 2019 did you get an assignment from Omni
16 Present with regard to a Salih Karasu?

17 A. Yes.

18 Q. Now how would you in general how would you receive
19 assignments from Omni Present?

20 A. I would receive attention or phone call from someone
21 asking if I could work a certain day if I could then if I
22 confirmed then they it would send over the file.

23 Q. What would that include?

24 A. Person's name information address a picture if given or
25 received from someone else any information that would benefit me

1 in identifying the person.

2 Q. You got that information with regard to Mr. Karasu.

3 A. Yes.

4 Q. Were you did you get an assignment from Omni Present to
5 conduct surveillance on Mr. Karasu for November 192019?

6 A. Yes.

7 Q. Did you also get an assignment to conduct a
8 surveillance on November 21st 2019?

9 A. Yes, yes.

10 MR. EDWARDS: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes.

13 Q. Mr. Gottlieb, I'm going to show you just for you right
14 now did you make video surveillance of Mr. Karasu?

15 A. Yes.

16 Q. I'm going to just show you right now video I'm just
17 going to before I ask you any further questions I'm just going
18 to ask you to look at the video?

19 A. Okay.

20 Q. Mr. Gottlieb, does that video you just saw fairly and
21 accurately depict the video that you took of Salih Karasu on
22 November 19 and November 21 of 2019?

23 A. Yes.

24 MR. EDWARDS: I offer defendants F into evidence.

25 MR. BURKE: Subject to the same statement I made

1 prior to the start of witnesses this morning no objection.

2 MR. EDWARDS: Your Honor, may I publish this to
3 the jury.

4 THE COURT: Yes.

5 (Video playing).

6 Q. Mr. Gottlieb there are breaks in the video is that
7 because you didn't shoot any video?

8 A. No.

9 Q. It is not?

10 A. No, it's not.

11 Q. Did you pause the video at times?

12 A. No.

13 Q. Did you video all -- how long was your surveillance how
14 much time did you spend in hours on between the 19 and the 21?

15 A. 16.

16 Q. You didn't shoot did you shoot 16 hours worth of video?

17 A. No.

18 Q. You shot when you saw activity?

19 A. Yes.

20 MR. EDWARDS: I don't have any other questions.

21 Thank you.

22 MR. BURKE: Thank you.

23 CROSS-EXAMINATION BY

24 MR. BURKE:

25 Q. So you just watched the video that you filmed on

1 November 19, 2019 which was a Tuesday and then on November 21st
2 2009 which was a Thursday, right?

3 A. Yes.

4 Q. You arrived at the house at 6 approximately 6 in the
5 morning on November 19, 2019?

6 A. If that's what the time stamp said yes.

7 Q. And you discontinued surveillance at about five p.m.?

8 A. Yes.

9 Q. So that would be a total of 11 hours on the 19th?

10 A. Yes.

11 Q. And how many minutes of filming did you do on November
12 19 of 2019?

13 A. Whatever the report says.

14 Q. Well, I'm we just watched it would you agree that it
15 would have been five minutes or less?

16 A. Probably just about.

17 Q. So when you parked near by Mr. Karasu house I imagine
18 you didn't park directly in front of that you parked one or two
19 houses away?

20 A. Correct.

21 Q. That's but what you had been trained to do?

22 A. Yes.

23 Q. You had been trained to film any strenuous, vigorous
24 activity that would be inconsistent with what the person you're
25 following is saying correct?

1 A. Yes.

2 Q. They give you these assignments by text but then they
3 send you a file, correct?

4 A. Through text.

5 Q. So there is no paperwork?

6 A. No.

7 Q. In other words it's important for you to know, am I
8 following somebody who has a claim about a bad wrist or a bad
9 arm as opposed to somebody who has a bad leg, do they give you
10 even a general idea of the injury being claimed by the person
11 you're following?

12 A. Yes.

13 Q. So what did you do know about Mr. Karasu's case what
14 was his injury?

15 A. I would have to see the text message.

16 Q. And you don't have access to it right now?

17 A. No.

18 Q. But custom and practice if someone had a problem with
19 their knee versus the ankle as opposed to a wrist or maybe it's
20 a neck you would know what body part is the subject of the case,
21 correct?

22 A. First given that information, yes.

23 Q. And if somebody was saying that they couldn't walk
24 without a cane or crutches you would know that so that you would
25 know when to start videotaping someone right?

1 A. First given that information, yes.

2 Q. Right if someone's claim that I cannot walk without a
3 cane you would want to capture video of that person if they
4 weren't using a cane so you do show you were booing inconsistent
5 right?

6 A. Yes.

7 Q. So for example in the November 19 video the notes
8 indicate withdrawn? Do you know who James O is?

9 A. Yes.

10 Q. Who's James O?

11 A. The person who hired me father.

12 Q. He hired you at Omni?

13 A. Yes, not James Mike.

14 Q. What is it these are brothers?

15 A. No father and son.

16 Q. So there is a multi page report details of
17 investigation that James O prepared for what you did on November
18 19, 2019 correct?

19 A. Yes.

20 Q. That's standard practice?

21 A. Yes.

22 Q. So it indicates that your surveillance started at five
23 56 a.m. and you went you referred to Mr. Karasu's as little man
24 at 1701 Auburn Road in Wantagh, right?

25 A. Yes.

1 Q. You noticed that a waste management company apparently
2 came down the street of Auburn road and picked up garbage cans
3 that had garbage in them it was garbage pick up day correct?

4 A. I don't know I don't live around there.

5 Q. Okay but James O does it refresh your recollection if I
6 were to tell you that James O recorded that at 9:20 a.m. waste
7 management am collected trash in the area?

8 A. Yes.

9 Q. And would it refresh your recollection if I reminded
10 you that looking on the videotape on November 19, 2019 we know
11 that at 10 in the morning you have film of Mr. Karasu he picks
12 up the empty garbage can from the front of the house and he
13 bring it over to the side of the house correct?

14 A. I can't be 100 percent certain of your example.

15 Q. Does anybody in the neighborhood you live in bring a
16 full garbage can of trash from the front of the house to the
17 side of the house?

18 A. No.

19 Q. I'm going to ask that we have this page marked just
20 only for identification I'm going ask you to read it and I'm
21 going to ask you the same question again and ask you if it
22 refresh your recollection okay?

23 (Document is marked plaintiff's exhibit 14 for
24 identification).

25 COURT OFFICER: Document marked for identification

1 shown to the witness.

2 Q. I'm just asking that the question about the waste
3 management pick up?

4 A. Okay.

5 Q. Does that refresh your recollection as to the time
6 line?

7 A. Yes.

8 Q. So we know that at 9: 20 a.m. on November 19, 2019 the
9 garbage trucks came down that street and picked up the garbage
10 and then put the empty garbage cans back down in front of the
11 houses on that street right?

12 A. Yes 921, yes.

13 Q. No doubt about that so now we go from having full
14 garbage cans to empty cans by ten in the morning correct?

15 A. Yes.

16 Q. So that when we see on the video film Mr. Karasu easily
17 picking up a can of garbage it's an empty can and it's a plastic
18 garbage can true?

19 A. Yes.

20 Q. You flow that there is no claim in this case that
21 Mr. Karasu can't picket up an empty garbage can correct?

22 A. I wasn't given that so yes.

23 Q. You got a file but you don't remember what's in it
24 correct?

25 A. Correct.

1 Q. Are you involved in the billing by Omni to whoever they
2 send the bill to?

3 A. No.

4 Q. Who if you're working for Omni doing surveillance who
5 were Omni's clients?

6 MR. EDWARDS: Objection.

7 THE COURT: Overruled.

8 Q. Who is Omni working for?

9 A. I don't know.

10 Q. You don't even know who their clients are?

11 A. No.

12 Q. You're also trained that if somebody goes into a
13 business establishment sometimes you should just canvass the
14 business establishment and see what they are doing correct?

15 A. Yes.

16 Q. You did that with Mr. Karasu you wrote down he didn't
17 see any activity?

18 A. I didn't write it down, but when are we talking about?

19 Q. On November 19?

20 A. No. He exited the car and went into the building.

21 Q. Did you canvass the building?

22 A. A little bit, yes.

23 Q. A little bit what do you mean when you say you
24 canvassed a building that someone you're following goes into?

25 A. I couldn't canvass the whole building judge I offer so

1 I just followed him to the parking lot and recorded half of the
2 building.

3 Q. When you didn't see anything worth recording?

4 A. He got out of the car and went into the building.

5 Q. And went in the building?

6 A. I didn't see anything, no.

7 Q. So you didn't see anything that you thought was worth
8 videoing?

9 A. Correct.

10 Q. So can we agree that you didn't follow him on any other
11 days you haven't told us about it was just two days?

12 A. Correct.

13 Q. Just November 19 and just November 21st?

14 A. Yes.

15 Q. How about November 23rd of 2019?

16 A. No.

17 Q. And never again?

18 A. Correct.

19 Q. And never before November 19 did you ever follow him?

20 A. No, no.

21 Q. Do you ever coordinate with the other investigators or
22 people like yourself at Omni who go out on surveillance
23 assignments?

24 A. Only one person.

25 Q. Like do you know Mr. Keute who just testified here

1 earlier today?

2 A. No, no.

3 Q. Do you know Alex Bartoli who testified just before you?

4 A. I met him once or twice before.

5 Q. But you were never involved with Mr. Bartoli in terms
6 of surveillance activities?

7 A. No.

8 Q. Concerning my client?

9 A. No.

10 Q. So 11 hours on November 19 and we have let's say
11 approximately what five minutes of tape?

12 A. Yes.

13 Q. And five roughly I mean I could be off by a plain or
14 two but roughly five minutes on November 21st for total of maybe
15 10 minutes over those two days ballpark give or take two
16 minutes?

17 A. Yes.

18 Q. So on November 21st you started at 6:51 a.m. correct,
19 you could turn the page?

20 A. Yes.

21 Q. And your day you stopped surveillance at 3 p.m.

22 A. 3:15, yes.

23 Q. Okay so 3:15 from 10 to seven in the morning that's
24 approximately 8 and a half hours maybe 8 hours 20 minutes?

25 A. Yes.

1 Q. So actually you followed Mr. Karasu's or at least kept
2 track of his whereabouts for 19 hours and you only filmed 10
3 minutes correct because there was nothing else worthwhile
4 videoing correct?

5 A. Correct.

6 Q. You have to say yes?

7 A. Yes.

8 Q. And in all that time you didn't see Mr. Karasu running
9 or jogging correct?

10 A. Correct.

11 Q. You didn't see him climbing up and down ladders
12 correct?

13 A. Correct.

14 Q. You didn't see him buys cling or doing jumping jacks
15 correct?

16 A. Correct.

17 MR. BURKE: Okay. Thank you.

18 MR. EDWARDS: No redirect, your Honor.

19 THE COURT: All right. Thank you. You may step
20 down.

21 MR. EDWARDS: I don't have any other witnesses,
22 judge.

23 THE COURT: Okay well folks guess what you are
24 done for the day we don't we have one more witness
25 tomorrow. Sometimes we have schedule the witness's at

1 their convenience. I hope you don't mind but go home.
2 Have a nice day. Have a nice lunch. Think about coming
3 tomorrow. We'll have another witness for you. Right. So
4 you heard things today you did yesterday. Don't talk about
5 anything you have heard amongst yourselves or with anybody
6 else you go on have a nice day see you tomorrow 9:45.

7 Thank you for your attention.

8 (Matter is adjourned until March 16, 2022.)

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1 COURT OF THE STATE OF NEW YORK
2 COUNTY OF NASSAU : PART 15

3 - - - - - X

4 SALIH KARASU and ANA DE LUCCA KARASU,

Index No.
4428/16

5 Plaintiffs,

6 -against-

7 SECURITY AUTO SALES, INC., SECURITY
8 DCJR, INC., and 345 MERRICK ROAD, LLC,

9 Defendants.

10 - - - - - X

11 16th of March, 2022
12 Mineola, New York

13 B E F O R E : HONORABLE DICCIA PINEDA-KIRWAN

14 Justice and a Jury.

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

16 Plaintiffs:

17 RONALD BURKE, ESQ.
18 Kelner and Kelner
19 7 World Trade Center
20 250 Greenwich Street, Ste. 2700
21 New York, NY 10007

22 Defendants:

23 JAMES A. EDWARDS, ESQ.
24 Ahmuty, Demers & McManus
25 199 Waters Street, 16th Floor
New York, NY 10038

1 THE CLERK: All rise. The Nassau County Supreme
2 Court Trial. Term Part 15 is now in session. The
3 Honorable Diccia Pineda-Kirwan presiding. Be seated. Come
4 to order.

5 In the matter of index number 004428 of 2016.
6 Salih Karasu and Ana De Lucca Karasu against Security Auto
7 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road,
8 LLC.

9 MR. BURKE: Ronald Burke from Kelner and Kelner
10 for the plaintiff.

11 MR. EDWARDS: For the defendant, Security Auto
12 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road,
13 LLC, James Edwards Ahmuty, Demers & McManus.

14 THE COURT: All right. Here. You want to take a
15 look at it before we mark it. This is from yesterday.

16 MR. BURKE: Judge, I wanted to put on the record
17 the agreement the defense counsel and I have which is I
18 deleted from my proposed verdict sheet past medical
19 expenses because we have stipulated to add to the verdict
20 the workers compensation sum for medical expenses, but
21 discounted by one third. Which I anticipate the workers
22 comp carrier will extend to us.

23 MR. EDWARDS: So stipulated.

24 MR. BURKE: And so you do have my --

25 MR. EDWARDS: We did discuss that yesterday.

1 MR. BURKE: We had discussed it off the record,
2 but I just wanted to put it on the record.

3 So plaintiff's proposed verdict sheet that I have
4 submitted of March 15th is the current proposed verdict
5 sheet that we stand by.

6 THE COURT: So let's mark it.

7 MR. EDWARDS: And I handed a court the proposed
8 verdict sheet from the defendant dated March 15th also.

9 THE COURT: We'll mark it as Court's Exhibit VIII
10 and IX.

11 (Two documents Court's Exhibits VIII and IX).

12 THE COURT: Good morning, everybody. Thank you
13 for coming in. You may be seated. All right.

14 Mr. Edwards, you want to call your next witness?

15 MR. EDWARDS: Yes, thank you, defense calls
16 Dr. Eial Faierman.

17 THE CLERK: Please raise your right hand, do you
18 solemnly swear or affirm that the testimony you are about
19 to give now on trial will be the truth, the whole truth and
20 nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Could you please state and spell your
23 full name and address for the record.

24 THE WITNESS: E-I-A-L Faierman F-A-I-E-R-M-A-N
25 address 37-47 77th Street in Jackson Heights, New York,

1 11372.

2 E I A L F A I E R M A N, called as a witness by
3 the Plaintiff, having been first duly sworn, was examined
4 and testified as follows:

5 DIRECT EXAMINATION BY

6 MR. EDWARDS:

7 Q. Dr. Faierman, you are a medical doctor?

8 A. Yes.

9 Q. Do you specialize in a particular field of medicine?

10 A. I'm an orthopedic surgeon.

11 Q. Doctor, if you could, could you starting with, start
12 with college, could you give us your educational background
13 please?

14 A. So I went for one year to Hobart and William Smith
15 colleges in Geneva, New York. After that I transferred to
16 Brandeis University which is in Hawthorne Massachusetts. I
17 graduated BA in biology then I went to Mount Sinai Medical
18 school in Manhattan. I graduated with honors from medical
19 school. Then I went to orthopedic surgery residency. In
20 orthopedics you do one year internship in general surgery and
21 then four years of residency.

22 Now they make the internship six months, but it used to
23 be one year when I was do it. Orthopedic surgery has different
24 areas of specialties within orthopedic pediatric spine surgery,
25 hand surgery, shoulder and elbow, you know, trauma. All sorts

1 of different -- and you do all these surgeries during residency
2 for those five years. When I finished my five years I went to
3 Harvard in Boston where I did --

4 Q. Doctor, did you complete your residency?

5 A. Oh, yes, I'm sorry. I completed my residency at
6 Monmouth Medical Center in Jersey. After I finished those five
7 years, I moved on to as, I said, Harvard in Massachusetts. And
8 there I did a fellowship in upper extremity trauma. So the
9 shoulder, elbow, wrist and hands. And, you know, trauma work
10 level one trauma center where they have two helicopters. You're
11 on call every other night and, you know, basically up all night
12 operating all night on trauma on fractures of the humerus,
13 forearm, hand, shoulder.

14 Q. Doctor, are you board certified?

15 A. Yes, I'm board certified.

16 Q. Tell the jury what does it mean?

17 A. I'm board certified orthopedic surgery being board
18 certified there are two tests. First test is a written test and
19 that was taken when was doing my fellowship. I think at 11
20 percent. I'm sorry I'm confusing the two. There is a 30
21 percent failure rate and I passed that.

22 The second part is oral exam. You do surgery for two
23 years and they take the first year and a half of surgery and you
24 present your cases to several different orthopedic surgeons. I
25 think 11 percent fail that. I passed both tests.

1 Then every ten years you have to take another exam. I
2 have taken that exam twice. It's a recertification exam.
3 That's just a written exam. Again, I passed both those times.
4 So when you say you're board certified most academic centers if
5 you do teaching, you need to be board certified in your
6 specialty. You know, you don't need to be board certified, but
7 it's kind of a certification that allows you to do a lot more.

8 Q. Doctor, if you could, can you summarize your work
9 experience as a doctor in trauma setting?

10 A. So when I finished my fellowship, I came back to New
11 York. And I put out a shingle in Jackson Heights, New York. My
12 parents are from South America. So I grew up in a Spanish
13 household. That area is primarily Hispanic. I prefer I wanted
14 to see patient's who are Hispanic.

15 So then I treated these patients, but I operated, I do
16 my surgery, in Manhattan. I also so at the beginning I joined
17 Hospital for Joint Diseases. So there are two big orthopedic
18 hospitals in New York Hospital for Special Surgery and Hospital
19 for Joint Diseases where they're primarily orthopedic hospitals.

20 I worked there for several years. And then my wife and
21 I moved to Westchester. It was too far of a commute so I
22 switched to Mount Sinai in Manhattan where I work now. I'm
23 assistant professor at Mount Sinai. I teach present medical
24 students and fellows.

25 Q. Doctor, as part of your work at the hospital, you do

1 perform surgery, correct?

2 A. Yes.

3 Q. Go ahead.

4 A. So I initially opened a practice general orthopedics
5 which means I covered multiple emergency rooms and did trauma in
6 the emergency rooms. As the years go by, I don't like staying
7 up all night. So I stopped doing emergency room work, but I
8 would say seven or 8 years ago. I no longer go in in the middle
9 of the night. I no longer do that kind of fracture, acute
10 fracture. At this point I do general orthopedics. I do mostly
11 shoulder and knee surgery.

12 Q. All right. When you were working in trauma, did you
13 treat did you have an opportunity to treat ankle fractures?

14 A. Yes. It's a very common fracture, an ankle fracture.
15 Pilon fractures are only ten percent of ankle fractures, but I have
16 treated pilons. I have treated ankle fractures as I treated all
17 these patients in the emergency room. I have worked out of
18 several hospitals over the years.

19 Q. As part of your -- as part of your practice right now,
20 you have patients that you performed surgery on?

21 A. Yes.

22 Q. And could you tell me, do you also do follow-up care
23 for the patients you do surgery on?

24 A. Of course.

25 Q. Could you tell me a little about how that works?

1 A. So I see new patients in the office. They have problem
2 that needs surgery I do the surgery. After surgery they
3 follow-up in my office again. The follow-up continues until
4 they are at a plateau. Means they are not getting worse.
5 Obviously if they are getting worse and worse, we are to figure
6 out what to do. But if they are at a point where they are good,
7 excellent results or even if they are at a point fair results,
8 but they are not worsening at that point we discharge, I
9 discharge them from care. They certainly are told they can come
10 back if there is ever a change in their status.

11 Q. And, Doctor, before today have you ever testified in
12 court?

13 A. Yes.

14 Q. About how many times over the?

15 A. Somewhere between 50 and 60, I would have to guess.
16 Just based on two or three a year. Last three years I have done
17 one.

18 Q. Have you testified in court on behalf of plaintiffs
19 bringing lawsuits?

20 A. Yes, mostly for my own patients.

21 Q. For your own patients?

22 A. Right.

23 Q. Have you ever testified in case where I was the lawyer?

24 A. Not -- I don't think so, no.

25 Q. Have you ever testified in a case for my law firm and

1 Ahmuty, Demers and McManus?

2 A. Not that I know of, no.

3 MR. EDWARDS: I move to qualify the doctor as an
4 expert in orthopedic surgery.

5 MR. BURKE: No objection.

6 THE COURT: Okay.

7 Q. Now --

8 A. I don't know if I said I worked orthopedic surgeon for
9 24 years now.

10 Q. Now, Doctor, you have had have you had experience with
11 pilon ankle fractures?

12 A. Yes.

13 Q. Doctor, if you could, could you -- and if you have
14 anything that may assist you, could you just explain to the jury
15 what a pilon ankle fracture is?

16 A. Just give me one second. I don't have a great model.
17 So a joint is comprised of three main bones. The tibia bone,
18 fibula bone and the talus. The fibula bone actually doesn't see
19 any pressure. It's just there to keep everything lined up. The
20 tibia bone is where all the pressure. Tibiotalar joint it's a
21 hinge joint. It moves primarily in flexion, extension. Has
22 minimal motion in varus and valgus or in inversion and eversion,
23 twisting in and out. The arc of motion based on the AMA
24 guidelines is 20 degrees, you can go up. And 40 degrees, you
25 can go down.

1 Now that varies based on people. People can have
2 different ranges of motion based on their own anatomy. It
3 varies based on measuring. So different doctors have different
4 what we call intraobserver and interobserver reliabilities.
5 Meaning, one doctor may see a little bit more. One doctor may
6 see a little bit less. But based on the American Medical
7 Association normal motion is 20 degrees of dorsiflexion and 40
8 degrees of plantar flexion.

9 So in this case when you have a pilon fracture, what is
10 a pilon fracture? A pilon fracture is a fracture that goes into
11 the joint in the tibia. Now ankle fractures also go into the
12 joint, but a pilon fracture goes into the weight bearing portion
13 of the joint.

14 There is a classification for ankle fractures. I do
15 this with every fracture. The American Orthopedic Association.
16 American Trauma Association both put out a classification system
17 for distal tibial fractures. Meaning fractures at the bottom of
18 the ankle and the ankle basically.

19 And these fractures can be extra articular which would
20 be a classification of A. They could be partial articular which
21 is classification of B, like this fracture. Or they could be
22 fully articular which is a C. The reason I say partial is
23 because partial means that the whole shin down to the ankle,
24 there is still a piece of bone attached. Meaning, you can crack
25 this piece off like this, that will be a partial.

1 A full, type C, would be where you fracture this way
2 and then split it down the middle. So there are three free
3 floating fragments. Okay.

4 So based classification A, B, C, C is the worst. B is
5 the middle. A is the least. Although A is not really a pilon
6 fracture it's an extra articular tibial fracture because it
7 doesn't hold a joint.

8 Then they also have after that classification of A, B
9 and C, they have one, two and three. One is zero comminution
10 just a crack. Least problem. Two is a mild to moderate
11 comminution. Meaning, little pieces. And three the C is most
12 comminution. So a three C is the worst kind of fracture you
13 could have in a pilon fracture.

14 If I have to when I look at the chart this fracture is
15 more like two B. Meaning two could be partially articular. And
16 B because it's also partially comminuted. Meaning some pieces.

17 Do you want me to go specifically into this one?

18 Q. I will ask you, no, we'll get there.

19 A. So obviously fracture an ankle has on to top of it,
20 this little model doesn't have it, you have ligaments and
21 ligaments connect bone to bone to keep everything stable. So
22 this bone even though it was cracked, it was very stable. It
23 held the whole thing stable in this case. So it had a crack.
24 You can barely saw in the first image. And they didn't fix it.
25 Why didn't they fix it because it was very stable. If it was

1 shattered in pieces, this bone, they it would have fixed it with
2 a plate and screws. And about half of them get fixed on fibula
3 as well. But in this case they did decided not to fix the
4 fibula, this bone. And they just fixed the tibia.

5 So ligaments connect bone to bone and then there is
6 tendons or muscle. It's really the same thing. Muscle is the
7 red part. The tendon is the band. And tendons, or muscles, let
8 you move the ankle. They lift up the ankle and push down. And
9 so there are tendons, multiple tendons here that lift up the
10 ankle because it holds lifting it up.

11 There are tendons that go around the bottom that push
12 it down. They go around these sides like this and push the, you
13 know, plantar. And in this case there were no muscular
14 problems. Dr. Helfet says full strength in all the muscles. He
15 has normal gait. There is no problem with muscles.

16 Q. Doctor, let me ask you a question, you do as part of
17 your practice can you read x-rays?

18 A. Yes.

19 Q. Is that standard part of your -- what role do x-rays
20 play in your assessment of treatment of a patient with a
21 fracture?

22 A. Very important especially in a fracture. You want to
23 know which fracture needs to be fixed which needs catscans and
24 what kind of treatment they need. So some fracture are higher
25 energy are also going to portend a poor result. And some

1 fractures are lower energy and portend a great result. Again,
2 this is somewhere in the middle.

3 Q. All right. Now, Doctor, did there come a time when my
4 office asked you to review the records and examine Salih Karasu?

5 A. Yes.

6 Q. As part of that, did you review the records from Good
7 Samaritan Hospital?

8 A. I did.

9 Q. Now doctor, before we -- were there films taken at Good
10 Samaritan Hospital?

11 A. There were multiple x-rays and CT scans taken of the
12 right ankle.

13 Q. Now before I ask you about the films, just in general,
14 based upon -- just in general terms based upon your review of
15 the records from Good Samaritan Hospital, what did you learn
16 about the injury that was sustained by Mr. Karasu?

17 A. So several things about the fracture. First of all,
18 fractures can be open or closed. An open fracture means both
19 exposed or the skin is open pointed. It's much more serious
20 because you risk an infection. An infection ruins everything.

21 But in this case it was closed. There was no opening
22 of the skin. There was no requirement to treat that. Also open
23 injuries tend to have higher energy and have more ligamentous
24 pathology. Ligaments are torn when you when bone pops out of
25 the skin it tears all the ligaments to get out of the skin.

1 Sorry. I don't mean to, but it's this was not an open fracture.
2 So the second thing from the hospital the initial -- if you just
3 ask me about the reports the first x-ray report --

4 Q. Would it help if you looked at the x-rays, Doctor?

5 A. It would be, but I can just state that the -- well, let
6 me look at the x-ray let's just go over there. That's probably
7 the best. Should I come up there?

8 Q. Sure. Doctor, if it helps you at all, if it helps you,
9 the x-rays are listed by date hereby sequence?

10 A. This picture is a little deceiving. This shows tiny
11 little crack in the front, but you need to look at all the
12 views. This is a lateral view. You're looking at the side.
13 The main thing this tells us is that there is a fracture in the
14 front. There is a piece in the front here. That's all that
15 really tells you, but I need the other view.

16 MR. BURKE: Just for the record, could we have the
17 dates.

18 Q. I'm sorry, yes, doctor, if you could when you mention
19 the x-ray, could you identify the date of the x-ray so it's
20 clear on the record?

21 A. This is the AP view from 3/26/15 anterior posteriorly
22 which means you're looking at it from the front. And again, you
23 know, this is you can barely see that there is a slight collapse
24 in the joint surface. This is that front piece that front piece
25 you saw on the other view. It's impacted. In fact that's what

1 the radiologist called it impacted.

2 This you can barely see the fracture. It was tiny
3 little crack right there. That's what actually radiologist said
4 we don't what if it's fractured. That's why we need a CAT scan
5 to see, but her first note was possible fracture here.
6 Otherwise the joint surface -- look at the joint surface, it
7 looks pretty good. Meaning, it's lined up pretty good. You
8 know, when we're talking about high energy injuries very often
9 the fracture that's here, teeny little fracture here too could
10 be completely off.

11 None of these bones are separated. On the other view
12 you have a little separation of the front, but there is actually
13 this is, you know, again compared to other fractures, there are
14 fractures, again, type three Cs for instance, C three -- I'm
15 sorry, shattered. Everything would be little pieces. But you
16 are seeing that there is this area here there is fracture. You
17 see there is a line here a little bit. Just shows that there is
18 a little bit of comminution.

19 She actually first radiology report doesn't say
20 anything about comminution. She doesn't see comminution. If
21 you look carefully there is a little bit. If you look at this
22 x-ray there is a little bit of pieces. That's why I said it's
23 not -- remember I said, it's B one is very little almost no
24 comminution. It's not B one, but there is comminution. It's B
25 two comminution means little pieces. And the more comminution

1 if it's shattered in many, many pieces there is nothing left of
2 the joint line, those are the ones that go on to having terrible
3 problems. So open fracture, bad. Highly comminuted bad.
4 Displaced very displaced open in pieces bad.

5 This has a lot of good features and you after you look
6 at the CAT scan there is impaction. Again it's intra articular
7 it does involve the joint. As I said it's in the middle if
8 you're counting extraarticular. It looks if you're counting
9 pilons it's one of the better pilons. It's not as bad.

10 Q. I'm going to scroll if you need a particular x-ray I
11 can just move it.

12 A. It's the same. This is a varus view trying to see the
13 whole joint all the way around. You can see the whole joint no
14 pieces sticking out, no pieces sticking out. These are the
15 three views and they are lined up quite well. On this view
16 though you can see that part that goes from the -- now this is
17 better to see it more the view it's the same as AP, but slightly
18 turned in. So you you're looking right down the joint. And on
19 this one you can see when you look at this there is you could
20 see there is a crack right here from here.

21 MR. BURKE: Could we get date on this film?

22 A. I'm sorry, the date of the film is 3/26/2015. All
23 these are presurgery. This does show crack that goes into the
24 medial inside. It shows the crack that goes from all the way
25 down to the joint, but again almost nondisplaced. It's not

1 shifted. So the only real shifting part of this is slight
2 anterior fragment is shifted slightly anterior. That's that
3 piece slightly.

4 Q. Would you like me to scroll?

5 A. Yes, keep going. This is intraocular. These are
6 called fluoroscopic views. We have an x-ray in the operating
7 room. You see that anterior piece. Three pieces in the front.
8 Looking from the side. This is on date 3/27/15. It's when they
9 were doing the external fixation. They put pins above here and
10 below to distract it a little bit and keep it that way because
11 you're not supposed to -- if there is significant swelling --
12 and the way you decide very simple you push the skin together if
13 it wrinkles you can operate right away, you don't need to do
14 this, but if it doesn't wrinkle you're worried that it's going
15 to swell a lot. And if you cut through a swollen ankle you end
16 whole thing opens up later. You get infected. All sorts of
17 problems that are terrible.

18 So most fractures of this type end up with fixators
19 first because of the swelling. And then so I should also
20 explain swelling can go down anywhere from two weeks to two
21 months. Some people that swelling just doesn't go down. So the
22 other reason for this external fixator is get give some
23 alignment. If you don't do anything just put it in the cast or
24 splint, overtime it will just collapse. And let's say it heals
25 that way, you know, that's big problems.

1 In this case it took two weeks. The swelling went down
2 and they could operate. In two weeks you don't get any real
3 healing. You could easily go in there lift up the fragment.
4 You get a little bit of scar, but no actual healing. There no
5 callus. Callus is immature bone. That happens at about 6 to 8
6 weeks when you're not -- when you don't operate.

7 When you do operate, you don't get callus because
8 you're scraping the blood supply, but when you don't operate,
9 you put somebody in a cast. If we just put it in the cast or
10 left it like this without actually going in, you would end up
11 with a lot of big immature bone that would later get remodeled
12 into a normal bone. This is kind of useless. Just very badly.
13 This is part of the a CAT scan but again very --

14 Q. Please remember tell us the date.

15 A. This is date is 3/27/15. And it looks to me like this
16 is part of a scat can. And you can better see the scans are
17 three dimensional x-rays. They can do three dimensional either
18 way they are three dimensionally. Either slice your ankle like
19 this like an x-ray at multiple views or like this multiple views
20 or they can reconstruct into a three D model. But either way
21 the point this view which is again AP view from the front,
22 you're seeing the fracture here and here.

23 This is the spot here to tell you which numbers where
24 you can find the different views. So this is not actually, you
25 know, this is just -- this is not view the radiologist would

1 look at right away. This is just tells me in they want to find
2 they look at this area here, they will look at that line 89 or
3 90. And they will find that little fracture on the other films.

4 Same thing. That little piece in the front. Keep
5 going. Keep going. Again these you have seen already this is
6 just two pins in the tibia up here. This is up una planer one
7 plane external fixator. They make ring external fixators that
8 is depending on the treatment some people have a big ring around
9 them with pins all over the place. They -- reduce and they
10 never operate. They never open it up. They operate, they don't
11 open it up. They use uniplaner for just to prevent gets
12 swelling down so you can operate.

13 Same thing. Pins in the foot. Same thing. And again
14 same thing. Keep going. This is all -- let me see now. Again
15 this is after the external fixator is put on. These are like
16 clamps all over the place. And there's pins sticking into the
17 bone here and the bone up there showing reduction showing that
18 they are holding down to length that this piece is sitting
19 there. It's adequate alignment. So let it wait for two weeks.

20 These are all the same thing all part of the surgery.
21 With the external fixator they just take multiple -- oh back up.

22 From x-ray this is 4/15/15. Now surgeon's very good
23 surgeon. He did a great job Acampa. Here's a piece of the
24 broken bone. You see how nicely lined up that is. And here's a
25 piece there is a plate in the front. And the plate holds that

1 front piece. You remember that front piece that was sticking
2 out a little bit, that plate is trying to push it back, you
3 know, push it back.

4 I should say, in this case they did an arthrotomy
5 arthro means joint otomy means cut. They cut into the joint to
6 make sure that when they reduced this fracture that that
7 cartilage was perfect. That when you line up the fracture, when
8 you take the bone, you take clamps close the bone together, look
9 through from the inside while from the inside while it's doing
10 it, cartilage is clear. You don't see cartilage on an x-ray.
11 You see bone.

12 So in fractures that have are involving the joint you
13 want to open up the joint look inside to make sure that you fix
14 it perfectly before we put pins first, before you put that plate
15 and compress it, but final job very good. They put a plate.
16 And they put multiple screws, multiple screws for that little
17 piece.

18 And these have this plate has screws going into this
19 screws above which is normal part of the ankle to hold it there.
20 And screws below to hold that front piece lined up so the joint
21 stays smooth.

22 Now if you do a bad job, you will have a big step off.
23 And that again that's a problem that will cause a lot of problem
24 because it will rub badly. Because that's the idea of opening
25 the joint so you see joint is line up well.

1 Q. Doctor, did this show joint being lined up well?

2 A. Yes, excellent. Again this is the alignment of the
3 joint right here. It looks good. But it was minimally
4 displaced to begin with. So as much as I like the surgeon it
5 was already pretty good to begin with then he made it perfect by
6 looking inside. Go to the next one. No back up.

7 This is the lateral view. The side view. Remember
8 main thing is you have one front view, one side view and on the
9 side view, again, you could see good joint space right here. A
10 little bit decrease, but a good joint space. Again, nothing
11 terrible. And here's all those screws I told you put in the
12 bottom of the plate. And then these screws will the normal part
13 of the tibia these screws -- the fracture in the front here he's
14 compressing this fracture.

15 Q. You have date on?

16 A. 4/15/15 same intra operative operative fluoral view of
17 surgery.

18 Q. Doctor, if you could try to reference the date before
19 you mentioned, any before you talk about any film?

20 A. This is later 4/15. This is not a fluoral view same
21 date, but afterwards they took a regular x-ray to make sure it
22 looks good. Same.

23 Q. How does it appear then?

24 A. Appears good. Same exact as the fluoral view looks
25 good too. Again here same exact date 4/15/15. And you still

1 don't -- this is an x-ray lateral view and you still don't see
2 that piece coming forward. Remember that piece was sticking
3 forward. He pushed it back with this plate.

4 So then, I mean, we can skip a lot of these. This just
5 because this is just the healing and there was no displacement,
6 no bone, screws none of the fractures, you know, sometimes when
7 you did fracture work, it's a race between bone healing which is
8 alive and metal plates and screws breaking.

9 If you're unhealthy and you're not going to heal, the
10 bone the plates break. So nothing moved or is broken on these
11 screws or plates. The bone healed before anything happened to
12 the plate. And then the plate sees no force. If you fix a bone
13 with the plate and screws after the bone heals that plate that
14 -- that plate could stay in forever. Only reason we take them
15 some time people say it bothers them plate bothers them, but
16 only 25 percent of people remove plates. 75 percent of the
17 people leave plates and screws in their whole life.

18 Q. Doctor, if film that is on the screen right now is from
19 what date?

20 A. So Dr. Acampa's got it 5/21/15. And, again, it shows
21 early healing. The joint -- the main thing you have to look is
22 the joint and again they didn't put a plate on this bone on the
23 fibula, but this plate looks good. Here's normal view. And
24 everything looks lined up well. You know, they did a good job.

25 We should go to the last one. There is no point to see

1 this over and over again. Just give me last x-ray most recent.
2 Okay. That's beautiful. This is date --

3 Q. Reference the date, Doctor.

4 A. This date is 12B 4/18. Okay. Now the plate bothered
5 him. So they took out the plate. And then they took out the
6 plate. If you read that second operative report they had
7 difficulty getting these screws out. He healed so well that the
8 screws got locked in there. They couldn't unscrew them.
9 Sometimes when you try unscrew it the piece doesn't go or the
10 head of the screw breaks. And they have to use what's called a
11 miter that's a big metal drill that basically cuts off the heads
12 of all the screws and they left the rest of the screw in the
13 bone.

14 Which again as I told, it's not problem. Only reason
15 we take out plates and screws is because they are hard and they
16 bother people's tendons. If I have a plate where my tendons are
17 rubbing over that bothers me. So they took out that plate, but
18 especially because they cut off all the screw heads, those
19 screws are inside the bone. They did a little bit they tried to
20 actually drill a little bit of the bone. They left them in. So
21 I see a little bit bony holes teeny little holes.

22 Basically these screws are inside the bone and they
23 will never -- they will stay there forever. You will never see
24 a problem from that. One more thing that's more important. So
25 on this view here here is the mortise view I told you. The

1 point is you could see the joint beautifully. All you along
2 here. There is little bit of joint space narrowing. It's
3 mainly in the front.

4 Now the question is I honestly don't know, the question
5 is this tiny thing a little spur or is that that front little
6 piece that shifted a little bit and healed that way. There is
7 no way for me to know.

8 Dr. Helfet that he saw later who is probably most
9 famous trauma surgeon, again he didn't see the original x-ray,
10 he didn't realize that could also be tiny little piece of that
11 bone. But looks like very mild arthritis. Joint space is
12 really nice. That cartilage in there is all that joint space is
13 really nice here.

14 Q. Are you done with the x-rays, Doctor?

15 A. Yes.

16 Q. Doctor, on at that last x-ray when you referenced the
17 cartilage and the joint space what's the significance of that as
18 far as prognosis for the --

19 A. So keeping the joint lined up and keeping the cartilage
20 -- so let's say the two pieces of bone two pieces of bone you're
21 putting together the cartilage has to line up too. Otherwise if
22 the cartilage doesn't line up -- of it lines up like this you
23 can have a step off. And if you keep doing this on a step off
24 you're going to ware away that cartilage, but in this case they
25 lined everything up perfectly because they looked in the joint.

1 And then they and then over time you can develop mild arthritis
2 with all these fractures, but, again, in this case, it's very
3 mild. And, you know, the last x-ray was 2018. He hadn't had an
4 x-ray in four years.

5 You know based on the range of motion Dr. Acampa, the
6 fact that the x-ray that I'm seeing here, he may slowly develop
7 arthritis, but I think it will take 30 or 40 years. I don't
8 think he'll have any surgery. There are multiple studies
9 showing these kind of fractures tend not to have surgery.
10 Fusions and things likes that, but fusion there is generally
11 five or ten percent of the pilon fractures and very high energy
12 fracture, but it's a subjective thing.

13 The problem just told you with a fusion is fusion means
14 you've worn away the cartilage so badly there is no joint space
15 left. It's bone on bone. You're barely moving anyway. So what
16 we do is we take the bones on both sides we take out whatever
17 cartilage is left, almost nothing, we put screws across it and
18 make it one bone. So that you leave it in a position you will
19 never move it again.

20 And so the kind of people who did that already have no
21 motion. Nobody's going to say I have this great motion, again,
22 which is documented on multiple doctors, very good motion, you
23 know, I have this great motion, but I'm going to get rid of my
24 motion because after I walk for 15, 30 minutes it hurts. No
25 ones going to do that.

1 So the question really question I think here in case
2 what's going to happen in 20 or 30 years, I don't believe this
3 patient will ever need fusion.

4 Q. Doctor, take step back for a second. When you say bone
5 on bone on what you saw from the most recent x-ray taken, is
6 there any bone on bone in that ankle?

7 A. Not at all.

8 Q. Now, Doctor, just for right now you reviewed
9 Dr. Helfet's -- you mentioned Dr. Helfet?

10 A. Yes, I did review it.

11 Q. You reviewed that and he saw Dr. Helfet back in 2016?

12 A. Yes.

13 Q. Did Dr. Helfet test the range of motion?

14 A. He did.

15 Q. What did Dr. Helfet find on range of motion?

16 A. He found Mr. Karasu had five degrees of dorsiflexion.
17 Dorsiflexion means this is neutral, neutral and it goes up.
18 Okay. Most people have about 20. I measured should mine
19 yesterday mine is 15. But I told it's not exact. Some people
20 have slightly different motions. So you should always check the
21 other side. So Dr. Helfet found 15 degrees on the other side of
22 dorsiflexion which it was for Dr. Helfet's measurement and every
23 doctor can measure little different, but for Dr. Helfet normal
24 was 15 degrees of dorsiflexion. And he found five degrees on
25 the right. And then plantar flexion pushing down -- down is

1 again as the amount AMA guidelines say 40 degrees. It could be
2 50 it could be 30 slight differences. Dr. Helfet found that the
3 patient had 40 degrees on both sides. So there was no
4 limitation in plantar flexion. Pushing it down.

5 Q. And Dr. Helfet did not recommend a fusion?

6 A. He did not recommend a fusion. It's weird because it
7 says patient was sent to him by someone because he told
8 Dr. Helfet that he was told he needs a fusion and I couldn't
9 find anybody who sent him for a fusion to Dr. Helfet.

10 Q. Okay.

11 A. I don't know.

12 Q. Now Doctor, did Dr. Helfet test any of the muscles
13 around the ankle?

14 A. He did.

15 Q. What were his findings on that?

16 A. So he puts the initials of the muscles. Anterior tibia
17 has x-rays AT. Extension or halluses longus extensor halluses
18 different initials. He said that all the muscle strength
19 gastrocsoleus this main muscle down here all the strength was
20 normal.

21 Q. Doctor, you actually examined Mr. Karasu, correct?

22 A. Yes.

23 Q. And when was that doctor?

24 A. February 10, 2018.

25 Q. As of February 10, 2018 which is just shy of three

1 years since his accident, correct?

2 A. Yes.

3 Q. Now up to that time based upon your review of the
4 record up to that time that you saw him, was there anything
5 unusual about his course of treatment or his healing?

6 A. So should I go each thing that happened. So I went
7 initially had external fixator like we talked about. He
8 switched out in two weeks to internal fixation. He removed the
9 plate, but after he removed the plate, he had little bit of
10 wound -- sound like dehiscence, a little eschar over the wound
11 that they cleaned up. Then it healed fine. That's only thing I
12 could think of that would be slight delay in healing.

13 Q. All right. Now, Doctor, did you did conduct an
14 examination of Mr. Karasu?

15 A. Yes, I did.

16 Q. If you could, Doctor, could you just tell me what your
17 examination entailed?

18 A. I'm so sorry. I just forgot one last thing on that
19 removal of hardware. I think it was after that he did develop a
20 little numbness between the great and second toe. So I just to
21 make sure so he has sensory probably some scarring or tiny
22 little nerves that were cut to be able to get the plate out. So
23 he has little bit of numbness in between the first toe on the
24 top.

25 Q. Doctor, could you tell me a little bit about your

1 examination of Mr. Karasu just shy of three years following his
2 accident at that point?

3 A. So my office has a long hallway. I leave the door
4 open. I called Mr. Karasu and when they walk towards me I watch
5 their gait. That's first thing I watch to see if they are
6 limping. An altered gait is when you limp. People have broken
7 ankle any kind of broken ankle if they are limping it hurts. So
8 when they put the foot in stance phase, there are different
9 phases, when you put your leg down and it hurts, so you lift it
10 up quickly.

11 So you do this kind of thing you're walking you go you
12 do that he wasn't doing this. Second thing is some people have
13 really bad cases most common gait in ankle fractures for
14 antalgic gait is to walk on the side of their leg like this
15 because that's -- you're trying to keep the foot off the ground.

16 And, again, those are kinds of things that you find
17 with antalgic gait or limp. Another word for antalgic gait for
18 limp. There was no difference. He wasn't using any cane. He
19 had a normal gait.

20 Q. Doctor, before you actually encountered Mr. Karasu your
21 examination starts when you were observing him walking in?

22 A. Correct.

23 Q. So you then actually you did conduct a physical
24 examination?

25 A. Yes.

1 Q. Was Mr. Karasu with anybody while he was there?

2 A. Yes, he was with his attorney. I don't think it's this
3 attorney, but it was another attorney.

4 Q. If you could just tell me a little bit about your
5 actual physical examination?

6 A. Yes, so first thing I checked was sensation. So I
7 touched both sides, you know. Again, when you examine ankle you
8 look at both sides. You want to compare both sides. Take off
9 both shoes. Both socks. You compare both sides for sensation.
10 He did have decreased sensation in the great toe to light touch.
11 Look at the scar. Measure the scar. It was 13 centimeters.
12 There was no signs of infection meaning no redness. No pus.
13 Everything looked good. There is mild tenderness over inside of
14 the scar on the scar. Patient have tender scars not unusual.
15 It doesn't usually cause a probably because you're not usually
16 touching your scar.

17 And there was no tenderness in the fibula. In the
18 outside bone there was as I told you tiny crack. There were no
19 scars over the fibula because he didn't have surgery over the
20 fibula over that bone. There was mild medial swelling mild
21 where he had that fracture here. And they put screws in here.
22 Hold lined up. He had some swelling over here. It says mild
23 and it's very consistent with all his doctors who say mild, mild
24 to medium swelling.

25 There was no swelling otherwise throughout the ankle

1 joint. It was just a little bit over where they put the screws.
2 But the ankle joint did not show any swelling which is another
3 word for sayings no diffusion, no buildup of fluid.

4 So when you have arthritis or very often you will have
5 a lot of swelling in the ankle. And in the joint you will have
6 a lot of swelling. And have because of that you will have a
7 limited motion because there is a lot of fluid in the joint.

8 There was no real tenderness when I touched the bones.
9 So the scar was slightly tender inside but the bone inside when
10 you touched on other side it was not tender. There was limited
11 motion. There was no -- for me, and, again, Dr. Helfet found
12 five degrees more, but I got neutral didn't go higher than five
13 degrees. And I got a full plantar flexion just like Dr. Helfet.

14 Again, Dr. Acampa found five degrees with the
15 goniometer. Five degrees is little. That they both got it --
16 got it maybe I missed that five degree dorsiflexion. I can show
17 you a goniometer. This is not the one I use in the office
18 because it's a little small, but I thought I would bring just to
19 give you an idea of what gets done.

20 When you're measuring range of motion on an ankle you
21 need to make sure the knee is bent because the muscle hamstrings
22 muscle they go from here to here. So they go all the way passed
23 the two joints. So if you try to do this and go up you're not
24 going to go as much as if you do this. Okay. So you need to
25 make sure it's knee is bent. Then this is goniometer. You

1 place this you ask the patient to lift up as much as they can.
2 You put down shaft or tibia like this. And you put this in the
3 middle and you try to put it line up with the foot like that.
4 And then you look at it. It has measurements right over here.

5 It gives you some idea of the motion. Honestly small
6 differences between doctors, like I said, I make a joke about
7 five degrees you can barely see five degrees on this. What they
8 are trying to see, they see a little bit lifting up slightly,
9 but whether there is 0 or 10, it's not that important. The
10 point he's able to fully go down and they are equal on both
11 sides.

12 I think Dr. Acampa found 30 degrees like Helfet found
13 40. I found 40. Again, all other motions have very similar
14 dorsiflexion. Dr. Acampa and Dr. Helfet found five degrees up.
15 I found zero.

16 Q. They found more than you?

17 A. They found more than I did.

18 Q. On the plantar flexion?

19 A. I found 40 so did Dr. Helfet. But and Dr. Acampa found
20 35. When I say 35 in the last like 8 visits his motion is about
21 that. I can't be exact but more than five visits his last five
22 motions are exactly the same. 35 degrees plantar flexion and
23 five degrees dorsiflexion.

24 Q. You looked at the both the right and left?

25 A. Yes, it's important to do that so you get an idea that

1 they are what the differences in motion.

2 Q. So if he's not 40 degrees on the left on ankle that had
3 no trauma, you telling me is it fair to say 40 degrees is sort
4 of his normal?

5 A. Yes.

6 Q. Doctor, at the time you examined him in February of
7 2018, did you have an opinion, did you form an opinion as to
8 whether at that point as of 2018, did you form an opinion with
9 regard to an any future course of treatment for Mr. Karasu?

10 A. I didn't think that anything else was necessary.
11 Obviously he does have pain even on prolonged walking and
12 prolonged standing which is consistent with this kind of
13 problem. I don't think he's going to be doing construction work
14 anymore. But at this point he's platued. His own doctor last
15 five or six visits there is no change in the examination at all.
16 Not one bit of change. So on top of which I happen to look at
17 that video of him moving that lawn mower --

18 MR. BURKE: Objection.

19 THE COURT: Sustained.

20 A. So the point is he's doing very well in my opinion.
21 And on this point I didn't think he would need anymore
22 treatment. I didn't think he would need anymore surgery. Again
23 in 20 years he might need some pills if it hurts. Some Motrin,
24 Advil, but I don't think there is anything else that's going do
25 happen in this case. I think as I told you orthopedic surgeons

1 when something's platued we discharge the patient. And tell
2 them you're welcome to back if there is a problem. And he
3 hasn't come back in about two years.

4 Q. Doctor, just so I know that opinion, you know, that
5 opinion right is within a degree of medical certainty?

6 A. Yes.

7 Q. You gave some other opinions, you gave some other
8 comments during your testimony, anything that you said it was
9 everything you said medically within a reasonable degree of
10 medical certainty?

11 A. Yes.

12 Q. Doctor, I want to ask you a question about in reviewing
13 your records in reviewing Mr. Karasu's treatment, what is the
14 role of the physiatrist, of a physiatrist with regard to
15 treatment of an injury like this?

16 A. Physiatrist usually don't see these kind of problems
17 unless you're referring to therapy center. So they are seeing
18 it beforehand. So they are recommending which kind of therapy.
19 Physiatry do EMG they do mostly neck and back. Check the nerve
20 of the neck and back. They give shots to the neck and the back.
21 They do, you know, they give pain medication. They give
22 therapy. That's what a physiatrist does. But just like in this
23 case Dr. Acampa never sent him to any physiatrist. Dr. Helfet
24 never sent him to any physiatrist. And in my case when I treat
25 these kinds of patients after you I do my surgery, I continue

1 until they plateau. And that's it. But if they need, if they
2 have problem they can always come back and see me. But
3 physiatrist generally doesn't treat these kinds of problems.
4 They come are right from the emergency room to the orthopedist
5 and orthopedist is in charge of musculo skeletal diseases.
6 That's -- we're the primary care physicians for musculo skeletal
7 diseases. So we're happy to treat patients. I have patients
8 that are with me for 24 years since my first year in practice.
9 So I'm happy to treat them if they need it, but in this case I
10 guess there was no further treatment needed I agree with
11 Dr. Acampa.

12 Q. Doctor, do you have an opinion with regard to whether
13 based upon your examination your review and your review of the
14 records to date, did you, Doctor, did you have an opportunity to
15 review Dr. Acampa's records through the conclusion of his
16 treatment?

17 A. Yes.

18 Q. Doctor, do you have an opinion as to whether it's
19 medically, Mr. Karasu needs to see a physiatrist for future
20 treatment?

21 A. No.

22 MR. BURKE: Objection. Just asked and answered.

23 THE COURT: Sustained.

24 Q. Doctor, Mr. Karasu had a course of physical therapy
25 during his healing process, fair to say?

1 A. Yes.

2 Q. Is that normal?

3 A. Absolutely, normal, yes.

4 Q. I want you doctor to assume that he has not had any
5 physical therapy since 2018 last three years?

6 A. Okay.

7 Q. In your opinion is there a need for him to have
8 continuing and ongoing physical therapy treatments into the
9 future?

10 A. No.

11 THE COURT: Counsel, hold on one second.

12 Q. Now with regard to future treatment by his orthopedic
13 surgeon you may have answered it, but just if he feels the need
14 he can go otherwise, no?

15 A. Absolutely, yes. I just want to say an orthopedic
16 surgeon can treat him if he ever wants with injections. Which
17 he tried only going for two weeks. He can treat him with more
18 surgery or he can treat him by sending him to therapy. So,
19 again, that's the options you have, but right now he's platued
20 and unless something changes, I don't believe he'll need to see
21 an orthopedic surgeon.

22 Q. Doctor, in your review of his course of treatment
23 through the conclusion with Dr. Helfet, was there any change or
24 any change in his treatment over the last, let's say, the last
25 couple of years of his treatment?

1 A. With Dr. Who?

2 Q. Acampa?

3 A. No, there has been as I said the last, I don't know,
4 more than five visits his exam is completely the same. There is
5 nothing new that's being done. That's why at that point we say
6 okay if you have a problem come back, but at this point you have
7 platued.

8 Q. Doctor, I want you to assume that there has been
9 testimony in this case that Mr. Karasu suffers from something
10 known as compensatory mechanism syndrome, do you agree with
11 that?

12 A. I have never heard of that. I heard that this was a
13 syndrome that was stated here. So I did a literature search.

14 MR. BURKE: Objection to his out of court reviews.

15 THE COURT: Sustained.

16 A. I don't know. I have never heard of compensatory
17 mechanical syndrome. It doesn't exist in the medical community.

18 Q. What is -- I will withdraw that. I also want you to
19 assume, Doctor, that there has been testimony that Mr. Karasu is
20 in 2022 suffering from osteoporosis as viewed on an x-ray from
21 2017, my question is assuming that, doctor, can you form an
22 opinion as to whether he has osteoporosis or osteopenia in 2022
23 based upon a five year old x-ray?

24 MR. BURKE: It's 2018, no, it's Helfet.

25 MR. EDWARDS: I think it is 2017.

1 MR. BURKE: I correct myself it was Helfet in
2 August of 2016.

3 MR. EDWARDS: 16 even better.

4 Q. Okay. So in a 6 year old or five plus year old x-ray,
5 can you even form an opinion as to whether right now Mr. Karasu
6 is suffering from osteoporosis or osteopenia based upon a five
7 and a half year old x-ray?

8 A. No.

9 Q. Now I'm assuming withdrawn. If Mr. Karasu was having
10 ongoing problems, would it be good practice for him to have an
11 updated x-ray to take a look at that time what was going on his
12 ankle?

13 A. Absolutely.

14 Q. Based upon your review of his entire medical history he
15 hasn't had an x-ray since 2018?

16 A. Correct.

17 Q. Doctor, can we agree that his ankle is never going to
18 be hundred percent back to normal the way it was before the
19 accident?

20 MR. BURKE: Note my objection to the leading
21 question.

22 THE COURT: Sustained.

23 Q. Withdrawn. Doctor, as a result of the injury that
24 Mr. Karasu had is his ankle ever going to be as it was before
25 the fracture?

1 A. No.

2 Q. Doctor, would you expect based upon the injury that he
3 had that he would be able to climb ladders and do commercial
4 roofing?

5 A. No.

6 MR. EDWARDS: I don't have any other questions.

7 Thank you, Doctor.

8 THE COURT: Mr. Burke, you may inquire.

9 MR. BURKE: Could we take five minute break?

10 THE COURT: Yes.

11 MR. EDWARDS: Fine with me.

12 THE COURT: All right.

13 Let take five take.

14 (Five minute recess is taken at this time).

15 THE COURT:

16 CROSS-EXAMINATION BY

17 MR. BURKE:

18 Q. Doctor, my name is Ron Burke. I represent Mr. Karasu
19 and his wife Ana. I'm going to be asking you some questions.
20 Now you mentioned you testified 50 to 60 times in the past?

21 A. That's a guess.

22 Q. When did you begin testifying in court?

23 A. I started practicing 1998. If I have to guess, it
24 would be sometime around 20, 2001.

25 Q. And in addition to testifying in court, you also

1 examine people who are bringing claims and lawsuits in your
2 office and you prepare reports at the request of defendants,
3 correct?

4 A. Yes.

5 Q. How many of these defense medical exams, do you do in a
6 month?

7 A. 35 something like that.

8 Q. When you did these defense medical exams you then
9 prepare a report as you did, for example, in this case where you
10 set forth your findings?

11 A. Yes.

12 Q. Would it be fair to say that when you do your
13 examinations of people who make claims, let's say, it has to do
14 with range of motion of a joint your normal values would remain
15 the same throughout all of them, correct, in other words, let's
16 say we take an ankle joint, your normal value said before for
17 dorsiflexion was 40, correct?

18 A. I'm sorry dorsiflexion was 20, plantar flexion was 40.

19 Q. Plantar flexion was 40 dorsiflexion was 20?

20 A. In this general.

21 Q. Just yes or no?

22 A. I can't answer.

23 Q. But do you generally use the same normal values time
24 and time again or do you change them as the claimant appears in
25 your office and in some cases say, well, it's much higher normal

1 range of motion or lower normal?

2 A. Well I do sometimes say it's a lower normal higher
3 normal very rare in my view, but again like I tried to explain
4 inter observer intra observer poor reliability. Some doctors
5 may say is 50 normal, some doctor say 40 is normal. I'm happy
6 that both treating physicians said same thing I did.

7 Q. But my point is when you do it on people that you're
8 examining who have made claims, you said your normal value was
9 20 for dorsiflexion 40 for plantar flexion, do you use those
10 same normal numbers when examining claims?

11 A. Those are usually the norm that is that I use, yes.

12 Q. Because it wouldn't be right when you sign one of these
13 reports about a medical exam to change what you call normal
14 values patient by patient, correct?

15 A. Sometimes you have to change the normal values for
16 instance in a knee who is obese normal for that patient because
17 of the obesity would be 90 not 120 or 130 depending on what your
18 normals are. But, as I said, as a community of medicine we have
19 general normal based on these studies generally said somebody 10
20 and 20 is normal dorsiflexion and somewhere between 40 sometimes
21 even 50 can be normal plantar flexion I use 20, 40, 20 dorsi and
22 40 plantar.

23 Q. Do you recall signing a report that you swear to --
24 withdrawn. I'm going to start this this way. In your medical
25 reports for these defense medical exams, you sign a multi page

1 report under the penalties of perjury, correct?

2 A. Not that I'm aware of, no.

3 Q. Well do you have copy of your?

4 A. In other words, I tell the truth is what you're saying
5 to me.

6 Q. No, no, talking about if the last page of these reports
7 that you sign there is a statement just before your signature
8 where you attest quote, I state that I'm a licensed physician
9 authorized by law United States that you are making these
10 statements in the report under the penalties of perjury to the
11 best of your knowledge?

12 A. To the best of my knowledge, yes. So unless I'm
13 actively lying on purpose, you're right, I'm not purposely
14 trying to lie about these things. I would be perjuring myself
15 if I said a lie, but to the best of my knowledge.

16 Q. So with Mr. Karasu for plantar flexion range of motion
17 you recorded that he had 40 out of a normal 40 plantar flexion,
18 correct?

19 A. Correct.

20 Q. I'm going to show you a report that you signed in the
21 case of Yun We Kim for an exam date of May 26th, 2015, could I
22 have this marked for identification?

23 MR. EDWARDS: I'm going to object, I would like to
24 approach, is there a HIPPA issue here?

25 MR. BURKE: It's filed in court.

1 THE COURT: Do you know what it is?

2 MR. EDWARDS: I don't know what it is.

3 THE COURT: It's for identification.

4 MR. EDWARDS: That's fine. I'm concerned about
5 happy that's all.

6 MR. BURKE: It's a public document. It indicates
7 on the top. It was filed with NYSCEF. It's available
8 online to the world.

9 THE COURT: I don't know what it is so.

10 MR. BURKE: Just another defense medical exam.

11 (Document is marked plaintiffs exhibit 15 for
12 identification.

13 COURT OFFICER: Shown to the witness.

14 MR. EDWARDS: I still have my objection regarding
15 somebody else's medical records.

16 THE COURT: Sustained -- I'm sorry, overruled.

17 Q. Dr. Faierman, do you recognize this three page report
18 that has been marked for identification?

19 A. Yes.

20 Q. Is it on your letterhead?

21 A. Yes.

22 Q. Does it identify your name?

23 A. Yes.

24 Q. Does it bear your signature?

25 A. Yes.

1 Q. And did you swear under penalties of perjury that the
2 information you set forth in that report was fair and accurate?

3 A. Yes.

4 Q. This was an examination of someone who had a car
5 accident and you performed range of motion analysis of this
6 person's ankle, if you turn to page 2 under right ankle, did you
7 not record that for plantar flexion this woman had 50 out of 50
8 indicating 50 was normal, just yes or no?

9 A. Yes, yes. In her case 50 was normal.

10 Q. I just asked you to say yes or no?

11 A. I understand you're trying to trap me but 50 is normal.

12 Q. Doctor, you have answered the question?

13 A. As I said.

14 Q. No, there is no question before you.

15 A. Okay.

16 Q. Now whether you're examining a patient or your
17 examining a claimant or a plaintiff, like Mr. Karasu, would you
18 agree that you have the duty, the ethical obligation to
19 accurately reflect what you know, correct?

20 A. Yes.

21 Q. And before you operate on a patient you want to have
22 every bit of information that's available in front of you,
23 correct?

24 A. Yes.

25 Q. When you examine a patient in your office even without

1 surgery, you want to have the most up to date information about
2 that patient, isn't that true?

3 A. Yes.

4 Q. You didn't have any of the images from Dr. Acampa's
5 office, did you?

6 A. No. When I did the report?

7 Q. Yes.

8 A. No, I did not.

9 Q. So you began expressing opinions providing them to
10 defense firms before you had even looked at Dr. Acampa's images,
11 correct?

12 A. Correct, but I had the reports.

13 Q. No, but, it's a yes or no. Isn't it true that in other
14 cases you have reviewed the images when a patient or rather a
15 plaintiff is being examined as a result of the lawsuit and you
16 do review images in films, correct?

17 A. Of course.

18 Q. I mean there is not many films around anymore it's now
19 on CD so we call them images?

20 A. Correct.

21 Q. Would it be surprising to you if I read to you from a
22 case in a report dated January 5th, 2022, filed in court
23 regarding your examination of a 53 year old man who was involved
24 in an accident without even showing it to you, Doctor, would you
25 be surprised to hear that you listed that you have reviewed

1 multiple images from MRIs, of the body parts that were involved
2 in the claim in that case?

3 A. Yes.

4 Q. You did because is important to reviews images isn't
5 it?

6 A. It's always helpful to review images when they are sent
7 to me, yes.

8 Q. Aren't there also cases where your examining plaintiffs
9 who have been injured have case in court at the request of the
10 defendant and if they don't give you the images, you write in
11 your report that you would like to see them?

12 A. Yes.

13 Q. The report in this case doesn't say you wanted to
14 review the images?

15 A. Okay.

16 Q. In fact, you actually have even stated, correct me if
17 I'm reading this correctly, but you have a phrase that you use
18 which is after you have already come to your opinions and
19 without looking at the images involving the body part you say
20 something to the extent it would be nice to have them, I would
21 be happy to review them if you would send them to me?

22 A. Correct.

23 Q. So you have said that before in other cases, tell me,
24 did you say to either Mr. Edwards or one of the attorneys at his
25 law firm that you would like to see the images before you

1 committed to writing what your findings are concerning
2 Mr. Karasu?

3 A. I don't recall.

4 Q. Would it be fair to say if we look at your report you
5 don't say anything about, hey guys, where are the radiology
6 images?

7 A. To be honest, usually I do say in almost every case.

8 Q. No, I didn't ask you that. I didn't ask you. I move
9 to arrest the response. It's not responsive to the question.
10 My only --

11 THE COURT: Sustained.

12 Q. My only question in that report, did you request to see
13 the images?

14 A. No.

15 Q. Doctor, isn't it true that you are one of two authors
16 of an article regarding joint fractures in 2018 entitled the
17 management of acute fractures involving the distal radial ulnar
18 joint and distal ulna meaning the wrist joint?

19 A. In 2018?

20 Q. 1998, I'm sorry.

21 A. Yes.

22 Q. And in 1998 you talked about what should be done in the
23 setting of a fractured wrist and you stated that I'm going to
24 quote from your article, tell me if I might -- if I'm reading
25 that wrong, if you think so, I'm going to pass it up to you.

1 You said, quote, history and physical examination are essential
2 in making the diagnosis and you also said of equal importance is
3 a radial graphics evaluation of the wrist?

4 A. Yes.

5 Q. So it's important to read the medical records in the
6 form of doctors notes, hospital chart, but it's also important
7 as you have stated equal important to review the radiology
8 images?

9 A. Yes, when you're treating the patient absolutely.

10 Q. No, Doctor just answer the question. Would you also --
11 no, Doctor, if I just want you to answer my question it's simple
12 yes or no. So we don't have to be here all day. Okay. Doctor,
13 would you agree that the standard you describe in the article
14 that you authored in 1998 is just as applicable to the ankle,
15 the knee, the hip as it is in the wrist joint?

16 A. Or are for treating ankle, knee and hip.

17 Q. Just, yes or no, Doctor?

18 A. I can't answer it the way you're asking.

19 THE COURT: It's important. This is
20 cross-examination, it's either yes no or, I don't know.
21 Okay.

22 Q. Doctor, can we agree that given your involvement in
23 testifying in court you're well aware of what the rules are on
24 cross-examination, are you not, yes or no?

25 A. Yes, yes.

1 Q. So wouldn't it be fair to say Dr. Faierman that you did
2 not look at any of the images concerning Mr. Karasu until
3 recently?

4 A. The images, no. The reports, yes.

5 Q. And when did you review the images of Mr. Karasu ankle
6 joint?

7 A. About a week ago.

8 Q. And yet you came to this firm opinion expressed in your
9 report of February of 2018 without seeing a single radiology
10 image?

11 A. I did based upon the x-rays reports. I saw all the
12 reports.

13 Q. That would be a no, you did not review any of the
14 images before you came to your opinions?

15 A. That's correct.

16 Q. Dr. Acampa documented osteo arthritis in Mr. Karasu's
17 ankle as early as January of 2017, true?

18 A. True.

19 Q. He found osteo arthritis as reflected on his charts
20 osteo arthritis in his right ankle or more accurately tibiotalar
21 joint in 2017, 2018, 2019 correct?

22 A. Yes. 2019?

23 Q. Yes, you saw --

24 A. X-rays? You're saying he got x-rays in 2019?

25 Q. No, I asked you if Dr. Acampa did not document I will

1 give you the --

2 A. Oh, he documented every time he wrote the same thing,
3 yes.

4 Q. But, no, on December 4th, 2018 he recorded in his note
5 osteo arthritis of the right ankle?

6 A. Yes.

7 Q. No, there's no buts just a yes or no.

8 MR. BURKE: I just December 4th, 2018.

9 A. You asked me originally you asked did he read
10 osteoarthritis in 2019 there weren't x-rays.

11 THE COURT: Excuse me. There's no argument. If
12 there is an issue then say.

13 Q. So Dr. Faierman, are you saying that Dr. Acampa did not
14 state in his records that Mr. Karasu had osteo arthritis even in
15 2019?

16 A. He stated in his records as osteo arthritis I said I
17 didn't get x-rays that's all.

18 Q. Did he say it in his records?

19 A. Yes.

20 Q. He said it again in 2019, right?

21 A. Yes, he repeated it, yes.

22 Q. And Dr. Acampa hasn't gone out on a ledge here or
23 become an outlier because as you yourself acknowledged
24 Dr. Dennis Helfet from HSS Hospital For Special Surgery perhaps
25 one of the greatest orthopedic surgeons in the world, correct?

1 A. He's a very good surgeon.

2 Q. I didn't ask you that. Isn't Dr. Dennis Helfet the
3 type of orthopedist that other orthopedists send their
4 complicated patients to?

5 A. Yes.

6 Q. Just like there is a doctor's doctor an account's
7 account a teacher's teacher, Dr. Helfet is that in the
8 orthopedic world?

9 A. He's an excellent surgeon, yes.

10 Q. So when Dr. Acampa repeatedly diagnosed with
11 Mr. Karasu's with osteo arthritis and Dr. Helfet also diagnosed
12 with Mr. Karasu's, I'm going to ask you to put away the laptop
13 when I'm questioning you?

14 A. I can't look at the record?

15 Q. No, you can't look at the record until I tell you to.

16 A. To make sure it's accurate.

17 Q. You're on cross-examination. Just answer yes or no.
18 Do you have some doubt as to whether or not Dr. Helfet
19 identified osteo arthritis, just yes or no?

20 A. I documented myself that he had mild.

21 Q. Just yes or no. You're going beyond the question.

22 A. You forgot to say mild osteo arthritis which is what he
23 said.

24 Q. I didn't ask you that?

25 A. Of course not.

1 Q. Doctor, it's Mr. Karasu's time through me to ask you
2 these questions?

3 A. Yes, he said mild.

4 Q. No, I didn't ask you to go beyond. No editorial
5 comment. Now we can all agree, can all of these jurors when
6 they are deciding this case safely conclude that Mr. Karasu has
7 osteo arthritis, yes or no, in the right ankle, just yes or no?

8 A. Yes, he has.

9 Q. I didn't ask you for more just yes or no. And can we
10 also agree that Mr. Karasu's has osteo arthritis in the right
11 ankle as a result of the pilon fracture?

12 A. Yes.

13 Q. And can we all agree at that Mr. Karasu's has the pilon
14 fracture because he fell from a ladder?

15 A. Yes.

16 Q. Now tell the jury what antalgic gait means?

17 A. A little limp.

18 Q. Dr. Acampa recorded in his record that Mr. Karasu has
19 an antalgic gait?

20 A. Yes.

21 Q. And in the beginning of his treatment with Dr. Acampa
22 he referred to it just at an antalgic gait and years later he
23 still referring to go it as a slight antalgic gait, correct?

24 A. Correct.

25 Q. So without going through all of the records can we

1 agree that right through the last visit of Mr. Karasu's in
2 September of 2020, Dr. Acampa noted that Mr. Karasu's still has
3 slight antalgic gait?

4 A. Yes.

5 Q. Did you read the physical therapy notes?

6 A. I read them a while ago.

7 Q. Because you said based upon your exam of February 2018
8 you said that Mr. Karasu has does not have an antalgic gait that
9 he walks normally?

10 A. Correct.

11 Q. You said gait normal?

12 A. Correct.

13 Q. Now you know that Dr. Acampa said a different has a
14 different view of it than you because he saw antalgic gait in
15 the beginning, complete then slight?

16 A. Right, well it gets better.

17 Q. So in comparing the time frame of your examination with
18 Dr. Acampa, Dr. Acampa has a note of February 26th, 2018, your
19 report is based on an exam of February 10th, 2018?

20 A. Yes.

21 Q. So 16 days apart?

22 A. Yes.

23 Q. Where as you said that Mr. Karasu has 15 out of 20
24 dorsiflexion, Dr. Acampa said zero?

25 A. Wait. I'm sorry repeat that again?

1 Q. Where as you said stated that?

2 MR. EDWARDS: What happened the date?

3 MR. BURKE: February 10, 2018 that is

4 Dr. Faierman's. This is Dr. Faierman's report?

5 MR. EDWARDS: You referenced an Acampa record.

6 MR. BURKE: Yes, but you have to let me finish.

7 Q. We have your exam on February 10th, 2018 and we also
8 know that within 16 days of that visit he's at Dr. Acampa's
9 office?

10 A. Correct.

11 Q. Dr. Acampa's records range of motion values and they
12 are different than yours, correct?

13 A. Yes.

14 Q. Where as Dr. Acampa recorded zero for dorsiflexion and
15 35 for plantar flexion you said it was 40 out of 40 for plantar
16 flexion and you said it was 15 out of 20 for dorsiflexion?

17 A. I said zero for dorsiflexion.

18 Q. You put down dorsiflexion on two different pages turn
19 to page 2 of your report because on the first page you said zero
20 out of 20, on the second page you say a different number. You
21 say 15 out of 20?

22 A. Where is the different number. I said Dr. Helfet's
23 findings are.

24 Q. No, I wasn't talking about Dr. Helfet's?

25 A. That's the only place I say 15 dorsiflexion talking

1 about it should be noted that Dr. Helfet's note document mild
2 arthritic changes in the tibiotalar joint it also documents
3 meaning Dr. Helfet's notes also document -- extra range of
4 motion 15 dorsiflexion and 40 is plantar flexion today it does
5 not pass neutral.

6 Q. Doctor, turn to the page 2 of your report, you want to
7 know where page 2 is?

8 A. This is page one, this is page two.

9 Q. So under right ankle you talk about scars, you measure
10 them further on down second to last sentence, there is limited
11 range of motion of the ankle to zero degrees dorsiflexion
12 parenthesis normal 20 degrees closed parenthesis?

13 A. Okay.

14 Q. So that means you said zero dorsiflexion?

15 A. Right, you just said I said 15.

16 Q. But now turn back to page one?

17 A. I don't see any discussion of range of motion where is
18 that.

19 Q. Oh, I'm sorry. It's on page four.

20 A. The last page four. That's my signature.

21 Q. The page right before?

22 A. In the summary I just read that to you.

23 Q. You said 15 degrees of force flexion?

24 A. That's Dr. Helfet's you're not understanding. Do you
25 want me read it again to you are now.

1 Q. No, Doctor, I want you to just listen, my question you
2 referred two different values are to dorsiflexion, correct, yes
3 or no?

4 A. One I measured and one that he measured. Do you not
5 understand. I even said in the summary he only dorsiflexion to
6 neutral that's zero.

7 Q. It was a yes or no.

8 A. I know because you made a mistake.

9 Q. Doctor, have you reviewed the records of the physical
10 therapist?

11 A. Again, I didn't, but I don't have them in front me and
12 I can't recall anything about them at this point.

13 Q. Right about the time of your exam and report of
14 Mr. Karasu there is a physical therapy note and under the
15 assessment there is a statement regarding patient problems and
16 the date of this is February 21st, 2018 it's five a few days
17 after your exam?

18 A. Yes okay.

19 Q. Can you read what it says on the problem line?

20 A. There is subjective objective --

21 Q. No, just what does say it next to problems?

22 A. Patient problems.

23 Q. If you could just read?

24 A. Limited range right ankle motion lower extremity
25 weakness pain swelling and antalgic gait.

1 Q. So the physical therapist, who has no dog in this fight
2 says within a few days of your examination the opposite of you,
3 says antalgic gait and says limited right ankle range of motion,
4 correct?

5 A. Yes.

6 Q. So it's not just Dr. Acampa who has clearly much
7 different opinions than you, also a physical therapist has a
8 different opinion than you, true or false?

9 A. False. I could explain.

10 Q. No, I didn't ask you to explain.

11 Can we also agree that as early as February 4th, 2016
12 Dr. Acampa specifically referred to getting authorization for a
13 tibiotalar arthrodesis?

14 A. I don't remember that but if you say so, yes.

15 Q. Then I don't want you to take my word for it?

16 A. I just don't remember.

17 Q. I'm going to give you Dr. Acampa's records?

18 A. As I said I didn't recall who sent.

19 Q. That's okay. Let's go to Dr. Acampa's records February
20 4th, do you want me to find it for you or would you prefer to
21 look?

22 A. No, I trust I have on my computer.

23 Q. No, I will just pass it up to you and I will find it
24 for you as well?

25 THE COURT: Do we have those as an exhibit maybe

1 we just should refer to.

2 MR. BURKE: Yes, I'm pulling from plaintiffs
3 exhibit 8.

4 Q. Just look on the top left of the page you will see the
5 visit date, if you look towards the bottom of the page there is
6 reference to seeking permission for a tibiotalar arthrodesis?

7 A. Yes.

8 Q. Arthrodesis means?

9 A. Ankle fusion.

10 Q. And what you talked about when you say tibiotalar joint
11 it's exactly this where the talus bone meets the tibia and
12 fibula?

13 A. Right.

14 Q. Can we agree that Dr. Acampa's notes in 2019 and again
15 in May of 2020 September of 2020 that Dr. Acampa is again
16 recommending fusion as an option to his patient?

17 A. Yes.

18 Q. And you know that when Mr. Karasu's went to see
19 Dr. Helfet the reason he went to Dr. Helfet as reflected in
20 Dr. Helfet's report, was that the patient wanted to get a second
21 opinion on whether to have a fusion?

22 A. Right.

23 Q. And Dr. Helfet conclusion was despite the presence of
24 osteo arthritis did not think a sufficient work-up had been done
25 to say that a fusion would be appropriate for Mr. Karasu,

1 correct?

2 A. Correct.

3 Q. Now you know from reading Dr. Acampa's notes that he
4 saw Mr. Karasu's ballpark 50 times between the first day March
5 26th, 2015 up until September of 2020?

6 A. Correct.

7 Q. That was not a drive-by medical exam Dr. Acampa had
8 seen him frequently, correct?

9 A. Yes.

10 Q. And would you agree that Dr. Acampa as the orthopedist
11 who had performed three surgeries on Mr. Karasu's had arranged
12 for multiple imaging studies between 2015 and 2018?

13 A. Yes.

14 Q. He's been able to review the CAT scan images from the
15 beginning, correct?

16 A. Yes.

17 Q. Can we agree that Dr. Acampa is more knowledgeable
18 about Mr. Karasu's right ankle than you are just, yes or no?

19 A. I can't answer that that way.

20 Q. Yes or no?

21 A. I can't answer it.

22 Q. Now doctor we know from the CAT scan report the
23 severity of this injury, correct?

24 A. Yes, there were multiple cat scans though.

25 Q. I'm going to draw your attention to this is from Good

1 Samaritan Hospital this is the report of the CAT scan on March
2 27th, 2015 so where it says?

3 MR. EDWARDS: You want to give him a moment to
4 pull up his copy.

5 MR. BURKE: Yes, pull it up.

6 Q. Next to findings, four lines down it says a comminuted
7 fracture in the distal aspect of the tibia, comminuted is a
8 synonym for shattered, correct?

9 A. No, comminuted means more than one piece. It could be
10 highly comminuted or -- comminuted.

11 Q. Doctor, remember the yes or no?

12 A. Right.

13 Q. It says anterior displacement of portions of the distal
14 fragment?

15 A. Yes.

16 Q. Portions of the distal fragment means pieces, correct?

17 A. It's that anterior piece.

18 Q. We're talking about pieces of bone?

19 A. Yes.

20 Q. Correct?

21 A. Yes, yes.

22 Q. Right this is the radiologist this isn't Dr. Acampa's
23 interpretation?

24 A. Yes, says comminution.

25 Q. That is hospital radiologist who wrote up this report

1 after that radiologist viewed these same images that you did two
2 weeks ago?

3 A. Yes, I agree.

4 Q. And then it says the fracture extend to the distal
5 articular surface of the tibia that's bad, right?

6 A. That's a pilon.

7 Q. That's a bad fracture once it goes into the joint,
8 correct?

9 MR. EDWARDS: Objection to the form of the
10 question.

11 A. Depends on his placement.

12 Q. Do you agree with Mr. Edwards that this is a bad
13 fracture, yes or no, do you agree?

14 MR. EDWARDS: I'm not testifying here, Judge.

15 MR. BURKE: But if there were statements made in
16 open court.

17 THE COURT: I didn't even rule on the last
18 objection.

19 MR. BURKE: Okay. Counsel. Fine.

20 THE COURT: Sustained sustained by the way.

21 MR. BURKE: I will ask it again.

22 Q. Do you agree with Mr. Edwards --

23 MR. EDWARDS: Judge, I would prefer not.

24 THE COURT: Hold on.

25 Okay. Everybody now I understand though I ruled

1 you have rephrased your question. So what are you
2 objecting to? To another one to the --

3 MR. EDWARDS: Objecting to him pointing at me
4 hovering over and pointing at me. That's what I'm
5 objecting to. Ask him all the questions he want.

6 THE COURT: Overruled.

7 MR. BURKE: Do you agree with Mr. Edwards --

8 THE COURT: Not sure what's going on here. No,
9 no.

10 MR. EDWARDS: Well he stopped doing it.

11 THE COURT: He's going to redirect his pointing.

12 Q. Do you agree with Mr. Edwards that this is a bad
13 fracture just yes or no?

14 A. It's not possible to answer yes or no.

15 Q. Objection to your response, sir, because if you can't
16 say --

17 A. It's not possible to answer yes or know just told you.

18 Q. Okay. All right.

19 A. But I can explain.

20 THE COURT: Strike that.

21 Q. This is Mr. Karasu's day in court, sir?

22 A. I understand.

23 Q. Just please follow the rules.

24 It says in addition a transverse fracture within the
25 fibula at it's distal aspect?

1 A. Yes.

2 Q. That means that not only is there a fracture extending
3 into the through into the tibial cartilage, there is also a
4 fracture extending into the cartilage of the fibula, correct?

5 A. Yes.

6 Q. So we have two bones that had damage to their articular
7 surface, correct?

8 A. Yes.

9 Q. But then it said there appears to be a small bony
10 fragment in the anterior aspect of the tibiotalar joint? Do you
11 see that right?

12 A. Yes.

13 Q. That's not good either right?

14 A. No, there is one of the fragments they are seeing is in
15 the front.

16 Q. I mean when you put little fragments of bone into a
17 joint that's problematic for that person, yes or no?

18 A. It depended on where the fragments are from.

19 Q. Once again, Judge, can I have a ruling that the witness
20 just answer yes or no?

21 A. I can't answer the question the way you're phrasing.

22 THE COURT: You know what, Doctor.

23 MR. EDWARDS: He has to be able to answer.

24 THE COURT: I just instructed him before I
25 understand, but it is the rules of the court. You have to

1 just answer yes or no that's what --

2 A. Or I can't say.

3 THE COURT: I said that, but you're arguing.

4 Please don't argue.

5 A. No, I said I can't answer.

6 THE COURT: It's important that you we have clear
7 testimony. So the jurors can make a decision.

8 A. Okay.

9 THE COURT: Yes.

10 Q. Now Dr. Faierman, if I could have your attention I have
11 another question for you.

12 A. Yes.

13 Q. Did that boney fragment come off the tibia or the
14 fibula?

15 A. Tibia.

16 Q. Did Dr. Acampa remove that boney fragment from the
17 tibiotalar joint based possible your review of Dr. Acampa's
18 objective note?

19 A. I would have to look at the operative note but I think
20 he removed it.

21 Q. I'm going to give you the opportunity to go to his
22 operative note?

23 A. Again you have to give it to me.

24 Q. I will put it up on the screen.

25 A. I have it here. I read through it. I have it here. I

1 will try to find it.

2 Q. I'm now putting up on the monitor Dr. Acampa's note,
3 there is two procedures that are done one on March 27th
4 arthrotomy and the external fixator and then Mr. Karasu's comes
5 back in April which operative report would you expect to find
6 whether or not that bone fragment was removed?

7 A. April 15.

8 Q. The April 15th so let's go there. Can we agree that it
9 wouldn't have been removed on March 27th?

10 A. Yes.

11 Q. Okay. So I'm putting up on the monitor the operative
12 report in April. Was the bone fragment removed from the
13 tibiotalar joint based upon Dr. Acampa's operative report of
14 April 2015?

15 A. I still don't see it here. I don't see where it says
16 he removed the fragment.

17 Q. Doctor, I'm going to ask you some general questions.
18 Dr. Helfet's notes documented as early as August of 2016 mild
19 arthritic changes in the tibiotalar joint, correct?

20 A. Correct.

21 Q. And you also familiarized yourself a few weeks ago with
22 Dr. Helfet's x-ray?

23 A. No.

24 Q. You didn't. Did you familiarize yourself with the
25 x-ray report of the images taken by Dr. Helfet's in August of

1 2016?

2 A. If they are in his report, yes, let me just take a
3 look.

4 Q. No, it was with the CD?

5 A. I didn't get the CD for Dr. Helfet.

6 Q. But you got it couple of weeks ago, didn't you?

7 A. Not for his x-rays, no, but I have his report on his
8 report it says imaging.

9 Q. Right. We'll get to that. I'm going to draw your
10 attention to the radiologist report?

11 MR. EDWARDS: Film or the report.

12 Q. The report. Now clearly Dr. Helfet when he sees the
13 patient if he wants to have an x-ray they go to the radiology
14 department at the hospital and there are specially trained
15 people called radiologist, board certified in their field, who
16 focus their entire practice on viewing images giving their
17 opinions verbally and writing up a report?

18 A. Correct.

19 Q. The Hospital for Special Surgery as you I think
20 acknowledged is one of the best orthopedic hospitals perhaps in
21 the world?

22 A. You keep saying world, the rankings are from the United
23 States.

24 Q. Tell me a country that has better orthopedic hospital
25 for --

1 A. I'm saying rankingwise it's number one in the United
2 States.

3 Q. Okay. And you don't know of another country that
4 has -- I didn't finish my question -- you have to wait until I
5 fine the question for the sake of the court reporter. You don't
6 know of another country that has a hospital better in the field
7 of orthopedics than the Hospital for Special Surgery, correct?

8 A. There are many hospitals in the world that are amazing
9 and I think it's very subjective finding he's asking --

10 THE COURT: The question is do you know, don't you
11 know or maybe, so I think it's the third option.

12 A. I can't answer it that way.

13 Q. Now this is the radiologist report person's name
14 Carolyn Sofka, she's reading the images taken two days earlier
15 report is dated August 24th, 2016, and she sees mild non uniform
16 joint space narrowing?

17 A. Correct.

18 Q. We don't want to see narrowing in a joint?

19 A. Correct.

20 Q. And she also finds mild various alignment?

21 A. Okay.

22 Q. Varus alignment means there is outward angulation of a
23 bone?

24 A. Inward.

25 Q. Inward. And that's not good for a patients condition

1 is it?

2 A. Not as good as straight, no.

3 Q. The problem with whether it's outward or inward
4 angulation it can actually even affect the length of a leg if
5 the angulation is too severe, correct?

6 A. Yes.

7 Q. She says the osteo structures which means bone?

8 A. Yes.

9 Q. The osteo structures are osteoporotic attributed in
10 part to disuse, correct?

11 A. Correct.

12 Q. And fair to say that, you know, unless we are walking
13 as we usually walk that you can have softening of the bone in
14 part due to disuse, correct?

15 A. Correct.

16 Q. Just like you know which also compensate that if I got
17 a pain in my hip, my left hip or my left knee, I would start to
18 favor my right side, wouldn't I?

19 A. If you had pain and it was causing enough pain that you
20 were limping, yes.

21 Q. But there is a level of pain even before limping which
22 many people experience when they get into their 60's, right?

23 A. People have pain without limping if that's what you're
24 asking me.

25 Q. You don't usually see that in a 40, 42, 45 year old man

1 correct?

2 A. Don't usually see what?

3 Q. See somebody having joint pain?

4 A. You don't usually see somebody having joint pain at 45.

5 Q. Yes.

6 A. Most people have some pain at 45 in some joints.

7 Q. There is nothing wrong with Mr. Karasu's left ankle,
8 agree?

9 A. Correct.

10 Q. And if somebody has pain in their left knee or left hip
11 they will favor their right side, correct?

12 A. Again not necessarily. Unless it's severe enough to
13 cause limping.

14 Q. So let's agree that when it reaches the point in time
15 that someone begins to favor one side of their body it generally
16 it's called a compensatory reaction, correct?

17 A. You're compensating, yes.

18 Q. And actually over time if people compensate let's say
19 because of pain in the left hip or the right knee, they can
20 actually over time begin to cause problems in their right knee
21 or their right hip?

22 A. No.

23 Q. Correct?

24 A. Incorrect.

25 Q. Now everybody's heard about cartilage meniscus in the

1 knees but articular cartilage is very different, correct?

2 A. Correct.

3 Q. The purpose of articular cartilage to cushion weight is
4 to cushion weight?

5 A. Correct.

6 Q. To allow gliding smooth movement?

7 A. Correct.

8 Q. And once damaged articular cartilage it doesn't heal?

9 A. Correct.

10 Q. And the articular cartilage doesn't have a blood
11 supply?

12 A. Has blood supply. That's incorrect.

13 Q. But minimal at best?

14 A. Yes, that's --

15 Q. That's why it doesn't regenerate?

16 A. Yes, yes.

17 Q. And articular cartilage once damaged can get worse over
18 time?

19 A. Yes.

20 Q. And so can we agree that Mr. Karasu's has traumatic
21 arthritis as a result of this fall?

22 A. Yes.

23 Q. And that arthritis, traumatic arthritis, that doesn't
24 get better, correct?

25 A. No, no.

1 Q. You disagree?

2 A. I agree it doesn't bet get better.

3 Q. And traumatic arthritis doesn't stay the same, correct?

4 A. Yes, correct.

5 Q. We know for sure that with traumatic arthritis it only
6 gets worse over time?

7 A. Correct.

8 Q. And as the articular cartilage breaks down the
9 underlying bone stiffens, correct, just yes or no?

10 A. Okay. If it broke down fully you would have stiffening
11 bones, yes.

12 Q. If that would cause bone spurs, correct?

13 A. Yes, you can get bone spurs from arthritis, right.

14 Q. It's actually a biological chemical reaction with
15 cytokines and inflammatory responses, correct?

16 A. You're body's finding a way to limit motion by forming
17 spurs, yes.

18 Q. As ankle joints becomes inflamed and swollen the
19 cartilage suffers more damage true?

20 A. Again mostly mechanical things over time depending on
21 how bad the initial injury was you will have different rates
22 progressive arthritis.

23 Q. And with progressive traumatic arthritis that leads to
24 increasing pain?

25 A. Yes.

1 Q. So someone with traumatic arthritis that might today
2 have a mild pain in an ankle joint, ten years later it could be
3 greater than mild, correct?

4 A. That's correct.

5 Q. You would expect that, right?

6 A. It could be greater than mild I wouldn't necessarily
7 expect it in this case.

8 Q. What's different about the ankle joint than hip or
9 knee, for example, is that the ankle joint is much smaller space
10 correct?

11 A. It's smaller than the hip and the knee, yes.

12 Q. The ankle joint let's say the tibiotalar joint per
13 surface area it bears a disproportionate greater weight than we
14 experience in our knees or hips?

15 A. Yes.

16 Q. And you would expect that the ankle is supporting more
17 weight than the knee or the hip, correct?

18 A. Yes.

19 Q. And as a result of that smaller narrow space the weight
20 above it will bear down and cause pain if the cartilage is
21 damaged, correct?

22 A. I'm confused repeat that.

23 Q. If the cartilage is damaged in the tibiotalar joint you
24 would expect consistent with the injury that that person would
25 have complaint of pain?

1 A. In the ankle?

2 Q. Yes.

3 A. Yes.

4 Q. And so the only treatments that we have for arthritis
5 in the ankle other than surgery, which would be fusion, are
6 medications, bracing, injections, things of that nature, right?

7 A. Yes.

8 Q. And it's important in evaluating an ankle joint
9 periodically if someone has suffered a pilon fracture?

10 A. Say again.

11 Q. It's important to evaluate someone into the future to
12 see how they are developing if they have had a pilon fracture?

13 A. If they are getting -- I can't answer that.

14 Q. And it would be important if you as the orthopedist
15 were evaluating somebody with a history of pilon fracture to
16 check their range of motion in multiple planes not just
17 dorsiflexion and plantar flexion, correct?

18 A. Again, it's helpful to measure varus and valgus
19 alignment.

20 Q. How about inversion and eversion?

21 A. That is inversion eversion is the varus and valgus. It
22 means twisting this way and twisting this way.

23 Q. Can we agree you didn't report any values for eversion
24 eversion, varus or valgus, correct?

25 A. I document that had I examined his varus.

1 Q. I didn't ask you that. I asked you if you documented
2 any range of motion values for inversion and eversion of
3 Mr. Karasu's right ankle?

4 A. No --

5 Q. No, I just said -- you like to do that. Are you here
6 as an advocate or are you an impartial witness at this trial?

7 A. Well so again you suggested --

8 Q. Again please answer the question are you telling this
9 jury --

10 MR. EDWARDS: Objection.

11 Q. That you're impartial?

12 MR. EDWARDS: Objection.

13 THE COURT: Sustained.

14 Q. Can we also agree that arthritis in the ankle is seen
15 far less than arthritis in the knee or the hip?

16 A. Yes.

17 Q. Now even if Mr. Karasu's were to have a fusion sometime
18 down the road, can we agree that there are problems associated
19 with fusion?

20 A. Yes.

21 Q. And some of those problems could be maybe ten percent
22 of the time the bones don't fuse?

23 A. I don't know if it's ten percent but, yes, I think it's
24 more like three or four percent depending on the study you look
25 at.

1 Q. There can be the side effects risk of infection of
2 course?

3 A. In any surgery, yes.

4 Q. But when you take away the function of the tibiotalar
5 joint with fusion that can lead to problems in the other joints
6 adjacent to the tibiotalar joint, correct?

7 A. Generally not.

8 Q. Would you agree that they are the joints adjacent to
9 the tibio talar joint would be subject to greater forces if the
10 tibio talar joint were fused, just yes or no?

11 A. Are you saying -- which joints?

12 Q. If you have a fusion of the tibiotalar joint the bones
13 below that where they have joints?

14 A. The foot bones.

15 Q. Yes. Would you agree that the bones next in line after
16 the tibio talar joint below it that they would be subject to
17 greater forces?

18 A. I honestly don't know if there is a study that shows
19 that.

20 Q. If you have a fusion would you agree it changes your
21 walking gait?

22 A. Yes, yes.

23 Q. And it would increase your difficulty going down steps?

24 MR. EDWARDS: Objection just relevance.

25 THE COURT: Overruled.

1 A. Yes.

2 Q. So when you receive this request for a physical
3 examination of Mr. Karasu's, did you receive it from a company
4 called Exam Works?

5 A. I'm not sure, but I think so.

6 Q. Do you get many assignments for defense medical exam
7 from Exam Works?

8 A. Define many. It's probably ten percent of what I do.

9 Q. I want to draw your attention to the your report page
10 one?

11 A. Yes.

12 Q. If the first paragraph in the last sentence you
13 referred to an impacted extra art distal tibia fracture?

14 A. Yes.

15 Q. You left out that he also had a fracture which he just
16 reviewed of the distal fibula?

17 A. So I didn't leave it out. I wrote -- should I read way
18 wrote?

19 Q. No, I'm just asking you you said distal fibula
20 fracture?

21 A. There is a possible distal fibula fracture and an
22 impacted intra articular distal tibia fracture.

23 Q. So you missed you didn't describe the fibula fracture
24 as being an impacted?

25 A. Because it wasn't impacted.

1 Q. Intraarticular fracture?

2 A. It's not an impact intraarticular fracture.

3 Q. Doctor, isn't it true that just ten or 15 minutes ago
4 when we went through the CAT scan report which showed a fracture
5 into the distal fibula, you agree that it extended into the
6 cartilage of the fibula?

7 A. It's hard for me. You're making mistakes. I don't
8 know what to say.

9 Q. Doctor, it's yes or no?

10 A. It's correct it was a fibula fracture.

11 Q. And it went to the distal end of the fibula?

12 A. Correct.

13 Q. Which include the cartilage?

14 A. No, it didn't go to the distal end. You're describing
15 everything wrong but I'm --

16 THE COURT: You know what happens in this case?
17 Don't talk over me.

18 MR. BURKE: I would ask for an instruction to the
19 witness.

20 THE COURT: Look, there is an attorney there
21 that's going to object if it's necessary. This can't go
22 on. It's taking, you know, it's not about arguing. We're
23 getting to the crux of the matter. And there is questions
24 you can answer yes, no, I don't know, I can't answer that
25 way. You got four options actually.

1 A. Yes, yes.

2 THE COURT: If there is a improper question the
3 attorney for the defendant will object. So please let's
4 just it's getting to that time where we're going to have to
5 adjourn soon.

6 Q. Doctor, I'm going to refresh your recollection with the
7 CAT scan report from Good Samaritan Hospital in March of 2015
8 which said fractures of the distal aspect of the tibia and
9 fibula, do you see that?

10 A. Yes.

11 Q. If you could turn back to your report, I would like you
12 to go to the third paragraph where you talk about the hardware
13 removal?

14 MR. EDWARDS: What page.

15 MR. BURKE: Page one third paragraph.

16 A. Yes, yes.

17 Q. So you said in the, I guess the third sentence, I do
18 not have the operative report of the removal of hardware?

19 A. Correct, yes.

20 Q. So that was yet another piece of medical evidence that
21 you didn't have when you wrote this report, correct?

22 A. Correct.

23 Q. And you recorded you said that Mr. Karasu, I will read,
24 quote, he currently complains that prolonged walking and
25 prolonged standing causes right ankle pains, end quote, do you

1 have any reason not to believe Mr. Karasu that he was
2 experiencing what he told you?

3 A. No.

4 Q. You would accept?

5 A. I agree with that.

6 Q. You would accept that. Okay. And then you recorded on
7 page 2 under physical examination you said he walks into the
8 office with a completely normal gait?

9 A. Correct.

10 Q. So let's set the picture of your office. You have an
11 office for these defense medical exams in the Bronx. You got
12 one in Jackson Heights, correct?

13 A. Correct.

14 Q. The building in Jackson Heights is two stories?

15 A. Correct.

16 Q. Multiple doctors?

17 A. No, there is more than one. There is two doctors.

18 Q. And your office is located in the front of this
19 building or the back?

20 A. In the back.

21 Q. How many patients did you see on the same day at
22 Mr. Karasu's?

23 A. How can I remember that there is no way I can remember
24 that.

25 Q. You found swelling in Mr. Karasu's ankle, correct?

1 A. Yes.

2 Q. Did you test Mr. Karasu's right ankle range of motion
3 both in the passive and the active range?

4 A. Just active.

5 Q. Active is when you the physician --

6 A. No, no, the opposite.

7 Q. Active is when the patient voluntarily moves?

8 A. Correct.

9 Q. And passive is when you, the physician, move the joint?

10 A. Correct.

11 Q. Now you don't say in your report whether you're
12 recording in the passive or the active range of motion, correct?

13 A. I only record in the active, but yes, correct.

14 Q. You just do active?

15 A. Unless I'm worried about adhesive capsulitis or
16 something like that, but, yes.

17 Q. On the third page you talk about reviewing multiple
18 medical records?

19 A. Yes.

20 Q. From Dr. Acampa?

21 A. Yes.

22 Q. What did you review from Dr. Acampa other than the two
23 operative notes you referred to?

24 A. Again his records up until in this time.

25 Q. Except you didn't read his radiology images?

1 A. I'm sorry.

2 Q. You didn't read Dr. Acampa's x-ray images?

3 A. Again if it was in his report I read it.

4 Q. The actual images themselves?

5 A. I didn't see the films.

6 Q. And you said you reviewed medical records from both
7 admissions from Good Samaritan Hospital, right?

8 A. Correct.

9 Q. And then referring to your review of Dr. Helfet you
10 wrote in your report references to Dr. Helfet's note that he
11 documented an excellent range of motion with 15 degrees of
12 dorsiflexion, do you see that?

13 A. Yes.

14 Q. Just yes or no?

15 A. Yes.

16 Q. That was wrong it was only five degrees?

17 A. It says it also documents so his other side was 15 and
18 40.

19 Q. You wrote down that Dr. Helfet found 15 degrees of
20 dorsiflexion?

21 A. Correct.

22 Q. You didn't say left or right that Dr. Helfet documented
23 15 degrees dorsiflexion?

24 A. Just by guessing looks like I was looking at the other
25 side which was 15.

1 Q. No, you you were talking here about the arthritic
2 changes that Dr. Helfet documented in the tibiotalar joint and
3 then you said referring to Dr. Helfet's notes it also documents
4 excellent range of motion with 15 degrees of dorsiflexion and 40
5 degrees of plantar flexion?

6 A. Correct.

7 Q. You said that. That wasn't about the left ankle that
8 was about the right ankle?

9 A. I don't know. Again, I'm looking at this I know he had
10 five and 40.

11 Q. Look at the jury and tell them whether Dr. Helfet said
12 word one about the left ankle. He only commented on the right
13 ankle?

14 A. He didn't write range of motion of the left ankle.

15 Q. He wrote range of motion for the right ankle?

16 A. And there is no range of motion left ankle note?

17 Q. Doctor, this is again a question and answer session,
18 can we agree that you made a mistake in your report?

19 A. It could be, yes.

20 Q. Because Dr. Helfet concerning Mr. Karasu's right ankle
21 documented a significant loss of range of motion in dorsiflexion
22 correct?

23 A. No.

24 Q. Five out of 20?

25 A. He wrote five out 15 he believes 15.

1 Q. That's one third reduction in range of motion isn't
2 significant?

3 A. You want me to answer, no.

4 Q. Just tell me what you agree, doctor -- I'm going to ask
5 you to put away the goniometer.

6 A. That's ten degrees.

7 Q. Doctor, do you find this amusing?

8 A. I don't find --

9 Q. This whole process?

10 A. I find your questions amusing, yes.

11 Q. Okay. Can we agree that Dr. Helfet documented a one
12 third reduction in dorsiflexion in Mr. Karasu right ankle?

13 A. Yes.

14 Q. You just don't think it's significant?

15 A. True. It's ten degrees.

16 Q. With you agree that if somebody only has 20 out of 40
17 range of motion whether dorsiflexion whether it's plantar
18 flexion that's a 50 percent loss? I'm just saying I'm giving you
19 an example.

20 A. 20 out of 40 --

21 Q. Let me just, Doctor, listen to my question, if someone
22 documents 20 range of motion in plantar flexion out of a normal
23 of 40, can we agree that that's a 50 percent loss? Is that a yes
24 or no just, yes or no.

25 A. We can agree that's 50 percent loss, yes.

1 Q. I know you want to say it's just 20 degrees?

2 A. No, I don't.

3 Q. But it's 50 percent loss of range of motion?

4 A. No, I never said that. I agree with you.

5 THE COURT: Sustained.

6 A. 50 percent of plantar flexion is significant loss.

7 Q. Thank you, Doctor. The jury has heard multiple entries
8 in Dr. Acampa's records over the years that Mr. Karasu was
9 complaining about difficulty sleeping due to pain in his right
10 ankle?

11 A. Okay.

12 Q. That's consistent with the nature of this injury isn't
13 it?

14 A. Yes, it could be.

15 MR. BURKE: I'm finished. Thank you, Judge.

16 THE COURT: Do you have any redirect?

17 MR. EDWARDS: Yes.

18 THE COURT: Okay. So start.

19 REDIRECT EXAMINATION BY

20 MR. EDWARDS:

21 Q. Doctor, Faierman, when you have in discussing normal
22 quote unquote normal values of flexion is it significant to if
23 you're testing the motion for example the right ankle that you
24 compare it with that same individuals left ankle?

25 A. Yes.

1 Q. So in this case did you examine the left ankle of
2 Mr. Karasu?

3 A. Yes.

4 Q. And with regard to the left ankle that we all agree had
5 no injury the dorsiflexion was 40?

6 A. 20.

7 Q. And the plantar flexion?

8 A. 40.

9 Q. And so 40 for Mr. Karasu is normal?

10 A. Correct.

11 Q. Now Dr. Helfet who you agree with counsel is a doctor's
12 doctor?

13 A. Yes.

14 Q. Did Dr. Helfet's check Mr. Karasu's left ankle?

15 A. Yes.

16 Q. And what did he find with regard to the plantar flexion
17 on his left ankle?

18 A. He found the same that I did. He found 40 degrees on
19 both ankle plantar flexion.

20 Q. So Dr. Helfet the doctor's doctor did not find 50 or 55
21 degrees, did not find on his good ankle 50 or 55 degrees?

22 A. No.

23 Q. And Dr. Helfet the doctor's doctor did he find an
24 antalgic gait?

25 A. No.

1 Q. Anywhere in Dr. Helfet's notes that you looked at where
2 Dr. Helfet says he has an antalgic gait?

3 A. No.

4 Q. And with regard to arthritis, okay, so now when you're
5 looking at you looked at the films you?

6 A. Yes.

7 Q. Where there is a joint space, okay, joint space that
8 means there is cartilage there?

9 A. Yes.

10 Q. Between the tibia and what's the bone under?

11 A. Talus.

12 Q. The talus?

13 A. Yes.

14 Q. So between the tibia and the talus on this particular
15 individual there is cartilage between the bottom of the tibia
16 and the talus?

17 A. Yes.

18 Q. As shown on the x-ray?

19 A. Yes, the clear space is the cartilage.

20 Q. And he has that as of the last imaging study that was
21 done?

22 A. Yes, yes.

23 Q. Now when you reviewed the records, okay, if you looked
24 at the records there were certain records that were not
25 available to you, okay, did you review the Good Samaritan the

1 entire you had the entire Good Samaritan record available to
2 you, correct?

3 A. Yes.

4 Q. And in part of the good which was put in evidence I
5 assume for a reason by Mr. Burke because it's relevant to the
6 injury?

7 A. Yes.

8 Q. The Good Samaritan record pretty big record?

9 A. Yes.

10 Q. You had that entire record available to you before you
11 examined this person, correct?

12 A. Yes.

13 Q. So did that record does this record was this record
14 able to give you a fair, pretty accurate idea of what his injury
15 was before you examined him?

16 A. Yes.

17 Q. The record does include the record does include reports
18 from radiologists?

19 A. Yes.

20 Q. And the radiologists who presumably are board certified
21 experts in their field?

22 A. Correct.

23 Q. And that are reliable can be reliable to determine what
24 actually the films show?

25 A. Correct.

1 Q. And you had those available to you without actually
2 having the actual imaging in front of you?

3 A. Yes.

4 Q. That was before you examined Mr. Karasu?

5 A. Yes.

6 Q. Now with regard Mr. Burke asked you Dr. Acampa saw him
7 45, 50 I think somewhere around 40 maybe slightly under 50 saw
8 him?

9 A. Yes.

10 Q. Obviously he saw him many more times than you saw him
11 correct?

12 A. Yes.

13 Q. You saw him?

14 A. Yes.

15 Q. Based upon your review of the medical record history
16 that you have available, did Dr. Acampa see Mr. Karasu also
17 about 45 times more than Dr. Ali Guy?

18 A. Yes.

19 Q. And Dr. Ali Guy you're familiar, I want you to assume
20 that Dr. Ali Guy testified in this case and testified as a
21 physiatrist?

22 A. Yes.

23 Q. Do you know Dr. Ali Guy as orthopedic surgeon?

24 MR. BURKE: Just note my objection beyond the
25 scope. I never discussed Dr. Ali Guy in my

1 cross-examination.

2 THE COURT: Sustained.

3 Q. Dr. Acampa who saw him 45 or some odd times, would you
4 consider Dr. Acampa to be qualified to come in and testify about
5 his injury?

6 A. Yes.

7 Q. There was something mentioned when Mr. Burke he didn't
8 have a shortened leg, does he?

9 A. Shortened leg, no, not at all.

10 Q. Now with regard to osteo arthritis it doesn't get
11 better, correct?

12 A. Correct.

13 Q. It can get worse?

14 A. Yes.

15 Q. Not everybody's arthritis develops at the same pace,
16 does it?

17 A. Exactly right.

18 Q. So if you could explain with regard to the person who
19 were here whose day it is in court today, Mr. Karasu, explain if
20 you can, based upon your review of progress of the arthritis
21 with regard to his right ankle?

22 A. So with regard to the motion we know that the
23 examination of Dr. Acampa is exactly the same for the last 8
24 visits. So he's not progressively worse things clinically.
25 Dr. Acampa felt it was a slight antalgic gait.

1 Dr. Helfet didn't see an antalgic gait. The motion is almost
2 the same in all three doctors. Me, Acampa, I give a little bit
3 worse motion than Dr. Helfet, the doctor's doctor. Dr. Helfet
4 gives five degrees dorsiflexion. I said it was neutral. But we
5 both agree same for plantar flexion. Dr. Acamapa gives 5 for
6 dorsi flexion. I say it's neutral. Plantarflexion 35 degrees I
7 say 40.

8 So the arc of motion of Dr. Acampa and me is exactly
9 the same. The arc of motion of Dr. Helfet says it's a little
10 better than I do.

11 So these arc of motion things, as I told you, slight
12 changes is silly to make arguments over five degrees or ten
13 degrees. That's why when I says 10 degrees dorsiflexion
14 difference it's so negligible on these goniometer. You could
15 barely -- you can barely tell the difference when two people
16 examine. There is intraobserver and inter observer poor
17 reliability when you try to compare doctors like that.

18 And so then the x-rays as far as the x-rays --

19 MR. BURKE: Objection he's going beyond the
20 question.

21 THE COURT: Sustained.

22 Q. My question was about the progress of arthritis? Could
23 you answer the question about the progression of arthritis?

24 A. Clinically based upon clinical examination arthritis is
25 not significantly progressing. After 2019 he wasn't seen. No

1 more x-rays after 2018 for some reason. As far as x-rays are
2 concerned, you look at the x-rays there is mild arthritis.
3 Again progress of that mild arthritis in my opinion will never
4 require further treatment certainly not a fusion.

5 A fusion is for -- again fusions are when there's bone
6 on bone. That will never happen in this case.

7 MR. EDWARDS: Thank you, Doctor. I have no
8 further questions.

9 MR. BURKE: Nothing further.

10 THE COURT: You may step down, doctor.

11 MR. EDWARDS: Your Honor, at this time we don't
12 have any further witnesses and the defense rests.

13 THE COURT: All right. Thank you. That being
14 said my lovely jurors, I'm going to let you go for not only
15 today, but until remember we discussed until Monday.

16 Monday we're going to have everything ready for
17 you and you're going to hear closing remarks. I will
18 charge you on the law and we'll move on.

19 So have a wonderful weekend. Remember what I said
20 you haven't heard everything. You're going to need to hear
21 the whole thing at that time then you can deliberate.

22 So don't talk to anyone about what you have heard
23 or seen. Just enjoy your time and we'll see you Monday at
24 9:45. All right. Take care everybody. Thank you for your
25 attention. We really appreciate it.

1 (Jury exited the courtroom.)

2 THE COURT: Counsel, I want to get everything done
3 so we just have to do go over the charge.

4 Most recent request to charge again you didn't
5 delete the third party action. So I'm going to do counsel
6 on the record I'm going to give you the copies we'll cross
7 it out. You initial it. Do you want to sign this initial
8 it?

9 MR. EDWARDS: Yes.

10 (Matter is adjourned to Monday, March 21, 2022 at
11 9:45a.m.)

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1 COURT OF THE STATE OF NEW YORK
2 COUNTY OF NASSAU : PART 15

3 - - - - - X

4 SALIH KARASU and ANA DE LUCCA KARASU,

Index No.
4428/16

5 Plaintiffs,

6 -against-

Charge conference

7 SECURITY AUTO SALES, INC., SECURITY
8 DCJR, INC., and 345 MERRICK ROAD, LLC,

9 Defendants.

10 - - - - - X

11 18th of March, 2022
12 Mineola, New York

13 B E F O R E : HONORABLE DICCIA PINEDA-KIRWAN

14 Justice and a Jury.

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

16 Plaintiffs:

17 RONALD BURKE, ESQ.
18 Kelner and Kelner
19 7 World Trade Center
20 250 Greenwich Street, Ste. 2700
21 New York, NY 10007

22 Defendants:

23 JAMES A. EDWARDS, ESQ.
24 Ahmuty, Demers & McManus
25 199 Waters Street, 16th Floor
New York, NY 10038

1 THE COURT: This matter is on trial. Counsel has
2 rested. We had the charge conference. I asked counsel to
3 after what I intended to charge, I asked them to work on
4 the wording of a specific jury charge and the verdict
5 sheet. And I advised them that if they needed further
6 argument that they would have this conference today. And
7 otherwise with we'll just see each other Monday for the sum
8 up and charge and deliberations.

9 I should say that I have here the plaintiffs
10 attorney the appearance of Mr. Burke Ronald Burke and
11 Mr. James Edwards defense attorney. They agree to go kind
12 of we were not going to go on the record but due to the
13 circumstances that arose where in by e-mail which I'm going
14 to document I'm going to deem these as court exhibits
15 because we're going to print it out and on Thursday March
16 17 at 4:05 p.m. the court received an e-mail from Mr.
17 Edwards copied Mr. Burke and Courtney Kane, I believe.

18 MR. EDWARDS: She's an associate from my office,
19 Judge.

20 THE COURT: Basically, counsel was requesting
21 several matters including e-mail which he wanted to put on
22 the record. And that would be the next exhibit.
23 Additionally he sent a proposed another proposed verdict
24 sheet. This is like the third I think and a proposed
25 request to charge. In that he advised the court that he

1 was going to make a motion a very new motion that he had
2 already made during the trial. The court responded with so
3 far so good, Mr. Edwards.

4 MR. EDWARDS: Yes, Judge.

5 THE COURT: I only have one screen. Then so the
6 court on March 17th at 4:17 p.m. responded that any motions
7 that you wish to make must be in writing submitted to Judge
8 Pineda-Kirwan remote NY courts dot gov. Your adversary no
9 later than tomorrow March 18, 10:00 a.m. responsive papers
10 were due at 11:30. The court thanks you very much for your
11 promptness because promptly the motion was in the e-mail
12 and the responsive papers came in for around the time that
13 we requested it.

14 So already we have three additional court exhibits
15 and so the motion was sent at 5:37 on March 17 and that
16 would be the next court exhibit. And I don't know what
17 we're up to but we'll I will talk to Melinda.

18 The motion by Mr. Edwards on behalf of the
19 defendants and the responsive papers answering papers for
20 Mr. Burke from today March 18, 11:43. I believe that was
21 was timely we realized we were going to have this
22 conference. I wasn't sure whether or not I wanted to
23 review the papers. I wasn't sure whether or not they
24 wanted to go on the record. And so here we are and I'm
25 going to give an opportunity briefly because I think they

1 wanted to address it briefly the motion and I can do two
2 things. I can either issue an order with the decision
3 because I want to do this before Monday or I can put it on
4 the record. So let's see. So movant, Mr. Edwards, you
5 want to.

6 MR. EDWARDS: Yes, Judge, on behalf of the
7 defendants in the case I am reviewing my motion made at the
8 close of the plaintiffs case to strike the trial testimony
9 of doctors Ali Guy and Debra Dwyer. Dr. Guys testimony
10 with regard to work life expectancy based upon two things.
11 One based upon an inadequate disclosure and just based upon
12 the testimony that he gave which was speculation.

13 Just that he cannot do it indefinitely. There was
14 no parameters given with regard to that. And with regard
15 to Dwyer that's based upon not based upon disclosure, but
16 just based upon lack of adequate communication for the most
17 part because she's relying on Dr. Guys speculative
18 testimony. That she herself is not qualified to testify by
19 her own admission. Is not qualified to testify with regard
20 to reduced work life expectancy.

21 So I move to strike both of their testimonies and
22 then along with that remove those items from the verdict
23 sheet. That's my motion.

24 THE COURT: Any response.

25 MR. BURKE: Yes, Judge, I would rest on my

1 affirmation in opposition. If you would like me to
2 summarize it, I would. I think that enough on my seven
3 days motion with citations for the record.

4 More than sufficient adequate disclosure no
5 foundation laid for testimony by both Dr. Guy and
6 Dr. Dwyer.

7 THE COURT: And both have been received plaintiff
8 had asked depending on what my ruling is on the motion,
9 what the charges would be and the question is fair that is
10 the verdict sheet.

11 Now I understand that before the motion you agreed
12 to just let it go. If it had this motion in common it was
13 going to go the way it was no changes, right.

14 MR. BURKE: The only open issue that we did not
15 have a chance to discuss and in fairness to both attorneys,
16 it was understood that, you know, there was no formal
17 binding decision by defense counsel or myself, but I am
18 satisfied with the charge as you have laid out. And I
19 would agree with Mr. Edwards that if when you charge work
20 life expectancy to follow the table in the PJI that says 14
21 point seven years work life expectancy.

22 And I disagree with Mr. Edwards who says that on
23 life expectancy as opposed to work life expectancy
24 Mr. Edwards contends that you should charge the jury that
25 there were there is 27 point five years future life

1 expectancy. I disagree with him. I think it should remain
2 what we had previously discussed it's 30 years based on the
3 PJI table.

4 THE COURT: I thought there was a different
5 between work life and there was two different numbers.

6 MR. BURKE: Yes.

7 THE COURT: So you want those in there, no.

8 MR. BURKE: Yes, I want both life expectancy again
9 which I say should be 30 years Jim says 27 point five and
10 on work life expectancy we both agree that it should be 14
11 point seven which is what the court had indicated was in
12 the table.

13 THE COURT: Back on the record. Now the question
14 is this, counsel, do you want to, you have three options.
15 I can I have draft of the decision. Would you be more -- I
16 was thinking maybe you want to hear it now so you can.

17 MR. EDWARDS: Yes.

18 THE COURT: You will hear it now on the record.

19 MR. BURKE: Yes.

20 THE COURT: Okay.

21 THE COURT: As I mentioned this motion came after
22 the closing of resting of both parties where defendant seek
23 to strike the trial testimony of Dr. Ali Guy. And
24 Dr. Debra Dwyer and dismiss plaintiff Salih Karasu's claims
25 for future medical care and lost earnings. Defendant

1 previously made the same motion on the record which was
2 denied with leave to move again and now defendants seek to
3 renew their motion.

4 In support defendant submit portions of the trial
5 transcript and does not advance any new arguments as to why
6 this motion should now be granted. As to Dr. Guys
7 testimony defendants allege that there was inadequate
8 expert disclosure that he would testify as to future
9 medical expenses and decreased work life expectancy and
10 that his testimony was otherwise speculative.

11 In the portions of the transcript provided
12 defendant's counsel admits that Dr. Guy's disclosure
13 includes quote a general reference to future care end
14 quote. That's cross trial transcript at 320 line 6, but
15 argues that this does not provide any quote specific
16 details end quote cross trial transcript at 320 line seven.

17 Defendant have not provided any authority
18 supporting the proposition that specific details need to be
19 provided in expert disclosure. Additionally plaintiffs
20 counsel note that had Dr. Guys expert disclosure as well as
21 big of particulars indicate the need for future medical
22 care and future periodic medical supervision. And there
23 was no objection by defendants prior to trial that the
24 disclosure was inadequate.

25 The portion of Dr. Guys transcript provided also

1 show a basis for his opinions as he testified that
2 Mr. Karasu muscle weakness nerve damage and arthritis will
3 worsen overtime and he will not be able to continue working
4 as he currently does.

5 As to Dr. Dwyer defendants allege that his
6 testimony regarding defendant cross has dropped dropped
7 based upon Dr. Guys speculative testimony. Initially as
8 noted above Dr. Guy provide add bases for his testimony
9 second defendant do not provide any portion of Dr. Driver's
10 testimony to support their contention.

11 In any event, as plaintiff's counsel pointed out
12 on the record Dr. Dwyers testimony was not solely based
13 upon Dr. Guy's testimony. She relied upon her background
14 and experience in health and labor economics and federal
15 data that she studies include the United States bureau of
16 labor statistics for which is relied upon by the government
17 and economists. She also relied upon tables that were in
18 evidence and part of her expert disclosure.

19 Accordingly defendants motion is denied.

20 Counsel, one last word if you want we can close
21 the record for now.

22 MR. EDWARDS: With regard to the motion I guess I
23 note my exceptions. I do have a comment on the verdict
24 sheet though also should we do that now. The one that
25 you're going to use the only usual that looks at the charge

1 301, you know, which lists the different items PJI lists
2 the economic items first and the pain and suffering after
3 that. And I think on what the court had has the pain and
4 suffering number first I think should go follow the way the
5 PJI.

6 THE COURT: Absolutely. I agree with you. I
7 noted that. I don't know how that happened. I think maybe
8 one of you must have had it like that but, yes, I will do
9 it. It's what I usually do is list pain and suffering and
10 you know the -- I can't remember the word but permanence.
11 Permanence and all that. So thank you I will fix that.
12 Okay.

13 MR. EDWARDS: Yes.

14 THE COURT: I don't think Mr. Burke has an
15 objection, do you?

16 MR. BURKE: I just, Judge, it's stylistic, but in
17 my experience generally the pain and suffering comes on the
18 verdict sheet before lost wages.

19 THE COURT: Really.

20 MR. BURKE: Generally.

21 THE COURT: PJI has it differently in everyone of
22 my charges we must have seen yours and went by that one.
23 We were doing it because at first I said why don't you give
24 us, but, yes, I instructed my law clerk already about that.

25 MR. BURKE: Absolutely my last trial in Nassau in

1 front of Judge McCormick he had pain and suffering first
2 but it's not life changing events whatever you decide.

3 MR. BURKE: Whatever you recommend, Judge.

4 THE COURT: We'll see you Monday 9:30 I guess.

5 MR. EDWARDS: Yes.

6 MR. BURKE: Yes, I don't know what else we have to
7 cover, but we'll be all ready. I hope we don't go through
8 it. I put the trial on Tuesday just in case. So they
9 don't feel rushed.

10 (Matter is adjourned to March 21, 2022)

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COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : PART 15

- - - - - X
SALIH KARASU and ANA DE LUCCA KARASU,

Index No.
4428/16

Plaintiffs,

-against-

SECURITY AUTO SALES, INC., SECURITY
DCJR, INC., and 345 MERRICK ROAD, LLC,

Defendants.

- - - - - X

21st of March, 2022
Mineola, New York

B E F O R E : HONORABLE DICCIA PINEDA-KIRWAN

Justice and a Jury.

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

Plaintiffs:

RONALD BURKE, ESQ.
Kelner and Kelner
7 World Trade Center
250 Greenwich Street, Ste. 2700
New York, NY 10007

Defendants:

JAMES A. EDWARDS, ESQ.
Ahmuty, Demers & McManus
199 Waters Street, 16th Floor
New York, NY 10038

1 THE CLERK: All rise. The Nassau County Supreme
2 Court Trial Term Part 15 is now in session. The Honorable
3 Diccia Pineda-Kirwan presiding. Be seated. Come to order.

4 In the matter of index number 004428 of 2016 Salih
5 Karasu and Ana De Lucca Karasu against Security Auto Sales,
6 Inc., Security DCJR, Inc., and 345 Merrick Road, LLC.

7 MR. BURKE: Ronald Burke. From Kelner and Kelner
8 for the plaintiff.

9 MR. EDWARDS: For the defendant Security Auto
10 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road,
11 LLC, James Edwards Ahmuty, Demers & McManus.

12 THE COURT: Welcome back.

13 MR. EDWARDS: Thank you, Judge.

14 THE COURT: Just before I go to what the court's
15 going to charge, I want to go on record. We just marked
16 some exhibit exhibits of work that was done while we were
17 in recess with the jury. And are in regard to motion
18 practice and the charge conference.

19 The courts going to charge the following PJI 1:20
20 which is the production. PJI 12D which is split trial
21 talks about damages. 1:21 review principal stated. 1:22
22 falsus en uno. 1:23 burden of proof. 1:25 consider only
23 testimony and exhibits. 1:27 excludes sympathy. 1:27A
24 fair juror in absence of implicit or conscious bias. PJI
25 1:70 general instruction direct and circumstantial

1 evidence. 1:90 general instruction, expert witness. And
2 we have Dr. Ali Guy, MD, physiatrist, pain management,
3 Debra Dwyer, Ph.D. economist. And Dr. Aeil Faierman, MD
4 orthopedic surgeon.

5 PJI 1:90 point two general instruction expert
6 witness. It will read as follows are the two ankle joints,
7 color anatomy chart of the foot and ankle. Was admitted --
8 was shown to you. It wasn't admitted was it?

9 MR. BURKE: It wasn't admitted.

10 THE COURT: Was shown to you for the limited
11 purpose of training and assisting you to understand the
12 opinion of Dr. Guy and Dr. Faierman?

13 MR. BURKE: Dr. Guy was the one who discussed it.

14 THE COURT: So both of them?

15 MR. BURKE: Well actually what happened was we,
16 plaintiff with Dr. Guy, had explained the color anatomy
17 chart and a model of the foot and ankle. When Dr. Faierman
18 came in for the defense he too used a model of the ankle
19 and foot. And I have to say it was an inferior model, Jim.

20 MR. EDWARDS: And a goniometer.

21 THE COURT: Do I have to state his name? Can I
22 just say the doctors?

23 MR. BURKE: Yes.

24 MR. EDWARDS: That's fine.

25 MR. BURKE: We don't have break it up.

1 MR. EDWARDS: That's fine.

2 MR. BURKE: Yes.

3 THE COURT: 1:92 general instruction interested
4 witness.

5 MR. EDWARDS: We decided we're not giving that
6 charge, Judge.

7 THE COURT: No deposition testimony.

8 2:277 damages in general. 2:77A. Are you going
9 to make any comments during closing?

10 MR. BURKE: Yes. I'm going to be discussing the
11 economics of course.

12 MR. EDWARDS: As will I judge.

13 THE COURT: 2:280 personal injury and injury and
14 pain and suffering plaintiffs entitled to recover every sum
15 of money which will justly and fairly compensate him for
16 the ingrate, disability, and conscious pain and suffering
17 to date caused by defendant.

18 MR. EDWARDS: Judge, I have since it's in that
19 language I think we can leave that injury to say the same
20 as we did the other charge.

21 MR. BURKE: What else did it say?

22 MR. EDWARDS: It says caused by defendant which is
23 I think we could leave it as jury.

24 MR. BURKE: Well it was caused by the defendant.
25 It's a labor law case.

1 THE COURT: And remember they didn't hear the
2 liability. So I don't think it's going to --

3 MR. BURKE: I don't think we should modify that
4 language.

5 THE COURT: I don't think so either.

6 MR. EDWARDS: I except.

7 MR. BURKE: We're not saying negligence. We're
8 just telling them that he violated the labor law.

9 MR. EDWARDS: Cause. Cause is an active verb.

10 MR. BURKE: Could be cause by omission.

11 MR. EDWARDS: Exactly right which is why the jury
12 can speculate on it. And they don't need to with regard to.

13 THE COURT: Well liability was held already
14 period. Your clients were held liable period.

15 MR. EDWARDS: Correct. Statutorily.

16 THE COURT: PJI 2:280.1 damages personal injury,
17 injury and pain and suffering. Supplemental instruction
18 which is loss of enjoyment of life. 2:282.2 this is
19 regarding the income tax whether or not they had to pay
20 income taxes. And then we went 2:281 which is plaintiffs
21 life expectancy. He's 47 years old his life expectancy is
22 30 years. 30 more years. 2:285 expenses incurred. Do you
23 have 285. Did I give that you one too.

24 MR. BURKE: Basically the past expenses we're
25 stipulating to.

1 THE COURT: The who whole first paragraph if you
2 have a copy.

3 MR. EDWARDS: It's x'd out.

4 THE COURT: If you find plaintiff will need
5 medical and physical therapy in the future you will decide.

6 MR. EDWARDS: Correct, correct.

7 THE COURT: How about 2:285 if you have it in
8 front of you so we're going to start with the second
9 paragraph then the third paragraph starts with this your
10 verdict you will state specify the amount of order awarded
11 for medical and PT expenses up to date, if any.

12 MR. BURKE: We shouldn't say that because --

13 THE COURT: I will take that out.

14 MR. BURKE: It's only future.

15 MR. EDWARDS: So it could just say if you make an
16 award for future it could start at that.

17 THE COURT: What are you looking for?

18 MR. EDWARDS: Just saying judge if you remove the
19 phrase.

20 THE COURT: I think we start before that PT.

21 MR. EDWARDS: Reasonable expense to be incurred if
22 you find that plaintiff decided to award medical PT. If
23 you make an award. Do not. Okay. 2:290. 2:280 damages
24 personal injury, loss of earnings in general. 2:290.
25 That's the one with.

1 MR. EDWARDS: One which just went over.

2 THE COURT: Next 2:301 damages personal injury,
3 collateral sources, itemized verdict.

4 MR. BURKE: You're not going to be reading
5 something about collateral sources though, right?

6 THE COURT: No. No, they just that's just so you
7 guys know what it's about. Have you seen it the 301?

8 MR. BURKE: I didn't bring my book with me but.

9 THE COURT: You could borrow mine.

10 MR. BURKE: Oh. Thank you.

11 THE COURT: If you decide the plaintiff and the on
12 the question of liability you must include in your verdict
13 an award for past and future pain and suffering.

14 MR. BURKE: She already did that.

15 THE COURT: We're just going to add medical
16 expenses and PT.

17 All right. In the future medical PT loss of
18 earnings, right. Do you want lost social security time
19 income benefits in this?

20 MR. BURKE: Yes, that's also on the verdict sheet.

21 THE COURT: Loss of earnings. What about
22 paragraph four there is an issue on whether a particular
23 claim of was provided gratuitously -- we don't have issue.

24 MR. BURKE: No.

25 MR. EDWARDS: No.

1 MR. BURKE: Yes, that should be out.

2 THE COURT: If you decide to make an award if you
3 decide to make future then for each item. Okay. We got
4 return to the court automatic PJI 1:24. I also like to
5 address, I put a supplement here to 1:24 return to the
6 courtroom, you know, if they want to hear something read
7 back. And I had 1:24 supplement. Please make any such
8 requests if you have any requests in writing and through
9 the foreperson in the event of -- I given them this so they
10 have -- saving time try whenever possible to make any
11 request be as specific possible.

12 For example, if you only wanted hear read back of
13 a particular portion of a certain witnesses testimony
14 indicate that with particularity. If you only want to hear
15 direct or redirect or only cross-examination in the
16 particular witness indicate so we'll be able to find the
17 testimony.

18 1:26 special verdicts and general verdict support
19 bid written interrogatories yes no some numerical figure.

20 MR. EDWARDS: Is that now covered by 301 or.

21 THE COURT: This case will be decided on the basis
22 of answers you give. It's kind of different. To written
23 questions that will be submitted to each of you. Each of
24 the questions this is like just general instruction 126. I
25 just put it toward the end. I had in all in order before.

1 MR. BURKE: It's a good general instruction and it
2 does get specific later on but it's more generalized.

3 THE COURT: I think you asked for that too.

4 MR. EDWARDS: I may have. I am not objecting to
5 the charge. That's around after 301.

6 MR. BURKE: No, you're going to put that --

7 THE COURT: No, I put it in after 124 read back.
8 It's like already just -- I think that's last of the law on
9 the case except that I have to do the other plaintiff 301
10 I'm sorry 315, 305. I'll get to it.

11 General verdict while it's importance that all
12 views be considered verdict of five out six is sufficient
13 it's kind of repetitive at times. But as jurors you're due
14 to decide from the testimony that you have heard this is
15 how you know they should look at the testimony.

16 And then conclusion 130 which is one of the new
17 ones. And 131 deals with alternate jurors. I said I was
18 going to keep them.

19 MR. BURKE: We have one juror left.

20 THE COURT: I will ask you whether you want to
21 give them all the evidence. I ask you will the attorneys
22 agree that the jury may have the exhibits now or upon
23 request. You decide.

24 MR. EDWARDS: I think upon request.

25 THE COURT: Upon request.

1 MR. EDWARDS: Upon request.

2 THE COURT: Then we have 2:315 damages, action,
3 regarding spouse loss of services. Let's see if you find
4 that injured plaintiffs wife is entitled to recoverer --
5 I'm sorry, is entitled to recover you'll award the wife, is
6 that right?

7 MR. BURKE: Yes, it would be.

8 THE COURT: Sounds weird because injured
9 plaintiffs husband wife -- you'll award the wife damages
10 for the monetary value of lost services and society which
11 you find plaintiff wife's sustained by the loss of her
12 spouses services and society. You probably know this by
13 heart. This hasn't changed in years.

14 MR. BURKE: No, I don't think it has.

15 THE COURT: And I think that's it.

16 MR. BURKE: Okay.

17 THE COURT: That will be it. And you wanted to
18 add --

19 MR. EDWARDS: I just wanted to note my exceptions
20 to your inclusion of the word cause in the charge on 2:80.
21 That's all.

22 THE COURT: Okay. We also we didn't really go
23 through what their requests were because they kept on
24 supplementing it, but they are all documented as court
25 exhibits. They have been changes back and forth but I

1 believe that they are satisfied with, you know, allowed
2 them to help me out putting it together. And I thank you
3 very much for that.

4 MR. BURKE: Thank you, Judge. Can I take three
5 minutes to go down the hall. I will be right back.

6 THE COURT: They agreed to they were going to show
7 some demonstrative.

8 MR. BURKE: I have got a white board I'm going to
9 be writing.

10 MR. EDWARDS: We already agreed.

11 MR. BURKE: Yes.

12 THE COURT: We're going to go through past if it's
13 one. If it's okay with you. I think it's okay. Court
14 officers -- we got them lunch. We're going to go through
15 the end of charge and everything. If we're ordering lunch
16 they can work through lunch.

17 How long you think you're going to take?

18 MR. BURKE: Depends in part on the --

19 MR. EDWARDS: The content of what I say may take
20 the length of yours.

21 MR. BURKE: I would expect about an hour or so.

22 COURT OFFICER: Jury entering.

23 THE COURT: Welcome back. Happy spring. You may
24 be seated.

25 Mr. Edwards, you want to start.

1 MR. EDWARDS: Thank you, your Honor.

2 THE COURT: In case you don't know we're going to
3 do the closing remarks now.

4 MR. EDWARDS: Good morning, ladies and gentlemen,
5 I'm going to speak -- I have been speaking directly to you
6 for a couple of weeks now.

7 There is one person who was actually with his own
8 eyes seeing the inside of the plaintiff's ankle and the
9 ankle joint, that's Dr. John Acampa. Who was not called by
10 the plaintiff to come and testify on this case.

11 And I think that to consider what you have heard
12 everyday over the last two weeks pretty much whatever --
13 everything you have heard here falls into sort of one of
14 three categories to me.

15 One which is fact, reality. I do think there are
16 certain things you heard that are fictions. And I'm going
17 to talk about and that I think there is a certain element
18 to what you heard that's speculation.

19 So one thing that there is a claim here and I told
20 you from the beginning when we talked about opening
21 statements, you know, one of the reasons we're here is
22 because we have a claim about damages going into 57, 67, 77
23 with regard to his injury. And claims for lost earnings.

24 And you want to be, you know, he had, in fact,
25 certainly true. He had the accident. He had the fracture.

1 He had the procedure. Obviously we -- obviously never
2 denied that. But the reality is that that has healed and
3 that has been healed for years.

4 We're not saying it's a hundred percent of what it
5 was before, but he is healed. And that is a factor that's
6 true because we know that he has not been treating now for
7 years. And with regard to the earnings it is a fact that
8 he earned over 60 thousand dollars in 2021. That's a fact.

9 So I think there are really two, you know, the
10 claim there is two sort of real to me essentially moments
11 in this case that I want you to think about from the
12 evidence that you got.

13 One is obviously March 26 of 2015 which is when
14 the accident happened and the injury was sustained. And at
15 that time he went to Good Samaritan Hospital. And he had a
16 fracture that was eventually diagnosed as a pilon fracture.
17 And there is reference in that to the fracture impacted.

18 What's also in there this is a little bit
19 important is referenced that as mildly impacted. You heard
20 some testimony about sort of the different degrees of pilon
21 fracture. And it's a pilon fracture, but this is not the
22 worst of the pilon fractures.

23 It's not to diminish the fact that he had that
24 injury. But the second key date that's the date that I do
25 want you to think about that's for the later. The second

1 key date is July 14 of 2017. A little over two years after
2 the accident, but I think it's an important date because
3 that's the date that the plaintiff had that surgery to
4 remove some of the hardware from his ankle. All right.

5 And what's important about that is one the removal
6 of the hardware did relieve some of the discomfort and pain
7 that he was having as a result of having a hardware in miss
8 ankle that's important. But the more important thing there
9 is that at that moment on July 14 of 2017 it's in evidence
10 it's in the records at 11:39 a.m. there is Dr. Acampa
11 actually not looking at x-rays or CTs scans or anything
12 else, actually with his own two eyes looked inside of this
13 man's ankle and observed the ankle joint.

14 And while he was doing this procedure and he
15 prepared an operative report there was standard thing when
16 a doctor does a report they actually dictate an operative
17 report how the procedure is going, but only what their
18 observations are.

19 And one of the facts here is in that operative
20 report from Good Samaritan Hospital in evidence from
21 Dr. Acampa when he is looking at because you're going to
22 hear a lot of. You heard a lot. You heard a lot of
23 testimony with regard to articulating surfaces. Okay.
24 That's the space between the joints.

25 So you have the tibia going into the talus and

1 they had articular surfaces. And you heard a lot about
2 that being basically the sort of the foundation of what
3 most of the claim is with regard to the future damages that
4 are going to be claimed in this case. Because that damage
5 to the articular surface was the problem.

6 But when Dr. Acampa looked inside of the
7 plaintiff's ankle on July 14, 2017, he noted I'm quoting
8 right here from the record in evidence from Good Samaritan,
9 there were no noted deficits. Withdrawn. To quote
10 Dr. Acampa from his report, there were no deficits noted in
11 the articulating surface.

12 Now I'm going to just -- this is just my -- this
13 is just, I already discussed with counsel that's the quote
14 and the reason why I have this here is because I think a
15 lot of what you're going to hear about this articular
16 surface, but the only person who actually looked inside,
17 this is done over two years -- over two years after the
18 accident -- no deficits in the articular surface.

19 And that is the foundation to me. That's why when
20 I said here there is facts there is some fiction to me that
21 is a fact. Okay. That that shines a little bit of a light
22 on what is to be a fiction of this ongoing problem with the
23 articular surfaces. This is two years after the accident.
24 No deficits noted in the articular surface.

25 You also heard you know about with the articular

1 surface that the reason why there is a problem because it
2 affects the range of motion in the ankle right, but we also
3 had in evidence that you saw, I'm not going to -- I'm not
4 going to show you the whole -- you saw the video, I'm not
5 going to show you the whole video.

6 But I do want you to just take a look at -- we
7 talk about this purported damage to the articular surface
8 causing significant loss of range of motion in the ankle.
9 If we take a look at a portion of the video, and I think
10 you will hear from the judge that if you want to see
11 anything more of the evidence you will be able to look at
12 that, but I don't want to spend a lot of time now going
13 through the whole thing.

14 So if we take a look, I want you to take a look
15 what I want you to do is just take a look, folks, here I
16 want you to take a look. Now you heard and I'm going to go
17 show you this, but you hear about the significant loss
18 range of motion because of damage to the articular surface
19 which doesn't exist in 2017. And that damage is causing
20 restriction of motion in the ankle.

21 I want you to look as I play the rest of the
22 video. I want you to take look at this man is walking down
23 here with regard to the claim of restricted motion in that
24 ankle. Now it's moving folks. It's moving. It's moving
25 fine.

1 So two pieces of evidence that you're about to see
2 in here. One the front of that basis of the claim is
3 damage to the articular surface which when Dr. Acampa saw
4 it. It wasn't there. And the other that there is a
5 significant range of motion which you clearly see in the
6 video. I want to make a comment -- make a comment about
7 the video. Okay. Because -- and I get it because I
8 understand that some people might take offense to following
9 somebody around and taking video.

10 And I do get that, but if we look at the time
11 we're talking about here this is back in -- this is in
12 2019, you know, when the economist testified at one point
13 in 2019, I'm looking at case here where I have a claim, I
14 have a claim that he's got a damage articular surface in
15 the joint. I have a claim that he's got significant range
16 of motion which at that point turns out not to be so, but
17 that happen. I have a claim that he's not going back to
18 work and he can't do anything.

19 We have limited options of what we can do to
20 investigate to see. If you're asking for -- we'll get to
21 the end. You will hear about the damages. You're asking
22 for that.

23 Do I love the idea of going out and following
24 somebody around with a camera? Quite frankly, no, but
25 there are limited things that we can do in order to defend

1 against the claim. Because otherwise the claim is just a
2 claim. And then we have to deal with it.

3 So I understand that some people may have issue
4 with it but there are limited options and what we can do to
5 sort of guard against these claims.

6 So I think that two key facts just starting out
7 that I think seriously undermine the foundation of the case
8 that's being presented to you here by the plaintiff. You
9 heard from witnesses in the case first witness was
10 plaintiff. And honestly, you know I think one of the
11 impressions that he got seems pretty smart, seems pretty
12 well spoken, makes a pretty good experience. He's got an
13 accounting degree.

14 Before he came to this country he worked for a
15 construction company. He didn't work for the construction
16 company climbing ladders. He worked for a construction
17 company as an accountant. One of the trips back to Turkey
18 they went to, he mentioned he did work again for a
19 construction company not climbing ladders. He was working
20 in supervising crew of people.

21 He got his own company Net Home Improvement that
22 he still keeps active. I know is no longer doing business
23 but he still has an active company that at one point was
24 had employees that he supervised.

25 He's got to school and learned something about

1 took a course in what we call the auto cad. Computer aided
2 design. And he did well enough in that to actually design
3 a sprinkler system. That not one sprinkler system life and
4 death sprinkler system in a building. Pretty handy stuff
5 to me.

6 And the point of that is that for all that claim
7 about being a commercial roofer, this guy does not need to
8 climb up and down ladders to make a living. He's got other
9 skills that he's clearly shown that he can do that.

10 I told you from the beginning I don't saying that
11 he should be climbing up and down ladders. That's not his
12 only -- my point is that that's not the only option he has.

13 The other thing about his testimony, you know,
14 there is going to be, there is a claim here about a bunch
15 of future medical treatment, future physical therapy,
16 future physiatrist, future doctors visits. Okay. And you
17 know that there is a claim here that there is going to be
18 this progressive and ongoing disability.

19 Well, two of the things that we got that are facts
20 is not fiction, things that we do from his testimony is he
21 has not had he said himself there has been no change his
22 complaints are not getting any worse with regard to the
23 ankle over the last several years.

24 So that to me the fact of what he said is again
25 shines a little bit of a light what a might be a fiction as

1 far as this progressive nature. I will talk a little bit
2 more about that later. But the other thing with regard to
3 treatment. Does he need all this future treatment. The
4 fact is that he's not and doesn't need it because there is
5 nothing changed with regard to the condition of his ankle.
6 And before I go into experts couple things you didn't get.
7 Okay.

8 Obviously you know this case has been around for a
9 long time. We have an accident that happened seven years
10 ago. You heard several times you know from the attorney
11 here that this is his day in court. This is his moment in
12 court. This is the opportunity to give you everything that
13 you can possibly get to consider with regard to assessing
14 this case. They didn't give you Dr. Acampa. That's his
15 doctor.

16 This is the doctor that it's his doctor that saw
17 him from day one at Good Samaritan. Who did the procedure.
18 Then who evaluated him. Then who has seen him on every
19 visit since he stopped since at last visit which was in
20 September 2020.

21 If Dr. Acampa had anything to say to support this
22 claim about all this future damages they would have had him
23 come in here and testify. You also didn't hear from
24 Dr. Helfet. I only saw I know he saw him once we spent a
25 little bit of time talking about what you know Dr. Helfet

1 who is a doctor's doctor, as he said. He's the top guy
2 he's it. You saw him. And they didn't bring the top guy
3 in here. If the top guy had anything to say to support
4 what this is you would have heard from him.

5 Then you have let me just talk about this we have
6 this thing with regard to the progressive nature of the
7 injury. So all based upon not what was seen inside of the
8 ankle on July 17 but based upon four year old films more
9 than based upon 2018 films. X-ray. There was no evidence
10 of that.

11 But if there was an x-ray if there was an x-ray in
12 2019 or 2020 or 2021 or 2022 that certainly could have been
13 taken that would have helped this claim you folks would
14 have seen it. Because that would have certainly would
15 have added credibility to what the claim is here but you
16 didn't get it.

17 There is none. There is no x-ray there is nothing
18 recent to say. There is nothing that can say, hey, look
19 here's what we have in 2016 look what we have by 2018. And
20 now what happened in 2020. You don't have that. You don't
21 have any of later stuff. And if it existed you would have
22 seen it.

23 What you got was two experts okay, Ali Guy who I
24 forget one or two didn't complete these or two of his --
25 who doesn't do surgery hasn't done surgery, testifies an

1 awful lot for the firm of Kelner and Kelner and for the
2 attorney here. Says he sees patients. Okay. Didn't see
3 this patient. Right.

4 Saw him one time in 2019 at least according to the
5 testimony that was elicited on direct. He saw him one time
6 in 2019. One time so he's not treating him. I questioned
7 him. I questioned him. He said no, no, I saw him March
8 2nd five days before the trial. Oh. Do you have any notes
9 of that. That's why I asked the doctor can I see your
10 note.

11 Honestly if there was anything on that I could
12 have deciphered, I would have talked about it, but I don't
13 know what that was. But the point is okay, if there was
14 anything he saw on physical examination in 2022 that he saw
15 him on March 5th of 2022, if there was anything in there
16 that would have helped support this claim, he would have
17 talked about it, but he said nothing about it.

18 So he said other things. CMS Compensatory
19 Mechanism Syndrome which does not exist in the legal in the
20 medical community as a syndrome. I'm not arguing. I'm not
21 saying that there are certainly, you know, affects one part
22 of the body can affect other part of the body, but as far
23 as recognized syndrome it doesn't exist.

24 It exists in a medical community the one medical
25 community of one being Ali Guy. I will talk about

1 Dr. Helfet a little later.

2 That was pretty energetic cross-examination but
3 noticed when Dr. Helfet was talking about CMD despite the
4 cross-examination Dr. Helfet's cross-examination he never
5 challenged him once about the Dr. Helfet's comment that
6 there is no such thing as --

7 MR. BURKE: You're referring to --

8 MR. EDWARDS: Dr. Faierman, my apologies.

9 Dr. Faierman.

10 He also said couple other things, well, about if
11 you don't use it you lose it type of thing. I know he used
12 that phrase. Well he's using it. He's using his ankle.
13 So I don't know what the relevance of that was.

14 One thing I thought was interesting too the basis
15 of the claim with regard to plaintiffs ability to work in
16 the future is what they said was strenuous nature of the
17 work that he's doing now.

18 He said to me sort of out of one side of his mouth
19 but that also said that while he's put on weight because he
20 used to work that he used to do was so active and now the
21 work that he's doing now is sedentary because the work that
22 he's doing now which we know is a lot of hours because we
23 learned that, but the work he's doing now is so sedentary
24 that he's put on weight.

25 At the same time it's so sedentary that he's

1 putting on weight yet it's so taxing on him that he won't
2 be able to do it into the future.

3 He did talk about that honestly folks if I
4 remember the word right I think he was -- he wasn't asked a
5 question with any specifics about working just can he do it
6 indefinitely. No, he can't. I don't think any of us can
7 do anything indefinitely. To me that's well whatever the
8 valuation is.

9 But most important thing honestly to me, I'm going
10 to move on from that in a little but the most important
11 part of Dr. Guy's testimony was the discussion of an ankle
12 replacement.

13 You heard on opening statements on openings at the
14 beginning of the case, Mr. Burke talked to you about one of
15 the things that you're going to hear about is an ankle
16 replacement. And then when he talked to Dr. Guy when he
17 was talking to Dr. Guy about Dr. Helfet's examination and
18 he mentioned that Dr. Helfet talked about aside from an
19 ankle fusion but also talked about an ankle replacement and
20 I objected because there was no reference that he mentioned
21 on opening. And the only place I heard it the first time
22 it was heard, was on opening and then he mentioned it again
23 on the questioning. And I objected, as you remember
24 because it was -- I objected because there was no reference
25 to anything about an ankle replacement in the record.

1 As the questioning went on and when he was asked
2 the question at first he agreed Dr. Guy said, yes, that he
3 talked about an ankle replacement while I noted my
4 objection. Then you remember, we had a lunch break. And
5 then in the afternoon -- well obviously they realized,
6 wait, there is no -- there was never any mention of an
7 ankle replacement. I guess we better fix it. Sounds like
8 a nice idea, sounds like an exciting thing to talk about in
9 an ankle case, but he realized that all of a sudden, wait a
10 second, Dr. Helfet didn't mention anything about an ankle
11 replacement. Well we better fix this.

12 So we come back in after lunch before I get a
13 chance to cross-examine him, they go you know they correct
14 it. Okay. Now the correction isn't really why I'm
15 bringing this up so much. Because we know clearly an ankle
16 replacement was never been any part of this case. But why
17 it matters to me is Dr. Guy who read the records from
18 Helfet Dr. Guy's willingness to go along with Mr. Burke on
19 the issue of replacement when he knew this was not part of
20 the case. That he would be willing Burke says replacement
21 I guess we'll go with placement. It's not in the record
22 anywhere, but lets go with it. So they got caught on it
23 until basically I called them on it. And then they had to
24 try to fix it.

25 The important thing isn't the issue of the

1 replacement itself. It's the willingness with which
2 Dr. Guy was more than happy to go along with what the
3 lawyer wanted.

4 MR. BURKE: Note my objection, Judge, I will
5 mention it after.

6 THE COURT: I just want you to remember that what
7 they are doing is not evidence. The evidence only what you
8 heard from the witness mouth. All right. Just remember
9 that.

10 MR. EDWARDS: You're going to hear from the judge
11 as the judge mentioned she's going to give you instructions
12 at the end of the case. Okay. One of the instructions
13 that you're going to get, we'll let you know that if and if
14 and if you think that any witness testified falsely about
15 something, you can disregard that witness completely. You
16 don't have to, but the law certainly permits you to do
17 that. You will hear that from the judge.

18 But let's talk a minute next witness that he got
19 was Debra Dwyer. Who went to -- worked at Stony Brook for
20 27 years. Didn't get tenure. Now by her testimony makes
21 her living testifying in court in plaintiffs injury cases.

22 And the interesting thing she had done as you know
23 it sets this case back in 2019 or so. And at the time if
24 you recall I asked her, well, based upon your earlier
25 findings if we had tried this case back in March of 2020

1 you would have come in and testified within a reasonable
2 degree of economic certainty that the plaintiff would have
3 only earned very small amount of money in 2021.

4 And that so that she would have said with
5 certainty back then turned out to be kind of speculation
6 because it runs into the stark phase of reality which is
7 the fact that you know he makes 61,813 dollars in 2021.

8 You also had some testimony from Dwyer about
9 retirement ages and work life and this and that. He's
10 going to be as part of the -- tied in a little bit with
11 Dr. Guys testimony -- based upon the same to me the same
12 sort of to me, well, if you can reconcile it. That's fine.

13 Either he's working at a less strenuous job or
14 he's not. Her testimony with regard to well he would have
15 been able to work age 67 whatever she had, but now he can
16 only work until 61 whatever the years were because of this.

17 Honestly I don't know what that is based on at
18 least in the report that she had she did not cite any
19 source whatsoever with that. She mentioned couple things
20 during her testimony. She also mentioned something she
21 reviewed from Young and Young. Which was vocational rehab
22 services which evaluated the plaintiff on behalf of the
23 Young firm.

24 And they didn't call that person in either. And
25 that in person had anything to say about this case. I

1 think you would have certainly heard from them. Well look
2 with regard to you're going to hear the judge is going to
3 give you a charge as part of the charge from the judge.

4 She's going to just based upon certain tables an
5 amount of years. And honestly I think I -- withdraw that.

6 You may consider the fact that Dr. Dwyers
7 testimony has some real element of speculation with regard
8 to predicting the work life. You're going to get a number
9 from the judge in the charge at least based upon certain
10 times. Quite frankly, I think use the numbers that you get
11 from the judge as far as potential return. The other thing
12 with regard to Dwyer, I think probably the most significant
13 element of her testimony because there may have been a
14 little bit of economic gymnastics in there, she did explain
15 that.

16 But without getting into, you know, if you're
17 comfortable with her explanation that this income in 2021
18 with this past history somehow computes into a loss of I
19 think she gave you a number like a million dollars or so.
20 See if it makes sense to you. It's just this is the
21 reality of what this man's earnings are and what they are
22 now.

23 She did an earlier assessment. When we talk about
24 the degree of certainty she had to change it twice. She
25 did it once because she was projecting everything on him

1 never going back to work. Then she did it again because he
2 went back to work. So she had to reevaluate it. And that
3 was for the and then coming in she had to redo everything
4 all over again because he's working.

5 So when you are deciding about this claim, the
6 judge is also going to charge you with regard to the claim
7 for future lost earnings. And the judge will tell you that
8 your findings should not be the result of speculation.

9 I'm going to submit that the testimony of Debra
10 Dwyer, as I said earlier, that sort of fiction speculation.
11 I think there is a lot of speculation with regard to this.

12 You did hear from the only orthopedic surgeon who
13 testified in the case who was Dr. Faierman and I will
14 acknowledge right now that he did lose his cool a bit on
15 the cross-examination.

16 I would have preferred he didn't, but if you look
17 at to me not the style but the substance of what was said
18 there and because he is, again, he's the only one that
19 became a surgeon who testified in the case. And he
20 testified quite frankly that he thought Dr. Acampa did a
21 very good job in treating this man's ankle, but look one of
22 the to me back to this, you know, what the issue with
23 regard to the range of motion. And the big deal was made
24 on the range of motion right from the start of the
25 examination. Which is what I think got things going to a

1 point that Dr. Faierman reacted as he did.

2 Because right out of the bat if I recall this
3 right he was accused of really accusations of perjury on a
4 report while some person whose medical record was being
5 waived around in court, and I'm sure that person doesn't
6 know that their medical record was being waved around in
7 court on somebody else's case. Because he made a statement
8 in there about a normal range of dorsiflexion flexion of 50
9 degrees. And that somehow was some tremendous
10 transgression.

11 But he explained very clearly that normal there
12 are different normals. Okay. And that is very common so
13 he what did was his examination on the range of motion was
14 on was comparing it to the left ankle which had no injury.
15 And he had in a left ankle the left ankle had dorsiflexion
16 of 40 degrees. So he used 40 as a reference for normal.

17 There seemed to be a lot of big deal made out of
18 that. I don't really know why that's quite frankly the
19 same thing. Dr. Helfet did was he looked at the leg he
20 compared right and the left and came up with 40.

21 He did come over you have evidence here look at
22 everything, I'm not hiding x-ray from the x-rays and with
23 not. And hospital treatment. He did have the injury but
24 one of the things when Dr. Faierman was testifying and he
25 did show you some of the images and he showed you on one of

1 those x-rays a little dark space. Okay. A little dark
2 space between the distal tibia and the talus. And what
3 that dark space is the cartilage. That's where the
4 articular surface is. And what that dark place means that
5 there isn't any bone on bone that's restricting that.

6 And that's what you can see in that dark space and
7 that quite frankly is confirmed Dr. Faierman's testimony is
8 confirmed by Dr. Acampa who when he not just looking at an
9 film, but when he looked inside the man's ankle found no
10 deficit in the articular surface.

11 And maybe that's why there were so many fire works
12 because the substance of what the doctor said which was
13 only really looking at the other records was not helpful.
14 He showed you in there the space that that's cartilage
15 intact. And that's why that's why you have range of
16 motion. That's why you have the range of motion that you
17 saw because that articular surface is not that damaged the
18 way it's being explained.

19 One other thing because there was a comment he was
20 asked and he was asked you know they possibly saw him one
21 time okay. Fine. Here's the thing, okay, you only get one
22 shot. He could see Ali Guy when he wants. He could see
23 Dr. Acampa whenever he wants. We only get one shot as part
24 of the -- there is certain tools. We have certain options.
25 We have one of the options you get one shot to have a

1 doctor look at somebody. That's what we do. He only saw
2 him one time. He's only allowed to see him one time.

3 To me that does not explain why the whole basis of
4 this case here is coming off Ali Guy who only saw him one
5 time. But either way, let's -- so you're getting asked to
6 render a verdict in the case. We're going to get at the
7 end of the -- at the end of the case we're going to get a
8 verdict sheet. Okay. And it's got questions on it. It's
9 going to ask you to answer the questions and obviously at
10 the beginning of the case this is only about the amount of
11 damages, right. It's not about so you're not -- I would
12 like to talk to you about this, I don't know what they are
13 going to ask you for, really.

14 But I have got some guesses just based upon the
15 numbers that they had that required here. So I would like
16 to talk about this for a minute. Now in and going back to
17 what I one of the things I mentioned before sort of where
18 these key dates key moments which is July 14 of 2017
19 hardware removed that relieved some of the pain where the
20 doctor clearly confirmed that there wasn't damage to the
21 articular surface.

22 So the first question that you're going to have to
23 answer there is no issue -- there is no issue for you to
24 answer with regard to the past for the medical treatment.
25 That's not going to be a question. The only question the

1 first question that we're going to have is first question
2 here in view is the lost earnings. So what that is you're
3 going to be asked award lost earnings from the date of the
4 accident up until today up until the date of your verdict.

5 Now in 2015, right, he made -- it actually works
6 out fine. He made 12,000, I think, 9 hundred 25 dollars
7 through March 26 the date of the accident. Roughly first
8 quarter. It's roughly \$13000. So I am not saying -- I
9 have no problem, I think he's entitled to his lost earnings
10 for the rest of 2015 certainly.

11 He made roughly 13,000 dollars the first quarter
12 give him 13,000 dollars from the first three quarters
13 that's another 39 thousand dollars that's 39 thousand
14 dollars on top of the 13 which I think is full replacement
15 for what he would have made. Just based upon what he made
16 the beginning of there. I do think he's entitled to that.

17 For 2016 -- you know, he still got treatment.
18 He's still going to a lot of PT. He's still going to a lot
19 of PT. And, again, we're not arguing I think these early
20 years right after if you work out if you look at his
21 damages, you know, that 39 that 12,925 if you run it
22 through the years it's about 51 thousand. I think he said
23 that. Comparing apples. 2016 he had a lot of treatment.
24 He had that -- I'm that's not what we're fighting over
25 here. Okay.

1 And for 2017 now though, you know, we're getting
2 now 2017 we're getting two years after the accident. Okay.
3 And he was having some discomfort. We're not arguing that
4 that's why he had the -- that's why he had the revision
5 surgery. That's why he had the surgery in July Dr. Acampa
6 made that note.

7 So honestly by 2017, two years after, I would
8 expect there to be some earnings, but I will give you that
9 he's still -- he's still going to PT. And he certainly had
10 time out for the surgery. So if I you know it's not exact
11 science, but if I didn't say 75 percent for 2017 that's
12 another 39 thousand dollars. So if I look at between 2015
13 and 2016 and 2017 if I add that all up it's roughly 130
14 thousand dollars in earnings.

15 But now another important case to me which is
16 November 29 of 2017, why am I making November 29 of in 2017
17 because in Dr. Acampa's notes he's already had he had the
18 revision surgery.

19 So now in November 29 of 2017 on the physical
20 examination with Dr. Acampa's it notes that the wounds are
21 well healed. That's why the July surgery so he's fully
22 recovered from the surgery. He's getting numbers on the
23 dorsiflexion and plantar flexion are not there, but there
24 is no difference from the numbers that he has in the other
25 reports. You can see, you know, you get numbers of

1 dorsiflexion on that on piece of paper they are, but they
2 are we see what the ankle was functioning at. So he's got
3 to there is no change in that. And it does say he
4 ambulates which is referred to here and this is good
5 because you heard a lot about an antalgic gait. Dr. Acampa
6 says slight antalgic gait. Okay. Then is says ankle
7 slightly swollen. No other deficits noted in the other
8 extremity.

9 Now from that note okay in November of 2017 up
10 until very last note in September of 2020 virtually the
11 same. There is on the physical examination -- there is no
12 change in the physical examination with regard to the
13 dorsiflexion plantar flexion the slight antalgic gait and
14 -- so I think you should award past earnings for the
15 balance of the year in 2015 which I think is fair.

16 I think you should award treatment. I think you
17 should award him treatment for 2016. I think that's fair.
18 I think you can because of the other surgery award him
19 earnings for most of 2017 going 75 percent on that but as
20 of there has been virtually no change in his physical
21 condition based upon Dr. Acampa's notes since the end of
22 2017.

23 So I am going to suggest that you make no further
24 award from that. I think by that point if we're going on
25 three years now that's going three years after the accident

1 whether he did or didn't earn. Okay. Whether he did or
2 didn't earn in these years there is no change. Okay. On
3 these years of his physical condition to the earnings here
4 they were supposed to have, you know, this lawsuit was
5 going on back then it was supposed to be resolved by 2020.

6 His physical condition is no different in these
7 years. As I said starting these is years here there is no
8 change in physical condition. He's completely incapable of
9 earning what he was making before the accident for starting
10 new years 2018. For the number by my math the number on
11 the lost earnings claim on your verdict sheet works out to
12 be, I think works out to be about 130 thousand dollars in
13 past lost earnings.

14 Next question you're going to get is a question on
15 pain and suffering. Okay. And that's the judge will
16 explain the charge will describe what you can consider when
17 awarding pain and suffering. He had pain and suffering. I
18 mean ankle fracture he had surgeries he had he's entitled
19 to money for his pain and suffering from the date of the
20 accident on.

21 Now it's a little easier to calculate earnings.
22 We have numbers what I would give you I would suggest to
23 you that for the pain and suffering number I really think
24 the pain and suffering primarily is those years leading up
25 to because he's been by his testimony and according to

1 Dr. Helfet's notes it's pretty basically stable since he
2 had the 2017 one hundred thousand dollars maybe you want to
3 make it 130 thousand. You know, very tough to give this on
4 that. This is really what you, you know, you folks are
5 doing and the judge, but I'm not saying you shouldn't get
6 you shouldn't give him anything because he's entitled to
7 it.

8 And with regard to the rest of your the rest of
9 your verdict sheet the next question you're going to get
10 into future damages. Okay. Now this to me this on the
11 future damages you're going to be asked for medical therapy
12 expenses into the future. He's not getting it. The
13 evidence does not support the fact that he needs any of
14 that.

15 And I'm going to, you know, upon that I'm going to
16 suggest you put zero on the lost earnings into the future.
17 He's making more now than he ever made. Dr. Dwyer on
18 different case not this case but Dr. Dwyer in other cases
19 said that if he's making more of the same that he was
20 making before the accident there is no damages.

21 Medical therapy expenses the earnings roughly on
22 the medical expenses he's not getting treatment. Pure
23 speculation Dr. Guy. His award is going to be nothing. On
24 Social Security income benefit nothing.

25 And the absent pain and suffering that again is

1 the least amount, but in some places he got some arthritis
2 it's not progressive. There's nothing to indicate or
3 progressing at a rate that is going to give -- I'm not
4 suggest that you shouldn't give him -- I'm not suggesting
5 -- while I'm suggesting you -- I am suggesting that you
6 should not give him future treatment which is still the
7 occasion that he needs.

8 I am suggesting that you don't give him future
9 earnings because I don't think anything warrants it but,
10 yes, on pain and suffering, yes. He's going to have some
11 difficulty -- he's going to have some discomfort is what
12 he's going to have. It's going to bother him give him
13 something. You want go to give him one hundred thousand
14 dollars for that. He's going to have some problems. He's
15 going to have some discomfort.

16 You're going to have some questions with regards
17 to the claims derivative claims of Mr. Karasu. I'm not
18 going to suggest whatever, you know, you guys do what you
19 want. I don't really have a suggestion with regard to
20 that. I will leave that you're good consideration.

21 I will say that as lawyers we really have no idea
22 what the jury is going to do, but this is not -- the
23 numbers that I'm suggesting are not a like hey let me give
24 low ball number and then do that do that. I'm telling you
25 the numbers that I gave you are numbers that I think.

1 You will hear from the court you're making a
2 decision on what is fair and reasonable and what's fair and
3 reasonable on the credible evidence and that between the
4 you add it up between the past earnings and the past pain
5 and suffering and the future pain and suffering four
6 hundred something. You could add it up you could add up
7 the numbers I gave you.

8 I will just now finish up with one thing, trust me
9 I will sit down shortly. Just to go back sort of the
10 beginning okay. I got to talk about this during opening
11 statements. You heard a lot about -- you heard in the
12 opening statement about the articular surface. Okay. That
13 the damage basically the basis for this case is damage to
14 the articular surface.

15 I do think based upon not just what was clearly
16 shown in the films which is that dark space between the
17 joints and confirmed by Dr. Acampa, who they did not offer
18 as a witness, that is a fiction. There isn't damage to the
19 articular surface that is going to offer as the basis for
20 this claim.

21 As I said, we're not denying the injury, but ankle
22 has healed. It's not getting worse. I would ask you to
23 please give some consideration obviously you're going to
24 hear from Mr. Burke now, fair and reasonable, since I first
25 told you from the beginning we know he's entitled to

1 damages. Use your best judgment.

2 I thank you very much for tolerating my inability
3 to always keep my brain matched up with my mouths.

4 And thank you for the time because you have been
5 here maybe a little longer than you thought you folks were
6 going to be here. But thank you I will sit down now.

7 THE COURT: Yes, Mr. Burke.

8 MR. BURKE: May we have a break before I start.

9 THE COURT: Five minutes. Five minutes. You need
10 to use the lavatory because I would like to get going.

11 MR. BURKE: Judge, I wanted to elaborate on an
12 objection that I made. My single objection made during
13 Mr. Edwards closing I objected because Mr. Edwards made a
14 personal attack upon me. He questioned the honesty of
15 opposing counsel. Talked -- he talked about how I had some
16 conversation with Dr. Ali Guy on the break after he almost
17 completed his testimony, and he told the jury that I worked
18 out an arrangement with Dr. Guy that we should fix
19 testimony on joint replacement. And he particularly
20 emphasized that during this break when the jury went out we
21 all went out, we did take a break, it actually was a lunch
22 break.

23 Counsel suggested to them that plaintiff's counsel
24 and Dr. Guy worked to fix something. Suggesting that I
25 somehow did something that was not honest and so was an

1 attack on my credibility. And that is absolutely forbidden
2 to be made in a close in a closing argument.

3 So I would ask that the jury be given a curative
4 instruction and that the jury be explained that personal
5 attacks upon opposing counsel are neither warranted nor
6 acceptable.

7 MR. EDWARDS: I don't think I -- I don't think I
8 did that, but I apologize. It was not -- I'm telling you
9 right now it was not my intention.

10 MR. BURKE: But you did.

11 MR. EDWARDS: It was not my intention to do that I
12 don't recall --

13 THE COURT: Had I heard it -- I didn't because I
14 let you go on, you said there were no objection to the
15 point, but we have the record. I mean, I know that it's
16 not evidence, but that's uncalled for if that's what you
17 did.

18 I don't know what you want me to say.

19 MR. EDWARDS: If it came out that way if you want
20 to give a curative instructions -- give a curative
21 instruction on this. I don't believe that I -- honestly
22 was not my intention to make a personal attack on
23 Mr. Burke. I don't know that I did, but if you heard --
24 I'm not arguing with you I just --

25 MR. BURKE: I won't repeat myself. It's on the

1 record.

2 THE COURT: All right. That being said, I'd like
3 you to write something because as I said I wasn't attuned
4 to it, but you must what it sounds like that he said
5 something is there a way to find out.

6 MR. BURKE: I think what we should do, I will make
7 my closing argument and we will have a break for lunch
8 before.

9 THE COURT: Well, no, I was going to charge I mean
10 I was going right through.

11 MR. BURKE: He was approximately --

12 THE COURT: An hour.

13 MR. BURKE: I'm going to be somewhere between
14 upwards of an hour and a half.

15 THE COURT: Well what we're thinking if we're
16 going you finish, I charge, then they go so it's not we're
17 not going to cut, you know, stop at one. That's why we got
18 lunch.

19 MR. EDWARDS: I don't have any problem with it,
20 Judge, with the jury getting a curative instruction. I
21 don't think I think but I don't have any problem with that.

22 MR. BURKE: I don't know if the damage could be
23 undone or that bell unring, but it was a personal attack
24 upon opposing counsel.

25 THE COURT: As I said, you tell me what I should

1 say without making it more obvious unless you want to
2 address it in your closing. Either way, but I think we can
3 do that without it big fan fair. I mean, I don't want you
4 -- the more you talk about it, but if I said something like
5 because I did say whatever he's saying it's -- it's not
6 evidence but, you know, that especially.

7 MR. BURKE: I think what I -- as I said before,
8 Judge, I think best thing I will just do my closing, I'd
9 like to have an opportunity to have a read back outside the
10 presence of the jury regarding that passage in the closing
11 of Mr. Edwards but for now let's --

12 THE COURT: It's an hour long. Things really --
13 you should have said something before.

14 MR. BURKE: Yes but --

15 THE COURT: An hour went by and nothing.

16 MR. BURKE: Yes, I couldn't make a detailed
17 objection of course in the middle of his closing.

18 THE COURT: But at least we could have flagged it
19 now she has to go through the whole thing just so you can
20 which you know we'll do but --

21 MR. BURKE: I think if you were to look for the
22 words break or lunch break, break in testimony, it will be
23 found. Can I just step out to use the men's room?

24 THE COURT: Yes.

25 (Brief recess is taken at this time.)

1 (Record is read by the reporter.)

2 (Pause in proceedings.)

3 COURT OFFICER: Jury entering.

4 MR. BURKE: May I proceed?

5 THE COURT: Yes, you may proceed, yes.

6 MR. BURKE: Well, good afternoon ladies and
7 gentlemen. Thank you for being willing to serve as jurors.
8 Thank you for sitting on this trial on behalf of the Karasu
9 family. We greatly appreciate your serving today.

10 We have lawsuits and we have of jury trials.
11 Flawed though they may be, I have yet to hear someone come
12 up with a better way to do it.

13 What we've presented to you is overwhelming
14 evidence to support Mr. Karasu claims regarding the long
15 term consequences of this type of an injury.

16 To quickly address some of the points that
17 Mr. Edwards made he keeps on referring to a single line in
18 a two page operative report of Dr. Acampa. That in 2017
19 said that there were no deficits noted in the articular
20 surface.

21 Counsel didn't say whether that was referring to
22 an articular surface on the side of the fibula on top of
23 the fibula. Whether or not that was the articular surface
24 of the tibia because it's if you were just told there is no
25 damage to the articular surfaces in this case we should all

1 go home right now.

2 We know for a fact I didn't even have to bring it
3 out of any witness. He has damage to the articular surface
4 of his tibial bone. Which is why every single witness in
5 this courtroom and every witness we have submitted their
6 records said the same thing. He has degenerative osteo
7 arthritis as a direct result of this damage to the
8 articular cartilage that we know. But time and time again
9 that single sentence from one operative report taken out of
10 context says otherwise.

11 We know that the same man Dr. Acampa and I'm going
12 to get into this in detail, but I wanted to just take it
13 right out wind Dr. Acampa clearly viewed this that is very
14 very bad fracture. Why you don't recommend a fusion
15 procedure to someone's ankle when they are 43 years old --
16 this accident happened when he was 42, a year later
17 Dr. Acampa is already talking about the need of a fusion.

18 He called it an arthrodesis of the tibiotalar
19 joint. Even Dr. Faierman who was here on behalf of the
20 defense he agreed that there was osteo arthritis in the
21 tibiotalar joint. You can't escape it it's unavoidable.

22 And so you have an attorney who was retained by a
23 car dealership and a real estate property holder. Their
24 mission in this courtroom to make Mr. Salahi Karasu's
25 injury seem insignificant, you know, why, because they

1 don't want to be held accountable. They don't want to pay
2 him reasonable compensation.

3 That's, you know, all we're asking for is two
4 things hold these two defendants responsible for the
5 injuries, and we have all the evidence -- all the evidence
6 here overwhelmingly agrees it was a bad injury that caused
7 an arthritic condition and it's going to get worse.

8 Now there is a number of things -- without any
9 evidence whatsoever you were just told that Mr. Karasu was
10 working as an accountant in America for a construction
11 company. Not a single word of testimony said that. Not a
12 single document says that. In fact, it's quite the
13 opposite. You were given a board prepared by the attorneys
14 back in Mr. Edward's office look at this earnings history.
15 Why did they put in the year 2010 that he only earned 25
16 hundred dollars.

17 I put into evidence the tax returns from 2011 to
18 2020 with a w2 for 2021. There is no evidence that you
19 have heard that said he made 2,500 dollars in 2010. It's
20 not accurate it's not reliable and there is no evidence.

21 But back at the law firm that's representing these
22 two defendants, they probably been giggling about some of
23 the things they have put in their chart that are absurd and
24 I'm going to address those.

25 MR. EDWARDS: Judge.

1 THE COURT: I just have to keep reminding you that
2 that the only evidence you should recall is what you heard
3 from the witnesses. This is a summation. Okay. Of all
4 what the attorney believes they showed through the
5 evidence.

6 MR. BURKE: Just remember no matter what you hear
7 from either Mr. Edwards or myself, if we didn't bring in
8 either testimony or a document in evidence it means
9 nothing. It's just an attorney advocating for a position.
10 Don't decide this case based on attorney talk. Where is
11 the proof of what that person is saying.

12 And of course if you see evidence that conflicts
13 then you decide but if there is no evidence whatsoever of
14 something that an attorney said ignore it. So what's
15 really difficulty about serving as a juror in case like
16 this is that you have to make decisions about the future
17 what the future holds.

18 We cannot come back there is no mechanism that
19 anyone who bring a lawsuit when it's rapped up by a jury
20 with a verdict. You cannot come back in five years. You
21 can't come back in ten. You can't come back in 20. You
22 can't come back in 30 years and say I would like another
23 trial because in my first trial no one considered that I
24 would have surgery 15 years later or that I'm even worse
25 now that I'm 60 years old compared to when I was 47. You

1 don't get that. Which is why we need all of you to make an
2 important decision that Mr. Karasu and his family have to
3 live with for the next 10, 20, 30 years.

4 So I ask you to put columns in your mind what's
5 the useful information we're going to rely upon. And what
6 is the disinformation that has been fed to you.

7 I have got a witness that was favorable to
8 Mr. Karasu in the form of three investigators who took the
9 stand and told you that they kept Mr. Karasu or his home
10 under surveillance.

11 One investigator Mr. Gotlieb testified that over
12 the course of two days he followed Mr. Karasu outside his
13 house in his car for 19 hours.

14 Another Mr. Cutie 8 hours under surveillance. A
15 third investigator Mr. Bartoli he was posted for 8 hours
16 and all of that happened in May and November of 2019.
17 That's a fact. So what did we see what was the fruitful
18 production of that surveillance? We don't see Mr. Karasu's
19 doing anything other than what he told you and he has been
20 candid with forever.

21 That, yes, there came a point in time when he was
22 able to do certain things. Yes, he was able to get in his
23 car. Of course that was sometime after the accident. But
24 we know in one of those videotapes and that was Mr. Bartoli
25 we saw him Mr. Bartoli had the surveillance footage or the

1 video running as Mr. Karasu's went into a restaurant and
2 then short time later you see him coming out again.

3 And I asked Mr. Bartoli he just took a seat on a
4 bench before he went back to his car. And we had to show
5 it again because Mr. Bartoli agreed, yes, when he came out
6 of the store with whatever he -- I don't know if he either
7 consumed or was take out whichever, but before he went to
8 his car he sat down on a bench.

9 So over the course of four days, we have 35 hours
10 of surveillance, not a thing inconsistent with what he told
11 you. Not a thing. In fact, you were told that for a
12 couple of years after the accident Mrs. Karasu would mow
13 the lawn of their rental home a self propelled mower.

14 And then it was already admitted to you had been
15 forever that Mr. Karasu in 2019 he mowed that front yard.
16 Not one day he did it the whole season. So you know if
17 ever there was a man who came in front of a jury and told
18 the told it just like it is that's the man.

19 They told you when they are parked outside the
20 house or outside of building they would only film if there
21 was something to film. So we don't know how many other
22 investigators because they all, you know, they are not
23 working together. They are going out individually. What
24 did they film in 2016. That they didn't want to show you.
25 What did they film in 2017 and 2018 that they didn't want

1 to bring into court. They chose not to. Well maybe they
2 didn't even do it. But after 35 hours of surveillance in
3 the spring and fall of 2019 the only thing worthy of your
4 consideration was maybe five to ten minutes on videotape.

5 And there was nothing there that suggested that
6 Mr. Karasu was doing things that he told you he couldn't
7 do. So there is no video surveillance of Mr. Karasu's
8 running across the street there is no video evidence of
9 Mr. Karasu's playing soccer.

10 The only thing we learned is in fact as we saw in
11 one of the video clips he has a lot of treatment at that
12 time he was going to a doctors office and we saw that.

13 Now I want to talk to you after the attack on
14 Dr. Ali Guy both Dr. Ali Guy and Dr. Faierman are
15 accustomed to coming into court. Both of them have
16 acknowledged significant times that they have come into
17 court to testify.

18 I believe that Dr. Faierman acknowledged that he's
19 testified in court 50 or 60 times. I questioned him about
20 his defense medical examinations where he's hired by the
21 defendants and lawsuits. And he has their -- the plaintiff
22 come into his office and he examines them and he writes up
23 a report. And he says he does that 30 times a month. 30
24 times a month times 12 is he does it 360 times a year.
25 Working for defendants.

1 So we are not going to learn much about either man
2 just solely because they have experience in litigation both
3 of them do.

4 But as to a lawyer calling doctors to trial well
5 if a doctor doesn't want to come to the courtroom the
6 lawyers have subpoena power. We can compel any person
7 including, a doctor, any person, if they have relevant
8 information any of us have the right to serve a subpoena
9 upon them to come to court and testify.

10 And if they don't come the trial judge can hold
11 them in contempt and force them to come in. Now I don't
12 know why Mr. Edwards chose not to call through subpoena
13 power Dr. Aiel Helfet, Dr. Acampa, but I can tell you why I
14 didn't. I didn't because we have it in their records and
15 if we had chosen to put Dr. Acampa on the stand to discuss
16 what he's already reported in his very comprehensive notes
17 for even of these visits, I probably would have one really
18 angry Dr. Acampa in the courtroom, but I didn't need to. I
19 have his records.

20 I have a detailed comprehensive report that I put
21 into evidence from Dr. Helfet. And the radiology report
22 from the doctor for special surgery. There has never been
23 any evidence as to was suggested to you that somehow or
24 another Mr. Karasu could have earned money better than he
25 did. Because he has some valuable accounting skills based

1 upon what he did in Turkey in the midline 1990's. In a
2 country that has a tax system that would be different from
3 any other countries. And with his facility of the English
4 language which is a second language to him.

5 So as you can see from the defense of this case
6 the defendants haven't spared a dime on this case. And if
7 they had evidence of something other than what Dr. Acampa's
8 notes say or Dr. Helfet's report says, well, it would have
9 been in the courtroom.

10 So why should which find Dr. Ali Guy credible.
11 Well he has the background and credentials. He's a
12 clinical instructor of physical medicine and rehab at NYU.
13 He's clinical assistant professor of medical medicine and
14 rehabilitation at NYU.

15 He's the director of pain services at facility in
16 Queens supervising 30 other physicians. He's the director
17 of department of where he oversees about 50 other doctors.
18 He's board certified in the field of physical medicine and
19 rehabilitation which we know as physiatry. But Dr. Ali Guy
20 is the type of doctor that people like Dr. Acampa sent
21 their patient's to too. That Dr. Faierman send their
22 patients to after a surgery or working them up hopefully
23 before a surgery and maybe a surgery could be avoidable.
24 So specialized in a number fields.

25 As a physiatrist as he told you he's trained in

1 the field of orthopedics, neurology and radiology. So that
2 they can understand an injury and treat it. So he
3 explained to you that when you have a fracture in a joint
4 especially an intraarticular joint that you have in this
5 case traumatic arthritis sets in and causes any patient
6 suffering from that to begin compensating because of it.

7 And remember when he asked the anatomy he we had
8 the model of the ankle and the foot. He showed you various
9 bones in the area of the tibiotalar joint shows how the
10 function of that tibiotalar joint to allow gliding. To
11 allow the forces to be applied so that you can engage your
12 range of motion.

13 And what he said is that with the articular
14 surface he likened it to if you put sand into a sliding
15 door that's going to interrupt the ability of the sliding
16 door to move smoothly. It only makes sense.

17 And he explained to you that there are both
18 articular surfaces on the fibula and the tibia. The tibia
19 coming down the outside it's almost like it has a 90 degree
20 ankle where piece of it over the talus and then it comes
21 down along the side.

22 So Dr. Guy explained to you looking at a CAT scan
23 from the Good Samaritan Hospital that the radiologist at
24 Good Samaritan described this as an impacted fracture of
25 the distal tibia and a transverse fracture meaning across

1 of the distal fibula.

2 And Dr. Guy said that any fracture inside a joint
3 almost always heals with traumatic arthritis and the range
4 of motion deficit would remain permanent. And that's why
5 intraarticular fractions are the worst the.

6 So Dr. Guy read to you from the CAT scan report
7 where the radiologist looking at the CAT scan described
8 this fracture not just as a line the word comminuted.
9 Which is a synonym the same as saying shattered.

10 And looking at the CAT scan Dr. Guy explained that
11 there were fragments of both the tibia and the fibula going
12 into the tibiotalar joint space. We'll come to that later
13 on. It shows up.

14 So what he explained was that given the rupture of
15 this joint and the damage to the extra articular surfaces,
16 that they had to do an external fixator. You remember the
17 reason to do the external fixator and lock Mr. Karasu's up
18 in this hideous looking device wrapped around his lower
19 right leg was to wait for the swelling to come down so that
20 they can do the procedure.

21 And reviewing the x-ray images after the external
22 fixator was removed three weeks later, Dr. Guy identified
23 the screws that had to be left in place when ultimately it
24 was removed in July of 2017. But importantly Dr. Guy
25 focused on the first visit with Dr. Acampa back in April of

1 2015 one week after that surgery to use plate and screws to
2 fix this.

3 He pointed out a little piece of bone floating in
4 the joint line between the tibia and the talus. And so if
5 you remember I asked Dr. Faierman about that little piece
6 of bone and I asked him if he would take a look at
7 Dr. Acampa's operative report from the surgery to remove
8 the external fixator and apply the plate and screws.

9 I asked him find one sentence in that operative
10 report that says they removed the piece of bone fragment in
11 the joint line and he couldn't because it hasn't been done.

12 So we know that from Dr. Guys testimony
13 Mr. Karasu's was unable to bear weight. No one would be
14 able to bear weight on that for some extended period of
15 time.

16 For what he did say was looking at the x-ray image
17 from April 22nd, 2015 he testified that as a result of less
18 mobility traumatic arthritis sets in and disuse.
19 Osteoporosis sets in to the bone. And we know from the
20 radiology report at the hospital for special surgery in the
21 following year there were multiple areas of osteoporosis as
22 described in the report. It's not the just osteo arthritis
23 also osteoporosis.

24 Dr. Guy said that as early as July 2015 the joint
25 space you can see had narrowed. Which is evidence that

1 traumatic arthritis is already setting in. And he
2 explained that there are stages of traumatic arthritis
3 which begins with stiffness and joint space narrowing. And
4 then later on in the natural process of a traumatic
5 arthritis the formation of a bone spur which in the
6 following year is documented by Dr. Helfet in his report
7 and you have seen that.

8 So by the end of 2015 Dr. Acampa has Mr. Karasu
9 going to physical therapy and he's going three times a week
10 but according to Dr. Acampa's note we're going to see the
11 same consistent documentation in Dr. Acampa's notes. He
12 found dorsiflexion flexion to be zero. Plantar flexion was
13 50 percent of normal. And eversion was only 25 percent
14 normal. And inversion was only 50 percent normal.

15 Bear that in mind that as early as 2016 these
16 deficits are noted in almost all planes of motion. And
17 just keep in the back of your head why didn't Dr. Faierman
18 document what Mr. Karasu's range of motion was for
19 inversion and eversion. He didn't address it at all.

20 And I asked Dr. Guy why do we see a note a year
21 after the surgery to put into the plate and screws why are
22 we still seeing notes of a swollen ankle documented by
23 Dr. Acampa. And basically Dr. Guy explained that there was
24 part of the process of natural evolution of traumatic
25 arthritis. It's all throughout Dr. Acampa records.

1 If you have any doubt about something that I have
2 said or something that Mr. Edwards has said, you can ask
3 for the evidence and read it your self. And I would
4 suggest that if you go into Dr. Acampa's records if you
5 have some disagreement as to you know remember this being
6 said or something else Dr. Acampa's notes generally are
7 three or four pages.

8 The first page and last page generally have the
9 most significant information. And the middle page is just
10 generally going through all the other body system. And
11 this is nothing significant in that, but you're welcome to
12 look at anything whatsoever.

13 So Dr. Guy testified that even in 2016 because we
14 have to look at the evolution of this year by year. He
15 testified that there was radiological evidence of traumatic
16 arthritis. And the clinical evidence -- there is
17 radiological evidence and clinical -- the clinical evidence
18 was the complaint of pain. The objective you know
19 complaint of pain are subjective it's what anyone of us
20 feels. Subjective is when a doctor looks at an ankle can
21 see that it's swollen.

22 So part of the clinical way to diagnose traumatic
23 arthritis is evidence of swelling crepitation or like a
24 grinding you know something that you can feel, see or hear.
25 But what Dr. Guy also explained was that as a result of the

1 metal that's left in Mr. Karasu's leg, weather changes also
2 impact arthritic symptoms. So when Dr. Guy reviewed the
3 records of Dr. Helfet in 2016 he pointed out it out from
4 the image, the images from Dr. Helfet's office that he said
5 quote, the joint line was almost completely gone on the
6 outer portions of the joint.

7 And in another area this was very very narrow and
8 beginning to show sclerotic formation which is radiological
9 evidence of early traumatic arthritis. And that's exactly
10 how Dr. Helfet's described it.

11 So one of the things that you can do in terms of
12 the assessing witnesses, is if you want to factor in that a
13 witness was brought in by one side. Maybe they are going
14 to be favorable to that side. Or a witness is brought in
15 by the defense to maybe they are going to be favorable to
16 the defense.

17 You know what, look at the Dr. Helfet's and
18 Dr. Acampa who have nothing to do with the litigation. And
19 ask yourself, who were you going to rely upon.

20 Dr. Helfet's and Dr. Acampa who use the word
21 arthritis or attorney talk who tells you that there is
22 nothing wrong with the articular surfaces. Think about it.
23 If there was nothing wrong where the articular surface then
24 someone was outrageously irresponsible in performing three
25 surgeries on Mr. Karasu. And then of course excising all

1 the dead tissues when he had a problem healing after that
2 hardware removal surgery in 2017.

3 Remember when the judge talks to you about this
4 charge where she'll basically told tell you that if you
5 find that you don't believe something a witness said and
6 you think they maybe being dishonest about it, you don't
7 have to but you can reject everything they say.
8 Everything.

9 So if you don't believe Dr. Faierman when he's
10 talking about different range of motion in one courthouse
11 and goes into another courthouse and says something
12 different as to what the normal range of motion is consider
13 that.

14 One thing that just about every physician talking
15 about Helfet, Acampa, Faierman, Guy all of them well
16 actually not Guy, all of them except Dr. Guy found zero
17 dorsiflexion. Even Dr. Faierman zero force flexion. And
18 yet we have you're being asked for you to make a medical
19 decision as to whether Mr. Karasu has full range of motion
20 by looking at the man walk with a lawn mower.

21 You know what if we had a claim that Mr. Karasu
22 couldn't walk we would have told you that. He does walk.
23 And in the course of his job we know that he's done a lot
24 of walking.

25 So one of the things that that we know is that

1 with these multiple planes of motion Acampa said zero force
2 flexion throughout all his notes. Dr. Faierman says zero.
3 Dr. Acampa said zero Helfet said zero. Dr. Guy he said he
4 found some dorsiflexion, but he was more specific than it
5 the other doctors because he pointed out there is two ways
6 you can test range of motion.

7 One is basically the patient does it on their own.
8 And that's what all these or doctors were measuring.
9 That's call the active range of motion. But Dr. Guy said
10 when he on passive range of motion when the physician
11 maneuvers the foot he found 15 degrees of dorsiflexion.
12 Which is more generous to the defense than even
13 Dr. Faierman.

14 So when every single witness every medical witness
15 whether they are on the record such as Acampa or Helfet or
16 in the court who is Dr. Guy and Faierman. When everyone is
17 saying that there is a significant problem in the
18 dorsiflexion. Don't rely on attorney talk from the
19 defendants to suggest to you that this is all no big deal
20 because this was all sum and substance what you just heard.

21 So I'm going to 2017 still treating Dr. Acampa and
22 there is one of multiple notes Dr. Acampa as was explained
23 to you by Dr. Guy his records showed early degenerative
24 osteo arthritis of the ankle joint and that is another term
25 for traumatic arthritis. Dr. Guy was explained why do they

1 go in and remove the hardware more than two years after the
2 accident. That he explained it they do it to give the
3 patient some additional range of motion. And you hope it
4 works because if it doesn't work, according to Dr. Guy your
5 only other last resort is a fusion.

6 I asked Dr. Guy I want you to assume Dr. Acampa's
7 note in February of 2018 specifically indicated that the
8 patient complains of difficulty sleeping actually there are
9 multiple notes in there. Acampa's records about difficulty
10 sleeping. And I told Dr. Guy assume that Mr. Karasu told
11 the jury that he even has pain when he's laying in bed at
12 night. And it's sometimes it's worse at night.

13 Doctor explained that was endorphins being
14 released by the body that would minimize that type of pain
15 or aggravate it once you're inactive. As you heard later
16 on from the case Mr. Karasu's has more difficulty in the
17 morning as opposed to in the middle of the day.

18 So even as of February 2018 when Dr. Acampa was
19 looking at Mr. Karasu some six months after hardware had
20 been removed dorsiflexion was still at zero. Flexion was
21 better it was 35 degrees which was improvement because on
22 the earlier visit was only 25, but his eversion was only 10
23 degrees which is one half of normal. And Dr. Acampa noted
24 in February of 2018 that was still with a slight antalgic
25 gait.

1 And as you will see in Dr. Acampa's notes obvious
2 years multiple prescriptions for oxycodone which
3 fortunately he's no longer taking. Dr. Acampa documented
4 traumatic arthritis even after the screws most of the
5 screws and the plates were removed.

6 So going to the last x-ray -- the last x-ray that
7 was taken by Dr. Acampa, Dr. Guy showed it to you he
8 explained he said you can't miss the significant narrowing.
9 And he was pointing to it on the screen he pointed exactly
10 to where a point where he was asking you to look so that
11 you could appreciate it.

12 And Dr. Guy said not only was the showing
13 significant narrowing on that last x-ray. He said it also
14 showed osteoporosis. Now in March of 2019 there is a note
15 from Dr. Acampa, quote, the patient has a permanent
16 impairment of the right lower extremity secondary to
17 degenerative osteo arthritis of the right ankle.

18 The patient will require an ankle fusion to reduce
19 his pain and improve his ability to ambulate. But as
20 Dr. Guy explained you fix one problem you create another.

21 In May of 2020 Dr. Acampa's second to last note
22 indicate patient still plates with an antalgic gait his
23 ankle is slightly swollen. He's still at zero dorsiflexion
24 and his eversion is still at 50 percent of normal. That's
25 Dr. Acampa. Dr. Guy agreed that on the last visit of

1 September of 2020 Mr. Karasu's to Dr. Acampa it's still the
2 same he's not getting better. And in 2020 it's now five
3 years after the accident, but you will be asked to decide
4 what life will be like for Mr. Karasu's arthritic ankle
5 joint for decades to come.

6 Dr. Guy testified about his physical examination
7 and I went over what he said, but he documented significant
8 loss of range of motion. He also documented significant
9 loss in sensation. Which even Dr. Faierman agreed evidence
10 that this is was not only an orthopedic injury but involved
11 a nerve injury.

12 So I asked Dr. Guy the ultimate question he told
13 you that the arthritis in the right ankle. The arthritis
14 in the noted by Dr. Helfet's record in the right knee. He
15 said that they were causally related to the accident of
16 March 26th, 2015 when Mr. Karasu fell off at that ladder.

17 And he said that they were permanent and
18 progressive. He pointed out that the x-rays have
19 continuously consistently shown not only arthritis but some
20 of the affects of the progress of arthritis which include
21 the growth of bone spurs.

22 So Dr. Guy explained to you what would be a
23 reasonable schedule for Mr. Karasu in the future he
24 explained that he should have physical therapy on a regular
25 basis. He explained that Mr. Karasu's should be supervised

1 and visit frequently with both a physiatrist and
2 orthopedist. And if your recollection of what Dr. Guy said
3 were the cost of each and frequency all you have to do is
4 while you're in the deliberation room is send a note to the
5 judge that you would like to review the trial transcript of
6 Dr. Guy with regard to this subject future medicals or
7 whatever issue you have. You can break it up like this and
8 as to any witness.

9 I asked Dr. Guy's comment as Dr. Faierman's report
10 and which of course Dr. Faierman his report goes back to
11 2018. He testified that Dr. Faierman found deficits of
12 zero degrees in dorsiflexion, but pointed out that
13 Dr. Faierman had taken the position even back then years
14 ago no further treatment necessary for this man nothing not
15 a penny.

16 Dr. Guy pointed out that evidence showed that
17 Mr. Karasu was showing evidence of problems already
18 extending to the joint above that being the knee and fore
19 that he has problems sleeping. He has problems with pain.
20 I mean throughout Dr. Acampa's notes you see it. That's
21 why Dr. Guy justified future medical care in Mr. Karasu.

22 I asked Dr. Guy it's important when you hear about
23 an injury to find out if the complaint about pain or
24 limited ability is that something which is consistent
25 something that you would expect with this type of an

1 injury.

2 I asked that question of Dr. Guy and he told you
3 that these complaint of Mr. Karasu are absolutely
4 consistent given the nature of this jury. And he pointed
5 out that with regard to Mr. Karasu complaint that he can't
6 return that he can't play soccer.

7 He actually said not only should not be doing that
8 but it was contra indicated for him to do that same thing
9 with regard to Mr. Karasu's complaint about limitation of
10 how long he can stand. How long he can walk. And of
11 course he's described to you it's much less than before the
12 accident.

13 Dr. Guy again said it was absolutely consistent
14 with this type of a fracture. And he says that given the
15 week muscle, the nerve damage, and the arthritis setting in
16 that you would expect all of that. And I asked Dr. Guy
17 Mr. Karasu has gone from working part time as a delivery
18 driver and he's working 60 to 70 hours a week for the last
19 year.

20 And I asked him do you have an opinion whether
21 Mr. Karasu today as 40 year old working 60 to 70 hours a
22 week is he going to be able to sustain that level
23 indefinitely. And Dr. Guy explained, no, absolutely not
24 were the words he used. Dr. Guy noted that Mr. Karasu is
25 doing that type of level of course. He's got to do what he

1 needs to do for his family, but he won't be able to sustain
2 it according to Dr. Guy because the range of motion in time
3 will worsen. The weakness in the leg will continue.

4 And Dr. Guy is of the opinion that though today
5 Mr. Karasu says he doesn't want to take on the risks and
6 benefits of a fusion, it's uncertain. It's not guaranteed.
7 It may create other problems, relieve some, but Dr. Guy
8 pointed out at some point in time his pain will be
9 unbearable. And at that point that's when he would do it.

10 So I asked Dr. Guy if Mr. Karasu had an ankle
11 fusion as recommended by Dr. Acampa as an option, how would
12 that change the way he walks if he has even more rigidity
13 in that ankle. And Dr. Guy explained it will worsen his
14 gait. It will make it much more noticeable. He will never
15 have a normal not even a close to normal gait. And right
16 now Dr. Guy explained it's close to a normal gait to the
17 average lay person but that gait will worsen.

18 Just quickly Dr. Helfet's report is in evidence in
19 one of the folders. He pointed out that one there were
20 arthritic changes in the tibiotalar joint as of August of
21 2016. That's one month. I'm sorry that's one year and
22 five months later. I pointed out that there was an
23 anterior bone formation. He pointed out that the ankle
24 joint was in valgus. That's referring to a position where
25 someone's bone is angulated outward.

1 Now what I want you to consider with regard to the
2 seriousness of this injury, Dr. Helfet's specifically said
3 in his report that he warranted more of a work-up to decide
4 whether or not he would recommend a fusion, remember,
5 having received a recommendation from Dr. Acampa the
6 reasonable thing that we do we ask for a second opinion.

7 So when he goes for the second opinion it's not
8 like Dr. Helfet says, oh, forget about it. You're fine.
9 You don't need a fusion.

10 He talks about I don't see it now, but we need a
11 future work-up. What's interesting is that after you heard
12 the opening -- I'm sorry the closing remarks of Mr. Edwards
13 regarding Dr. Acampa, said there is nothing wrong with
14 these articulating services. Dr. Helfet is basically
15 saying that he's seriously thinking about do you recommend
16 a fusion. Dr. Acampa has already concluded that serious
17 enough for a fusion.

18 Now you don't recommend fusion which takes away
19 range of motion. If you think as you heard in a closing on
20 behalf of the two defendants, that it's no big deal. No
21 big deal. That this is nothing. No, you're talking about
22 two different orthopedists. And I got Dr. Faierman to
23 acknowledge that Dr. Helfet has the reputation of being one
24 of the top orthopedists if not in the country in the world.

25 So Dr. Helfet's didn't say, oh, go home Mr. Karasu

1 there is nothing wrong with you or you're fine. It's a
2 little inconvenient. He actually was saying we need a
3 further work-up to see whether you should have a fusion.
4 He didn't reject it out of hand. And it's an extremely
5 serious decision. Which is evidence of the very very
6 serious injury here. That you just heard is essentially no
7 big deal.

8 Now I just have a few comments about Dr. Faierman.
9 You were asked to look at images in addition to reports
10 give can you imagine giving an opinion a professional
11 opinion before you looked at everything that was available
12 to you.

13 I read from Dr. Faierman's article on the wrist
14 joint from 1998 where he specifically talked about a
15 physical examination, but equally important equally
16 important review the radiology images.

17 Dr. Faierman didn't review radiology images before
18 he arrived at his opinions years ago. He saw it -- he
19 never saw the radiology images according to his own
20 admission until two weeks ago. And I showed him other
21 defense medical exams and reports and other cases where he
22 had looked at multiple images but for some reason the
23 images in this case weren't sent to him. And for some
24 reason he didn't ask for them. Because I pointed out in
25 other cases where he didn't get the images he said to the

1 attorneys for the defense, I would be happy to review them
2 send them to me.

3 But he didn't say that either. He didn't see them.
4 He chose not to see them. And he gave his opinions years
5 ago that Mr. Karasu does not need any further medical
6 treatment and diminish the significance of the injury, but
7 on the day, he examines Mr. Karasu which is February 10th,
8 2018. He claims he watched him walking down the hall to
9 come into his office. And he said he has a totally normal
10 walk. But I showed him during the trial that we have the
11 physical therapy records here in evidence.

12 Approximately 11 days after Dr. Faierman's exam
13 Mr. Karasu was at his therapist office who records antalgic
14 gait records limited range of motion recorded weakness.

15 About two weeks after Dr. Faierman's exam where he
16 says no problem with his gait, Dr. Acampa saw him on
17 February 26th, 2018. Throughout Dr. Acampa's records there
18 are multiple references to in the beginning antalgic gait
19 and in the later years slight antalgic gait.

20 Let me talk to you about Mr. Karasu. I think if
21 we had seen any evidence of a more admirable person just to
22 show you the character of his quality, the way he goes to
23 work for his family. You can only imagine as was explained
24 to you by Mrs. Karasu that finances were a nightmare being
25 out of work for as long as he was out of work. And they

1 agree he was out of work for years. There was nothing he
2 could do, you know, that's not giving us much of an
3 admission. Who's going to go to work with an external
4 fixator and climb a ladder.

5 We know that Mr. Karasu has done something
6 extraordinary starting in 2021. And so the defense
7 suggests to you that, well, if he can work like that in
8 2021 when we draw up our tables of showing that he's even
9 better off earnings wise as a driver.

10 They are assuming that they could continue to do
11 this with all these problems well into the future. They
12 have him going out to until 62 or 67. I'm going to get to
13 the tables, but if you accept the defendant tables that
14 were prepared by not an economist, you know, they chose not
15 to bring an economist to advocate their position or it
16 explain their position.

17 So we don't have any of the assumptions in these
18 tables. None. But when I look at the tables they
19 absolutely indicate that Mr. Karasu probably owes the car
20 dealership and the real estate property holder defendant,
21 he probably owes them money.

22 That's what it comes out their chart are there are
23 that he showed you they had him making a huge gain which is
24 absurd.

25 So Mr. Karasu is working for three years in Turkey

1 in the mid 90's in accounting. But he's working not with
2 computer. He didn't learn any computer skills in Turkey.
3 In the mid 90's very few people did. Even the United
4 States they were just that was the beginning days. He said
5 he had two years in construction.

6 And when he came to the United States and became a
7 citizen for from 1996 to 2010 he outlined first work at
8 cashier at a gas station. Then he works in a variety of
9 construction jobs. But in his construction work he spent
10 about ten years doing roofing. And that's up to 2010 in
11 2010 and 2011.

12 We know that couple things were going on in his
13 life. One is he had liver transplant. So we don't see any
14 earnings. He also had a brother who had significant issue.
15 So he was in Turkey visiting his brother. He was in Brazil
16 where he had the liver transplant. We know that in 2011, I
17 gave you tax return showing that Mr. Karasu earned about 30
18 or 31 thousand dollars. But in 2012 he's in Brazil. In
19 2013 he's starting to make money again 33 thousand. In
20 2014 he's making 43 thousand dollars but from several
21 different sources.

22 So in evaluating the pain and suffering I need to
23 remind you that Mr. Karasu explained that the fall itself
24 from the ladder landing on the ground 8 to 10 feet baring
25 most of that impact on his right ankle, right foot. He

1 said it was the most extreme pain he ever felt. That's
2 part of the pain and suffering question for this case.

3 The next date he's in an external fixator you saw
4 gruesome photographs which are in evidence. They are
5 available to you if you want to look at them. We know from
6 the radiology images they don't just screw in, you know,
7 like an 8th of an inch into the bone. They screw right
8 threw. They almost come out the other side to hold those
9 bones in place until the swelling can go down.

10 So for three weeks Mr. Karasu wearing that
11 external fixator is helping. There is nothing he can do.
12 He has second surgery three weeks later. That's yet
13 another hospital admission of three days.

14 We know that for four months he's non weight
15 bearing. No weight. And the only way he can get around if
16 you're non weight bearing on one leg, you have to have a
17 walker. There is no other way to do it. And of course
18 even after he's becomes wait bearing sometimes between
19 August and October he's got a CAM boot. He's using
20 crutches and a cane. And of course he's living on
21 oxycodone. You all know about the horrors of oxycodone.

22 And of course oxycodone is provided for people
23 like Mr. Karasu who have clearly would have severe pain.
24 And during this time Anna Karasu who as a homemaker now all
25 of a sudden she's basically a caretaker for her husband.

1 She has taken over all of the household chores that you
2 heard how they divide the things up.

3 And so it's not until the end of 2015 when
4 Mr. Karasu told you he was able to be do a little bit
5 around the house. By 2016 he was able to resume some
6 driving, but he has his third surgery in July of 2017 to
7 remove the hardware.

8 And then one month after that, he's back. That's
9 his third hospitalization. One month he's back again yet
10 another hospital because the wound from that surgery is not
11 healing. And they have to debride. They had to cut away
12 the dead tissue. So that that was at south Nassau
13 community hospital that's his 10th day in the hospital.

14 And not to be the type of person who is looking
15 just to kickback and take advantage of whatever resources
16 that he can, Mr. Karasu tries to get some work towards the
17 end of 2015 for a friend who is an auto mechanic. And he
18 did it I think for three our four weeks on and off. And he
19 earned about 18 hundred dollars. And we know that because
20 he reported it on his tax return.

21 But he explained that he couldn't tolerate it
22 because he was on his feet too much. It was too much and
23 he said he couldn't tolerate the pain.

24 That tells me this was a man who was willing to
25 suffer to try to earn money. This, ladies and gentlemen,

1 is the opposite of a malingerer. The opposite of a faker.

2 So his earnings in 2018 are like 9 thousand
3 dollars. In 2019 he makes like 13,000 dollars. In 2020
4 it's 28 thousand dollars. I don't have to tell you how
5 much it takes in Nassau county to support a family of three
6 with a young girl. At the time of the accident their
7 daughter Julia was 9. You know today she's 16.

8 But you can't live on that kind of money. And the
9 only way they lived on that kind of money was through the
10 can kindness of family that helped them. And Mr. Karasu
11 ultimately attempting to work even though he's still
12 recovering. But it was explained somewhat by Mr. Karasu
13 but more so by his wife the financial stress was through
14 the roof.

15 It's only a measure of his character that in order
16 to make that big leap we see from 2020 where he made 28
17 thousand to close to 62 thousand in 2021. That seven days
18 a week now seven days a week working between 60 and 70
19 hours a week there is a couple of things coming to mind.

20 You know that expression thank God it's Friday.
21 Well there are no Fridays. Because he don't have a
22 weekend. You know how oftentimes on a Monday morning you
23 know we all we really don't feel like going to work, you
24 know, you pick up during the week, but on a Monday it's
25 like all right it's like it's bad Monday, well Mr. Karasu

1 doesn't have any bad Mondays. And he doesn't have any good
2 Fridays because everyday is workday. And why is he doing
3 that why is he doing that despite his limitations and pain
4 because he has to support his family.

5 And as we know from Mr. Karasu's testimony and as
6 are in the tax returns this is a woman who didn't just sit
7 back let thing happen. She gets back into the work force
8 within two years of the accident. And she's going to
9 Nassau community college she then goes to SUNY old
10 Westbury. She's doing the smart things to get an education
11 to get a better job. And she's done very well at the CPA
12 firm of Tusa & Associates.

13 But since the accident I asked Mr. Karasu to tell
14 us about what it's been like since the accident. And he
15 said that 80 percent of the time he feels a sharp stabbing
16 burning pain and he experiences numbness and tingling on
17 the top of his big toe and part of the top of his foot.

18 And if you look at Dr. Acampa's records those
19 types of complaint are consistent throughout. There is
20 like 50 visit toss Dr. Acampa's. I asked Mr. Karasu what's
21 the range of motion like and he said that it's nothing like
22 before his foot and ankle right feels weaker and he says I
23 feel like I have a limp.

24 And he said with regards to sleeping that he has
25 more pain laying down it wakes him up and he said flights

1 in bed can be worse.

2 MR. BURKE: Judge, can I approach?

3 THE COURT: Yes, it is.

4 (Whereupon, a discussion is held off the record.)

5 MR. BURKE: I apologize for the length of my time
6 speaking to you. It's been an hour. I'm only in take this
7 as I know as serious as you are because it's on me to point
8 out to you where the evidence supports each of the claims
9 that we made.

10 So Dr. Dwyer the economist what she pointed out to
11 you with her charts is that in 2019 it was one set of
12 circumstances because obviously as of 2019 based upon the
13 evidence in 2019 is his earnings have been extremely
14 limited.

15 So she prepared a table based upon things as they
16 were in 2019 and of course even though we accident get into
17 it during E even though we get to go this trial in 2019
18 because of Covid here. We're two years later and we knew
19 this day would come. Since Mr. Karasu knowing full we will
20 that he's coming to court here he worked in 2021 at a rate
21 of earnings that was far in excess that anybody has done
22 before.

23 So that 2019 table is no longer relevant because
24 the earnings history increased. But you were asked to look
25 at charts prepared by according to Mr. Edwards at the time

1 he introduced these two charts. We don't have an blowups
2 of them.

3 But exhibit 13 and exhibit 14 the defense chart
4 couple of things you know there is a column with you look
5 at the preinjury actual earnings you have look at the post
6 injury column and then you subtract and you come up with a
7 loss 0 a gain for some reason the starting wage that
8 Mr. Edwards and the attorneys in his office they came up
9 with what I consider to be misleading.

10 He told you that you should start at base of 45
11 thousand which is indicated on top of this page in
12 comparing his earnings has a driver delivering specimens.
13 They want you to compare what it's like when Mr. Karasu
14 let's say is working 22 hours of overtime as a driver. And
15 13 hours of overtime as a roofer. The only way they can
16 get his post injury earnings higher and higher is to have
17 him working far more hours than he did as a roofer. And
18 they have him doing that despite his arthritic ankle.

19 Now Dr. Faierman did not offer any testimony that
20 indeed Mr. Karasu could continue to work like that. In
21 fact he agreed he has arthritis. And he agreed that
22 arthritis can get worse. He agreed to that in this table.
23 When you look at this table I want you to remember
24 something else it says here that when he came up with these
25 numbers that show that actually Mr. Karasu owes the

1 defendants money, what they did was they took his -- they
2 called it ten months of earnings as a roofer.

3 There is no evidence that he work for Four Seasons
4 for ten months between 2014 and 2015. Actually the
5 evidence is he worked from July 2014 until March 26th, 2015
6 I counts that as 8 maybe 8 going two, three, four but no,
7 it's 9. And it's certainly not ten. And they annualize
8 the earnings spread between 2014 and 2015 based upon 10
9 months of work well it wasn't ten months. It was 8 months
10 of work we know it was just said that Mr. Karasu obviously
11 was successful at Four Seasons because in December of 2014
12 he gets a bump.

13 He gets a six percent raise from 18 dollars an
14 hour to 19 dollars an hour. And the defendant in the in
15 the defendants table at the blended it and projected it
16 into the future based upon an artificially reduced hourly
17 wage.

18 He had a 19 dollar raise in December of 2014.
19 They started this table at 45 thousand dollars. Of course
20 if you starts too low it changes all the numbers. It makes
21 it lot less. If you just look at the first three months of
22 earnings in 2015 at Four Seasons he's making 19 dollars an
23 hour, you should not use any part of 2014, but he's making
24 19 dollars an hour. And is over the course of just
25 slightly less than three months. Let's take as 13 thousand

1 when you multiply that those three months represent a
2 quarter. So we have the earnings where you would multiply
3 it by four. If someone earned as Mr. Karasu did, as you
4 can see in his tax return even as Mr. Edward just say if
5 it's 13,000 dollars times four is 52 thousand. Where did
6 they get the 45 thousand dollars figure.

7 Why were you asked to do the right thing as
8 Mr. Karasu. That's all we're here to do the right thing
9 but Mr. Karasu and start off at 45 thousand. That's not
10 fair. There says nothing these tables say nothing about
11 the Social Security loss. Why? Because the Mr. Edwards or
12 the attorneys in his office prepare this chart to show that
13 there was never a loss any time. Therefore there wouldn't
14 be any Social Security loss.

15 They don't accept that there is any loss
16 whatsoever in Mr. Karasu earnings capacity despite the fact
17 that he can't go back into construction or roofing.

18 Dr. Dwyer used a figure of 60,327 dollars and she
19 did it based on a number of factors. The actual earnings
20 in 2019, 2019 she looked at the average salary of a roofer
21 every in the United States in 2015 she said that was 60,327
22 dollars.

23 With the understanding being is that you can't
24 project decades into the future with a number based upon
25 three winter months the overtime in the winter would be

1 less than the other time in the summer.

2 So Dr. Dwyer in her table was very conservative
3 and she made an assumption that it would be 13 point 6
4 overtime and when you're making 19 dollars an hour overtime
5 is one half times the rate she said it would be she used
6 overtime at a rate of 27 dollars per hour because that is
7 my math.

8 So what they have done in the defense tables is
9 they say well he can work so many hours as a driver even
10 though they are relying upon a figure of 22 hours of
11 overtime to be consistently performed in one table. They
12 have him working 22 hours of overtime as a driver until
13 he's 67. And at the they have him working until 62 working
14 again assume that he's still working 22 hours of overtime a
15 week for the rest of his working career.

16 But when you compare what he earned as roofer
17 every in 2015 if you look at 19 dollars an hour times 40.
18 I was going to put it on this board for you but we don't
19 have enough time. If you take his one half overtime rate
20 that means that his overtime is going to be paying him 28
21 dollars and 50s an hour.

22 So if you multiply this is in 2015 if he had
23 worked the rest of the year that would put him up just
24 about 60 thousand dollars. As a driver and this is at his
25 current wages seven years later you know wages have gone

1 up. They continue to go up if we start him at 60 as Dr.
2 Dwyer did in 2015 go then add the growth rates each year of
3 3 percent and way that against whatever work he can do as a
4 driver for how long you find interests a tremendous wage
5 loss.

6 So what they have done in these tables instead of
7 comparing apples to apples meaning same amount of over time
8 here, same amount of overtime there, they took the 22 hours
9 as a driver that he's been able to do for one year. They
10 have assumed that he will be able to do that until the age
11 of 62 or 67. And the only reason why it has been done is
12 because he had no choice to survive financially. And they
13 want you to hold that against him and take away from his
14 fair compensation.

15 And Dr. Dwyer didn't pull this out of thin air.
16 Long before this trial long before Dr. Faierman was a
17 witness.

18 She used actual wage growth rates from the United
19 States bureau of labor from 2015 to 2021. No one disagrees
20 that the average wage growth and it's based on these
21 federal statistics which are accepted commonly accepted
22 into economics.

23 There is a three percent growth rate you know if
24 you look back and this is based on like 25 years there
25 somebody some years where it would spike some years where

1 it will go down, but long term average because we're
2 looking forward in the long term. Dr. Dwyers numbers do
3 not include any assumption that Mr. Karasu might get
4 promoted.

5 Just no promotion. She looked at his overtime and
6 she testified that according to the Department of Labor
7 these are her words the seasonal adjusted baseline in
8 income for 2015 based upon working as a roofer was 60,327
9 dollars. And that's what you will see in her tables which
10 are in evidence and available to you she said in 2020
11 accord to the Department of Labor the average roofer was
12 earnings 67 thousand dollars because it's going up. With
13 three percent wage growth.

14 When you look at this didn't labor they don't show
15 any when get wage growth as a roofer had this accident not
16 had happened. In fact they don't show Mr. Karasu on their
17 table getting to 67 thousand dollars as a roofer had the
18 accident not happened.

19 They say in 2028 had this accident not happened he
20 would have reached 67 thousand dollars annual earnings.
21 That's not but there is no evidence no economists came into
22 courtroom to say that. Dr. Dwyer said in 2020 a roofer are
23 was earning 67 thousand dollars from 2015 she testified the
24 average was 60,327, but these tables are extremely
25 misleading because they assume that it would take another 6

1 years before Mr. Karasu would get to that level. Think
2 about it. Dr. Dwyer 2015 says 60,327 was the average.
3 It's just about approximately the same as when you
4 annualize his first three months at 19 dollars an hour and
5 multiply it by four.

6 Think of it that way when you're deliberating on
7 this. I have some figures that I want to share with you
8 with regard to what I think you should award you can't do
9 this without looking at the tables from Dr. Dwyer because
10 you're not going to remember. I know I wouldn't remember
11 the numbers I'm about to give you because it's a lot of
12 information.

13 For the record 2022 table as opposed to 2020
14 Dr. Dwyer has put in there are categories passed lost
15 wages, future lost wages and future lost Social Security
16 benefits. Because if you're wages are down in the years
17 before your retirement less is being paid into the system
18 and you will get less when you do retire lost SS lost wages
19 and benefits.

20 So if we look at it this way under the 2022 table
21 in 2022 she records and you can see this on the bottom or
22 rather it's at the end of the second page past lost wages,
23 she has three one 35 dollars this is on page 2 of the 2022
24 table future lost wages. She has this is how much he would
25 have earned, but for the injury from today up until he

1 turns 62 because she testified that with an injury based
2 upon federal data that people with an injury don't work as
3 long as people without an injury 892,424.

4 As to security benefit the future lost there is no
5 past loss Social Security benefits because he's too young
6 to have lost anything. She put down 277,318. I'm not
7 going to go through the 2019 table because of course in
8 2019 Dr. Dwyers tables assumes a much lower earning because
9 she was unaware that years later he would work longer
10 hours.

11 So when you are asked on the verdict sheet there
12 is multiple questions with sub parts. For past lost wages
13 according to Dr. Dwyers report she records 335,935 dollars
14 and 892,424 thousand dollars for lost wages into the future
15 to age 62. And the lost of Social Security benefits at
16 277,318.

17 These numbers are based upon very conservative
18 estimates using both a blend of what Mr. Karasu actually
19 earned at 19 dollars an hour federal data including the
20 average earnings of a roofer. And again just remember when
21 you look at the defense tables ask for selves how could
22 they possibly have started with number of 45 thousand
23 dollars instead of the number 60 thousand and changes.

24 So we went through what Mrs. Karasu did and how
25 the burden of the household change and how she explained to

1 you how they witness into debt how they are it got worse
2 and worse she described the affects on Mr. Karasu life much
3 better than Mr. Karasu was able to convey to you.

4 Because she pointed out that her husband used to be
5 a fun happy Guy very involved with friend and family and
6 she said of since the accident he doesn't interact with her
7 or his daughter the way he used to. That he comes home
8 about he just lays down. And he doesn't talk. And she
9 used the phrase quote he is gone end quote when he comes
10 home.

11 So she said that he doesn't want to talk to his
12 family. He doesn't want to talk to his friend. He just works
13 and comes home and he's gone. He has according to his
14 Karasu he has become quieter so quiet as she put it moody
15 frustrated and depressed and you will listen to the charge
16 when awarding money damages, for pain and suffering. It's
17 not just about physical pain. It's also the emotional
18 trauma or the emotional distress that goes with it. It's
19 much more stressful life. And Mrs. Karasu explained that
20 he walks, she sees a limp in the morning.

21 She says it gets better in the day, but she also
22 used the word which reminds me of how Dr. Guy was like
23 saying that there is this external rotation of the foot
24 which is consistent with that valgus or angulation found in
25 the x-rays at Dr. Helfet's office. She says he walks with

1 a waddle. That's how she described it she used the word
2 waddle. So this is what I'm suggest going to suggest to
3 you and then I'm done.

4 On the verdict sheet you're going to hear from the
5 judge that with regard to life expectancy based upon
6 various federal and state tables projections that a person
7 of 47 years is expected live for 30 more years.

8 Now we all know these tables are just a guide
9 because Mr. Karasu could live another 40 years or maybe he
10 only lives another 20 years, but a jury today as in any
11 case involving someone who has suffering that goes into the
12 future, you have to decided today. And there are, yes,
13 there is a degree of projections of estimations. It's not
14 a science.

15 And the judge will give you some parameters but
16 it's largely up to you we asked for Mr. Karasu two million
17 five hundred thousand dollars for the last seven years
18 recognizing that the first six months to a year was a
19 nightmare. That it gets a little bet better, but nothing
20 changes except he continues to suffer.

21 For the next 30 years pain and suffering and you
22 will also hear and see on the verdict sheet it's not only
23 pain and suffering physical and mental, but the loss of the
24 enjoyment of life.

25 In other words there are some people who if

1 someone had lost a him that doesn't have pain, they are
2 still suffering because they are limited in activities due
3 to that. But for the next 30 years we ask you award five
4 million. You know, from the medical evidence that the
5 condition that Mr. Karasu has today is not getting better.

6 That was even conceded by Dr. Faierman. It
7 absolutely is not getting better. It can only get worse.
8 And so we can't take comfort in the fact that he's not
9 worse today than he was two years ago because he's got
10 another 30 years.

11 On the loss of services, society, consortium for
12 Anna Karasu, I would ask that you award 250 thousand for
13 the past seven years. Five hundred thousand for next 30.

14 Now it's a tremendous undertaking and I know that
15 you just heard from an attorney using an attorney talk
16 throwing out outrageously unfair proposals to you in the
17 hope that you will probably give him more than he's asking
18 for, but this is fair and reasonable. If you feel it
19 should be less any number I say is only what I'm proposing
20 as an advocate on behalf of my clients.

21 The judge will tell you that. You can feel
22 something -- category should be more or less. And when
23 you're looking at the tables for future lost wages from
24 Dr. Dwyer, Dr. Dwyer's tables are assuming that he can work
25 at this rate until he's 62. I'm going to ask you if the

1 lost wages column Dr. Dwyer that if you think that he won't
2 be able to continue doing that until he's 50, you put back
3 in the column for recovery the years that he actually
4 wouldn't be able to continue doing it. Dr. Dwyer's table
5 assumes whole work capacity for the next 10 to 14 years
6 until the age of 62.

7 Ladies and gentleman, I have completed I just ask
8 you that you just you do what fits with your sense of
9 justice. That you recognize the gravity of the harm and
10 the fact in the decades to come for Mr. Karasu than it is
11 today. No doubt about that. What we can do in our 50's we
12 find ourselves a little bit limited in our 60's. Probably
13 even more so in the 70.

14 But for someone whose lifetime expectancy is
15 projected to be another 30 years until the age of 77, this
16 is just this is only one and only opportunity for someone
17 to compensate them into the future. That's our system of
18 justice. We all agree to live with it and apply it. And I
19 thank you for your time and attention.

20 THE COURT: Thank you, Counsel.

21 We have lunch for you. We had thought you were
22 going to deliberate and eat. He want I had to get
23 everything to you, but things happen. So what we are going
24 to do he's going to bring you to your lunch. All of you
25 together. Because you won't deliberate until I charge you.

1 That's the next step. And I'd like to do that we're going
2 to come back here 2:15. All right. I know it's not your
3 whole hour, but in the long run hopefully it will work out.

4 We don't want you to rush eating though I'm
5 injured giving you suggests I have consent of all right.
6 So don't talk about anything yet. Remember you have to
7 listen to what I say. And then I say start deliberating
8 and that's when you start talking about it.

9 So go have a nice time. Enjoy your lunch. I hope
10 it still we started asked them to delay it a little. So it
11 will be fresher. So go ahead have a nice lunch and I will
12 see you at 2:15.

13 (Jury excused for lunch.)

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1 COURT OF THE STATE OF NEW YORK
2 COUNTY OF NASSAU : PART 15

3 - - - - - X

4 SALIH KARASU and ANA DE LUCCA KARASU,

Index No.
4428/16

5 Plaintiffs,

6 -against-

Jury charge

7 SECURITY AUTO SALES, INC., SECURITY
8 DCJR, INC., and 345 MERRICK ROAD, LLC,

9 Defendants.

10 - - - - - X

11 21st of March, 2022
12 Mineola, New York

13 B E F O R E : HONORABLE DICCIA PINEDA-KIRWAN

14 Justice and a Jury.

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

16 Plaintiffs:

17 RONALD BURKE, ESQ.
18 Kelner and Kelner
19 7 World Trade Center
20 250 Greenwich Street, Ste. 2700
21 New York, NY 10007

22 Defendants:

23 JAMES A. EDWARDS, ESQ.
24 Ahmuty, Demers & McManus
25 199 Waters Street, 16th Floor
New York, NY 10038

1 (After luncheon recess.)

2 MR. BURKE: Judge, I wanted to note for the record
3 that I have been told because I didn't see it myself that
4 during the course of my summation Mr. Edwards from time to
5 time closed his eyes as though he was sleeping and
6 otherwise acted in an inconsiderate way to a fellow
7 attorney for purpose of showmanship during my summation.

8 MR. EDWARDS: I did no such thing.

9 MR. BURKE: That's what I was told I didn't --

10 MR. EDWARDS: I was on computer I was on the
11 computer I did no such thing. I did no such thing.

12 THE COURT: What about the other thing you asked
13 me about.

14 MR. BURKE: Judge, I don't know how we can unring
15 that bell. I don't want to create an appeal by having you
16 point out to the jury that with a Mr. Edwards said about me
17 engaging in a conspiracy with Dr. Guy I think it's just
18 going to highlight it I don't know who it's going to help
19 or hurt. I don't think there is away to cure it.

20 THE COURT: I will just reinforce that what I told
21 you about and I will stress it highly. I mean that's about
22 the best I can do.

23 MR. BURKE: Okay.

24 THE COURT: I think that should suffice hopefully.
25 I know I told them for each one of you at one point I said

1 to the judge the jury not to take that as evidence
2 everything anything you said during this. We said it at
3 the beginning of the trial. I said it now. I will say it
4 again now that the closing are fresh on your minds and
5 hopefully they will do the right thing. We can only had he
6 been for that the jurors are outside who is juror number
7 one by the way.

8 Because, you know, I see the change usually I say
9 juror number one is foreperson that that's why they don't
10 take any time although times they do whatever they want.
11 The new charge doesn't say it says they have to have
12 elections. I could always say you know juror number one is
13 usually the foreperson.

14 MR. BURKE: I think we just say the jury should
15 decide if the foreperson is.

16 THE COURT: It has both the old one this is the
17 new one I'm talking about.

18 MR. EDWARDS: The new one.

19 THE COURT: Strictly they should have a vote he
20 thank you for your attention you have been wonderful we
21 appreciate that.

22 All right members of the jury we now come to that
23 portion of the trial when you are instructed on the law
24 that applies to this case. After which you will retire for
25 your deliberations. You have heard and seen all the

1 evidence introduced by the parties and for arguments of the
2 attorneys you have learned the conclusions each party
3 beliefs should be drawn from the admitted evidence.

4 The question of liability has already been decided
5 thus in this part of the case you will decide only the my
6 father and extent of plaintiffs injuries and with an amount
7 of money will fairly and justly compensate the plaintiff
8 for all results loss.

9 And should there be any mention of an accident or
10 injury how this happened you will consider that reference
11 only in the deciding the amount of money if any that will
12 fairly and justly compensate the plaintiff.

13 You will recall at the beginning of the trial I
14 state the certain principals. Briefly, they were that you
15 are bound to accept the rules of law found as I give them
16 to you whether or not you agree with them. You are not to
17 ask anyone else about the law. You must not consider or
18 accept any advice about the law from anyone else but me.

19 During this trial I have ruled on the admission of
20 evidence and on motions made with respect of the applicable
21 law.

22 You must not conclude from any ruling I have made
23 any questions I have asked or anything I have said that I
24 favor any party to this lawsuit. Your view of the evidence
25 and your decision on the issue of fact will decide that

1 case. During the trial I may have sustained objections to
2 questions without allowing the witness to answer or where
3 an answer was made instruct thank you that it be removed or
4 stricken from the record and that you disregards it dismiss
5 it from your mind.

6 In reaching your decision you may not draw any
7 inference or conclusion from unanswered question nor may
8 you consider testimony that has been removed or stricken
9 from the record.

10 The law requires that your decision be made solely
11 on the admitted evidence. Anything I exclude from your
12 consideration was excluded because it was not legally
13 admissible.

14 In deciding how much weight if any you choose to
15 give to the testimony of any particular witness there is no
16 magical formula can be used.

17 The tests you used in your everyday affairs to
18 decide that the reliability or unreliability of statements
19 made to you by others are the tests you'll my in your
20 deliberations. In deciding how much weight if any you will
21 give to a witnesses testimony you may consider the interest
22 or lack of evidence of that witness in the outcome of the
23 case.

24 The bias or prejudice of the witness should there
25 be any. The age, the appearance the manner in which the

1 witness gave testimony on the stand. The opportunity and
2 able to the witness had to somebody every the facts about
3 which he or she testified the probability or improbability
4 of the witnesses testimony when considered in the light of
5 all the other evidence in the case.

6 If it appears there is a conflict in the evidence,
7 you will have to consider whether and to what extent the
8 apparent conflicts can be reconciled by fitting the two
9 versions together. Otherwise you will have to decide which
10 of the conflicts versions if any you will accept.

11 By the processes I have just described and any
12 further instructions I may give you as the sole jurors of
13 the fact decide which of the witnesses you believe portion
14 of their testimony you accept and what weight you give to
15 this.

16 If you find that any witnesses has willfully
17 testified falsely as to an important matter the law permits
18 to you disregard completely the entire testimony of that
19 witness that upon the principal that one who testifies
20 falsely about one important matter is likely to testify
21 faultily about everything.

22 You are not required however to consider such a
23 witnesses totally unbelievable. You may accept so much of
24 the witnesses testimony as you deem true and disregard what
25 you deem as falls. The burden of proof rests upon on the

1 plaintiff that means plaintiff must establish by a fair
2 preponderance of the credible evidence that the claim he
3 makes is true.

4 The credible evidence means the testimony and
5 exhibits you finds believable and reliable the
6 preponderance of the evidence means the greater part of the
7 evidence it does not mean the greater number witnesses or
8 the greater Lex of time taken by any party.

9 The phrase refers to the quality of the evidence
10 that is it's convincing quality the weight and affect it
11 has on you your mind not to the quantity. The law requires
12 that for plaintiff to prevail in the claim the evidence
13 that's supports his claim must appeal to you as more nearly
14 respecting what took place than the evidence opposed to his
15 claim.

16 If it does not, or if it weighs so evenly that you
17 are unable to say there is a preponderance on any side then
18 you must decide the question against plaintiff. It is only
19 if evidence favoring plaintiff claims outweighs the
20 evidence oppose to it that you can find in favor of the
21 plaintiff.

22 In deciding this case you may consider only the
23 exhibits that were admitted in evidence and the testimony
24 of the witnesses as you have heard in this courtroom.
25 However arguments remarks and summation of the attorneys

1 are not evidence remember I was tell you all along during
2 the closing, disregard that let's that's just to help you
3 aid in remembering.

4 Some of the evidence or the testimony however nor
5 is anything I now say or may have said with regard to the
6 facts evidence. As I instructed you previously, it is
7 important to remember that you may not use any internet
8 services or social media including for example Google,
9 FaceBook, Twitter, Linked-In Instagram or TikTok or the
10 media platforms.

11 I'm sure there are hundred he is them right to
12 discuss or get information about the case or it's
13 participants or to research topics concerning the trial.
14 Electronic devises including any cell phones as a matter of
15 fact phones lap tops or any other personal electronic
16 devises must be turned over while you were deliberating.

17 Allowing outside inferences which maybe incomplete
18 inaccurate or otherwise unreliable to affect your judgment
19 is unfair and prejudicial to the parties and could require
20 this case to be retried. In reaching your verdict you are
21 not to be affected by sympathy for any other parties.

22 What the reaction of the party or the public to
23 your verdict may be whether it will please or displease
24 anyone be popular or unpopular or indeed any consideration
25 outside the case as it has been presented to you in the

1 this courtroom and your verdict will be determined by the
2 conclusions you reach no matter whom the verdict helps or
3 hurts.

4 You may recall at the beginning of the trial I
5 instructed you on the role of a fair juror. As a fair and
6 impartial juror you must guard against the application of
7 any stereotypes or attitudes about people or groups that
8 might lead you to render a biased decision based on those
9 stereotypes or attitudes. Keep in mind that bias based
10 upon stereotypes or attitudes is not always obvious or
11 conscious. In assessing the testimony and other evidence in
12 the case, you must not be swayed by those
13 stereotypes or attitudes.

14 Facts must be proved by evidence, evidence includes
15 the testimony of a witness concerning what he or she saw, heard or did. Evidence also includes writings,
16 photographs, or other physical objects which may be
17 considered as proof of a fact. Evidence can either be
18 direct or circumstantial.

19 Direct evidence is evidence of what a witness saw,
20 heard or did which is believed by you to prove a fact. For
21 example. Direct evidence is direct of what witness saw or
22 heard and is believed by you to prove a fact for example
23 suppose a fact in dispute whether I knocked over this cup of
24 glass near the witness chair if someone testifies that she
25

1 saw me knock over the cup that is direct evidence. That I
2 knocked over the cup.

3 Circumstantial evidence is evidence of a fact that
4 does not directly proved a fact in dispute but by permits a
5 reasonable inference or conclusion that the fact exists.
6 For example acquit testified that he saw me that he saw
7 this cup of water on the bench. The witness states that
8 while he was looking the other way he heard the breaking of
9 the cup looked up and saw me wiping water from my robes and
10 from the papers on the bench. This testimony is not direct
11 evidence that I knocked over the cup it is circumstantial
12 evidence from which you could reasonably infer that I
13 knocked over the cup.

14 Now those facts form basis of an inference must be
15 proved and the inference to be drawn must be one that
16 reasonably may be drawn. In the example if though the
17 witness did not see me knock over the cup, if you believe
18 testimony you believe conclude that I did therefore the
19 circumstantial evidence if accepted by you allows to you
20 conclude that the fact in dispute has been proved.

21 In reaching your conclusion you may not guess or
22 speculate. Suppose for example the witness testifies that
23 the water glass of water was located equally distance from
24 the court reporter and myself. The witness states that she
25 heard the breaking of the cup and looked up to see both

1 court reporter and me brushing water from our clothes.

2 If you believe that testimony you still could not
3 decide on the evidence alone who knocked over the water
4 cup. Were these from the only proved facts it only would
5 be a guess as to who did it.

6 However if the witness also testified that she
7 heard the court reporter say oh I'm sorry then this
8 additional evidence would allow to you decide who knocked
9 over the water cup. Facts maybe proved either by direct or
10 circumstantial evidence or by a combination of both you may
11 give circumstantial evidence less weight more weight or the
12 same weight as direct evidence.

13 You will recall that doctors Ali Guy MD a physio
14 therapist and Manhattan element Dr. Debra Dwyer a Ph.D.
15 chemist, about Dr. Aeil Faierman MD orthopedic surgeon.
16 They have had concerning their qualifications in the field
17 of physiatry and pain management economy and ar though my
18 dick surgery and gave their opinions concerning issues in
19 this case.

20 When a case involves matters of sequence or art or
21 requires special knowledge or skill that most people do not
22 have qualified witness is permitted to state his or her
23 opinion for the information of the court and jury.

24 The opinions stated by Dr. S Ali Guy, Debra Dwyer
25 and Faierman were based on particular facts as he or she is

1 there is they obtain knowledge of them and testified about
2 them or as their attorney who questioned them asked them to
3 assume. You may rejects any opinion if you find the facts
4 to be different from the fact that is form the basis for
5 the opinion.

6 You may also reject an opinion if after careful
7 consideration of all the evidence in the case including the
8 cross-examination doctors guy Dwyer and Faierman you decide
9 that an opinion is not convincing. No other words you are
10 not required to accept any opinion to the exclusion of the
11 facts and circumstances disclosed by other evidence opinion
12 testimony should be evaluated in the same way as the
13 testimony of any other witness.

14 It is given to assist new preaching a proper
15 conclusion. It is entitled to such weight as you find the
16 witness's qualifications in the field warrant and must be
17 considered by you. But is not controlling upon your
18 judgment. The two an joints and color anatomy charts of
19 the foot and ankle were shown to you for the limited
20 purpose of I will strutting an assist willing you to
21 understand the opinion of the doctors and may not be
22 considered for any other purpose.

23 My charge to you on the law of damages must not be
24 taken as a suggestion that you should find for the
25 plaintiff. It is for you to decide on the evidence

1 presented and the rules of law I have given you whether the
2 plaintiff is entitled to recover from the defendant.

3 If you find that the plaintiffs entitled to
4 recovery from the defendant you must render a verdict of in
5 sum of money that will justly and fairly compensate the
6 plaintiffs for a losses resultless from injuries and
7 disabilities he sustained.

8 Now during closing remarks counsel I'm not sure
9 whether both he have them did but suggested a specific
10 dollar amount he believes should be appropriate
11 compensation for specific element of plaintiffs damages.
12 An attorney is permitted to make suggestions as to the
13 amount that should be awarded but those suggestions are
14 argument only and not evidence. And should not be
15 considered by you as evidence of plaintiffs damages.

16 The determination of damages is solely for you the
17 jury to decide. Plaintiff is entitled to that recover a
18 sum of money which will justly compensate him for any
19 injuries disability conscious pain and suffering to date.
20 Caused by the defendants. In determining the amount of if
21 any to be awarded plaintiff for pain and suffering you may
22 take into consideration the affect that plaintiffs injuries
23 have will on plaintiffs ability to enjoy life.

24 Loss of enjoyment of life involves the loss of the
25 ability to perform daily taxes to ports pate in the

1 activities which were a part of the person's life before
2 the injury and to experience the measures of life.

3 If you find that plaintiff as a result of his
4 injuries suffered some also of his ability to enjoy life
5 you may take at that loss into consideration in determining
6 the amount to be awarded to plaintiff for pain and
7 suffering. If your verdict in favor of the plaintiff he
8 will not be required to pay income taxes on the award and
9 you must not add to or subtract the award any amount on
10 accounts of income taxes. With respect to any of the
11 plaintiffs injuries or disabilities the plaintiff entitled
12 to recover from future pain and suffering and disability
13 and the loss of his ability to enjoy life.

14 In this regard you should take into consideration
15 the period of time that the injuries or disabilities are
16 expected continue. If you find that the injuries or
17 disabilities are permanent you should take into
18 consideration the period of time that the plaintiff can be
19 expected live.

20 In accordance with the statistics calendar life
21 expectancy tables plaintiff has a life expectancy of 30
22 years. Such a table however provides nothing more than a
23 statistical average. It neither guarantees that plaintiff
24 will live an additional 30 years or means that he will not
25 live for longer period. The life expectancy figure I have

1 given you is not binding upon you.

2 But maybe considered by you to go with your own
3 experience and the evidence you have heard concerning the
4 condition of plaintiffs health habits employment and
5 activities in deciding what plaintiffs present life
6 expectancy is. If you decide for plaintiff strike that,
7 strike that.

8 If you find at that plaintiff will need medical or
9 physical therapy in the future you will include in your
10 verdict an amount for those anticipated medical and
11 physical therapy expenses which are reasonable le to be
12 incurred in the future and that from necessitated by
13 plaintiffs injuries.

14 If you find that plaintiff is entitled to an award
15 in medical and physical therapy expects to be incurred in
16 the future you will fix the there are amount of expenses
17 over the entire period that you find plaintiff will incur
18 such expects and include that amounts in your verdict.

19 If you make an award for future medical physical
20 therapy expenses you will state in your verdict the amount
21 of award and the period of years which such award entitled
22 to provide compensation.

23 Do not state an amount per year but only a total
24 amount for the entire period. Plaintiffs entitled to be
25 reimbursed for any earnings lost as a result of his

1 injuries from the time of the accident until today.

2 Moreover if you find that as a result of those
3 injuries plaintiff has suffered a reduction in miss
4 capacity to earn money in the future then plaintiff is also
5 entitled to be reimbursed for loss of future earnings. Any
6 award you make for earnings lost to date must not be the
7 result of speculation. Any award must be calculated from
8 the number of days that you find plaintiff was disabled
9 from working by the injuries and the amount that you find
10 plaintiff would have earned had he not been disabled.

11 Any award you make for reduction of plaintiffs
12 earning capacity in the future should be determined on the
13 basis of plaintiffs earnings before the accident the
14 condition of plaintiffs health his prospect for advancement
15 and the probabilities with respect to future earnings
16 before the accident.

17 The extent of which you find that thighs prospects
18 or probable abilities have been produced by the injuries
19 the length of time that you find plaintiff would reasonably
20 be expected work had he not been injured the nature and
21 hazard of plaintiffs employment and any other circumstances
22 which would have an affect on plaintiffs earning capacity.

23 Plaintiff is not now 47 years of age and has a
24 life expect teak according to the table work life
25 expectancy according to the work life expectancy table in

1 evidence of 14.7 more years.

2 Such tables are of course nothing more than
3 statistical averages. The they neither assure that
4 plaintiff will have the span of working life I have given
5 you nor assure that plaintiff span will not be greater.
6 The figures I have given you are not binding upon you but
7 maybe considered by you together with your own experience
8 and the evidence you have heard in determining what
9 plaintiffs work life expectancy is.

10 If you find that plaintiffs entitled to an award
11 for reduction in everything capacity if the future I will
12 fix the dollar amount of such reduction over the entire
13 period the plaintiff will suffer such reduction and include
14 that amount in your verdict.

15 In your verdict you will state separately the
16 amount of awarded for lost earnings to date if any and if
17 you make an award for lost future earnings you will state
18 in your verdict the amount awarded about the cleared period
19 of years over which such award is en ten today provide
20 compensation.

21 Do not state an amount per year but only total
22 amount for the entire period. You must include in you're
23 verdict an way forward paths and future pain and suffering.
24 An amount must include the amount for the injuries suffered
25 and for the future affect of the injury if any.

1 Based upon the evidence you may also include pan
2 award for each of the following items separately divide it
3 into amounts intend today compensate the plaintiffs for
4 damages incurred before your verdict and amounts intend to
5 compensate for damages to be incurred in the future.

6 Medical expenses physical therapy expenses loss
7 earnings impairment of earnings ability if you make an
8 award for any item of damages to be incurred in the future
9 then for each such item you must state the period of years
10 over which the amount awarded is intend to provide
11 compensation and the amount of you fix must present full
12 amount awarded to plaintiff for that item of damage for
13 that future period with that reduction to present value.

14 Your verdict will include answers to the following
15 questions which will be submitted to you in writing.
16 Should be very clear I think. You will be asked to
17 determine state separately the amount awarded for the
18 following item of damages if any for the time of the
19 occurrence up to the date of your verdict. Lost earnings
20 pain and suffering up to the date of your verdict.

21 If you decide not to make an award as to any item
22 you will insert the word none what is to that item. State
23 separately the amount awarded for following items in
24 damages if any to be incurred in the future. Medical
25 expenses, physical therapy, lost earnings lost Social

1 Security strike that. Excuse me. Lost social strike that
2 again lost Social Security retirement income benefits.

3 Pain and suffering including permanent affect of
4 the injury from the time of verdict to the time at that
5 plaintiff could be expected to live.

6 If you decide not to make any award as to any item
7 you will insert the word none. If you decide to award any
8 amounts then intending to compensate plaintiff for any
9 damages to be incurred in the future then for each item for
10 which an award is made state the period of years with such
11 amount are intend to provide compensation for any item for
12 which an award is not made you will insert the word non
13 pass to that item.

14 The verdict sheet will lead to you everything I
15 read will be in a verdict sheet if you find that injured
16 plaintiffs wife is entitled to recover, you'll ward the
17 wife damages for the monetary amount strike that monetary
18 value of lost services in society which you found plaintiff
19 wife sustained by the loss of her spouses services in
20 society.

21 In decide you go the amount of such damages you
22 may take into consideration the nature and extent husband
23 services and society before the injury. Including his
24 disposition, temperament, character, entertainment, the
25 interest he showed in his home the social life of his

1 family and in the comfort, happiness, education and general
2 welfare of the members of the family the services he
3 rendered in superintending the household, training the
4 children, assisting his spouse and the management of the
5 business or affairs in which the spouse was engaged.

6 If any. His acts of affection, love, sexual
7 intercourse and the extent to which the injuries he
8 sustained presented him from performing such services and
9 providing such society you'll award plaintiff wife such an
10 amount based upon the evidence and upon your own
11 observation experience and knowledge conscientiously
12 applied to the facts and circumstances as in your judgment
13 will compensate her for the monetary value of the lost
14 services in society that you find she has sustained. And
15 is reasonably certain to sustain in the future.

16 For the reason of her spouse's inability to
17 perform such services and provide such society in the
18 result of his injuries.

19 You'll award if any for loss of spousal services
20 society will be if separate amounts for the past and few
21 fewer damages in addition you will state number of years
22 over which you'll ward for the future damages is meant to
23 cover.

24 If during your deliberation your collection of any
25 part of the testimony should fail or if you have any

1 questions about my instruction to you on the law then you
2 have the right to return to the courtroom for the purpose
3 of having the testimony read to you or your questions
4 asked.

5 Please make any requests if you have any requests
6 in writing and true the foreperson and the interest of
7 saving time try whenever possible to make any requests as
8 specific as possible for example if you only want to Larry
9 the read back of the particular portion of a certain
10 witnesses testimony indicate that with particularity if you
11 want to hear only the direct or redirect or only the cross
12 examination of a particular witness indicate that so be
13 will be able to select the testimony you're required to be
14 read.

15 This case will be decided on the basis of answers
16 you give to certain questions that will be submitted to
17 you. Each of the questions calls for a yes or no, or some
18 numerical figure though it's important that it the views of
19 all the jurors be considered five.

20 Six of you must agree on the answer to any
21 question but the same five person's must not agree on the
22 all the answers when five everybody agree on any answer the
23 foreperson of the jury will write the answers in the space
24 provided for each answer.

25 And each of you will sign in the appropriate place

1 to indicates your agreement or disagreement. Each question
2 will be followed by an instruction as to how you will
3 proceed based upon your answers to the that question. If
4 you disagree with an answer that five jurors have agreed
5 upon you should not stop deliberating and you should not
6 stop voting on the rest of the questions that need to be
7 answered.

8 In other words you should consider participating
9 in the deliberations and voting on all questions that
10 require answers, when you have answered all the questions
11 that require answers report to the court. What is
12 important is that the views of all jurors be considered a
13 verdict of five of the six much you will be sufficient
14 under the law when five of you agree on the verdict may
15 report your verdict to the court.

16 As jurors your duty is to decide from all of the
17 testimony you have heard and the exhibits that have been
18 admitted into evidence what the facts are you are the sole
19 and exclusive judges of the facts neither I nor anyone else
20 can invade -- strike that.

21 Neither or nor anyone else can take over your
22 responsibility to decide the facts of this case. Which you
23 will do by the answers you provide on the verdict sheet as
24 sole judges of the facts you must decide which of the
25 witness you believe what portion of the testimony you

1 accept and what weight you give to it.

2 I have now out lined for you the rules of law that
3 apply to this case and the processes by which you way the
4 evidence and decide the facts the first thing you should do
5 in the jury room choose a fore person.

6 The foreperson mass several duties it is
7 foreperson who keeps order in the jury room and make sure
8 that you each have an opportunity to speak and just as
9 important to listen to your throw jurors. When you have a
10 question or request the foreperson will write a note place
11 a date and time long it and sign it. You will be given
12 court officer will give you everything you need.

13 He similarly the foreperson will mark your answers
14 and the fore person's copy of the verdict sheet however
15 despite all these duties the forepersons view of the
16 evidence in his or her vote is entitled to no greater
17 weight thank than what that is of any other juror.

18 Your function to reach a fair decision from the
19 law and the evidence is an important one. When you are in
20 a jury room listen to each other and discuss the evidence
21 and issue in the case mocked your selves.

22 It is a duty of each of you of each of you as
23 jurors to consult with one another and to deliberate with
24 goal of reaching an agreement on the verdict. If you can
25 do so without violating your individual judgment and your

1 conscience.

2 While you should not surrender conscientious
3 convictions the what the truth is and of the weight and
4 affect of the evidence and what each you have must decide
5 the case for yourselves and not merely consent to the
6 decision of your fellow jurors you should examine the
7 issues and the evidence before you with candor and
8 frankness. With proper respect and regard for the opinions
9 of each other.

10 Remember in your deliberations that you dispute
11 between that the dispute between the parties is for them a
12 very important matter. They have the court rely upon you
13 to give full and conscientious deliberation and
14 consideration to the issues and evidence before you by do
15 doing you carry out to the fullest your oaths as jurors to
16 truly try the issues of this case and render a verdict.

17 Now as far as the foreperson I used to say juror
18 number one could be foreperson if you don't want to go
19 through the voting process but I know all that civic duty.
20 At this point I am going to have the officer well the
21 officer is going to place who is alternate is that you --
22 juror going to go to a different room.

23 As I told you before only 6 you of you will be
24 deliberating and additional jurors are required to has a
25 safeguard against the possibility that one or more of you

1 might be unable to complete his or her services. Those of
2 you who will not be deliberating those of you must not
3 communicate anything about the case in any fashion with the
4 sitting jurors other alternates or anyone else until after
5 the verdict has been rendered.

6 Or I may instruct you otherwise. So we need you
7 and we'll let you know when it's over you will be brought
8 back when the verdict is ready. I commend you for your
9 actually I commend you all for your faithful attendance and
10 attention. And in advance I'm go to go thank you again but
11 I thank you all for your service. All right now you have
12 the attorneys agree that the jury may have the exhibits
13 upon request.

14 MR. BURKE: Yes.

15 MR. EDWARDS: Yes, your Honor.

16 THE COURT: Why don't you just hold them outside.
17 I have to see if there are any exceptions.

18 You can go you have verdict sheet. You have paper
19 you can go that way. Just hold them a second outside.

20 THE COURT: Counsel, all the requests which have
21 been submitted in writing have been incorporated as
22 charged. Are there any exceptions into no exception.

23 MR. EDWARDS: No exceptions.

24 MR. BURKE: No, judge.

25 THE COURT: Okay. Thank you.

1 (Jury excused to begin deliberations).

2 THE COURT: We have a note it read as follows
3 today's date 3:30 p.m. message need chemists charts
4 financial not tax forms. Counsel, come and see. And sign
5 Mark Canco. Want to this word says note from the jury.

6 MR. BURKE: I don't know what they mean by that we
7 have tax returns and W two Dr. Dwyer two reports two
8 tables.

9 This the 2022 and the 2019.

10 MR. BURKE: Exhibit 12B and 12A. The only thing
11 we can tell them is that the only financial records we have
12 are tax returns and a W two.

13 MR. EDWARDS: Give them chart if they want more.

14 MR. BURKE: That would prompt it they might say
15 well wait a minute.

16 THE COURT: All right. Will continue tomorrow.
17 Come in at 9:30.

18 You will come back here and then we'll take care
19 of whatever we need to take care of then you will go
20 upstairs again.

21 All right. Stop deliberating whatever went on in
22 there I know it was very serious business, but don't talk
23 about it it's very important that you keep it to yourself
24 just go enjoy the nice weather and we'll see you tomorrow
25 thank you take care thank you so much.

1 They will come if here tomorrow we'll send them
2 out.

3 Anything else you wanted to cover?

4 MR. BURKE: Yes, we're good. Thank you.

5 THE COURT: See you tomorrow.

6 (Matter is adjourned until March 22nd, 2022.)
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