

In The Matter Of:

*Michael T. Little and Ellen Little v.
Memorial Sloan-Kettering Cancer Center et al*

June 13, 2023

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NEW YORK STATE SUPREME COURT.
NEW YORK COUNTY : CIVIL TERM : PART 58

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MICHEAL T. LITTLE AND ELLEN LITTLE,

Plaintiffs,

-against-

MEMORIAL SLOAN-KETTERING CANCER CENTER AND
S.K.I. REALTY, INC.,

Defendants.
-----X

Index No. 152386/2015

CONTINUED JURY TRIAL

New York Supreme Court
71 Thomas Street
New York, New York 10013
June 13, 2023

B E F O R E: HON. DAVID B. COHEN
Supreme Court Justice

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

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BY: MR. ZACHARY J. LYON, ESQ.

Matthew Sedacca
Lori Ann Sacco
Official Court Reporters

1 MR. LYON: Could you mark this.

2 (Whereupon the photograph was received in evidence
3 as Defendants' Exhibit C as of this date.)

4 THE COURT: Could you mark these.

5 (Whereupon the defendant's request to charge was
6 marked received in evidence as Court's Exhibit IV as of this
7 date.)

8 (Whereupon the defendant's proposed verdict sheet
9 was marked received in evidence as Court's Exhibit V as of
10 this date.)

11 THE COURT: Case on trial continued. We're on the
12 record. The time is now 9:39. The jury is all here. They
13 are assembled in the jury room and waiting to be brought
14 out. Anything before we bring in the jury?

15 MR. MADONNA: Just one, your Honor. As it was
16 mentioned off the record, we're working on the wording for a
17 stipulation that we would like to be read to the jury that I
18 anticipate counsel wants in the record before his witness is
19 called.

20 THE COURT: You stipulated a document into
21 evidence?

22 MR. MADONNA: Yes, another photograph.

23 MR. LYON: Defendants' Exhibit C.

24 THE COURT: A photograph?

25 MR. LYON: Correct.

1 THE COURT: And I marked defendants' request to
2 charge and defendants' proposed verdict sheet as Court's
3 Exhibit IV and V respectively. So, you handed up a
4 stipulation that you both agree on?

5 MR. MADONNA: Yes, your Honor.

6 MR. LYON: Yes, your Honor.

7 THE COURT: You want me to read this stipulation to
8 the jury?

9 MR. LYON: Correct.

10 THE COURT: Do you want me to read it to them when
11 they first come in or at some later point?

12 MR. MADONNA: It's up to you.

13 MR. LYON: When they first come in would be good.

14 THE COURT: Agreed.

15 MR. MADONNA: Okay.

16 THE COURT: I will read it through the first time
17 to make sure I can read it clearly. Your handwriting is
18 pretty good.

19 MR. MADONNA: I was trying really hard.

20 THE COURT: Mr. Madonna. It reads as follows. It
21 is stipulated that by October 2015 the exterior construction
22 was completed, which included replacement of the entire
23 exterior sidewalk and pedestrian ramp on both 61st Street
24 and York Avenue.

25 MR. MADONNA: Correct.

1 MR. LYON: That's fine by me.

2 THE COURT: All right. I'll read it to them when
3 they come in. And your witness is here, counsel?

4 MR. LYON: He is.

5 THE COURT: Anything else before we bring in the
6 jury?

7 MR. LYON: No, your Honor.

8 THE COURT: The jury is ready to be brought into
9 the courtroom.

10 THE COURT OFFICER: All rise. Jury entering.

11 (Whereupon the jury panel entered the courtroom.)

12 THE COURT OFFICER: You may be seated.

13 THE COURT: Members of the jury, good morning and
14 welcome back. The first thing I want to tell you this
15 morning is we're going to take a witness out of turn. So,
16 the plaintiff hasn't finished their case, but we're going to
17 take a defense witness first before we have a plaintiffs'
18 witness this afternoon. We do this for purely scheduling
19 reasons. There is nothing unusual or irregular about it.
20 And that's my instruction with respect to that.

21 I'm also going to read you a stipulation that the
22 parties have agreed to. This stipulation is an agreement
23 agreed to the parties. It's a stipulated fact and you are
24 to accept it as such. And it reads as follows: It is
25 stipulated that by October 2015 the exterior construction

1 was completed, which included replacement of the entire
2 exterior sidewalk and pedestrian ramp on both 61st Street
3 and York Avenue. Keep that stipulation in mind. That is
4 evidence for your consideration.

5 At this time I call on Mr. Lyon to call his first
6 witness.

7 MR. LYON: Thank you, your Honor. The defense
8 calls Bernie Lorenz, PE.

9 B E R N A R D P. L O R E N Z, after having been duly sworn by
10 the court clerk, was examined and testified as follows:

11 THE COURT CLERK: Thank you. Please state your
12 name for the record.

13 THE WITNESS: Bernard P., as in Peter, Lorenz,
14 L-O-R-E-N-Z.

15 THE COURT CLERK: And your address for the record.

16 THE WITNESS: 777 New Durham, D-U-R-H-A-M, Road,
17 Edison, New Jersey.

18 THE COURT CLERK: Thank you.

19 THE WITNESS: Thank you.

20 THE COURT CLERK: The witness is sworn.

21 THE COURT: Mr. Lyon, you may inquire.

22 MR. LYON: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MR. LYON:

25 Q Good morning.

1 A Good morning.

2 Q Please introduce yourself to the jury.

3 A Good morning, jury. My name is Bernard Lorenz, Bernie
4 Lorenz as I was referred to earlier, which I prefer. I'm a
5 licensed professional engineer in the states of New York, New
6 Jersey and Pennsylvania. And I perform forensic engineering
7 investigations in matters such as this. Matters involving
8 construction accidents, structural instability of buildings,
9 things along those lines. I've been doing it for approximately
10 29 years, a little over 29 years.

11 Q If you could give the jury a summary of your
12 educational background beginning with undergraduate studies.

13 A Yes. In 1985 I graduated from the George Institute of
14 Technology, also known as Georgia Tech in Atlanta, Georgia with
15 my bachelor in civil engineering. In May of 1999 I graduated
16 from the New Jersey Institute of Technology in Newark, New
17 Jersey with my master's in civil engineering.

18 Q What training and experience do you have in the field
19 of engineering?

20 A I'm a civil engineer by education. So, my experience,
21 my training all relates to civil engineering. What is civil
22 engineering. It's engineering matters involving structures that
23 are used by civilians, roadways, bridges, buildings, walkways,
24 ramps, stairways, things of that nature. Throughout my
25 experience I've designed and oversaw construction of buildings,

1 building renovation, both industrial, residential and
2 commercial. I've -- I've seen the construction and oversaw the
3 construction of walkways, concrete walkways, slate walkways,
4 paver walkways of all different designations. I've been trained
5 in the occupational safety and health administration standards
6 for both general industry and construction. I'm a licensed
7 building inspector also in the state of New Jersey.

8 Q Do you have any certifications accreditations or
9 applications to your name?

10 A As I stated earlier, licensed professional engineer,
11 PE, which is that designation in states of New York, New Jersey
12 and Pennsylvania. And a licensed building inspector in the
13 state of New Jersey.

14 Q And what is your current employment?

15 A I'm currently employed by Affiliated Engineering
16 Laboratories in Edison, New Jersey as an engineering consultant.

17 MR. LYON: Your Honor, at this time I would like to
18 ask that Mr. Lorenz be deemed an expert in professional
19 engineering.

20 THE COURT: Hearing no objection, the witness is so
21 qualified.

22 Q Mr. Lorenz, was there a time that I contacted you to
23 discuss this matter?

24 A Yes.

25 Q All right. Do you remember when that was?

1 A My recollection is April of 2021.

2 Q At that time did I show you some photographs of the
3 alleged accident site?

4 A Yes, you did.

5 Q Okay. Did I also ask you to teach me a little bit
6 about coefficient of friction?

7 A Yes.

8 Q Okay. You didn't do that for free, did you?

9 A No, absolutely not.

10 Q And you were paid for your time?

11 A Yes.

12 Q All right. And what are your rates?

13 A \$415 an hour.

14 Q Okay. And as is customary are you being paid for your
15 time to be here today?

16 A Yes.

17 Q All right. Do you know how much you've charged for
18 this case to date?

19 A To date I've sent your office one invoice, and that was
20 for 8.4 hours is my recollection at \$415 an hour. I forget what
21 the math is, four to \$5,000 I would estimate.

22 Q Okay. So let's switch gears a little bit. Have you
23 ever tested the coefficient of friction of a walking surface?

24 A Yes.

25 Q All right. And tell the jury how that is typically

1 done.

2 A It's the matter -- The manner in which the coefficient
3 of friction is tested on floor surfaces has evolved throughout
4 my career as an engineer. There have been certain test methods
5 used in the past that are no longer used.

6 MR. MADONNA: Your Honor, I'm just going to note my
7 objection. If we can just have this limited to the
8 timeframe at the time that this incident had occurred back
9 in 2014 as opposed to the present. I mean, anything that
10 may have changed over that period of time is not relevant to
11 the date that this incident occurred.

12 THE COURT: Step up, counsel.

13 (Whereupon a side bar conference was held.)

14 Q So, let's go to 2014 and let's stick with 2014. In
15 2014 how was the coefficient of friction tested for a walking
16 surface?

17 A It -- it depended on the test method used. There are
18 various and there were various test methods in 2014 to which you
19 could apply, a machine to test the coefficient of friction. One
20 was known as ASTM F 609, which is ASTM stands for The American
21 Society for Testing and Materials. They develop testing
22 procedures for the coefficient of friction and a bunch of other
23 matters. But with regard to the coefficient of friction, that
24 device was called the Whiteley or the Whitely. I believe it's
25 W-H-I-T-L-E-Y. That test method was a method for testing the

1 coefficient of friction under dry conditions only. And what
2 that test method would do is you would use this machine,
3 essentially drag said sled, drag it across the surface. Do a
4 mathematical calculation. You would come up with a coefficient
5 of friction.

6 At the same time there was a test method for testing
7 the wet coefficient of friction, and that was an American
8 National Standards, ANSI, Institute document. ANSI being very
9 limit to ASTM. They develop standards again for multiple
10 things, including the test of coefficient of friction. That
11 standard utilized a different device and actually came up with a
12 specific number with regard to the wet coefficient of friction
13 that would be deemed acceptable or safe or unsafe. And that
14 threshold value was 0.42. The Whitely or the Whiteley test,
15 that was a 0.5, but begin that was under dry conditions. The
16 different test method, the ANSI document was 0.42 for wet.

17 Q Okay. Did you have an opportunity to review the
18 testimony of Michael Kravitz from yesterday?

19 A Yes.

20 Q And I want you to assume that Mr. Kravitz testified
21 that the coefficient of friction for the paint mark in this case
22 was 0.72. Is 0.72 generally regarded as a safe coefficient of
23 friction for a walking surface?

24 A Yes. My recollection is the 0.72 is under dry
25 conditions. Yes, that is a safe level of a coefficient of

1 friction.

2 Q Okay. I want you to also assume that Mr. Kravitz
3 testified that he did not test the paint under wet conditions,
4 but instead he used an equation to estimate what the wet
5 coefficient of friction would be based on his result for the dry
6 test. Have you ever heard of anyone doing that?

7 A I have not.

8 Q Is that something that a professional engineer can do?

9 A No. I mean, they can perform a calculation. Whether
10 the value of that calculation results in any meaningful results
11 is a different story and does not.

12 MR. LYON: Your Honor, I would ask the witness to
13 step down in front of the jury if there is no objection.

14 THE COURT: You have my permission.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Madonna, find a position where you
17 can see.

18 Q Looking at Plaintiffs' Exhibit 30, we can see the
19 equation that was used by Mr. Kravitz. Have you ever seen this
20 before?

21 A (Examining). I have not.

22 Q Is this equation a generally accepted method in your
23 field for testing wet coefficient of friction or -- or
24 concluding wet coefficient of friction?

25 A No.

1 Q Is there a method for testing coefficient of friction
2 under wet conditions?

3 A Yes.

4 Q Okay. Is this it (pointing)?

5 A That is not it.

6 Q Does this equation make any sense to you?

7 A It does not for several reasons.

8 Q Please elucidate those reasons.

9 A First and foremost, Mr. Kravitz on the bottom scale of
10 this diagram, the axis if you will has a relative level of water
11 on surface. There are numbers that range from zero to one. But
12 there is no dimension provided. It's not in inches. It's not
13 in feet. It's not in millimeters. There is no dimensions
14 provided, which smacks of unacceptability and inaccuracy number
15 one.

16 Number two. He's assumed a straight line, this get's a
17 little technical, a straight line deviation if you will for both
18 the concrete surface and the painted splotch, I believe it's
19 been referred to. And that's not accurate either. Because
20 under low levels of water on a surface, you get a brief rain
21 shower. You get due on a water surface. It typically does not
22 affect the coefficient of friction, because the surfaces have
23 undulations or protuberances or something, I forget what
24 Mr. Kravitz referred to them as. So, you wouldn't see a
25 straight line here, what you would see -- I'm sorry, a diagonal

1 line. You would see more of a straight line until that depth
2 got to a certain number. And again we don't know what the depth
3 is here. Again, these results are unreliable.

4 The third thing is that once you get to this number
5 one, again whatever that represents, I believe his testimony was
6 that this is as slippery as ice. That's certainly not a
7 condition that we experience in our everyday lives. Even if
8 it's pouring rain out and walking on a sidewalk, it doesn't feel
9 like you're walking across an ice skating rink. There is still
10 some traction. Certainly it is going to be reduced under
11 certain conditions, but it's not going to be as slippery as an
12 ice skating rink. So, those are the reasons why I believe that
13 essentially this is junk science.

14 MR. MADONNA: Note my objection, Judge. Move to
15 strike that last comment.

16 THE COURT: Objection is sustained. Jury is to
17 disregard the last characterization by the witness.

18 Q Based on your education, training and experience do you
19 have an opinion as to whether Mr. Kravitz's calculations are
20 valid?

21 A Yes.

22 MR. MADONNA: Objection.

23 THE COURT: Overruled.

24 MR. MADONNA: Form.

25 Q And what is that opinion?

1 A It is my opinion that his calculations are not valid.

2 Q Based on your education, training and experience, do
3 you have an opinion as to whether Mr. Kravitz's calculations are
4 reliable? First, do you have an opinion?

5 A Yes, I do.

6 Q And what is that opinion?

7 A It is my opinion that these calculations are
8 unreliable.

9 Q Okay. Is there a linear relationship between dry
10 coefficient of friction and wet coefficient of friction?

11 A No.

12 Q And -- and can you kind of explain what that means?

13 A Certainly. I think I mentioned a little bit earlier.
14 Depending on the thickness of the wetness, will have -- the
15 surface will have different characteristics. But again it's not
16 a straight line that we see her. It would be more of a
17 horizontal line. And as the depth of water got thicker, then it
18 would start to decline. But it would never go to zero ice
19 skating rink number. Absolutely not.

20 Q Okay. This formula here, did Mr. Kravitz make this up?

21 A He testified that he derived that, so yes. He was the
22 one that made up that calculation.

23 Q You may step back in the witness box.

24 MR. LYON: Actually I'm going to ask the witness to
25 step back down.

1 THE COURT: Okay.

2 MR. LYON: My apologies, your Honor.

3 THE COURT: The witness will get a little exercise
4 this morning.

5 MR. LYON: Yeah. Sorry.

6 MR. MADONNA: Yeah, but I don't need it.

7 THE COURT: Why don't you step down to the easel.

8 THE WITNESS: Sure.

9 Q We're looking at Plaintiffs' Exhibit 25. Can you
10 identify this document?

11 A (Examining). Yes. That's a New York City Department
12 of Transportation pedestrian, I'm sorry, sidewalk pedestrian
13 ramp detail.

14 Q Are you familiar with this document?

15 A Yes.

16 Q And what -- Explain to the jury what it is, what it's
17 used for, where did it come from.

18 A Certainly. The DOT provides specifications for
19 transportation including pedestrian transportation. In this
20 instance this document is a plan which the DOT would like to
21 exist at the intersections of roadways typically seen in the
22 City of New York. And what it provides for are certain
23 dimensions, certain slopes, meaning the slope of a ramp surface
24 or a sidewalk surface or walkway surface. And essentially these
25 are provided for accessibility purposes, people with

1 disabilities, the elderly and the infirmed. That's why they are
2 here. They give a couple of scenarios as to, you know, in a
3 perfect world, you know what we would like to see, what the DOT
4 would like to see. However, depending on site conditions, there
5 is note on here that provides for engineering judgment. If
6 there are conditions that exist where this exact diagram cannot
7 be fabricated in the field and adjustments are made by the
8 contractors that install this.

9 Q Okay. Does this document define what a pedestrian ramp
10 is?

11 A Yes, it does.

12 Q Okay. And can you point out on the diagram where the
13 pedestrian ramp is in this plan, case one?

14 A Absolutely. So, the pedestrian ramp is essentially --
15 it looks like a piece of pie. It's a pie shape section. It
16 comes from the curb line virtually up to this point here
17 (pointing) and then horizontally across. So that high section,
18 if you will, would be the pedestrian ramp. And it's designated
19 within that -- that pie shape, there is two arrows that point to
20 the horizontal line and vertical line that says limits the
21 sidewalk, which means that the sidewalk ends at this horizontal
22 -- I'm sorry -- this vertical line and this horizontal line
23 based on that diagram (pointing).

24 Q Now you may step back to the witness box.

25 MR. LYON: May I approach, your Honor?

1 THE COURT: Yes.

2 MR. LYON: I'm handing the witness what has been
3 marked as Defense Exhibit C.

4 Q Mr. Lorenz, can you please outline with the marker in
5 front of you the limits of the pedestrian ramp in that
6 photograph?

7 MR. MADONNA: Objection. Absolutely objection,
8 Judge.

9 THE COURT: Step up. Absolutely objection.

10 MR. MADONNA: Absolutely objection.

11 (Whereupon a side bar conference was held.)

12 Q Mr. Lorenz, looking at Defense Exhibit C, are you able
13 to delineate the boundaries of the pedestrian ramp in that
14 photograph?

15 A Yes.

16 Q Okay. Then please take the marker and outline the
17 pedestrian ramp that you see in the photograph.

18 (Whereupon the witness complied with the above
19 request of counsel.)

20 MR. LYON: Permission to publish to the jury, your
21 Honor.

22 THE COURT: Not yet, counsel. You need to ask an
23 additional question or two.

24 Q Is the outline that you created on Defense Exhibit C a
25 fair and accurate depiction of what the pedestrian ramp is in

1 that picture?

2 A Yes.

3 MR. LYON: Permission to publish.

4 MR. MADONNA: Objection.

5 THE COURT: Step up.

6 (Whereupon a side bar conference was held.)

7 THE COURT: Objection is overruled. You can
8 publish.

9 MR. LYON: Thank you, your Honor.

10 THE WITNESS: Judge, I did a dash line instead of a
11 solid line. I don't know if it matters.

12 THE COURT: I think it's clear now. You can show
13 it to the jury, counsel.

14 (Whereupon the exhibit was published to the jury
15 panel.)

16 MR. LYON: Nothing further, your Honor.

17 THE COURT: Mr. Madonna.

18 MR. MADONNA: Certainly.

19 CROSS EXAMINATION

20 BY MR. MADONNA:

21 Q Good morning, Mr. Lorenz.

22 A Good morning.

23 Q How are you doing today?

24 A I'm well. How about yourself.

25 Q We have never met before this morning, correct?

1 A Correct.

2 Q You talked about earlier the -- that you were retained
3 by Memorial Sloan-Kettering and defense counsel to defend this
4 case in April of 2021, is that correct?

5 A That's my recollection, yes.

6 Q And when you did that, what did you do when you got
7 this assignment?

8 A I believe we chatted briefly about the matter. I was
9 provided file material to review the deposition transcript of
10 the plaintiff, the deposition transcript of a Mr. Matera is my
11 recollection. I believe I also reviewed the verified Bill of
12 Particulars, certainly some photographs and exhibits that were
13 marked at depositions.

14 Q And did you issue a report at that time, in April of
15 2021?

16 A No.

17 Q Why not?

18 A I wasn't asked to issue a report.

19 Q At that time, in 2021, in reviewing the plaintiff's
20 deposition transcript, were you provided with any photographs
21 that documented where he said you fell?

22 A I believe so. Yes.

23 Q Yeah. Do you have those in your file?

24 A No.

25 Q Okay. Were they marked at the deposition?

1 A Yes.

2 MR. MADONNA: Your Honor, I would like the Court to
3 take judicial notice that there were no such photographs
4 marked at plaintiff's deposition in this case.

5 Q Did you know that?

6 A My recollection was that they were marked. I did see
7 exhibit marks on some of the photographs that I reviewed, that's
8 why I answered in the many they are I did.

9 Q It didn't correspond to where the plaintiff fell?

10 THE COURT: Counsel, on your last request I have no
11 such information sufficient for me to take judicial notice
12 at this time. You may continue your inquiry.

13 MR. MADONNA: Thank you.

14 Q Where did Mr. Lyon tell you the plaintiff fell?

15 A I don't recall if he told me exactly where the
16 plaintiff fell. Certainly I reviewed the deposition testimony
17 of the plaintiff, and he was able to figure out, I believe, the
18 area where he alleges the slip and fall occurred.

19 Q So, your -- your retention with regard to where he fell
20 corresponds to a fall that occurred on the sidewalk, correct?

21 A It was on a pedestrian ramp in my opinion.

22 Q Let's include for this discussion right now before we
23 get to the specifics. He was on the concrete?

24 A He was on a concrete surface.

25 Q He was not on the asphalt?

1 A Correct.

2 Q He was not on a metal grate? That's not what Mr. Lyon
3 told you to review, right?

4 A I -- I -- Well, actually I recall now that I did review
5 hospital records.

6 MR. MADONNA: Objection, your Honor.

7 THE COURT: Sustained.

8 MR. LYON: Your Honor, I'm going to object to --

9 THE COURT: Sustained.

10 MR. LYON: -- to the scope, the scope of the
11 question.

12 THE COURT: Ask the next question, counsel. The
13 question and the answer to the point where I sustained the
14 objection is before the jury to that point. Now you may ask
15 your next question.

16 Q So the information that you received and you were
17 investigating whether or not this paint spot that was on the
18 concrete was a hazardous condition, correct?

19 MR. LYON: Objection. Scope.

20 THE COURT: Overruled.

21 A Yes. I believe so.

22 (Continue on the next page.)

23

24

25

1 CROSS-EXAMINATION

2 BY MR. MADONNA:

3 Q. Did Mr. Lyon ever ask you to look into whether or not
4 this paint splotch would be a dangerous condition?

5 A. I don't recall a specific request that Mr. Lyon -- with
6 regard to that.

7 Q. Do you know what the weather was like that day that
8 Mr. Little fell?

9 A. My understanding, it was snowing earlier in the day.

10 Q. And raining all day?

11 A. And then raining after that.

12 Q. Did you look at the weather reports?

13 A. No.

14 Q. And in 2021, it's only two years ago, at that time, you
15 had no opportunity to go out and do an inspection at the site,
16 correct?

17 A. That's correct.

18 Q. You had no opportunity to see and feel what was there
19 to be seen?

20 A. Correct.

21 Q. Did you look back at Google images and photographs of
22 that intersection?

23 A. I did.

24 Q. And that paint splotch that was on the pictures that
25 Mr. Lyon told you was where the plaintiff fell, that was in

1 those pictures going back to 2009?

2 A. That's my recollection.

3 Q. Would you expect good and safe engineering construction
4 practice to have inspections of the exterior concrete sidewalk
5 and pedestrian ramps of the property while it's under
6 construction?

7 A. Yes.

8 Q. That would be daily, at least, to clean up?

9 A. Yes.

10 Q. And then good and safe practice would include them
11 identifying hazards that were on the sidewalk on the concrete of
12 the exterior perimeter of the building?

13 MR. LYON: Objection, scope.

14 THE COURT: Overruled.

15 A. I agree that that would be prudent.

16 Q. And to make a determination of whether or not there
17 would be -- whether that sidewalk, concrete area was in a
18 reasonably safe condition?

19 A. Yes. That's reasonable.

20 Q. And if there's a difference in substance between
21 concrete and any other substance, let's take the paint splotch
22 in this instance, would it be prudent to make a determination as
23 to whether or not one was more slippery than the other?

24 A. That would be prudent, yes.

25 Q. And would it be prudent to make a determination as to

1 whether one would be even more slippery if it became wet than
2 the other?

3 A. Yes.

4 Q. In fact, good and accepted engineering practices would
5 dictate that two different surfaces with different coefficient
6 of frictions, when somebody's walking, taking one step to
7 another in an even stride, that could cause them to fall?

8 A. It depends on the variation between the coefficient of
9 friction.

10 Q. Right. If one is .5 under the Whiteley test that was
11 in effect back in 2004 and less and the other one was .5 and
12 greater, meaning one's slippery and hazardous and one side's
13 not, if you're stepping from a non-slippery surface with one
14 foot to a slippery surface under .5 with the other, that's a
15 hazardous condition, correct?

16 A. With regard to the Whiteley, under dry conditions that
17 would be a hazardous condition if it were below .5 in one
18 location and the other.

19 Q. That difference is a big deal, isn't it?

20 A. It can be.

21 Q. To someone walking and not knowing what the coefficient
22 of friction when you're walking, you expect it to be the same
23 with each step?

24 A. That's a reasonable anticipation depending on the
25 person's actions. If they're in a hurry, certainly that's a

1 variation.

2 Q. But even if you're walking in a hurry, even if you're
3 walking briskly or walking fast, if you're taking the same
4 steps, continuous stride, that's what we have to assume on
5 average, whether it's a slow walk or a faster walk, what makes
6 that hazardous, is moving from a less, non-slippery surface to a
7 slippery surface, correct?

8 A. If that condition exists, yes.

9 Q. And rain, would you agree, would make a surface more
10 slippery?

11 A. Yes.

12 Q. Even a concrete surface?

13 A. In general, yes.

14 Q. And we talked about the -- you talked about the
15 protuberances, I think, is that a good word for it, the
16 undulation in surfaces?

17 A. Yes.

18 Q. Because water itself is impermeable; is that the right
19 word for it? Incompressible? What's not the right word for it?
20 Incompressible?

21 A. Water is incompressible.

22 Q. What does that mean, generally, in physics and
23 engineering?

24 A. If you have a container containing some water and you
25 try to compress or make that water smaller, you can't do it.

1 But on a sidewalk it's a different situation. That's under a
2 contained, let's say, laboratory-type conditions. So sidewalks
3 are sloped to the road. They drain water. It's not an equal
4 comparison.

5 Q. But by incompressible, that means that if it's covered,
6 the water, if it's trapped under there, it's not going to sink
7 in, it will find the protuberances; if not, it will fill up and
8 become slippery?

9 A. Well, talking about on a walking surface, correct?

10 Q. Yes.

11 A. On a walking surface it's different than a laboratory
12 scenario that I just outlined. On a walking surface the water's
13 not confined. If you step on it, it will squish out from the
14 sides of your shoes. So that would be the difference.

15 Q. Right. And depends on how much water is there to
16 determine whether or not there's room for the water to go into
17 those protuberances and under the tread, correct?

18 A. No.

19 Q. So water doesn't make a surface more slippery?

20 A. I'm not saying that.

21 Q. Water makes a surface more slippery?

22 A. In general, yes.

23 Q. It would make a surface that has a lower coefficient of
24 friction more slippery than a surface that has a higher
25 coefficient of friction?

1 A. Yes.

2 Q. And if you wanted to determine, in a chart for them,
3 demonstrative purposes, an algebraic equation to show how any
4 data would change with one variable changing, is there an
5 algebraic formula for that?

6 A. Not to my knowledge.

7 Q. There's not an algebraic formula that can plot a graph?

8 A. There's plenty of algebraic formulas that can chart
9 graphs. But the information that goes into that equation is
10 essential with regard --

11 Q. I'm not talking about the information yet. I'm just
12 talking about the formula.

13 A. Anyone can develop a formula to plot a graph.

14 Q. If you use the same formula and change one data point,
15 then that would show you the difference between those two
16 graphs, right?

17 A. In theory, yes.

18 Q. Not in theory. It's mathematics, isn't it?

19 A. Are you basing it on this specific equation?

20 Q. I'm just asking, how about -- and you can write this
21 down.

22 MR. MADONNA: Can we have a pad for the good
23 engineer, if that's possible? Or I can give him my paper.

24 THE COURT: Don't have one here.

25 MR. MADONNA: I have it.

1 A. I can write on the back of my file.

2 Q. Yellow pad (handing). And a marker (handing).

3 A. I got it.

4 Q. Okay. A parenthesis B equals C parenthesis one minus A
5 over 100 percent -- no, A, B, C -- can I see what you wrote?

6 Because I'm not good at math.

7 A. I didn't know if you wanted closed parenthesis.

8 Q. I'll write it down for you. Let's do it this way.

9 Do you see the one I just wrote there?

10 A. I do.

11 Q. Is that an algebraic equation?

12 A. Yes.

13 Q. And that has three different variables in it?

14 A. Four.

15 Q. Four different variables.

16 So if you know three of those variables and one of them
17 change, that can plot an X and Y axis graph?

18 A. I don't understand that question.

19 Q. If you know three of the variables and you want to find
20 one of them, can you do that?

21 A. Yes.

22 Q. And if you do that and that one changes, you can plot a
23 graph on an X and Y axis?

24 A. Yes. As that variable changes, you can plot different
25 numbers which would end up in a straight line.

1 Q. Isn't that exactly what this formula is?

2 A. That formula plots a line.

3 Q. Yes.

4 A. Yes.

5 Q. A line?

6 A. Yes.

7 Q. And with the variable changing on a graph, it will show
8 you what it changes from, one to another, it's straight because
9 you're going gradually from one to another, mathematically,
10 correct?

11 A. Based on mathematics with that formula, you are,
12 correct. Yes.

13 Q. Isn't that formula -- aren't you able to compare the
14 variable of one surface with the variable of another surface?

15 A. No.

16 Q. So if you're using that formula with the coefficient of
17 friction of the paint at .72 and the coefficient of friction of
18 the concrete at 1, that wouldn't show two different variables as
19 it goes down the graph?

20 A. It will show a straight line.

21 Q. Isn't that what it shows?

22 A. Again, the value of that information is what you --

23 Q. Is that what it shows?

24 A. It would show a --

25 THE COURT: One at a time.

1 A. It would show an angled line very similar to what we
2 see to that diagram.

3 Q. So that algebra isn't made up; that's math?

4 A. It's math. It's math.

5 Q. And it shows the line so we can see how something gets
6 more slippery as there's more water on the surface as the
7 percentage of the protuberances --

8 A. No.

9 Q. You can't?

10 A. No.

11 Q. So if the surface of those two substances, the concrete
12 and the paint, are different and one is more slick and one is
13 less slick and one has more protuberances in it, when it rains,
14 one would get more slippery than the other, correct?

15 A. In theory, yes.

16 Q. So, in theory or in reality?

17 A. In theory. It would depend on the material, its
18 characteristics.

19 Q. Okay. So would you agree with me that in this
20 situation with the paint starting at .72 and the concrete
21 starting at 1, that as they -- the same amount of water poured
22 down from the sky that was raining, that the paint would get
23 more slippery than the concrete?

24 A. In theory, yes.

25 Q. Okay. And would the paint get more slippery faster

1 than the concrete that's slippery?

2 A. Oh, I don't know about a rate of slipperiness. I don't
3 know if I can answer that.

4 Q. Would the paint get to the .5 or a less slippery point
5 before the concrete did?

6 A. Again, I don't know the composition of the paint. I
7 don't know its characteristics. I can't answer that question
8 within a reasonable degree of engineering certainty.

9 Q. But somebody who went out there and felt the spot might
10 be in a better position to determine how soft -- how flat or
11 what the surface felt like?

12 A. He would certainly have a better opportunity to feel it
13 than I would, absolutely.

14 Q. And you would have liked to have done that?

15 A. Yes.

16 Q. Now, are you familiar with what the corner quadrant is
17 on a sidewalk?

18 A. Yes.

19 Q. What is the corner quadrant?

20 A. It's essentially one-fourth of the intersection of -- a
21 street intersection that has sidewalks. Where the two sidewalks
22 would intersect would be an intersecting quadrant.

23 Q. The corner quadrant, that's part of the sidewalk?

24 A. Yes, it is.

25 Q. And would that include the area above closer to the

1 building line and the curb line of the pedestrian ramp area?

2 MR. LYON: Objection to form.

3 A. I don't understand the question.

4 THE COURT: Rephrase it.

5 Q. Okay. In this picture that you drew your dash line on,
6 and we'll get to where you started it from in a minute, but in
7 this picture, you drew your dash line all the way up to the
8 building line?

9 A. Yes.

10 Q. Does the corner quadrant of the sidewalk, does that
11 encompass any portion of the corner area where the two sidewalks
12 meet?

13 A. It doesn't encompass any portion of the pedestrian
14 ramp, which would be contained within that pie-shaped section.

15 Q. So the corner quadrant is not in the corner of the
16 sidewalk?

17 A. No, it is in the corner of the sidewalk.

18 Q. Can you point to it for me?

19 A. In that photograph, the pedestrian ramp occupies the
20 entire corner quadrant.

21 Q. So they're both the same thing here?

22 A. In this instance, they're not the same thing. A
23 sidewalk's a sidewalk --

24 Q. No. The corner quadrant and the pedestrian ramp.

25 A. In this instance, the pedestrian ramp occupies the

1 corner quadrant.

2 Q. So the corner quadrant is within your dashed line?

3 A. No. The pedestrian ramp is within my --

4 Q. Is the corner quadrant also within the dashed line?

5 A. Yes.

6 Q. So they're both within the dashed line?

7 A. Yes.

8 Q. The pedestrian ramp and the corner quadrant, sorry it's
9 taking so many questions, but they're both in the same location
10 that you dashed in here?

11 A. Yes.

12 Q. I know they're different words. But the place on the
13 area of the sidewalk that we're talking about is synonymous then
14 in this picture?

15 A. In that instance, yes.

16 Q. Okay. Now, you talked about the standards and
17 Plaintiffs' 25 in evidence, and you agree that with the notes
18 here, that the engineers had judgment when they're putting the
19 pedestrian ramps in the intersection, they have to take into
20 consideration certain structures that are already there such as
21 the lamp post and the sewer drain and any other preferences that
22 may be there?

23 A. Yes.

24 Q. In this instance there's a lamp post here?

25 A. There is a lamp post within that pedestrian ramp,

1 correct.

2 Q. And that lamp post is that within the corner quadrant?

3 A. If they're synonymous, then it would be.

4 Q. Is that your opinion?

5 A. Yes.

6 Q. Are you familiar with who's responsible for maintaining
7 the sidewalks?

8 A. Yes.

9 Q. Who is that?

10 A. The adjacent property owner.

11 Q. In this case that would be the cancer center, MSK?

12 A. Yes.

13 Q. And you're familiar with the administrative code
14 that -- 7-2 -- is it 210 or 201? 7-210?

15 A. Yes.

16 Q. Is that the administrative code that puts the
17 responsibility of the abutting sidewalk on the property owner?

18 A. Yes.

19 Q. And isn't it true, Mr. Lorenz, that 7-210 puts the
20 responsibility for the sidewalk, including the corner quadrant
21 of that sidewalk, the responsibility for maintaining that in a
22 safe condition on the property owner?

23 A. Yes.

24 Q. So do we agree that your dashed-in line here, which is
25 the corner quadrant also and the pedestrian ramp, would be

1 included in the responsibility of the property owner because
2 it's part of 7-210's definition of the corner quadrant that the
3 building owner's responsible for maintaining?

4 A. No.

5 Q. But you just testified that 7-210 says that the corner
6 quadrant is the responsibility of the property owner?

7 A. That's correct.

8 Q. Is there another statute that I'm not aware of?

9 A. I don't believe so.

10 Q. So that's the statute that governs responsibility with
11 regard to the maintenance of the sidewalk?

12 A. Correct.

13 Q. That's the only one you're aware of?

14 A. Correct.

15 Q. That's the only one that exists?

16 A. It is the only one I'm aware of.

17 Q. So this paint splotch, again, if those two are
18 synonymous, this paint splotch is also included within the
19 corner quadrant of the sidewalk on the property?

20 A. It's within the pedestrian ramp. Again, the
21 distinction here is that the pedestrian ramp occupies the entire
22 corner quadrant in this instance. And I can tell you why if
23 you'd like to know.

24 Q. Does the corner quadrant include the pedestrian ramp?

25 A. In this instance?

1 Q. Yes.

2 A. Yes.

3 Q. So, you can answer that simple question, is this paint
4 splotch within the corner quadrant of that area?

5 A. Not in my opinion.

6 Q. Not in your opinion? Even though it's in the
7 definition and even though it's synonymous with the area that
8 you drew included the corner quadrant?

9 A. That is the pedestrian ramp which I drew.

10 Q. I don't want to do this again. It includes the corner
11 quadrant?

12 A. The pedestrian ramp occupies the entire corner
13 quadrant.

14 Q. Right. And you would agree with me that it's the
15 property owner's responsibility to maintain the -- under 7-210
16 the sidewalk, including the corner quadrant, in a reasonably
17 safe condition?

18 A. Yes.

19 Q. And if there's a slippery condition on that corner
20 quadrant in that sidewalk, that would be MSK's responsibility in
21 this case?

22 A. Yes.

23 Q. And if there was any other hazardous condition on that
24 sidewalk in the corner quadrant, that would also be MSK's
25 responsibility?

1 A. Yes.

2 Q. Do you know if anybody ever went out on behalf of
3 Memorial Sloan Kettering and did any other inspection
4 measurement or looked at this spot?

5 A. No.

6 Q. As a matter of fact, the deposition testimony that you
7 read, nobody was even aware of it, correct; Mr. Matera said he
8 never noticed it?

9 A. Certainly Mr. Matera testified to that.

10 Q. And nobody brought it to his attention as far as he
11 testified?

12 A. That is my recollection.

13 Q. So nobody saw this mysterious splotch that was there
14 from 2009 through this accident in 2014 as far as you know from
15 Memorial Sloan Kettering?

16 A. I'm not sure if anyone didn't see it. But certainly
17 it wasn't brought to his attention as being an unsafe condition.

18 Q. And, again, if the surface area is less slippery or
19 became slippery when it gets wet, that would be a hazardous
20 condition?

21 A. Yes.

22 Q. And that's something that should be rectified?

23 A. I agree.

24 Q. So would you agree, Mr. Lorenz -- let's forget about
25 the designations, the definitions because we're arguing over

1 synonyms according to your testimony of pedestrian ramp and
2 corner quadrant.

3 MR. LYON: Objection to form.

4 Q. Would you agree that this paint splotch --

5 THE COURT: Overruled.

6 Q. -- is an unsafe condition on the sidewalk?

7 THE COURT: You can answer.

8 A. Sorry. Can you repeat the question?

9 THE COURT: Repeat the question.

10 MR. MADONNA: Can we have it read back?

11 THE COURT: Ask it again. It was a little inartful
12 in any event.

13 Q. Would you agree, regardless of whose responsibility you
14 want us to testify that it is, would you agree that that paint
15 splotch is an unsafe condition on the sidewalk?

16 A. I can't agree to that.

17 Q. Would you agree that if the coefficient of friction got
18 below .5 when it was wet, that it would be a slippery condition?

19 A. I pause because when I testified earlier, I spoke about
20 two different coefficient of frictions, 0.5 number being dry,
21 which is the F609 number, if I may, and then the current - and,
22 actually, it was an existing number back then; when I say back
23 then, in 2014 - 0.42.

24 So let me state that if it's below the threshold
25 between safe and unsafe, it can be a slipping hazard.

1 Q. And if it's below the threshold between safe and
2 unsafe, and it gets wet, that's unsafe?

3 A. Yes.

4 Q. And that's something that should be rectified by
5 whoever's responsible for it?

6 A. I agree.

7 Q. So would it be fair to say that over the years from
8 when MSK purchased this building, having this kind of a
9 condition on the sidewalk should have at least been something
10 that they looked into to make a determination as to whether or
11 not it was slippery or unsafe?

12 A. That's reasonable.

13 MR. MADONNA: I have nothing else.

14 THE COURT: Any redirect, Mr. Lyon?

15 MR. LYON: Yes, your Honor.

16 REDIRECT EXAMINATION BY

17 MR. LYON:

18 Q. Just to clarify, can you explain the distinction
19 between what the intersection quadrant is and what the
20 pedestrian ramp is?

21 A. Yes. Can I use an exhibit to explain that? It would
22 probably be more clear. And the one that I marked would be
23 fine, if I can use that.

24 Q. Sure.

25 MR. LYON: May I approach, your Honor?

1 THE COURT: You may.

2 THE WITNESS: Can I show this to the jurors just to
3 explain it?

4 THE COURT: It's in evidence. You can hold it up.

5 THE WITNESS: Okay.

6 THE COURT: Point to it, describe it if you need.

7 THE WITNESS: The diagram that we saw earlier, and
8 I forget which, Exhibit 30.

9 MR. MADONNA: 25.

10 MR. LYON: 25.

11 A. Again, under perfect conditions, this is what the DOT
12 would like for pedestrian ramp at an intersection (indicating).
13 Note No. 3 provides the ability of the engineer to make changes
14 if there are certain conditions in the field which exist which
15 could not result in that DOT drawing there. And that's a
16 condition that we see here in this photograph. And that
17 condition is this catch basin steel grate at the very
18 intersection of these two pedestrian ramps. Had that not been
19 there, then these dashed lines (indicating), both horizontally
20 and diagonally, if you will, on this diagram, would have come
21 closer to one another. This pie shape would have gotten smaller
22 (indicating). And then this intersection quadrant -- sorry,
23 this pedestrian ramp (indicating) would then not occupy the
24 entire intersecting quadrant, if that makes sense.

25 Q. Okay. And, Mr. Lorenz, is every pedestrian ramp within

1 the intersection quadrant?

2 A. Yes.

3 Q. And Mr. Kravtiz testified that the City's responsible
4 for the pedestrian ramp.

5 MR. MADONNA: Objection. Outside the scope of
6 cross, Judge.

7 THE COURT: Sustained.

8 MR. MADONNA: This is redirect.

9 MR. LYON: Please.

10 THE COURT: Counsel, you can ask your next
11 question.

12 MR. LYON: Your Honor, may I have the last question
13 and answer read back?

14 MR. MADONNA: The last question and answer was
15 sustained, Judge. Objection.

16 MR. LYON: Well, before that.

17 THE COURT: Will the Court Reporter please read
18 back the last question and answer prior to the objection?

19 (Whereupon, the Court Reporter read the requested
20 portion of the record.)

21 Q. But does every pedestrian ramp occupy the entire
22 pedestrian quadrant?

23 A. No.

24 Q. And, for instances like that, where the pedestrian ramp
25 does not occupy the entire intersection quadrant, that piece of

1 the intersection quadrant that is not the pedestrian ramp, is
2 that the property owner's responsibility?

3 A. Yes, it is.

4 MR. LYON: Nothing further, your Honor.

5 MR. MADONNA: No recross, Judge.

6 THE COURT: Witness may step down.

7 THE WITNESS: Thank you, judge.

8 (Whereupon, the witness was excused from the
9 witness stand.)

10 THE COURT: Step up, counsel.

11 Members of the jury, give us a moment, please.

12 (Whereupon, an off the record discussion was
13 held at the bench.)

14 THE COURT: Members of the jury, our next witness
15 is going to be here at 2 o'clock. So I'm going to excuse
16 you for a very early and long lunch. Enjoy yourself, but
17 not too much, and be back promptly at 2 o'clock.

18 Jury may exit.

19 THE COURT OFFICER: All rise. Jury exiting.

20 (Whereupon, the jury exited the courtroom.)

21 THE COURT: Anything on the record before we break
22 for lunch?

23 MR. MADONNA: No.

24 MR. LYON: No, your Honor.

25 (Whereupon, a luncheon recess was taken and the

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

MR. MADONNA: Could you mark these for identification. They are just demonstrative.

THE COURT: Okay.

(Whereupon the model of the knee was marked for identification as Plaintiffs' Exhibit No. 31 as of this date.)

(Whereupon the medical illustration was marked for identification as Plaintiffs' Exhibit no. 32 as of this date.)

THE COURT: On the record. Good afternoon counsel. Anything before we bring in the jury?

MR. MADONNA: No, Judge, I think we're ready.

MR. LYON: No, your Honor.

THE COURT: Bring in the jury.

THE COURT OFFICER: All rise. Jury entering.

(Whereupon the jury panel entered the courtroom.)

THE COURT OFFICER: You may be seated.

THE COURT: Members of the jury, welcome back. At this time I call upon Mr. Madonna to call your next witness.

MR. MADONNA: Thank you, your Honor. The plaintiff calls Jeffrey Kaplan, M.D.

THE COURT CLERK: Raise your right hand.

J E F F R E Y K A P L A N, M. D., after having been duly

1 sworn by the court clerk, was examined and testified as follows:

2 THE WITNESS: Yes.

3 THE COURT CLERK: Thank you. Please state your
4 name for the record.

5 THE WITNESS: My name is Jeffrey Kaplan,
6 K-A-P-L-A-N.

7 THE COURT CLERK: And your address.

8 THE WITNESS: My office is at 160 East 56th Street,
9 Manhattan, 10022.

10 THE COURT CLERK: Thank you. Witness is sworn.

11 THE COURT: You may inquire.

12 MR. MADONNA: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MR. MADONNA:

15 Q Good afternoon, Dr. Kaplan.

16 A Hi.

17 Q Are you currently licensed to practice medicine?

18 A Yes.

19 Q And where are you licensed?

20 A I have licenses in New York, New Jersey and Nevada.

21 Q And when did you become licensed?

22 A In New York in 1994. New Jersey 19 -- I'm sorry 2014.
23 And Nevada 2020.

24 Q I think that microphone is on.

25 MS. SACCO: No, I don't think it's on.

1 THE COURT: Press the button.

2 Q There you go. Can you tell the jury a little bit about
3 your educational background, undergrad?

4 A Education, I went to college at Yale University. When
5 I graduated college, I went to medical school here in the city
6 at Columbia University. Following that I did a training program
7 in orthopedic surgery. I did that at a place called The
8 Campbell Clinic in Memphis, Tennessee. I was in the first
9 orthopedic training program in the United States. Following
10 that I moved to New York in 1994 where I've been in private
11 practice ever since.

12 Q And are you certified in any particular field in
13 medicine?

14 A I'm board certified in orthopedic surgery.

15 Q And what does it mean to be board certified in
16 orthopedic surgery?

17 A Board certification is simply an extra qualification
18 you can receive after graduating college and medical school and
19 doing a residency training program. Basically you take a series
20 of examinations over a number of years. It's given by an expert
21 panel of orthopedists, surgeons of The American Board of
22 Orthopedic Surgeons. You take oral exams and written exams.
23 And if they feel you have reached a certain level of expertise
24 and knowledge, then they deem you board certified.

25 Q Do you have to become recertified every so often?

1 A You do. Every ten years you have to recertify.

2 Q When is the last time you have been recertified?

3 A 2017, I believe.

4 Q Now, you mentioned that you've been in the private
5 practice of medicine in the field of orthopedics, correct?

6 A Yes.

7 Q Can you explain to the jury what the concentration in
8 the field of orthopedics is in medicine?

9 A Sure. Orthopedics is the study of bones and joints and
10 injuries or abnormalities to the bones and joints. And the
11 treatment of those things you have conservative means, physical
12 therapy, injections, medications. Or if those things don't work
13 or are inappropriate then surgical treatment of those, those
14 problems.

15 Q And in that field, doctor, you treat patients who come
16 to you with traumatic injuries as well as other disorders to the
17 bones and joints?

18 A That's correct.

19 Q What other besides traumatic injuries that you treat?

20 A Developmental injuries, meaning birth injuries, things
21 developmental, arthritis, which can occur for many reasons, but
22 either rheumatoid, osteoarthritis, which is wear and tear
23 arthritis, traumatic arthritis, sports injuries, things like
24 that.

25 Q And what are traumatic injuries?

1 A A traumatic injury is an injury that occurs because of
2 a force directed at the body that usually overcomes the strength
3 of either bones, muscles or the cartilage. That's most of what
4 we deal with.

5 Q Okay. And are you affiliated with any hospitals?

6 A I am. On the staff of New York Presbyterian Hospital,
7 Mount Sinai Hospital Systems and Lenox Hill Hospital.

8 Q And how long have you been with those hospitals?

9 A Since --

10 Q Approximately.

11 A I moved back to New York in 1994. So, I've been on
12 hospital staff since then.

13 Q And in your private practice of medicine approximately
14 how many of your patients you treat are patients that are
15 related to traumatic injuries as opposed to other disorders or
16 congenital injuries, conditions?

17 A Most of what I do is trauma. In fact, the name of my
18 practice is NY Ortho, Sports Medicine and Trauma.

19 Q Is there a difference between sports medicine and
20 traumatic injuries?

21 A Yes. You can have wear and tear injuries, overuse
22 injuries from sports. But most injuries that we treat are
23 sports injury that are traumatic.

24 Q And in your practice, doctor, have you treated patients
25 with traumatic injuries to their knees, including ruptures and

1 tears to tendons and ligaments?

2 A Yes.

3 Q And do you conduct surgery as well?

4 A I do.

5 Q How often do you do surgery?

6 A I'm in surgery one to two days a week, depending on
7 what comes through the office. So, usually definitely on
8 Wednesdays, sometimes Wednesdays and Fridays.

9 Q And how long have you been on that schedule,
10 approximately?

11 A Thirty years.

12 Q Okay. An awful lot of surgeries then.

13 A Yes.

14 Q Have you done surgeries for a ruptured
15 quadriceps tendon, where you had to repair that?

16 A Yes, I have.

17 Q Approximately how many times have you seen that?

18 A Well over a hundred.

19 Q Now, doctor, were you retained by my office to conduct
20 an examination of Michael Little with regard to injuries he
21 sustained in an accident back on November 26th, 2014?

22 A Yes.

23 Q And have you been retained by my office in that matter
24 before to do an examination and issue a report with regard to a
25 client of mine's injuries?

1 A I have.

2 Q Approximately how many times?

3 A I have no idea. Lots of times since I've done that.

4 Q Do you also treat some patients of mine who suffer from
5 traumatic injuries who have been referred to your office for
6 treatment?

7 A I have patients who are clients of yours, yes.

8 Q Have you issued reports with regard to those clients as
9 well?

10 A If you ask me for them, yes.

11 Q Have you testified in court?

12 A I have.

13 Q Do you do this for other attorneys too, not just my
14 office?

15 A Because of the nature of trauma, often times people
16 have lawsuits going on. So, I am asked to give an opinion
17 regarding what the injuries were and what the permanency of
18 those injuries both by defense firms and plaintiffs firms, yeah.

19 Q In that part of your practice, that's the part where
20 you examine the patient to just give an opinion, do a physical
21 examination, to give an opinion and report, not somebody that
22 you've treating. About how many of those are for plaintiffs and
23 how many are for defendants, what percentage?

24 A The expert opinions are about 50/50 plaintiffs,
25 defendant.

1 Q And how often do you come to court to testify either on
2 behalf of those examinations or on behalf of patients who you
3 treat?

4 A There is not a regular schedule of that. It's been --
5 During COVID I wasn't here for two and a half years -- but it's
6 generally about once a month, something like that.

7 Q And have you testified in cases where I was a trial
8 lawyer for?

9 A I believe so.

10 Q About how many times?

11 A Again, I don't remember.

12 Q Okay. But it has been quite some time since we have
13 done this?

14 A I haven't seen you in a long time, yeah.

15 Q Are you compensated in those situations when you're
16 doing an examination and coming in to testify?

17 A Yes, of course.

18 Q What are you compensated to do an expert examination
19 and offer an opinion in a report?

20 A In a report, probably when this was first done, it was
21 \$1,700. Now we charge about \$2,000 for an examination, and that
22 includes a report and X-rays and things like that.

23 Q And also for taking time away from your practice, I
24 imagine your practice is fairly busy during the week. But to
25 get down here and spend an afternoon with us at 71 Thomas and

1 take that time away, are you being compensated for that as well?

2 A Sure. I had to cancel my office from about 11:30 so
3 that I can make sure that I can get down here. That's \$7,500.

4 Q Now, let's go back to Michael Little. When he came to
5 your office for the examination and reports, how many times have
6 you examined him?

7 A I've seen him three times.

8 Q Do you recall when they were?

9 A I have my chart, if I could give you the dates.

10 Q Yes.

11 MR. MADONNA: With the Court's permission.

12 THE COURT: You have my permission.

13 THE WITNESS: Okay.

14 A So, I first saw him on July 2nd of 2015. I saw him
15 again on October 10th of 2017. And most recently January 24th
16 of 2023.

17 Q And on each of those visits, without getting to the
18 specifics, what did you do on each of those visits?

19 A Those visits I reviewed medical records that were
20 available to me. Spoke to Mr. Little. Examined Mr. Little.
21 Took some X-rays. And then offered an opinion as to what his
22 injuries were. And some information about my opinion.

23 Q And what records did you review?

24 A I reviewed a lot of records. I reviewed records from
25 his -- the day of his injury to his left knee. I reviewed

1 records from some previous knee surgeries that he's had, two on
2 the right and then an arthroscopy on the left prior to this.
3 And I reviewed the operative report from this injury from Dr.
4 Turtel and some of Dr. Turtel's notes.

5 Q We have those records, doctor, here in the court in
6 evidence. If there is anything you need to refer to as we're
7 going through, you can refer to them.

8 A Sure.

9 Q So, would you then take a history from Mr. Little?

10 A Yes.

11 Q What was the history that you took from Mr. Little on
12 the first visit in July 2015?

13 A My first visit I took a history of injuries that
14 occurred on 11/26/24. Mr. Little slipped on what I interpreted
15 as some construction debris. He believed it was epoxy or wet
16 paint. He fell and ruptured his quadricep tendon, which is the
17 thigh muscle connected to the kneecap. He was taken to New York
18 Presbyterian Hospital and he was placed in a knee immobilizer,
19 which is a brace that keeps the knee from bending or
20 straightening. He came under the care of Dr. Turtel, that's
21 Andy Turtel, who performed a surgical repair of his left
22 quadriceps tendon on December 4th of 2014. He had a period of
23 rehabilitation following that and he was continuing to do
24 rehabilitation, exercises on his own at that time.

25 Q Now, let's talk about the knee, if we can. And I have

1 here, if it will assist you, a model of the knee. Would that
2 assist you in explaining the anatomy?

3 A Sure. Yeah.

4 MR. MADONNA: May I, Judge?

5 THE COURT: You may approach.

6 Q Plaintiffs' 31 for identification.

7 A Thank you.

8 Q Can you explain to the jury what that model is and then
9 the working parts of the knee?

10 A Sure. So, this is a model of the knee. This is
11 actually a right knee, although in this case we're talking about
12 a left knee. They look the same in mirror image. The knee is
13 made up of several structures. Primarily the two major bones of
14 the knee are the thigh bone, the femur, and the shin bone, the
15 tibia. And they come together to form the joint of the knee,
16 which moves normally (indicating). And in between the bones of
17 the knee is a soft cartilage called the meniscus, a lot of
18 people have injuries of (pointing). And also capping each of
19 the bones is a smooth, shiny surface, and that's called the
20 articular cartilage. And the word articular means to move
21 against something else of similar quality. So, the joint
22 articulates between the bones. It moves. This surface is
23 smooth and shiny and has low friction and allows the knee to
24 move smoothly. Normally without any noise or cracking or
25 popping or things like that. You all look at the end of a

1 chicken bone and you've seen the pearly white, that's the
2 articular cartilage you're looking at.

3 The third major bone of the knee is the patella, the
4 kneecap. It spans across the knee and it's connected through
5 this tendon to the muscle of the quadriceps or the thigh muscle.
6 That muscle, when it fires, when the muscle fires, it
7 straightens the knee (indicating). So, it's responsible for
8 bending and straightening the knee. In Mr. Little's case, when
9 you fall quickly and your muscle contracts but your body weight
10 pushes in the other direction, you can rupture this mechanism of
11 the quadricep tendon, which is what happened in Mr. Little's
12 case.

13 Also in Mr. Little's case I noted from reviewing the
14 operative report is that when he fell, the force generated
15 between the kneecap and the femur is responsible for an
16 operative finding of a piece of this cartilage, this smooth,
17 sliding, gliding cartilage being knocked off and becoming a
18 loose body in the joint. And that is the beginning of what we
19 call traumatic arthritis, because it's not a wear and tear
20 problem that occurs over time. But immediately, at the time of
21 the accident, you damage the joint surface. The joint surface
22 damage is what leads to arthritis.

23 Q And the quadriceps muscle, that's one of the largest
24 muscles in your mode?

25 A It's four muscles put together, and yes, as an

1 aggregate they are the largest muscle in the body.

2 Q And that you said is responsible for the extension of
3 your leg?

4 A It's responsible for many things, but the thing that we
5 most think of it is the extension of the knee. It's also
6 responsible for, when you step down, it fires to keep you from
7 sliding forward. It stops your knee from buckling. That's
8 another major, major function of the quadriceps muscle.

9 Q And is a rupture of the quadriceps tendon -- And you
10 reviewed the emergency room record and the ambulance report?

11 A Yes.

12 Q -- is that a traumatic injury?

13 A Yes.

14 Q Was that a traumatic injury to Mr. Little?

15 A Yes, it was.

16 Q Is there any doubt that that occurred traumatically or
17 at the time it occurred?

18 A That occurs from a traumatic injury.

19 Q And what is there in the record in Plaintiffs'
20 Exhibit 7 --

21 MR. MADONNA: May I, Judge?

22 THE COURT: You may.

23 Q -- or the hospital record afterwards that tells you as
24 a doctor who is looking at this or the EMT that was examining
25 him at the scene, that there is such a traumatic injury to the

1 left leg?

2 A Well, they note, number one, it's -- he was dispatched
3 because of an injury. Let's see (examining). He was
4 complaining of pain in the left knee. That's a symptom of
5 trauma. Let's see. They wrapped his leg in an ice pack and a
6 bandage, which is done for trauma. (Examining). That's from
7 the ambulance call sheet.

8 Then when he comes to the emergency department, they
9 note again that he had a fall, which sets up trauma. That his
10 chief complaint was the left knee injury, status post mechanical
11 fall, meaning that he had a slip or trip, it's a mechanical fall
12 and he had immediate knee pain. He had swelling. He was unable
13 to bear weight. Let's see. So, those are all signs of trauma.

14 Q Now, is the rupture to a tendon as large as the
15 quadriceps tendon, is that palpable on physical examination?

16 A It can be. There can be a separation, because the
17 muscle normally contracts unless it's tethered to the -- to the
18 tendon. If you rupture the tendon, the muscle can contract and
19 you can get a gap. That can quickly fill with blood sometimes
20 or sometimes it is not palpable but it can be.

21 Q And that is -- would prevent somebody from being able
22 to extend their leg?

23 A If there is a gap, if there is any rupture it will
24 extend -- it will prevent extension, that's right.

25 Q And so having reviewed the medical record, what was

1 their plan -- what did they diagnose Mr. Little having that day?

2 A Well again just -- just to point out, because I'm just
3 reading this again for the first time in a while, he did note a
4 pop when he fell. That's very common in this type of thing.
5 The knee gave out. Again, that's what I was describing before,
6 the quadriceps protects your knee from just buckling. They do
7 note that he was unable to extend the knee. So, their plan
8 would have been to place him in a knee immobilizer and advise
9 him to see an orthopedic surgeon.

10 Q And did they do that?

11 A They did.

12 Q And did Mr. Little, as far as your review of the
13 records indicate, come under the care of an orthopedic surgeon?

14 A He came under the care of Dr. Andrew Turtel.

15 Q And when he saw Dr. Turtel, did he present with the
16 same injury?

17 A He did.

18 Q Did Dr. Turtel come to the same findings from your
19 review of the records in the records in evidence here?

20 A He did.

21 Q I'm going to provide you with Plaintiffs' 9 and 10 in
22 evidence. Can you review them.

23 A Sure. (Examining).

24 Q So, was there any need for further testing to be done
25 upon that diagnosis of the ruptured quadriceps tendon at the

1 presentation to the emergency room or with the presentation to
2 Dr. Turtel?

3 A It's a pretty obvious injury when it occurs. So, the
4 only imaging they usually get is an X-ray just to make sure that
5 there is not a piece of -- the patella didn't fracture along
6 with the rupture. That was -- This was primarily a tendon
7 rupture.

8 Q Is that a painful injury?

9 A Yes, it is a very painful injury.

10 Q And what would then be the normal course of care or
11 treatment of that injury once you come under the care of an
12 orthopedic surgeon?

13 A For a surgery repair of the quadriceps tendon.

14 Q Is there any other way to repair the quadriceps tendon?

15 A No. I mean, if someone is very, very sick, you can
16 keep them in a knee immobilizer for the rest of their life, but
17 that's not usually done for a person who can tolerate surgery.

18 Q Now, let's talk about Mr. Little. Upon your
19 examination of him, what did you find as far as his stature and
20 his activity level when you examined him?

21 A When I examined him, I noted that he, number one, still
22 had some atrophy.

23 Q We'll get to the injury in a minute. Just in general
24 was he somebody who stayed in shape?

25 A Oh, yeah. Yeah.

1 Q He was a physically active person?

2 A He's physically active, yep. He's doing exercises on
3 his own at the time I first saw him. That was in July of 2015.
4 So, you know, several months after his -- his surgery.

5 Q And did part of your history include that he was
6 athletic?

7 A Yeah. Yeah.

8 Q Now, with Dr. Turtel, Dr. Turtel then undertook that
9 plan that you had indicated and recommended the surgery for
10 Mr. Little?

11 A Yes.

12 Q Did Mr. Little undergo that surgery shortly thereafter?

13 A He did. December 4th, 2014.

14 Q And you've done that surgery yourself?

15 A I have.

16 Q And similar surgeries to the quadriceps like that?

17 A That's correct.

18 Q I'm going to show you what's marked as Plaintiffs'
19 Exhibit 32 for identification. And would this medical
20 illustration, which is not Mr. Little's knee, but would this
21 medical illustration assist you in explaining to the jury about
22 the anatomy and the procedure and how the tendon is re-attached?

23 A Yes.

24 Q Okay. I actually have that in a blow up.

25 MR. MADONNA: With the Court's permission, if you

1 could come down and we can use this to explain to the jury.

2 THE COURT: You may step down.

3 MR. LYON: Judge, may I step aside?

4 THE COURT: You may.

5 A So, this is a medical drawing of the quadriceps. One,
6 two, three (pointing) and there is a fourth muscle they don't
7 have on here. This is an illustration of a rupture through the
8 patella tendon, which dislodges the patella from the quadriceps.
9 So, this mechanism, this extension mechanism no longer holds.
10 So, that's the patella, and this is the quadriceps tendon hooked
11 into the quadriceps. So, you're unable to extend the knee by
12 firing the quadriceps.

13 The surgery that is done, you go in and clean off both
14 surfaces of the quadriceps and quadriceps tendon above as well
15 as the top of the patella. Dr. Turtel then drilled three drill
16 holes with a mechanical drill into the top of the patella. So,
17 into the top surface of the patella (indicating). And then he
18 drove some anchors into the -- into the patella. And those
19 anchors have sutures attached to them. Then you weave the
20 suture through the end of the patella tendon and bring it all
21 together so that the quadriceps tendon and patella tendon are
22 anchored into the patella and they hold in place.

23 Again, you have to be in a knee immobilizer for a
24 period of time. Once that starts to grow together, you can do
25 exercises and try to get this straightened back up.

1 Q Now, you mentioned earlier about the surgery that Dr.
2 Turtel did. This is a blowup of the operative report. And this
3 is normal for a surgeon to do at the time of an operation?

4 A Sure. An operative report is just basically a cookbook
5 of the steps that you took to perform the surgery.

6 Q And this is in evidence in the Beth Israel record. The
7 number is on the chair. I forget what number it is. It's also
8 in Dr. Turtel's record.

9 A Ten.

10 Q Ten. So, this is what Dr. Turtel saw and did at the
11 time that he went into Mr. Little's knee to perform the surgery?

12 A That's correct.

13 Q And aside from -- Well, explain to the jury what the
14 surgery consisted of.

15 A Sure. So, the preoperative diagnosis, before he opened
16 up Mr. Little's knee, because of the quadriceps tendon rupture,
17 so the major procedure that he is expecting to do is to repair
18 that quadriceps tendon. When he got in there, the postoperative
19 diagnosis was not only the quadriceps tendon rupture but also a
20 tear of the anterior horn of the lateral meniscus. Again this
21 is the meniscus (pointing), this cartilage and a loose body. A
22 loose body, as he dictates later in the report, is a chunk of
23 this smooth, sliding, gliding surface that knocked off and is
24 just sitting free in the joint (pointing). So, the surgery --
25 You want me to go through the surgery?

1 Q Yeah, sure. Yeah.

2 A So, the surgery that was performed, Mr. Little was
3 brought in the operating room. Put on the operating table. An
4 incision is made with a tourniquet inflated. The incision is
5 made from the top of the patella superior fold of the patella
6 down, across the knee joint (pointing). Let's see. Immediately
7 the torn and retracted portion of the quadriceps tendon was
8 noted. So, again, since that quadricep is connected to -- I'm
9 sorry -- since the tendon is connected to the muscle, the
10 quadriceps muscle, the muscle normally contracts unless it's
11 tethered across the knee. So it was torn and retracted, pulled
12 back. He debride it, which means to clean off the dead tissue
13 at the top of the patella and at the bottom of the patella
14 tendon. He looked inside the knee joint by flipping the kneecap
15 down. Looked inside. He noted a tear in that cartilage in the
16 joint, the meniscus cartilage (pointing). You can see it's sort
17 of like a circle, and the thigh bone sits in there, and that
18 helps center the knee for motion. So, he's torn that center and
19 cartilage of the knee.

20 Also noted in addition was a large loose body fragment
21 of articular cartilage. Again articular cartilage means the
22 joint surface. So that's necessary to make the joint move
23 smoothly. When you damage that, the moment you damage that
24 articulate cartilage, you have arthritis in your knee. You have
25 the starting of arthritis. That was removed, because once

1 that's knocked off, it's not going to grow back. It doesn't
2 have the capacity to grow back.

3 He also took a knife and cut out the portion of the
4 meniscus that was torn. And then three separate drill holes
5 were placed in the top of the patella, that's the bone, and put
6 in these anchors called bio suture tacks. Those were then each
7 used to suture through the quadriceps tendon in an interlocking
8 fashion and the sutures were tied. And so that brings together
9 the patella tendon and the patella bone. And then, of course,
10 postoperatively he's placed in a plaster splint, an
11 immobilization device, because even when you have repaired the
12 tendon to the bone, it still has to grow together, right. So
13 you have to keep this immobilized while the body does its job.
14 And you can put it in the right spot, but then it has to grow
15 together. So for a period of time you immobilize it before
16 starting exercises and things.

17 (Continue on the next page.)

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1 Q. And that's all for this.

2 So after that surgery's done, what would you expect as
3 an orthopedic surgeon to be the plan for care and treatment for
4 somebody with that injury and that surgery?

5 A. So the plan in my hands, and looks like Dr. Turtel did
6 the same thing, is to start some rehabilitation, some physical
7 therapy and to try to strengthen the muscle up, get the motion
8 of the knee back and things like that.

9 Q. So Mr. Little rehabilitated his knee?

10 A. He did rehabilitation exercises, yeah.

11 Q. Did he do it with an office of physical therapy or
12 someone like that?

13 A. Yes.

14 Q. Or on his own?

15 A. Both.

16 Q. And the physical therapy that he went through, was he
17 compliant according to the records of Dr. Turtel?

18 A. As far as I know, yes.

19 Q. Did he get a good recovery from that?

20 A. He has gotten a reasonable recovery, yeah.

21 Q. Now, after the surgery was done and you follow up with
22 the orthopedic surgeon a few times as Mr. Little did with Dr.
23 Turtel, is there any other treatment that's necessary at that
24 time for this injury?

25 A. There's no other treatment that's necessary. Of

1 course, as Mr. Little did, he tried to stay as strong as you
2 can, try to get your muscles as equal as possible. And keep
3 your joint moving as much as is possible.

4 Q. So it's better to stay active and do work even if it's
5 painful?

6 A. Yeah. Of course.

7 Q. Let's go back to your examination, the first one, July
8 22, 2015.

9 A. Yes.

10 Q. And you were talking about there, after taking the
11 history and reviewing the records and the injury, that
12 Mr. Little sustained -- you conducted a physical examination?

13 A. I did.

14 Q. What did the physical examination consist of?

15 A. First there's some observations, you take a look at the
16 legs. Mr. Little still has atrophy of his left thigh compared
17 to the right. Atrophy means a loss of muscle bulk and strength.
18 And so when injured, the muscle and the tendon, it's very
19 difficult to get it back to equal. And that's true in
20 Mr. Little's case. Part of that is the injury. Part of that is
21 not being able to surgically get things exactly right. And part
22 of it is the loss of motion that has occurred because of the
23 injury to the meniscus and primarily to the joint surface.

24 Q. So when we talk about atrophy, is that something
25 normally that you would expect an orthopedic surgeon to do on

1 examination, particularly one that involved the muscles and
2 tendons?

3 A. Standard part of the physical exam, yeah.

4 Q. How do you do that?

5 A. You simply take a tape measure and measure around the
6 thigh.

7 Q. Is there a particular place on the thigh you're
8 supposed to measure?

9 A. You just do it at an equal point.

10 Q. Meaning the same on one side and the other?

11 A. Exactly.

12 Q. So you can do it six inches up or eight inches up or
13 four?

14 A. You can, uh-huh.

15 Q. Do you also do measurement of the lower leg?

16 A. I generally do. His lower leg was not injured in this
17 case. But I think it's a more thorough exam, yeah.

18 Q. Was the lower leg measurements equal, right and left?

19 A. Yes, they were.

20 Q. Would you expect there to be some difference in the
21 measurements with regard to somebody who's right-hand dominant,
22 left-hand dominant?

23 A. Not of their legs, no.

24 Q. So you would anticipate the upper legs to be as the
25 lower legs were?

1 A. That's right.

2 Q. And with the atrophy that you found in the upper leg on
3 the measurements, how much atrophy, how much loss was there at
4 that initial visit in July 2015, eight months after the injury?

5 A. Initially three centimeters loss; that's about an inch.
6 An inch in the thigh. You know, it's noticeable. Just like an
7 inch around your waste, which is about double the size of your
8 thigh, is noticeable.

9 Q. And what's the significance of that?

10 A. Again, it's loss of muscle bulk and strength generally
11 associated with injuries on the joint surface, injuries to the
12 muscle and arthritic changes.

13 Q. And did Mr. Little provide you with any -- did he give
14 you any complaints about any activities or issues that he had
15 with his leg?

16 A. He did. At that time, he was doing exercises on his
17 own, but he was finding it difficult to return to the gym
18 activities that he had previously enjoyed; those included
19 martial arts and sports. He was unable to run or train. He was
20 unable to do squatting exercises or lift at that time.

21 Let's see. Those were the primary complaints he had.

22 Q. Did he make a complaint about his knee giving out?

23 A. Let's see. Yes, his knee was giving out at that time
24 about one to two times a week.

25 Q. Is that important to an orthopedic surgeon in his

1 history?

2 A. It is in a case like this. Again, the quadriceps
3 muscle is responsible for maintaining your knee, keeping it from
4 giving out when you step forward. With weakness in your
5 quadriceps, you can get giving out of your knee. That's one of
6 the primary things people have, giving out of their knee.

7 Q. Let's talk about this knee. You said you were aware of
8 the prior history of a surgery on his left knee; that's correct?

9 A. That's correct.

10 Q. What is the history that was given with regard to his
11 prior injuries?

12 A. He had a partial meniscotomy on the left. That was
13 done, I believe, around 2010. And he had returned to work in
14 his usual activities, including working out and things like
15 that, after that, which is pretty routine for a meniscus injury.

16 Q. Would that prior meniscus injury have any affect on
17 this quadriceps tendon rupture and the rehabilitation from it?

18 A. Not likely.

19 Q. Now, he did also tear part of the meniscus in this
20 surgery that Dr. Turtel agreed as well?

21 A. That's right.

22 Q. That's not really the significant part?

23 A. That part of the injury is not that significant.

24 Q. It is an injury though?

25 A. It's an injury, absolutely. And it required removing

1 some more of the cartilage. It was a lateral meniscus this time
2 as opposed to the medial meniscus. But the injuries that are of
3 concern now are the joint surface injury and the quadriceps
4 rupture, which causes atrophy and weakness.

5 Q. And the joint surface you talked about was that a loose
6 body you saw for the bone, for the particular part of the bone,
7 and the significance of that, you told us, was the posttraumatic
8 arthritis?

9 A. That's right. That leads to arthritis, immediately.

10 Q. Can you explain to the jury what arthritis is and why
11 that's significant?

12 A. Sure.

13 Arthritis is a medical condition, a syndrome that --
14 meaning it has different symptoms. Those symptoms can include
15 loss of motion, loss of strength, swelling, cracking and popping
16 in the joint, redness of the joint, and certainly pain. And
17 they usually stem from the joint surface not being smooth.

18 Now, that can be either a wear-and-tear change, meaning
19 over time you wear out that joint surface. That can be a
20 bloodborne problem like rheumatoid arthritis where the blood
21 elements eat away at the joint surface and make it rough, or it
22 can be traumatic where you knock a piece of that joint surface
23 off as we did in this case.

24 Q. And did you have any other findings?

25 A. We did. He had the scar that we talked about, the

1 incision from the patella down.

2 Q. How large was that?

3 A. That was ten centimeters by measuring with a tape
4 measure.

5 He had limited motion of his left knee compared to his
6 right, and that stayed pretty consistent. On the left he can
7 flex to 135 degrees. On the right he can flex to 145 degrees.

8 When I first saw him, he lacked three degrees of
9 extension of the knee, extensions straightening the knee out.
10 And that is mediated by the patella tendon, and that actually
11 has gotten slightly worst over time, which is what you would
12 expect with aging. And now the most recent time I examined him,
13 he had a five-degree loss of motion. Not much, but it is
14 significant.

15 Q. And what about did you examine Mr. Little's gait at
16 that time?

17 A. I did. When he walks, and you can watch him walking,
18 he does have a slight abnormal gait. He has what's called an
19 antalgic gait, which means a limp. When he walks, his leg
20 doesn't swing through on the left the way it does on the right.
21 So he limps along -- it's slight, no question about it. But if
22 you're looking for it, it's very obvious.

23 Q. It's definitely something that would be obvious to an
24 orthopedic surgeon doing an examination?

25 A. Absolutely.

1 Q. And something they would be looking for with an injury
2 to the lower extremity?

3 A. You would hope so, yeah.

4 Q. So at that time in July of 2015, after reviewing the
5 records that you reviewed, taking the history, doing the
6 physical examination, did you formulate a diagnosis of what
7 Mr. Little's injury was?

8 A. I did.

9 Q. What was that diagnosis?

10 A. The diagnosis was of a left quadriceps tendon rupture,
11 articular surface injury requiring an excision of an articular
12 surface loose body, status post-surgical repair of the
13 quadriceps tendon, removal of loose body and partial
14 meniscectomy, meaning taking out that meniscus part that was
15 torn.

16 Q. And do you have an opinion with a reasonable degree of
17 orthopedic certainty as to whether those injuries are permanent?

18 A. I do believe. Certainly the articular surface injury
19 of the joint is permanent. It's not like permanent, but it's
20 progressive; meaning it will worsen over time as the joint
21 moves.

22 He has atrophy, which is a sign of permanent injury to
23 the muscle and tendon, even though it has been repaired. And
24 with regard to the meniscus, a portion of it was taken out. So
25 obviously it's a permanent change in the shape of the meniscus.

1 Q. And at that point you had diagnosed limited range of
2 motion. At that point did you know if that was going to be
3 permanent or not?

4 A. There's no way to know for sure. But it's usually
5 likely.

6 Q. And did you formulate a prognosis? And before you tell
7 us if you did, what is that medically?

8 A. A prognosis is looking into the medical future based on
9 what's happened to the patient and your experience with things.
10 And deciding whether things were going to get better, meaning a
11 good prognosis, or things were going to get -- stay the same,
12 which would be a guarded prognosis, or things were going to get
13 progressively worse, and I felt that things would certainly get
14 worse over time because of the joint surface damage. And so I
15 gave him a poor prognosis.

16 Q. And then you followed up and saw Mr. Little again. I
17 think you said the next visit was October 2017, a little more
18 than two years later?

19 A. That's right.

20 Q. At that examination what did you do?

21 A. At that examination I reviewed some additional medical
22 records. I did another physical examination, took some more
23 x-rays, came to an opinion.

24 Q. So can you explain to the jury at that time -- let me
25 ask you, did your physical examination, was it essentially the

1 same?

2 A. It was essentially the same, yeah.

3 Q. And the findings that you came to, did you measure and
4 find atrophy again?

5 A. I did.

6 Q. What was that?

7 A. The atrophy at that time was about two-and-a-half
8 centimeters at the quadriceps.

9 Q. And you took X-rays?

10 A. I did.

11 Q. Did those X-rays show any findings?

12 A. The X-rays taken at that time showed areas of extensive
13 calcification about the soft tissue. So that's an indication
14 that the soft tissue is damaged as well as the bone. The body
15 uses calcium sort of like a glue to stick things together. It's
16 a healing process. That was true in the distal thigh. There
17 were areas where you can see where the drill holes were from
18 that surgery that I explained earlier. And he had findings
19 consistent with post-traumatic arthritis of the patella as well.

20 Q. Did you formulate a diagnosis after that visit?

21 A. I did.

22 Q. What was that?

23 A. Similar diagnosis; rupture of the left quadriceps
24 tendon, articular surface injury to the left knee requiring
25 excision of loose body, tear of the lateral meniscus requiring

1 partial meniscectomy, post-traumatic arthritis of the knee. And
2 at that time we had hypertrophic ossification in the distal
3 quadriceps; that's the calcification that occurs as a result of
4 the injury to the muscle.

5 Q. And your prognosis?

6 A. Prognosis, again, is poor.

7 Q. Why is that?

8 A. Because of the presence of the posttraumatic arthritis,
9 the persistent limited motion. And this is about three years --
10 almost three years after his injury.

11 Q. Was Mr. Little still active and doing the activities,
12 going to the gym and doing all that?

13 A. He was.

14 Q. And did he explain to you -- sorry. Do you have an
15 opinion as to whether or not that was also better for his
16 healing and health from this injury as opposed to not doing
17 that?

18 A. As a sports medicine physician, I always encourage
19 people to do as much activity as they can tolerate because I
20 think it helps keep the motion in the joints as good as
21 possible, the strength of the joints. In this case, the lower
22 extremity as good as possible. And unless it's too painful, I
23 think gym activity is good. I think any type of working out
24 that you can do that's not specifically damaging the area of
25 injury is good, yeah.

1 Q. Regardless, assuming that Mr. Little was doing those
2 activities, running the best he could and going to the gym and
3 working out, he still had significant findings and residual
4 findings from this injury in 2017 at the time of your
5 examination?

6 A. Yes, he did.

7 Q. That included weakness?

8 A. Yes.

9 Q. That included loss of motion?

10 A. Right.

11 Q. Was it still at 135?

12 A. At that time I believe it was 135. Yes. Uh-huh.

13 Q. And extension got worse, five degrees?

14 A. Extension was five degrees loss of full.

15 Q. And flexion, I don't want to turn my back to everybody,
16 but that would be turning your leg this way (indicating)?

17 A. That's right.

18 Q. And extension would be?

19 A. Straightening it out.

20 Q. Raising it up?

21 A. Raising it up.

22 Q. I've seen this measurement in different degrees before.
23 Some people do a full, like, 180 or 160 or something. But the
24 way you're measuring is flexion from 90 degrees out -- no. Tell
25 me.

1 A. I call that zero.

2 Q. Zero.

3 A. And then it flexes --

4 Q. Straight down?

5 A. It's zero, and then it flexes past 90 to 135; on the
6 other side to 145.

7 Q. Now, having had the opportunity to see Mr. Little again
8 more recently, January of this year, 2023, you conducted another
9 physical examination?

10 A. I did.

11 Q. And what did that consist of?

12 A. Again, physical exam is observation, doing
13 range-of-motion testing, feeling the joint for what's called
14 crepitus, which is popping and clicking in the joint. And
15 measurements.

16 Q. And what were the physical -- significant physical
17 findings you found now almost nine years after the -- eight
18 years after the injury?

19 A. So at that point, he still had loss of motion,
20 basically had not changed; in flexion, 135 degrees of flexion
21 versus 145 on the opposite uninvolved side. He still had lack
22 of five degrees of full extension, not able to fully extend five
23 degrees, and he had some weakness of his quadricep, meaning,
24 when I asked him to straighten it, I can push his left leg down,
25 bending his knee; I cannot do that on the right.

1 He had atrophy on the left compared to the right.
2 Although at this time he actually had improved in the place that
3 I measured, so he had an inch-and-a-half -- sorry, two inches --
4 excuse me. Two centimeters -- one inch, two centimeters of
5 atrophy at the quadriceps on the left compared to the right.

6 And, again, X-rays were taken as part of the
7 examination. And, again, revealed multiple calcified loose
8 bodies in the soft tissue, a loosening or defect in the patella,
9 the kneecap bone, consistent with the surgery that was done and
10 the signs of posttraumatic arthritis in the patellofemoral
11 joint.

12 Q. Now, Doctor, having had the opportunity to conduct this
13 physical examination of Mr. Little over the last nine years, and
14 on those three different occasions, and having the findings that
15 you found on each of those examinations, including the weakness,
16 the loss of motion, the posttraumatic arthritis and the
17 hypertrophic changes, do you have an opinion with a reasonable
18 degree of medical certainty as to whether or not these injuries
19 and the sequela or the results of those findings are permanent?

20 A. Yes, I believe they're permanent.

21 Q. What's the basis of that opinion?

22 A. The basis of the opinion is the persistence of the
23 atrophy many years after the accident, the knowledge that an
24 injury to the joint's surface is permanent, not only permanent,
25 but progressive, meaning, because it's a moving, a mechanism, it

1 will get worse over time. So I believe those are permanent
2 problems.

3 Q. And you mentioned progressive; that's the posttraumatic
4 arthritis?

5 A. That's right.

6 Q. And by "progressive," that's an injury that's going
7 to -- not going to get any better?

8 A. Not only not going to get better, but it will get
9 slowly worse.

10 Q. As Mr. -- did you have an opinion with a reasonable
11 degree of orthopedic certainty as to what the future holds for
12 Mr. Little with regard to the arthritis in that knee and the
13 outlook of that knee or prognosis?

14 A. Again, the prognosis will be poor because it's not
15 going to get better. As I said several times, it will get worse
16 over time. That's just the nature of arthritis. Even aging
17 arthritis. Osteoarthritis gets slowly worse in all of us over
18 time. But if you add a traumatic injury to the joint surface on
19 top of that, it happens much more quickly.

20 Q. The more he moves and the more he tries to keep it
21 strong and keep it active, the longer he'll be able to prolong
22 the symptomology?

23 A. It's a balancing act, really. You try to keep moving
24 to keep your joint moving as well as it can and to have the
25 muscle strength to support the joints so that all the forces are

1 not across the bone. But in doing so, you do slowly wear out
2 the joint.

3 Q. Now, Doctor, for the following questions I'd like you
4 to assume that these facts are in evidence:

5 I want you to assume that on November 26, 2014, on a
6 rainy day in the afternoon, early afternoon, Mr. Little was
7 walking briskly up 61st Street along York and he stepped with
8 his left foot on this wet paint splotch that was on the sidewalk
9 for at least five years; that his left foot that stepped on that
10 slipped out from under him. He felt his leg twist and fell to
11 the ground. Heard a popping noise. Was picked up by the police
12 at the scene, then taken by ambulance to Presbyterian Hospital.

13 I want you to assume that he presented with the
14 findings that you found and reviewed in the ambulance core
15 report and the findings that you found and reviewed in the
16 emergency room record, and was diagnosed there of having a
17 ruptured quadriceps tendon.

18 I want you to assume that Mr. Little came under the
19 care of Dr. Turtel, shortly thereafter, and on December 14th of
20 2014, underwent a quadriceps tendon repair surgery as you
21 described and as is contained in the operative report that you
22 explained to this jury, which included damage to the meniscus
23 and a large loose body all through the articular surface.

24 I want you to assume that Mr. Little continued to
25 rehabilitate on his own and worked out and managed to get

1 himself back to be able to getting back to the gym about six or
2 eight months after the surgery.

3 I want you to assume he does complain about pain
4 occasionally.

5 I want you to assume that he does continue to do his
6 gym activities to the extent that he's able to deal with the
7 pain that he has with regard to it.

8 I want you to assume that he had the findings that I
9 found on your three examinations, which were July 2, 2015,
10 October 10, 2017, and now January 24, 2023, with a continuous,
11 almost nine years' loss of motion in that knee. And the
12 crepitus and the posttraumatic arthritis that you found in the
13 X-rays and the weakness that you found there.

14 Assuming those, Doctor, first, do you have an opinion
15 with a reasonable degree of orthopedic and medical certainty as
16 to whether or not that slip and fall accident was the
17 competent-producing cause of that traumatic injury?

18 MR. LYON: Objection.

19 THE COURT: Overruled.

20 A. It is my opinion that the injuries that I've described
21 are a result of the accident of 11/26/14.

22 Q. What is that based on?

23 A. It's based on the maintenance call sheet showing an
24 initial injury, the emergency room record, Mr. Little's history
25 that's been provided to me, the need for surgery shortly after

1 the accident, and knowing -- having had the opportunity to
2 review those records associated with that injury.

3 Q. And do you have an opinion, again, assuming those
4 facts, with a reasonable degree of orthopedic certainty as to
5 whether those injuries that Mr. Little sustained that you
6 examined and saw and are contained in those records, again,
7 whether those injuries are the competent-producing cause of
8 pain?

9 A. Certainly the injury with a rupture of the quadriceps
10 tendon and one that is significant enough to knock off a piece
11 of joint cartilage and tear a meniscus is a very painful injury,
12 yes.

13 Q. Do you have an opinion, again, assuming those facts, as
14 to whether or not that injury and the sequela that Mr. Little
15 sustained, including the loss of motion, loss of strength, is
16 permanent and progressive?

17 A. It's my opinion, as I've stated, that it is not only a
18 permanent injury because of the joint surface damage and the
19 continued atrophy, it is a progressive injury.

20 Q. Thank you, Doctor.

21 MR. MADONNA: Nothing further.

22 THE COURT: Take a break?

23 MR. LYON: Break would be great.

24 THE COURT: Members of the jury, we're going to
25 take a ten-minute break.

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Jury may exit.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exited the courtroom.)

(Whereupon, the MRI Report was marked as
Defendants' Exhibit D in evidence by the Reporter.)

(Whereupon, a brief recess was taken and the
following was transcribed by Official Court Reporter Lori
Sacco:)

1 THE COURT: On the record. Bring in the jury.

2 THE COURT OFFICER: All rise. Jury entering.

3 (Whereupon the jury panel entered the courtroom.)

4 THE COURT OFFICER: You may be seated.

5 THE COURT: You may proceed with your cross
6 examination, Mr. Lyon.

7 MR. LYON: Thank you, your Honor.

8 CROSS EXAMINATION

9 BY MR. LYON:

10 Q Good afternoon, Dr. Kaplan.

11 A Hi.

12 Q Some boring stuff first. How long have you been
13 testifying as an expert?

14 A I don't know exactly, but I've been in practice since
15 1994. Probably '98.

16 Q Okay. So, 25 years or so?

17 A Something like that, yeah.

18 Q All right. And you testify in court, let's take COVID
19 out of the equation, but you testify one to two times a month,
20 true?

21 A Yeah.

22 Q Okay.

23 A It's usually now. It's gotten a lot less post COVID.
24 So, it's been a while.

25 Q Fair enough. Before COVID it was one to two?

1 A Yeah.

2 Q Can we compromise, say 1.5?

3 A Do whatever you want.

4 Q Well, can we do that?

5 A Fine with me.

6 Q 1.5, an average?

7 A Fine with me.

8 Q All right. And your rate is 7,500?

9 A It is now, yeah.

10 Q All right. When did that change?

11 A Oh, it's changed many times over the years. It started
12 probably 4,500 and it's gone up.

13 Q Okay. For a long time it was 5,500?

14 A True.

15 Q And then it was 6,500?

16 A Mm-hmm.

17 Q Now it's 7,500?

18 A Right.

19 Q What would you say an average, what's a fair average?
20 I want to be fair to you.

21 A I'm not a math guy. You be fair. Go ahead. In fact,
22 it doesn't matter. I make a lot of money over the years with my
23 practice. Just, you know, whatever number you want to put.

24 Q 6,000 fair?

25 A Whatever you say, sir.

1 Q Okay. Well, let's just cut through the chase.

2 A Yeah.

3 Q You've testified 450 times, something like that?

4 A If that's the math, it seems like a lot to me, but if
5 that's the math, sure.

6 Q All right, 450. You generated millions of dollars
7 testifying in a courtroom, true?

8 A Over the course of 30 years, you'd have to add it up,
9 but certainly I've testified one to two times a year, I mean,
10 one to two times a month, once a month. I get a fee of 65 to
11 \$7,500. It adds up. There is no question about it. It's what
12 I do for a living over 30 years.

13 Q Doctor, I'm going to ask you to answer my questions
14 yes, no. If you can't answer yes or no, why don't you tell me.
15 Can you do that?

16 A If you ask me a yes or no question, that would be fine.
17 I'll be glad to.

18 Q You're a member of the American Association of
19 Orthopedic Surgeons?

20 A American Board of Orthopedic Surgeons, yeah.

21 Q The American Academy of Orthopedic Surgeons?

22 A Yes.

23 Q Okay. And they have an expert witness affirmation
24 statement. Are you aware of that?

25 A I'm not.

1 Q Okay. You're not aware that they put out a list of --
2 of principles when their members are testifying in a courtroom?
3 You're not aware of that?

4 A I'm aware that they ask you to speak scientifically and
5 with accepted principles, sure.

6 Q The first one of those is, I will always be truthful,
7 yes?

8 A Yes.

9 Q Okay. And the second one is, I will conduct a
10 thorough, fair and impartial review of the facts and medical
11 care provided, not excluding any relevant information, true?

12 A True.

13 Q Okay. And are you going to do that for us today?

14 A I do the best as I can, sure.

15 Q That's a yes?

16 A Yes. Absolutely yes.

17 Q All right. Fair to say you're no stranger to the
18 courtroom? I think we established that, true?

19 A I've been here many times. It's part of being an
20 orthopedic surgeon, that's right.

21 Q Answer my question yes or no, if it's a yes or no,
22 okay.

23 A Yes. I'm sorry. You're throwing me off by being so
24 informal with me, so I'm just trying to -- trying to keep up
25 with you.

1 Q Okay. You've worked with Mr. Madonna and his firm
2 before, true?

3 A We have established that, yes.

4 Q Yes.

5 THE COURT: I need an audible answer.

6 THE WITNESS: Yes.

7 Q Mr. Little was sent to you by Mr. Madonna's firm, true?

8 A Yes.

9 Q Okay. When was the first time, this is not a yes or
10 no, when was the first time you reviewed a case for Mr. Madonna?

11 A I honestly have no idea.

12 Q Do you remember a case named Peralta versus Grenadier
13 in 2006 when you testified for Mr. Madonna, do you remember
14 that?

15 A I never know the case. If you tell me my patient's
16 name, I can tell you if I remember.

17 Q Anna Ramona Paralta.

18 A I do not remember Anna Paralta.

19 Q How about a case named Miguel Angel Virgos in 2006
20 where you testified for Mr. Madonna, do you remember that one?

21 A Mr. Virgos was a longtime patient of mine. Yes, I
22 remember that.

23 Q So, at least as early at 2006 you've been testifying
24 for Mr. Madonna, true?

25 A Sure.

1 Q The vast majority of your testimony is on behalf of
2 plaintiffs, true, yes or no?

3 A Testimony, yes.

4 Q All right. In this case you examined Mr. Little three
5 times, yes?

6 A Yes.

7 Q The first time was in July 2015. Where you aware that
8 that was three months after this lawsuit was filed? Were you
9 aware?

10 A No.

11 Q All right. The second time you saw Mr. Little was in
12 October 2017, three months after his deposition was taken. Were
13 you aware of that?

14 A No.

15 Q The last time you saw Mr. Little was this year, six
16 months before trial. Were you aware of that?

17 A No.

18 Q Okay. And isn't it true that you went over five years
19 without seeing Mr. Little between the second and third time you
20 saw him, isn't that right?

21 A I saw him October 2017, January 2023.

22 Q A little over five years?

23 A If that's the math, yes.

24 Q Okay. Fair to say you weren't treating Mr. Little,
25 true?

1 A I'm not treating Mr. Little.

2 Q Okay. You never performed any surgery on Mr. Little?

3 A Absolutely not.

4 Q You never prescribed any medication to Mr. Little?

5 A I have not treated him, that's correct.

6 Q You never prescribed any physical therapy to
7 Mr. Little, true?

8 A That is correct.

9 Q You never recommended any consultants, true?

10 A Never.

11 Q You never recommended any procedures, true?

12 A Never.

13 Q You didn't have regular follow up with Mr. Little, did
14 you?

15 A No. I'm not treating him.

16 Q He's not your patient, true?

17 A I am not treating him. That is correct.

18 Q All right. So, you were seeing Mr. Little not for the
19 purposes of helping his health, but for the purposes of helping
20 him within a lawsuit, true?

21 MR. MADONNA: Objection to the form, Judge.

22 THE COURT: Sustained. Rephrase. Move on.

23 MR. LYON: I'll move on.

24 Q You would agree, Dr. Kaplan, that before you come into
25 a court to testify, you should master the facts of the case,

1 true?

2 A As best as possible, sure.

3 Q Okay. And as master of the fact, how many left knee
4 surgeries did Mr. Little have before November 26th, 2014?

5 A I'm aware of one.

6 Q You're aware of one. That would be pretty fundamental,
7 right, knowing how many surgeries he had?

8 A The information I have is one. I have one from 2010.
9 He's only told me about one, so that's what I know.

10 Q That's pretty fundamental in trying to establish
11 whether this event caused his injuries. You would agree with
12 that?

13 A Not these injuries, no. The injuries that I've spoken
14 about are well documented in the ambulance call sheet and the
15 operative report. So, I've talked about those injuries, and I
16 know about those.

17 Q If you didn't know about another surgery, how could you
18 tell what was related to that surgery that you don't even know
19 about? How would you know?

20 A He had an articular surface injury, a large chunk off
21 his joint surface. That's a major injury. That happened at the
22 time of the accident. That's the only way that happened.

23 MR. LYON: Move to strike as nonresponsive.

24 THE COURT: Overruled. You can ask your next
25 question.

1 MR. MADONNA: Well, he's not done answering, Judge.

2 THE COURT: Yes, he is.

3 Q So, to your knowledge, Mr. Little had one left knee
4 surgery, true?

5 A That's what I'm aware of, that's right.

6 Q The date was July 6th, 2010, correct?

7 A I don't recall the exact date, but 2010 as I recall,
8 yes.

9 MR. LYON: May I approach?

10 THE COURT: The witness?

11 MR. LYON: Yes.

12 THE COURT: You may.

13 MR. MADONNA: Can I see what you're showing him?

14 THE COURT: Is this part of any record in evidence?

15 MR. LYON: Yes.

16 MR. MADONNA: Yeah, this is in evidence.

17 THE COURT: Then you can show it to the witness.

18 A Thank you.

19 Q Please identify that document.

20 A (Examining). That is an operative report from Dr. Marx
21 from a left knee surgery done July 6th, 2010.

22 Q Okay. July 6th, 2010. That's the knee surgery you're
23 aware of, true?

24 A That's correct.

25 Q All right.

1 MR. LYON: May I approach, your Honor, with
2 Defendants' Exhibit D in evidence.

3 THE COURT: Show it to counsel. Is a portion of
4 that document in evidence?

5 MR. MADONNA: It's in evidence.

6 MR. LYON: That's in evidence.

7 Q Please identify that document.

8 A (Examining). It's an MRI scan report from East River
9 Imaging from 3/12/2010.

10 Q And that was four months before the surgery, true?

11 A Yes.

12 Q All right. The second sentence of the clinical history
13 in that document says, "History of arthroscopic surgery", true?

14 A It does.

15 Q And this is an MRI scan of his left knee, true?

16 A That's correct.

17 Q So he had a history of an arthroscopic surgery, true?

18 MR. MADONNA: Objection, Judge.

19 A It doesn't say left knee.

20 THE COURT: Overruled.

21 Q The MRI scan is of his left knee?

22 THE COURT: What's the answer?

23 THE WITNESS: It says "History of arthroscopic
24 surgery". It doesn't identify which knee. And he's had a
25 right --

1 THE COURT: I got it. Go ahead.

2 Q This is an MRI scan of his left knee, true?

3 A True.

4 Q Arthroscopic surgery on his right knee would not be
5 relevant, true?

6 A I don't know.

7 THE COURT: Are you objecting or just standing up?

8 MR. MADONNA: I was going to object, but I withdraw
9 the objection.

10 THE COURT: You can answer.

11 A Yeah. I don't know if it's relevant to why they wrote
12 it down or not. I have no idea. I wasn't there.

13 Q Please go to the second sentence under "Findings".

14 A Yes.

15 Q It reads, "Whether this represents the sequela of prior
16 arthroscopic surgery or a retear is uncertain." That's what it
17 says, doesn't it?

18 A That is what it says, yes.

19 Q And that implies he had a prior arthroscopic surgery on
20 his left knee, true?

21 THE COURT: If you can answer.

22 A No, it does not imply that. It implies that she can't
23 tell if he had a prior arthroscopic surgery on his knee. I'm
24 not aware of one.

25 THE COURT: Mr. Madonna, if you stand up and raise

1 your hands at your side and don't say objection, I'm not
2 ruling on the objection.

3 MR. MADONNA: I understand.

4 THE COURT: Go ahead, Mr. Lyon.

5 Q It mentions a prior arthroscopic surgery. It certainly
6 is relevant to the right knee, you would agree with that?

7 A I'm sorry. I don't understand your question.

8 Q The report under "Findings" mentions a prior
9 arthroscopic surgery.

10 A All right. You mean under "Clinical History"?

11 Q No, under "Findings. Whether this represents the
12 sequela of prior arthroscopic surgery or --

13 MR. MADONNA: Objection.

14 Q -- or retear is uncertain."

15 THE COURT: Overruled.

16 Q This radiologist is not talking about the right knee,
17 true?

18 A He also doesn't say that there has been --

19 Q True? Yes or no?

20 A I don't know.

21 THE COURT: Counsel, wait and we'll hear an answer.

22 A He seems to be talking about the left knee, but he
23 doesn't say there is arthroscopic surgery of the left knee.

24 Q Does it say arthroscopic surgery right there? Does it
25 say that?

1 MR. MADONNA: Asked and answered at that point,
2 Judge.

3 THE COURT: Overruled.

4 A That's not a yes or no question.

5 THE COURT: Overruled. We have a question and
6 answer.

7 Q The truth is, doctor, you don't know how many surgeries
8 he had on his left knee, do you? You don't know?

9 A With a reasonable degree of medical certainty, I have
10 never seen anything about a prior left knee arthroscopy. This
11 gentleman who is pretty, pretty straightforward, in fact I have
12 never --

13 THE COURT: Sustained.

14 MR. LYON: Move to strike.

15 THE COURT: Jury to disregard.

16 THE WITNESS: Yeah. Show me it's the left knee.

17 THE COURT: Wait. Wait. Mr. Lyon, you may ask
18 your next question.

19 MR. LYON: Thank you, your Honor. May I approach,
20 your Honor?

21 THE COURT: Is that an excerpt of a page from a
22 document in evidence?

23 MR. LYON: It is, although I do not know the
24 exhibit number. We can find it later.

25 MR. MADONNA: Well, if you don't know where it's

1 from, I don't doubt that you're being --

2 THE COURT: Connect it.

3 MR. MADONNA: Connect it.

4 THE COURT: Connect it to an exhibit and you can
5 show it to the witness.

6 MR. MADONNA: The medicals are over there
7 (pointing).

8 MR. LYON: It is in Plaintiffs' 11.

9 THE COURT: You can show it to the witness.

10 A Thank you.

11 Q Doctor, please read the highlighted portion and the
12 highlighted portion alone.

13 A All right. It says, "Year 2000. Have you ever been
14 hospitalized before? The year 2000, arthroscopic surgery, left
15 knee."

16 Q Okay. "The year 2000, arthroscopic surgery, left
17 knee"?

18 A That's what it says, yes.

19 Q That information came from the patient, true?

20 A I don't know.

21 Q The question is, have you ever been hospitalized
22 before? And it's handwriting. Can we presume it came from the
23 patient?

24 A I don't know where it came from.

25 Q Can we agree now that you do not know how many left

1 knee surgeries he's had?

2 MR. MADONNA: Objection to form, Judge.

3 THE COURT: Overruled.

4 A It is my opinion that that's probably an error. Do I
5 know with a hundred percent certainty? I'm going on the medical
6 records I have which say he had a right knee arthroscopy in 2019
7 by Dr. O'Brien. That says a left knee arthroscopy. I have a
8 record of a right knee.

9 MR. LYON: Move to strike as not responsive.

10 THE COURT: Overruled. Next question.

11 Q When you see a patient, you take a history, right?

12 A I do.

13 Q And a medical history is basically asking the patient
14 why they are in your office. What happened to them. What
15 you're seeing them for. True?

16 A Correct.

17 Q Taking a history is important to a physician because
18 the history allows a physician to put things into context to try
19 to understand the injury and the accident as it happened, true?

20 A That's very well put.

21 Q It's important to find out how the accident happened,
22 true?

23 A Yes.

24 Q All right. And the history comes directly from the
25 patient, true?

1 A It's a combination of -- from the patient and the
2 medical record, yeah.

3 Q You get your history from the patient as well as
4 medical records, true?

5 A Yes.

6 Q And that's what you did in this case?

7 A Yes.

8 Q And you got the history from the ER record in this
9 case?

10 A Yes, and the patient.

11 Q Do you know Dr. Turtel?

12 A I do.

13 Q Do you know why he's not testifying in this case?

14 A No.

15 Q You testify in cases where you actually do treat the
16 patient, true?

17 A I do.

18 Q Wouldn't Dr. Turtel be more competent to testify in
19 this case?

20 A I don't know that he would be more competent to give an
21 opinion, but certainly he was the one that did the surgery. I'm
22 not sure why he's not here today.

23 Q Did you review Dr. Turtel's notes?

24 A Yes, the ones that were provided. I'm not sure they
25 are complete, but I think they are.

1 Q Okay. I'm going to read you his last note that he ever
2 wrote for this patient. "We're now four months from the
3 surgery. He's doing very well. Has no specific or significant
4 complaint other than some residual weakness. Range of motion is
5 excellent. And he can flex to 150 degrees." Does that sounds
6 like a poor prognosis?

7 A That is four months after the surgery. This isn't a
8 yes or no question. I'm sorry.

9 Q Fair enough.

10 A This is four months after the surgery. This is
11 something progressive over time. This gentleman has done really
12 well. Even today I think he's done well, but he still has
13 arthritis from this injury, still has weakness and still has
14 limited motion. That's what I base my prognosis on.

15 Q Is poor prognosis the worst prognosis you can give the
16 patient?

17 A You can go to severe. You can go to catastrophic, you
18 know.

19 Q Dr. Turtel gave 150 degrees on flexion, true?

20 A That's what he reports.

21 Q That's what he reports?

22 A That's right.

23 Q What did you get?

24 A I got 135. And on the uninjured side 145. 145 is the
25 largest number I've ever seen. I've never seen someone flex 150

1 degrees. I'm not sure what his range of motions are, Dr.
2 Turtel, and he doesn't report the other side, which may be
3 better than 150.

4 Q Okay. Did you call Dr. Turtel and tell him you don't
5 know what you're talking about? Did you do that?

6 A I believe he knows what he's talking about. I think he
7 may be using a different measuring system.

8 Q Was Mr. Little a compliant patient?

9 A Seems to have been, yes.

10 Q Okay. And your definition of noncompliance is a
11 patient who does not follow specific instructions, fair
12 statement?

13 A Routinely doesn't follow specific instructions.

14 Q Okay. Did Mr. Little ever do formal physical therapy?

15 A I believe he did exercises, yeah.

16 Q Did he ever do formal physical therapy, yes or no?

17 A I believe I've seen some physical therapy notes. I
18 can't recall exactly where that was or how much.

19 Q Was physical therapy recommended to Mr. Little?

20 A Yes.

21 Q And if he didn't do formal physical therapy, that would
22 be noncompliance, true?

23 A That would be between him and Dr. Turtel. You can
24 recommend therapy, and if patients can do it on their own, I
25 would not call that noncompliant.

1 Q You have physical therapists in your office, true?

2 A I do.

3 Q Would you hire Mr. Little to be a physical therapist in
4 your office?

5 MR. MADONNA: Objection.

6 THE COURT: Sustained.

7 Q Doing physical therapy at a physical therapy location
8 provides access to treatments beyond what a patient can do by
9 themselves, would agree with that?

10 A Yes, it can.

11 Q And there are a number of things physical therapists
12 can do that you can't do on your own, true?

13 A That is true.

14 Q For instance, physical therapists have access to
15 certain types of machines, including high heat, ice, diathermy,
16 which is a machine that sends certain medications like steroids
17 into the tissues, true?

18 A Again, that's not a yes or no question, because you
19 would not use diathermy here. You would use heat and ice and
20 range of motion.

21 Q Some of the things that physical therapists have, true?

22 A Yeah.

23 Q Okay. Mr. Little didn't do that, did he?

24 A He did range of motion. He did heat and ice.

25 Q Did he go to a physical therapy location?

1 A Again, I don't recall. I don't have that.

2 Q All right. Doctor, we all get wear and tear over time,
3 true?

4 A Absolutely.

5 Q All right. And being physically active can cause
6 degeneration of cartilage, true?

7 A A hundred percent.

8 Q And Mr. Little was involved in martial arts for more
9 than 40 years, true?

10 A That's right.

11 Q That could take a toll on your body, true?

12 A Sure.

13 Q You testified that Mr. Little had some atrophy in his
14 left leg, correct?

15 A Correct.

16 Q Which leg is Mr. Little's dominant leg?

17 A Again, legs are not the same as upper extremities.
18 This is not a straightforward answer. You would expect someone
19 who is keeping active would have the same measurements in both
20 legs unlike a dominant arm. As he does in his lower leg, it's
21 equal, you would expect that to be equal.

22 Q Did you think of the possibility that perhaps
23 Mr. Little who is right legged --

24 MR. MADONNA: Objection, Judge.

25 THE COURT: Sustained.

1 Q Is Mr. Little right handed?

2 THE COURT: Overruled.

3 A Yeah.

4 Q So, did you think of the possibility that Mr. Little
5 has been kicking things with his right leg a lot more than his
6 left leg? Did you think about that?

7 A I still don't think that would make his legs bigger on
8 one side. The primary activity of keeping your legs the same
9 size is walking, which we all do.

10 Q Do you have your report in front of you?

11 A I do.

12 Q Take a look at your October 10, 2017 report.

13 A (Examining). Okay.

14 Q You wrote that Mr. Little was unable to run, correct?

15 A That's right.

16 Q Can we agree that that statement was a complete and
17 absolute falsehood?

18 MR. MADONNA: Objection.

19 THE COURT: Sustained.

20 A Not --

21 MR. MADONNA: You know better, counsel.

22 THE COURT: Sustained. You don't have to answer.

23 Q That was not true, was it?

24 A He told me he was unable to run.

25 Q Did you read Mr. Little's deposition that he gave in

1 this case?

2 A No.

3 Q No?

4 A No.

5 (Continue on the next page.)

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1 CONTINUED CROSS-EXAMINATION

2 BY MR. LYON:

3 Q. Dr. Kaplan, can we agree that brisk means fast?

4 A. In general, yes, sure.

5 MR. LYON: I have nothing further, your Honor.

6 MR. MADONNA: I have a short redirect, please.

7 THE COURT: Go ahead.

8 REDIRECT EXAMINATION

9 BY MR. MADONNA:

10 Q. Dr. Kaplan, I want you to take a look at that MRI
11 report from East River Medical Imaging.

12 A. Yes.

13 Q. And just so that it's clear - this is in evidence -
14 this is a radiologist -- explain to the jury what an MRI is and
15 what an MRI was.

16 A. An MRI is an imaging study that's performed at an
17 imaging center. It's not performed by the physician who has
18 treated the patient, touched the patient, examined the patient.
19 It is reviewed by a radiologist who looks at the imaging studies
20 and bases their findings on the images that they see and the
21 history received.

22 Q. And the radiologist that reads an MRI is not a
23 clinician?

24 A. They're a -- I mean -- I can't answer that. They're
25 not touching the patient. They haven't met the patient. I'm

1 sure that Mr. Little has never met this doctor.

2 Q. And this was an MRI scan of the left knee of Mr. Little
3 on March 12, 2010, correct?

4 A. That's correct.

5 Q. Now, there was some questions that you were asked with
6 regard to the findings here?

7 A. Yes.

8 Q. Can you read the findings in that area and explain to
9 the jury what this radiologist is talking about medically?

10 MR. LYON: Objection.

11 THE COURT: Overruled.

12 THE WITNESS: Answer it?

13 A. So the impression is blunting of the posterior horn of
14 the medial meniscus.

15 Q. Sorry. The findings that you were asked about earlier
16 on the first page.

17 A. It says, "The medial meniscus demonstrates blunting of
18 the posterior horn in the medial meniscus best seen in Series 2
19 and 3, Image 16." So it's seen on one -- on probably 48 to 50
20 images.

21 "Whether this represents the sequelae of prior
22 arthroscopic surgery or a re-tear is uncertain."

23 Q. You can stop there.

24 So what this radiologist's seeing here and they're
25 interpreting, and I may have this wrong, but it's magnetic

1 imaging that's being bounced off the tissues in the leg giving
2 you an image?

3 A. It's a magnet being placed across the body, and it
4 changes the water molecules in a way that can be recorded. That
5 record can make a picture, which they look at, yes.

6 Q. But it's not --

7 A. It's not surgery. It's not looking inside.

8 Q. It's not a picture like a photograph or anything?

9 A. That's correct.

10 Q. It shows different grades and different --

11 A. Different colors correspond to different water content
12 within the body.

13 Q. And they're trained to look for things that are
14 abnormal?

15 A. That's right.

16 Q. And that's their specialty?

17 A. That is their specialty; that's right.

18 Q. And what this radiologist sees here is an abnormality
19 that, without the clinical, hands-on treatment of the patient --

20 I think it was a she?

21 A. It is.

22 Q. -- she can't tell whether or not what she sees was
23 caused by a prior surgery there or by a re-tear?

24 A. Correct.

25 So, radiologists will often say I can't tell if that's

1 a new injury or something related to something that happened
2 prior.

3 In this case, she says she can't tell if it's a prior
4 arthroscopy or a new injury. She does not say it is from
5 arthroscopy. She just says there's an abnormality there and
6 she's trying to identify -- she doesn't know if it's from new
7 trauma or arthroscopy.

8 Q. Now, let's stay with this. You talked a little bit
9 about the meniscus being -- and that's this Figure 8 cartilage
10 thing in your knee. And, medically, you guys like using Latin
11 words. I think, posterior, medially. What does each mean?

12 A. Posterior means back. Anterior means front. Medial is
13 towards the midline. Lateral is towards the outside.

14 Q. I always get those mixed up.

15 But with regard to this MRI and this subsequent
16 arthroscopic surgery here, they were concerned about the medial
17 meniscus, correct?

18 A. That's correct. Posterior horn of the medial meniscus.

19 Q. Now, the imaging also showed, because it does the whole
20 knee, the lateral meniscus, correct?

21 A. Yes, uh-huh.

22 Q. So I want to direct your attention to the second
23 paragraph on page two where it talks about her findings with
24 regard to the lateral meniscus in 2010.

25 A. Yes.

1 MR. LYON: Object to scope.

2 THE COURT: Overruled.

3 A. That indicates that the lateral meniscus demonstrates
4 normal morphology. Meaning it looks normal.

5 Q. No damage?

6 A. And signal intensity, no change in the water content.
7 So there's no apparent damage.

8 Q. No damage from wear and tear and aging?

9 A. That's correct.

10 Q. And no damage from any surgery or other injury?

11 A. That's correct.

12 Q. Now, the surgery that Dr. Turtel did after this injury,
13 that was on the lateral meniscus?

14 A. It was also on the left knee. Yes, that's correct.

15 Q. That was the left knee also?

16 A. Yes.

17 Q. But --

18 A. That's an MRI, sorry.

19 Q. That's on the lateral meniscus?

20 A. That's correct.

21 Q. That is a completely different part of the knee that
22 they were looking at with the damage in that MRI. In fact, the
23 lateral meniscus was normal in 2010?

24 A. It was.

25 Q. And it was damaged when Dr. Turtel actually looked in

1 with his own eyes during the surgery?

2 A. That's correct.

3 Q. And that's the best way to look at what's going on
4 inside somebody's body, is the surgeon actually looking in and
5 seeing what's there, right?

6 A. That's the gold standard.

7 Q. So would you say that that finding of lateral meniscus
8 damage was a result of this slip-and-fall injury in
9 November 2014?

10 A. It's certainly likely, yes.

11 Q. And prior to that, at least as far as 2010, there was
12 no damage to the lateral meniscus?

13 A. That's correct.

14 Q. And you were shown from Plaintiffs' 10 the handwritten
15 note of the 2000 arthroscopic surgery where it's written "left
16 knee". You reviewed those records and you got the history.

17 There was a 1999 right knee surgery?

18 A. Correct.

19 Q. By Dr. O'Brien?

20 A. Second half of 1999 there was a right knee surgery by
21 Dr. O'Brien, that's correct.

22 Q. And do you often, in your practice, do you see patients
23 sometimes many years, after having had an arthroscopic surgery,
24 that they don't have any continuing problems, even having had
25 them on both legs, forget which one is which?

1 A. I do have people forget which knee they had an
2 arthroscopy on. It's a simple menisectomy, yeah.

3 Q. Would you have an opinion with a reasonable degree of
4 medical certainty as to whether or not that was just an error?

5 A. It's my opinion that's an error because I've seen no
6 records and gotten a history from a guy I consider reliable that
7 he's only had one knee arthroscopy on the left and then this
8 surgery on the left.

9 Q. No other operative reports? And if there was one done
10 in and around when Dr. O'Brien did the right knee surgery, you
11 would expect to see that in the records?

12 A. I mean, Dr. O'Brien, we have his records. I didn't see
13 one of the left knee. He's a guy who's still around. Those
14 would be available if they were there.

15 Q. Thank you.

16 MR. MADONNA: Nothing else, Judge.

17 MR. LYON: Briefly, your Honor.

18 THE COURT: Recross.

19 Go ahead, Mr. Lyon.

20 RECROSS EXAMINATION

21 BY MR. LYON:

22 Q. The records you've seen in this case, did they come
23 from plaintiffs' counsel?

24 A. Yes.

25 MR. LYON: I have nothing further, your Honor.

1 Thank you very much.

2 MR. MADONNA: That's all, Judge.

3 THE COURT: Witness may step down.

4 THE WITNESS: Thank you.

5 (Whereupon, the witness was excused from the
6 witness stand.)

7 THE COURT: We have no further witnesses today,
8 right, counsel?

9 MR. MADONNA: That's correct.

10 MR. LYON: Correct, your Honor.

11 THE COURT: You have anything, counsel?

12 MR. MADONNA: I do, your Honor.

13 At this point, plaintiff rests.

14 THE COURT: Okay. Members of the jury, our next
15 witness should be here tomorrow at 9:30.

16 Do not discuss this case among yourselves or with
17 anybody else.

18 Do not do any independent research of any kind on
19 any of the issues or subject matter or individuals involved
20 in this case.

21 Do not visit the scene.

22 Have a good evening. I'll see you tomorrow at
23 9:30.

24 THE COURT OFFICER: All rise. Jury exiting.

25 (Whereupon, the jury exited the courtroom.)

1 THE COURT: Counsel have anything at this time?

2 MR. LYON: I have a motion for a directed verdict.
3 Would you like me to make it now or tomorrow morning?

4 THE COURT: Now.

5 MR. LYON: Okay.

6 THE COURT: If you're ready.

7 MR. LYON: I would really prefer to have the night
8 to put together some case law on the directed verdict
9 because it pertains to plaintiffs' liability expert.

10 THE COURT: I just told the jury to come in at
11 9:30. I understand we have two witnesses tomorrow, right?

12 MR. LYON: Correct.

13 MR. MADONNA: I thought you had one.

14 THE COURT: No.

15 You're going to bring in the ER doctor as well,
16 right?

17 MR. LYON: Thursday.

18 THE COURT: And Mr. Bria also Thursday?

19 MR. LYON: Thursday.

20 MR. MADONNA: Who's the other witness tomorrow?

21 MR. LYON: Meere tomorrow.

22 THE COURT: Only Meere tomorrow.

23 Yes, Mr. Madonna?

24 MR. MADONNA: I have nothing.

25 THE COURT: On the application to do the motion for

1 directed verdict, first thing in the morning.

2 MR. MADONNA: What I would suggest -- I know you
3 have to get out of here by 3:45 tomorrow.

4 THE COURT: We only have one witness.

5 MR. MADONNA: What I would suggest is we start the
6 witness in the morning and then do that motion afterwards.
7 I would expect we'll have plenty of time even in the
8 morning. I don't expect that witness to take the whole
9 session.

10 MR. LYON: And that witness also has no relevance
11 to the motion. There's no problem there.

12 THE COURT: Fine. So you're reserving motion to
13 dismiss until after the next witness tomorrow, after you
14 call Dr. Meere tomorrow morning?

15 MR. LYON: Correct, if that's okay with the Court.

16 THE COURT: Your timetable is preserved.

17 MR. LYON: Thank you.

18 THE COURT: Are both the ER doctor and Mr. Bria
19 coming in the morning?

20 MR. LYON: Yes, they are.

21 MR. MADONNA: I can't image that they're going to
22 take more than an hour combined.

23 MR. LYON: Agreed.

24 MR. MADONNA: On Thursday.

25 THE COURT: You want to try to sum and charge

1 Thursday afternoon?

2 MR. MADONNA: I would like to. And then this way
3 we can address the witness who has to leave Friday
4 afternoon.

5 THE COURT: The juror.

6 MR. MADONNA: The juror, I'm sorry, who has to
7 leave Friday afternoon.

8 We can either dismiss her and let them deliberate
9 all day, or if she leaves, if they're already deliberating,
10 then we can get them to only deliberate a half day if
11 they're still going.

12 MR. LYON: Your Honor, I really would prefer to sum
13 up on Friday because we wouldn't have the transcript. I
14 like to use the transcript during closing.

15 MR. MADONNA: The transcript of the testimony that
16 you just elicited?

17 THE COURT: That they just heard?

18 MR. LYON: Correct.

19 THE COURT: From Mr. Bria and the ER doctor?

20 MR. LYON: Yes.

21 THE COURT: I understand what you're saying. But
22 we have a juror who apparently advised during jury selection
23 she couldn't be here Friday afternoon. And we have a
24 three-day weekend.

25 We can give a little bit of -- little more thought

1 to this. But it may be worthwhile to -- look, I think it's
2 ambitious, but because of that circumstance, I thought it
3 may be worthwhile to try to sum up in the afternoon if we
4 can get the charge conference done in the morning.

5 MR. LYON: Is it doable, Judge? Yes, it is.
6 However, I'd like to get sleep. And I'm going to be up
7 until four in the morning.

8 THE COURT: We'll decide this tomorrow. Okay.

9 MR. LYON: Thank you, your Honor.

10 THE COURT: Anything before would go off the
11 record?

12 MR. LYON: Not from me.

13 MR. MADONNA: No.

14 THE COURT: Good night, counsel.

15 (Whereupon, the trial was adjourned to Wednesday,
16 June 14, 2023 at 9:30 a.m.)
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