

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF KINGS: CIVIL TERM PART 73

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3 PETRIKA DOJCE,

4 Plaintiff,

5 -against-

Index No.  
508449/2016

6 1302 REALTY COMPANY, LLC, F&D  
7 IMPROVEMENTS INCORPORATED AND MESIVTA  
8 YESHIVA RABBI CHAIM BERLIN,

9 Defendants.

Jury Trial  
Damages

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10 320 Jay Street  
11 Brooklyn, New York 11201  
12 November 3, 2023

13 B E F O R E:

14 HON. PETER SWEENEY,  
15 Supreme Court Justice.

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

17 FOR THE PLAINTIFF:  
18 LAW OFFICE OF PETER S. THOMAS, P.C.  
19 108-18 Queens Boulevard  
20 Forest Hills, New York 11375  
21 BY: PETER S. THOMAS, ESQ.

22 FOR THE DEFENDANTS:  
23 CATALANO GALLARDO & PETROPOULOS, LLP  
24 100 Jericho Quadrangle, Suite 326  
25 Jericho, New York 11753  
BY: DOMINGO R. GALLARDO, ESQ.  
BY: MICHELE R. LEVIN, ESQ.

P R E S E N T:  
Dr. Jacob Rauchwerger, Witness  
Dr. Vagmin P. Vora, Witness

ROBERT FRANKEL, CSR  
Sr. Court Reporter

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3 PLAINTIFF'S WITNESSES

4

5 NAME DIRECT CROSS REDIRECT RECROSS VOIR DIRE

6 Dr. Rauchwerger 697 774 839

7 Dr. Vora 845 879 886

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10 EXHIBITS

11

12

13 For the Plaintiff: Description FOR ID IN EVD

14 17. Dr. Rauchwerger's Office Records 717

15 17. Photo 741

16 18-B. Photo 741

17 18-C. Photo 741

18 19. Lutheran Hospital Records 769

19 20. Dr. Vora's Records 849

20 For the Defense: Description FOR ID IN EVD

21 B. Physical Therapy Records 801

22 C. Kings County Medical Center Records 831

23 D. Dr. Vora Notes of August 6, 2019 883 884

24

25

## Proceedings

1 MS. LEVIN: Judge, we have a motion in limine.  
2 Only one part really has to be done today because it  
3 concerns the witness, Dr. Jacob Rauchwerger; who is here to  
4 testify.

5 He's a pain management specialist. But he also  
6 submitted a lifecare plan. And in his expert exchange  
7 there absolutely no indication of what he relied upon for  
8 his opinions concerning future care, including: Physical  
9 therapy. Future pain management care. Future orthopedic  
10 care. Future neurology care. Future surgery, which  
11 Dr. Brisson said there is no future surgery.

12 There is no indication that he relied on any  
13 documents to formulate his opinions. And so it will be  
14 completely speculative.

15 THE COURT: What does it say in his 3101D?

16 MS. LEVIN: I can bring it up.

17 (WHEREUPON, papers are handed to the Court.)

18 MR. THOMAS: Again, he's a treating physician,  
19 Judge. He's seen him for over five years.

20 MS. LEVIN: We have no issues with the treatment  
21 that Dr. Rauchwerger provided.

22 MR. THOMAS: Which exchange did you give him?

23 MS. LEVIN: I gave him the most recent. They're  
24 both in there, but I showed him the most recent.

25 (Pause.)

Proceedings

1 THE COURT: Oh, all right. So, you didn't do a  
2 3101D?

3 MR. THOMAS: Can we have the date that you're  
4 looking at? Was it October 29th, 2019?

5 MS. LEVIN: Actually, it's August 24th, 2018.

6 MR. THOMAS: And, there's another one  
7 October 29th, 2019.

8 MS. LEVIN: There's a '19?

9 MR. THOMAS: Yeah.

10 MS. LEVIN: And then I gave him the one you just  
11 gave.

12 MR. THOMAS: Yes.

13 MS. LEVIN: Okay.

14 THE COURT: I'm looking at the one October 4th of  
15 2023.

16 MS. LEVIN: Yes. That was just exchanged.

17 MR. THOMAS: That was an updated exchange for  
18 visits in 2023.

19 THE COURT: Do you have the other one?

20 MR. THOMAS: Here's the one from 2019.

21 (WHEREUPON, papers are handed to the Court.)

22 THE COURT: Do you have this?

23 MS. LEVIN: Let me just take a quick look at it.

24 (Pause.)

25 MS. LEVIN: This is October 29th, 2019. But,

## Proceedings

1 then he had the surgery.

2 Okay. What about the other stuff though:  
3 Physical therapy?

4 THE COURT: Who are we talking about?

5 MR. THOMAS: Dr. Rauchwerger.

6 THE COURT: Well, here you're giving me --

7 MS. LEVIN: Who did I give you?

8 (Pause.)

9 THE COURT: So, counsel what you gave is an  
10 exhibit to your motion -- all right. I see it.

11 (Pause.)

12 THE COURT: Well, I'm looking at what you gave  
13 me, the August 24th, 2018. So, he says: "Dr. Rauchwerger  
14 is an expert in the field of pain management. He will base  
15 his opinions upon the plaintiff's medical record. His  
16 treatment of the plaintiff. His education. Background and  
17 experience as a physician. His knowledge of healthcare  
18 costs and other evidence admitted at trial."

19 All right. So, I mean it's not like he didn't  
20 tell you where he's drawing his opinions from. He says his  
21 knowledge of healthcare cost. His education. His  
22 background and experience as a physician.

23 MS. LEVIN: That's the October 2019 exchange?

24 THE COURT: This is the August 24th of 2018.

25 MS. LEVIN: Okay.

Proceedings

1 THE COURT: And, this is part of your motion.

2 MS. LEVIN: Yes.

3 THE COURT: Okay.

4 MS. LEVIN: He doesn't really cite to the medical  
5 bill.

6 THE COURT: What's that?

7 MS. LEVIN: He doesn't cite to any medical bills  
8 that he used.

9 THE COURT: Well, he says "the medical bills".

10 (Pause.)

11 THE COURT: And this is the lifecare plan, the  
12 second document, July 29th, 2018, where he sets forth the  
13 numbers?

14 MR. THOMAS: Correct.

15 THE COURT: All right.

16 So, counsel why is an expert not allowed to base  
17 his opinion on his education and his knowledge?

18 MS. LEVIN: Well, he's a pain management  
19 specialist. And he's talking about other fields,  
20 orthopedic fields, pain management fields.

21 THE COURT: Well, the guy can come in and refer  
22 to anything else other than his knowledge of healthcare  
23 costs.

24 So, do you have any case law in your motion?

25 MS. LEVIN: The case law that I have in the

## Proceedings

1 motion is just that speculative damages are to be stricken  
2 if there's speculation -- if the opinions are based on pure  
3 speculation then they are not reliable to be submitted to  
4 the jury.

5 THE COURT: All right.

6 But, how do we know that they're based on  
7 opinion?

8 MS. LEVIN: Well, it's just based on his expert  
9 exchange. He doesn't cite to the medical records billing  
10 as a source of his cost estimates.

11 THE COURT: Well, first of all you can't use an  
12 expert to prove past medical bills.

13 MR. THOMAS: Past medical bills are proven by  
14 virtue of the billing and the invoice. And we have the  
15 entire Worker's Compensation file here.

16 THE COURT: Right.

17 So, he's not here to render an opinion about past  
18 medical costs?

19 MR. THOMAS: Past? No. Future.

20 THE COURT: Right. Future.

21 So, again, it's all right here. All right.  
22 Look, I'm not going to preclude him from testifying.

23 MS. LEVIN: Okay.

24 THE COURT: Okay?

25 MS. LEVIN: Okay. Thank you, Judge.

## Proceedings

1 MR. THOMAS: Judge, there's another issue.

2 Defense counsel served on me last night an expert witness  
3 disclosure for Dr. Michael Keith Brooks; who, is their  
4 radiologist.

5 While I understand that they can supplement their  
6 3101D's up until the time of trial, we are well into the  
7 damages phase of this trial. And, I'm getting an expert  
8 disclosure now. It's a little late in the game.

9 THE COURT: Well, this hasn't been disclosed  
10 until now?

11 MS. LEVIN: Judge, we've disclosed Dr. Brooks as  
12 our radiological expert to testify as to the cervical and  
13 the lumbar injuries.

14 Yesterday -- or actually, two days ago Dr. Kolb  
15 came in here with the MRI of the right thigh, as well as an  
16 illustration of the right thigh. We had an issue with it  
17 because it wasn't disclosed in his expert exchange or the  
18 reports.

19 So we, basically, supplemented our expert  
20 exchange to say that our radiologist will now testify as to  
21 the right thigh MRI.

22 THE COURT: All right.

23 MR. THOMAS: I don't know where that's coming  
24 from. Because they gave us an exchange in April --

25 THE COURT: All right. Didn't we go through

## Proceedings

1 this? That there was an exchange about the right thigh --

2 MR. THOMAS: Yes.

3 THE COURT: -- way back when.

4 MS. LEVIN: Yeah. It was mixed into a different  
5 report. So, now we are --

6 THE COURT: They put the note of issue at the end  
7 of the exchange.

8 MS. LEVIN: It was annexed to Dr. Freedman's  
9 report. So, we didn't exchange Dr. Brooks as a witness.  
10 So, he's now coming in as rebuttal on the right thigh.

11 We gave him as soon as Dr. Brooks' testimony was  
12 over -- as soon as Dr. Kolb's testimony was over, we  
13 supplemented and said that Dr. Brooks is going to be coming  
14 in to testify as to the right thigh.

15 MR. THOMAS: Judge, just because they didn't read  
16 the exchange that was provided, and missed the fact that  
17 the report and an authorization was provided for the right  
18 thigh years ago is not a basis to now say that we are  
19 caught offguard and by surprise.

20 THE COURT: I will give you an opportunity to  
21 brief it for me.

22 MS. LEVIN: Okay. He's coming Monday. So we  
23 have time.

24 MR. THOMAS: But, again if you could just tell me  
25 what is --

Proceedings

1 THE COURT: He's coming Monday?

2 MR. THOMAS: Not Monday.

3 MS. LEVIN: Not Monday. Tuesday. The following  
4 Tuesday. We have time.

5 MR. THOMAS: If you could just, on this issue,  
6 tell me what it is that he's testifying to?

7 MS. LEVIN: I put it right in there.

8 MR. THOMAS: Well, in the April 7th, 2020  
9 exchange you indicate that he's going to be testifying  
10 about the right thigh.

11 MS. LEVIN: Okay.

12 MR. THOMAS: So, why --

13 MS. LEVIN: Then we're fine. You knew about it.  
14 We're good.

15 MR. THOMAS: No. No. No.

16 You're now changing his theory about the right  
17 thigh. That's the point.

18 THE COURT: All right. What are you saying,  
19 initially, counsel about the right thigh?

20 MR. THOMAS: It just said: "He's expected to  
21 give expert opinion concerning his orthopedic condition,  
22 diagnosis", blah, blah, blah, "as demonstrated by various  
23 radiological studies including", and then they list the  
24 studies that he's going to use to testify. And they  
25 include 5/19/16 MRI of the right thigh.

Proceedings

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THE COURT: Okay.

MS. LEVIN: All right.

So, it stands with my disclosure of April 7th.

THE COURT: So, it doesn't say what his interpretation is going to be.

MR. THOMAS: No. They now served me with a new exchange saying that he's now gong to render a different opinion about the right thigh.

THE COURT: Well, you didn't tell me what his opinion was in this one; other than he's going to testify as to an MRI of his right thigh.

MR. THOMAS: That's it. He will give an opinion concerning his orthopedic condition.

THE COURT: He's going to give an opinion? All right.

Does that comply with 3101D; that I have an expert who's going to give an opinion?

MS. LEVIN: Well, we referenced the right thigh MRI in our April 7th, 2020.

THE COURT: All right. All right.

MR. THOMAS: He's saying that there's no tear in that muscle. Now, he's saying there is no tear in the muscle.

This is a film that he had --

THE COURT: Did he have --

Proceedings

1 MS. LEVIN: That's not what he said.

2 MR. THOMAS: He said it's not a full thickness

3 tear.

4 MS. LEVIN: Okay.

5 MR. THOMAS: Excuse me. It's not a full

6 thickness tear.

7 THE COURT: All right. Before today, all right,

8 was his report exchanged setting forth --

9 MR. THOMAS: No.

10 THE COURT: -- his diagnosis of the right

11 thigh MRI?

12 MS. LEVIN: No. This was -- the expert exchange

13 was done in response as a rebuttal to Dr. Kolb's trial

14 testimony.

15 THE COURT: All right. So, this is the first

16 time that you're advising plaintiff's counsel that you have

17 an expert who's going to testify that there's no full

18 thickness tear in the right thigh?

19 MS. LEVIN: Right.

20 MR. THOMAS: The vastus lateralis muscle,

21 actually, specifically.

22 THE COURT: All right. Again, you could brief it

23 for me.

24 MS. LEVIN: Okay. We'll do that.

25 THE COURT: I mean, I don't see any prejudice.

## Proceedings

1 But I don't know if that's going to be the -- well,  
2 whatever. You could all brief it.

3 MR. THOMAS: We don't have a report. We just  
4 have a notice of exchange. So, this will be the first  
5 report that we've gotten.

6 THE COURT: All right. I got it.

7 But, you had your radiologist come in to  
8 interpret the film. It's not as if you are cut short on  
9 producing an appropriate expert to counter what her expert  
10 is going to say. All right.

11 You could brief it.

12 MR. THOMAS: Thank you, Judge.

13 THE CLERK: Ready? We got the jury.

14 THE COURT: All right. Is he here? Who are you  
15 leading with?

16 MR. THOMAS: Dr. Rauchwerger. I've already shown  
17 counsel his file.

18 THE COURT: All right. Then we're ready?

19 (Awaiting the jury.)

20 MR. GALLARDO: Your Honor, are you showing him  
21 the machine? Is that the machine up there?

22 THE COURT: I'm sorry, counsel?

23 MR. GALLARDO: I see a machine on the witness  
24 stand.

25 THE COURT: Oh, it's just the grinder.

Proceedings

1 (Awaiting the jury.)

2 COURT OFFICER: Are you ready, your Honor?

3 THE COURT: We're ready; right?

4 MR. THOMAS: Yes.

5 THE COURT: Okay. Bring them in.

6 COURT OFFICER: All rise. Jury entering.

7 (Jury enters at 10:20 AM.)

8 THE COURT: Good morning, everyone. You could

9 have a seat.

10 Okay. Mr. Thomas, whenever you are ready you

11 could call your next witness.

12 MR. THOMAS: Thank you, your Honor.

13 Your Honor, at this time we call Dr. Jacob

14 Rauchwerger to the stand.

15 (Witness takes the stand at 10:21 AM.)

16 THE CLERK: Good morning. Right this way.

17 Please remain standing and raise your hand.

18 (Witness complies.)

19 THE CLERK: Do you affirm the testimony you're

20 about to give this Court and jury will be the truth, the

21 whole truth, and nothing but the truth?

22 THE WITNESS: I affirm.

23 THE CLERK: All right. Please, be seated.

24 (Witness complies.)

25 In a loud, clear voice please state and spell

Dr. Rauchwerger - Plaintiff - Direct

1 your name for the record slowly.

2 THE WITNESS: Jacob, J-A-C-O-B. Rauchwerger,  
3 R-A-U-C-H-W-E-R-G-E-R.

4 THE CLERK: W-E-R?

5 THE WITNESS: G-E-R.

6 THE CLERK: W-G-E-R.

7 THE WITNESS: W-E-R-G-E-R.

8 THE CLERK: GER.

9 THE WITNESS: Yes.

10 THE CLERK: Okay. Very good.

11 And, your business address?

12 THE WITNESS: 165 North Village Avenue, Suite  
13 107, 1-1-5-7-0, Rockville Centre, New York.

14 THE CLERK: Thank you.

15 DR. JACOB RAUCHWERGER, a witness called on behalf of the  
16 Plaintiff after having been first duly sworn and having  
17 stated his address as 165 North Village Avenue, Suite 107,  
18 Rockville Centre, New York 11570, took the witness stand  
19 and testified as follows:

20 THE COURT: You may inquire, counsel.

21 MR. THOMAS: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MR. THOMAS:

24 Q. Good morning, Dr. Rauchwerger.

25 A. Good morning.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. Doctor, please tell the jury what type of doctor are  
2 you?

3 A. I am an anesthesiologist with sub-specialty training  
4 in pain management.

5 Q. What is pain management?

6 A. So, I am trained to treat different types of pain:  
7 Acute pain, chronic pain. And, basically when pain become's  
8 pathologic. You know, when it becomes life-threatening or when  
9 it's even not life-threatening it affects you where it affects  
10 your quality of life and your ability to function.

11 Actually, pain management was specifically done  
12 because people -- it was developed as a specialty because people  
13 are in pain. And not only does it affect their quality of life  
14 and their ability to function; which, has a big affect on the  
15 healthcare system.

16 So, by controlling people's pain or treating it, you  
17 know, you're preventing them from going down this continuum  
18 where they further decompensate. You don't have to decompensate  
19 just because you have, like, you have a heart condition or you  
20 have, you know, cancer. It could be just from pain alone.  
21 People will start decompensating. Because it affects you in  
22 every single way. It's, like, not only physically, emotionally.  
23 So, it becomes a vicious cycle.

24 Q. So, it's both body and mind?

25 A. Correct. It's all together.

Dr. Rauchwerger - Plaintiff - Direct

1           You cannot just treat pain and not take the emotional  
2           aspect. In fact, if you don't treat -- most of the time when  
3           you treat pain, the emotional part will get better, like:  
4           Anxiety, you know, depression. But, you have to treat them  
5           combined. Or, you have to be, you know, cognizant that there's  
6           another part to it.

7           And we do have specialists, you know, who focus more  
8           on the psychiatric side. But, in general, we have to take all  
9           the aspect together when we're treating someone.

10          Q.    Petrika Dojce.

11          A.    Yes.

12          Q.    Is he your patient?

13          A.    Yes, he was. He is.

14          Q.    How long have you treated him as a treating physician?

15          A.    I'm just going to -- I treated him since 2017.

16          Q.    And, is he still your patient, active patient?

17          A.    Yes, he is.

18          Q.    Have you treated him continuously since you first saw  
19          him?

20          A.    Yes, I do.

21          Q.    Everyone through Covid?

22          A.    Yes, I did.

23          Q.    Doctor, can you please tell the jury a little bit  
24          about your educational experience and your professional  
25          experience?

Dr. Rauchwerger - Plaintiff - Direct

1 A. Sure.

2 So, I went to the Universidad Autonoma de Guadalajara.  
3 And then I finished up at New York Medical College.

4 I then did a surgical training internship at North  
5 Shore University Hospital.

6 I then did anesthesiology residency at SUNY Downstate  
7 Medical Center.

8 And then, finally, I did a pain medicine fellowship at  
9 the University of Maryland.

10 Q. And, how long have you been working?

11 A. So, I've been -- so, we immediately begin our training  
12 the day we start our surgical -- you know, our internship. So,  
13 that would be since 2003. And, then once completely done, that  
14 was 2008.

15 But, our training -- our actual experience begins at  
16 the minute we finish graduating school itself.

17 Q. Do you have any hospital affiliations?

18 A. Yes, I do.

19 Q. Tell us about that?

20 A. So, I'm affiliated with two hospitals. I'm presently  
21 affiliated with two hospitals. One is Mount Sinai South Nassau  
22 in Oceanside, Long Island.

23 And I'm also affiliated with New York City Hospital in  
24 Brooklyn; which, is now called Maimonides Midwood Community  
25 Hospital and it's in Brooklyn on Kings Highway.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. Do you have any academic appointments?

2 A. Not at this time.

3 But, I was in the past the assistant professor of  
4 anesthesiology at New York Medical College for The Department of  
5 Anesthesia. I started out in academics. And then, eventually,  
6 you know, I'm right now in solo practice.

7 Q. Just tell us briefly, what is anesthesia,  
8 anesthesiology?

9 A. Oh, okay.

10 So, anesthesiologist mainly is, you know, in the  
11 simple terms is, you know, to take away the senses so  
12 patients -- you know, you have an operation. But, it's more  
13 than that.

14 And, you know, besides just taking care of you in the  
15 operating room. But, the whole goal is that to -- you know,  
16 when you have surgery you're going to have pain. And, so an  
17 anesthesiologists are to, sort of, paralyze you. That not only  
18 don't you move, but you don't feel anything.

19 And, it's very interesting, I'm sure you heard that  
20 people have been paralyzed, but they felt everything. That can  
21 happen, believe it or not. It's true. And it has happened.  
22 And, unfortunately it does, and it will continue to happen. You  
23 know, not as much, you know, now as it did in the past.

24 So, as an anesthesiologist that's our job. To  
25 paralyze you and take away the senses that you don't feel

Dr. Rauchwerger - Plaintiff - Direct

1 anything. And, that's what it really it. It's sort of taking  
2 away the pain.

3 Ad, with you guys I just want to, you know, the  
4 classic picture is if you see always when the surgical before  
5 anesthesia the specialty began, you know, it's always -- it's  
6 like our flag. In Massachusetts General Hospital how there are  
7 like five people holding down a patient while they're operating  
8 on him, and he's like screaming.

9 Q. Are you, originally, from Brooklyn?

10 A. I am.

11 Q. Because, you see this guy right here.

12 (Indicating.)

13 A. Yes.

14 Q. He's taking down everything that you're saying. And I  
15 see his fingers moving at a very high rate of speed. If I could  
16 just ask you to just slow down a little bit; so, that we don't  
17 tire him out to quickly?

18 A. I will.

19 Q. Okay. Thank you.

20 Doctor, do you have any board certifications?

21 A. Yes, I do.

22 Q. Tell us, what does it mean to be board certified?

23 A. So, board certified means that you've reached the  
24 highest level in your specialty. And, it's not only that. It's  
25 the maintenance of that high level.

Dr. Rauchwerger - Plaintiff - Direct

1           So, that's constantly doing what's called continuing  
2           medical education. Keeping up with the literature. Keeping up  
3           with the new -- with the new treatments. And, you know, sort of  
4           progressing with, you know, the times of medicine.

5           But, it's not just you take a test and then you're  
6           done. There's a maintenance. And, you know, every year I have  
7           to answer like 120 questions. I have to complete a certain  
8           amount of educational activities that, you know, that are not  
9           just, you know, new stuff. But review of the old stuff. And,  
10          how, you know, how it's being applied to certain patients.

11          So, and I just want to -- I'm just not board certified  
12          in anesthesia. I'm also board certified in pain management.

13          Q. Have you published in the field?

14          A. Yes, I have.

15          Q. And, your certifications are so numerous here. I'm  
16          just going to ask you: Have you been certified in the various  
17          fields of anesthesiology and pain management?

18          A. Yes.

19          Q. And, you've given lectures. And been invited all over  
20          the place to give lectures in this area; correct?

21          A. Yes, I have.

22          Q. And, you speak Albanian?

23          A. No.

24          Q. Do you speak Greek?

25          A. No.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. Do you speak any other languages?

2 A. I'm conversant in Spanish and Hebrew.

3 Q. Okay.

4 Have you been qualified as an expert in the field of  
5 pain management and anesthesiology in the courts of the State of  
6 New York?

7 A. Yes I have. Just by my publications alone. So, I'm  
8 considered an expert in my field.

9 MR. THOMAS: Your Honor, at this time, I wish to  
10 have recognized Dr. Rauchwerger as an expert in the field  
11 of pain management and anesthesiology.

12 MR. GALLARDO: Your Honor, only with respect to  
13 the field of anesthesiology and pain management; we have no  
14 objections to that limited field.

15 THE COURT: All right.

16 That's your request; correct, counsel?

17 MR. GALLARDO: Thank you, your Honor.

18 MR. THOMAS: Yes. But to the extent that pain  
19 management, as the doctor's already said --

20 THE COURT: Okay. I get it. All right.

21 So, the Court will permit the witness to render  
22 opinions in the field of anesthesiology, as well as pain  
23 management.

24 MR. THOMAS: Thank you.

25 Q. And, Doctor, you're a practicing physician; correct?

Dr. Rauchwerger - Plaintiff - Direct

1 A. Yes, I am.

2 Q. You see patients?

3 A. Everyday.

4 Q. Perform operative procedures.

5 A. Yes, I do.

6 Q. And in an effort to be here today to help the jury

7 understand the care and treatment that was rendered to

8 Mr. Dojce; did you have to cancel patients?

9 A. Yes, I did.

10 Q. And are you being compensated for your time away from

11 your office to be here today?

12 A. Yes, I am.

13 Q. And at what rate are you being compensated?

14 A. Ten thousand.

15 Q. Now, Doctor, you said something earlier. And I just  
16 want to go back to it so I don't forget with. You used the word  
17 "decompensate"?

18 A. Yes.

19 Q. Could you explain to the jury what that word means in  
20 this area, and with regard to the care and treatment of pain  
21 management?

22 A. Sure.

23 So, decompensation is, basically, when you have  
24 pain -- well, pain is because of a body, you know, something,  
25 you know, something -- there's damage done to the body; okay?

Dr. Rauchwerger - Plaintiff - Direct

1           And part of those result is that you're going to have  
2 pain because there's damage to nerves. So, you're not going to  
3 function anymore at the level you were before. There's a new  
4 level. And that's the problem.

5           So, you're going to -- instead of being an active  
6 person, you're now a less active person. You know?

7           And, that's where we get sort of these, what's called  
8 the -- you know, it's where we focus on is the activities of  
9 daily living, you know. Are you going to be able to, you know,  
10 cook for yourself? Are you going to be able to clean, you know,  
11 take care of your hygiene. You know, take care of your medical  
12 problems. You know, function as a person.

13           When those things start -- when your pain starts  
14 affecting your ability to do that, you're going to decompensate.  
15 I don't need to tell you, you know, if you're not taking a  
16 shower everyday, and you're not eating everyday, you're going  
17 to -- you know, as a person you're going to, all of a sudden,  
18 you're not going to -- you're going to get more infections  
19 because your hygiene is poor.

20           In terms of not eating, or you're going to have  
21 malnutrition. These are the things that happen all the time.

22           Q. And, one of the claims that we made in this case, that  
23 we're seeking compensation for, is pain and suffering.

24           You're the pain guy; right?

25           A. Correct.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. Can you tell the jury, is there a difference? Do  
2 you make a distinction between pain and suffering?

3 MR. GALLARDO: Objection, your Honor.

4 THE COURT: I'm sorry?

5 MR. GALLARDO: With respect to the claim made in  
6 this case, your Honor.

7 THE COURT: Well, look: If the witness wants to  
8 somehow tell us the difference; that's fine.

9 MR. GALLARDO: Note my objection.

10 A. Well, if you're going to have pain, you're going to  
11 suffer.

12 So, I mean, you know, I don't know anyone who doesn't  
13 have pain who is not suffering then. Because, I mean, you're  
14 suffering because you can't do your usual activities.

15 I mean, just think about it. If you're always having  
16 pain, I mean, you can't concentrate on what you're doing. It's  
17 difficult to carry out simple tasks or work. You know, to enjoy  
18 your relationships with your spouse.

19 This is my job as a doctor. You know, some of the  
20 things that as -- we are trained and taught as a pain management  
21 doctor is: It's, you know, we don't want our patients to -- so,  
22 for instance the holidays. That's, like, our patients suffering  
23 in pain during the holidays. You could imagine, you know,  
24 Thanksgiving, Christmas, any holiday, your spouse, your  
25 relative; they're at the table and they're miserable because

Dr. Rauchwerger - Plaintiff - Direct

1 they're in pain. Believe me, it happens. I could tell you  
2 that.

3 So, there is, you know, my job is to control that  
4 pain; so, you don't suffer.

5 Q. Doctor, Plaintiff's Exhibit 10 in this case is a video  
6 of Mr. Dojce after the accident. I know you've seen it before.  
7 But, I would like to show it to you again right now and then I  
8 will have some questions; okay?

9 A. Sure.

10 Q. And, when you look at this video I want you to look  
11 at, specifically, Mr. Dojce's movements and his actions.

12 And my questions are going to be with regard to your  
13 view of his body language, for lack of a better term.

14 A. Sure.

15 Q. And I want you to tell us what you see. And I'll ask  
16 you your expert opinion; okay?

17 A. Sure.

18 (WHEREUPON, Plaintiff's Exhibit 10 in Evidence is  
19 shown in open court, with the jury present, on screen.)

20 Q. So, the first video is just him coming out of the  
21 classroom. You saw him there; correct?

22 A. Correct.

23 Q. I'm going to show you another video.

24 (Another video playing.)

25 Q. This is now him walking down the hall.

Dr. Rauchwerger - Plaintiff - Direct

1 And, now him coming back the other way in the same  
2 video.

3 (Video playing.)

4 Q. Those two portions of the video with him coming out of  
5 the classroom, walking down the hall, and then walking away from  
6 the -- where you see his back and then where you see him coming.

7 Just in terms of what you see, knowing what happened  
8 to him, can you tell the jury with regard to his situation in  
9 terms of pain, what you're seeing there by looking at that  
10 video?

11 A. Yeah. So --

12 MR. GALLARDO: Your Honor, if I may -- I'm sorry.  
13 If I may note my objection for the record.

14 A. So --

15 THE COURT: All right. You could answer it.

16 A. A first sign of pain is, you know, the way he's -- you  
17 know, you could see he's not walking straight and upright. So,  
18 you could clearly see that he's slouching. That's for sure.

19 And, you could see he has, sort of, a limp antalgic  
20 gait, you know. You could see he's clearly in pain. Because,  
21 again, a person does not walk with slouching, and a limping gait  
22 or antalgic, you know for that type of -- usually we walk  
23 straight up. Even if we're not in pain, we don't walk like  
24 that. You could see his shoulders are clearly out like that.

25 (Indicating.)

Dr. Rauchwerger - Plaintiff - Direct

1 A. That's the way it is and leaning down with his head;  
2 that's characteristic of someone in pain.

3 Q. You said antalgic?

4 A. Yeah.

5 So, antalgic, you know, we're not seeing, you know,  
6 he's holding his hand without any injury. But, that type of  
7 gait -- usually, somebody who walks like that is having pain in  
8 their leg. In which, could be in Mr. Dojce's case, you could  
9 see two things. I mean, I know that he had laceration there.

10 But, also that's a type of gait where someone has --  
11 like, something is going on in the back also that that could  
12 happen.

13 MR. GALLARDO: Objection, your Honor.

14 I don't want to make a record in front of the  
15 jury, your Honor. That's why I'm hesitant to say anything  
16 other than objection.

17 MR. THOMAS: Your Honor, he could just say  
18 objection.

19 MR. GALLARDO: Of course. Of course. And, I'm  
20 very respectful of that.

21 THE COURT: Okay. I'm going to allow the answer  
22 to stand. You could make a record later.

23 MR. GALLARDO: Thank you, your Honor. Thank you.  
24 I appreciate it.

25 Q. I'm going to show you, now, another portion of the

Dr. Rauchwerger - Plaintiff - Direct

1 video. And, again, I know you've seen this before as well.

2 And, primarily when you see him coming into view in  
3 the hallway and then his actions near the stairs; okay?

4 (Video playing.)

5 MR. THOMAS: I'm going to pause it right there,  
6 40 seconds in.

7 Q. Observing his actions, his body movement in that, what  
8 can you tell us?

9 A. Well, again, you could see him slouching, you know.  
10 So, he's in pain. He's also guarded, the way he's guarding  
11 from, you know, exacerbation of pain, the way he sits down. He  
12 doesn't just sit down fast and, you know, he's trying to, like,  
13 prevent further pain. He puts his arm up. You know, he comes  
14 down. And then, you know, he falls over. But that's someone --  
15 it's not a fluid movement of someone not in pain. It's very  
16 broken up and very guarded.

17 So, you know -- wait. Like we all know. We have  
18 relatives and we see people: Not too fast. Not, you know,  
19 they're guarding, like, the movements to cause further pain.

20 Q. So, you see there's a point there where he seems to  
21 have, sort of, passed out?

22 A. Correct.

23 MR. GALLARDO: Objection, your Honor.

24 THE COURT: Well, no. Go ahead. Overruled.

25 Q. You see that portion of this video where he goes from

Dr. Rauchwerger - Plaintiff - Direct

1 sort of a seated position to a completely laying down position  
2 without moving?

3 A. Okay.

4 Q. What happened to him there?

5 A. I think that, I mean, you know, he sort of, like, he  
6 kind of passed out from everything that's going on with the  
7 pain.

8 MR. GALLARDO: Objection, your Honor.

9 THE COURT: Well, he's going to give an opinion  
10 that he passed out.

11 A. Well, I mean, you know, basically --

12 MR. GALLARDO: Objection, your Honor.

13 THE COURT: It looked like he passed out. Let's  
14 go. All right.

15 Q. When it comes to pain, the kind of pain that you  
16 understand Mr. Dojce was experiencing at this time because of  
17 the serious laceration to his leg, and any other issues that  
18 were going on, does pain have the ability to do that, sort of  
19 make you faint?

20 A. Sure, it definitely does. And it, sort of, sitting  
21 down was kind of like a relief. That the happens all the time.  
22 I see patients sit down and they're kind of like.

23 (Indicating.)

24 A. You know, it does happen. He's in severe pain. And,  
25 sort of like, all of that energy to take that movement to get

Dr. Rauchwerger - Plaintiff - Direct

1 there. It's sort of, like, you know, it's sort of like a vagal  
2 vagal reaction. In other words, like, all of that intense, you  
3 know, intense, like that sympathetic component. You know, that  
4 we call it sympathetic, like, where a fight or flight.

5 Everything is sort of, you know, your blood vessels. It's like  
6 you're running. It's like running a race and then all of a  
7 sudden you cross that race. And your body, sort of, collapses  
8 because there's the parasympathetic system that says, you know,  
9 I'm getting out of danger now.

10 So, your blood vessels dilate. And it's sort of a  
11 release of all of that tension.

12 Q. You mentioned "systems", sympathetic systems. You're  
13 familiar with the various systems in the body?

14 A. Yes, I am.

15 Q. We have the muscle, skeletal system, for example.  
16 There's the digestive system. There's the nervous system.

17 A. Correct.

18 Q. Your area of specialty deals with the nervous system?

19 A. Correct.

20 Q. And you talked about "sympathetic nerves". Could you  
21 tell the jury what's sympathetic nerves?

22 A. Yeah.

23 So there's, basically, what we have is called the  
24 autonomic system, autonomic nervous system; automatic, like  
25 autonomic.

Dr. Rauchwerger - Plaintiff - Direct

1           So, there's two parts of that. There's a sympathetic  
2 and a parasympathetic. So, the sympathetic is the fight or  
3 flight system. When your heart -- when your body is sensing  
4 danger, your heart needs to raise. You need to breathe faster.  
5 That's your sympathetic.

6           And, your parasympathetic is to slow it down. You  
7 know, slow down the heart rate. Slowed down the breathing, and  
8 also other. You don't have control of that. So, when you're in  
9 danger, you're sympathetic system will focus -- will take over  
10 the body and prepare it for the fight that you're in.

11           And, once you're out of that fight, it will -- the  
12 parasympathetic will take you out of that. And that's the, you  
13 know, that's sort of where, you know, release everything.

14           Q.    So, when I want to close my fist -- from an open hand  
15 to close my fist. And my brain is telling my hand to make a  
16 fist, what's happening there?

17           A.    Oh, so. And, again, all that depends on what's going  
18 on. But, that's sort of a more of a control of what's going on.

19           But, in terms of, like, if I'm getting into, like,  
20 into danger, I need to make a fist; that's my, you know,  
21 autonomic system getting me ready for that. So, it's like a  
22 reaction. You know, you got to fight.

23           Q.    Do I have an ability to grow hair on my head just  
24 because I want it to grow?

25           A.    No.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. What system is that?

2 A. That's dermatologic. And, unfortunately, there's no  
3 control over that.

4 Q. Or, if I wanted to lower my body temperature?

5 A. That's your autonomic system. That would be your  
6 sympathetic and parasympathetic of your autonomic. You would  
7 have to raise the temperature or decrease the temperature. Your  
8 body is preparing for that fight or flight.

9 Just to clarify, when I say fight or flight; you're  
10 either going to fight or you're going to runaway.

11 Q. Doctor, you see that the guys fingers are moving at a  
12 high rate of speed?

13 A. Yeah.

14 So, the fight or flight is your sympathetic. Your  
15 going to either fight or runaway. But, that requires your body  
16 to really rev up like an engine. And, you know, whenever you  
17 decide -- whatever is going to happen, that's the revving up of  
18 the body.

19 Q. Now, Doctor, can you tell us -- you treated trauma  
20 patients?

21 A. Yes. Plenty.

22 Q. And Mr. Dojce is considered a trauma patient?

23 A. Correct.

24 Q. Do you have a file that you kept with regard to your  
25 office visits, and narrative reports, and things like that

Dr. Rauchwerger - Plaintiff - Direct

1 throughout the day?

2 A. Yes.

3 Q. And do you have that with you?

4 A. Yes, right here.

5 Q. And is that a complete and accurate copy of your file  
6 of your records on Mr. Dojce?

7 A. Yeah.

8 These are my -- all my office notes that I'm aware,  
9 that I know of, of Mr. Dojce.

10 Q. Have they been kept in your custody and your control  
11 during the time that you maintained them?

12 A. Yes.

13 Q. You generated these notes?

14 A. Correct.

15 Q. And they are true and accurate copies of the records  
16 that you maintain?

17 A. Those are all my notes. My thoughts. My signatures  
18 are on them.

19 MR. THOMAS: Your Honor, at this time, I would  
20 like to offer Dr. Rauchwerger's file as Plaintiff's Exhibit  
21 17.

22 I've given counsel the opportunity to review it  
23 before the doctor took the stand.

24 MR. GALLARDO: Your Honor, the records are  
25 subpoenaed to the courthouse. I would ask that the

Dr. Rauchwerger - Plaintiff - Direct

1 subpoenaed records be put in.

2 MR. THOMAS: Fine. I don't care which set of  
3 records.

4 THE COURT: Look, I don't care either as long as  
5 they are the same set.

6 MR. THOMAS: Yes.

7 THE COURT: All right.

8 So, his office records will be received into  
9 evidence.

10 MR. THOMAS: Thank you.

11 (WHEREUPON, the item previously received and  
12 marked for identification is received and marked in  
13 evidence as Plaintiff's Exhibit 17 in Evidence.)

14 Q. Doctor, now that your records are in evidence feel  
15 free to refer to them, or read from them if you need to, to  
16 refresh your recollection.

17 A. Sure.

18 Q. Tell the jury, again, just so we are clear, when did  
19 Mr. Dojce first become your patient?

20 A. He became my patient on June 20th, 2017.

21 Q. And what presentation did he make on initial consult?

22 A. He came with pain in his, you know, basically his  
23 right lower extremities with specific parts: The right thigh,  
24 ankle, heel, foot, were the primary. And he mentioned his back.  
25 And, I documented that. But, you know, the greatest pain was in

Dr. Rauchwerger - Plaintiff - Direct

1 that right leg, you know. And that consisted of two parts of  
2 pain.

3 Q. Did you understand how his accident happened?

4 A. Yes.

5 Q. And, again, just briefly tell us how you understand  
6 the accident and injuries occurred?

7 A. Yes.

8 So, he was using a tool that kicked back. And there  
9 was, sort of, a jerking of his body. And, the tool in the  
10 process of when it malfunctioned, the kickback, you know, also  
11 cut his leg. And, so he had two injuries.

12 One was his back and one was the leg -- I mean the  
13 thigh from the laceration.

14 Q. And, which did you treat first?

15 A. So, we focused, basically, on the right leg because  
16 that's what was the greatest area of pain. I mean, we knew it  
17 was coming from the back.

18 But, just because you have back pain -- you have back  
19 and leg pain. But, we were focusing on the leg because he had  
20 two problems there. He had the laceration and he also had the  
21 pain that was coming from his back running down his leg.

22 So, what I was doing was getting a history on both  
23 ever that.

24 Q. And, were you provided any medical records from any of  
25 his other treating physicians prior to your consultations and

Dr. Rauchwerger - Plaintiff - Direct

1 review?

2 A. Let me just take a look at that.

3 (Pause.)

4 A. I had an MRI. You know, I had the disk, the MRI, the  
5 MRI disk.

6 Q. Of what part of the body?

7 A. Low back.

8 Q. And, did you read that MRI?

9 A. Yes. I look at the films and all of that when they  
10 come in.

11 Q. Do you read films in the course of your practice, MRI  
12 films?

13 A. Yes, I do.

14 Q. And, in reading that lower back MRI, did you see any  
15 evidence of arthritis?

16 A. No.

17 MR. GALLARDO: Objection, your Honor, as to  
18 reading an MRI. This is a pain management doctor.

19 MR. THOMAS: Who just said he reads MRI's in his  
20 practice.

21 A. So -- so.

22 THE WITNESS: Can I explain that?

23 THE COURT: Well, there's no question.

24 Do you have a question that you wanted him to?

25 MR. THOMAS: I asked the question. He answered

Dr. Rauchwerger - Plaintiff - Direct

1 it. Counsel is --

2 MR. GALLARDO: Your Honor, I move to strike.

3 THE COURT: No.

4 All right. You can lay a foundation for his  
5 ability to read MRI's.

6 A. Yeah, so -- I'm not a radiologist. So, but, you know,  
7 I am a physician.

8 And what I do is -- part of our training is we still  
9 have to be able to read. I'm not going to say I'm an expert,  
10 because I'm not an expert. I don't sit all day and do that. I  
11 didn't take exams for that. But, I am trained to read MRIs.  
12 I'm trained to read x-rays. I'm trained to do that.

13 And, of course, whatever I see, I concur with the  
14 radiologist's report. If I see something that does not match, I  
15 call the radiologist and I ask him his opinion. Or, I say, if I  
16 don't accept that then I would do my own study, you know. But  
17 that wasn't the case.

18 But, that being said, you know, just because you're an  
19 endocrinologist doesn't mean you can't read EKG's of the heart.  
20 We're trained in all of that. We're trained to do the basics  
21 and understand the basics. And, when it gets more complicated;  
22 that's why we have radiologists.

23 Q. Based on your review did you see any evidence of --

24 MR. GALLARDO: Objection, your Honor.

25 We don't know what MRI he was reading. The date.

Dr. Rauchwerger - Plaintiff - Direct

1 THE COURT: All right. So, be a little more  
2 specific in your question.

3 Q. Based on the lumbar MRI that you reviewed; do you have  
4 a date of that MRI?

5 THE COURT: All right.

6 A. I don't have it written down on there. No. Later on  
7 I did. But I didn't put it on my initial, the date, you know.

8 MR. GALLARDO: Objection, your Honor.

9 He doesn't have the date for the MRI that he is  
10 testifying that he read.

11 MR. THOMAS: You know what?

12 THE COURT: Is there A report in his file about  
13 this MRI?

14 MR. GALLARDO: No. No. Not in the one that we  
15 got subpoenaed. No.

16 MR. THOMAS: No problem. We could do this the  
17 long way. No problem.

18 MR. GALLARDO: No. There's no indication he  
19 read --

20 MR. THOMAS: All right counsel.

21 MR. GALLARDO: There's no indication in that note  
22 that he read an MRI.

23 THE COURT: Okay. One second.

24 (Pause.)

25 Q. Doctor --

Dr. Rauchwerger - Plaintiff - Direct

1 MR. GALLARDO: I object, your Honor.

2 THE COURT: It's in evidence, counsel.

3 That's in evidence; correct?

4 MR. GALLARDO: Your Honor, it's a piece of  
5 evidence that this --

6 THE COURT: All right.

7 You know what, ladies and gentlemen? We'll take  
8 five minutes. You could wait in the hallway.

9 COURT OFFICER: All rise. Jury exiting.

10 (Jury exits at 10:52 AM.)

11 THE COURT: All right.

12 Doctor, could you do me a favor and just step  
13 outside for a short minute?

14 THE WITNESS: Sure.

15 Can I take this or leave this here?

16 MR. GALLARDO: No. Your Honor, if we may?

17 THE COURT: I'm sorry?

18 MR. GALLARDO: I wanted his records to stay in  
19 the courtroom.

20 THE WITNESS: Yeah. Yeah. No problem.

21 MR. GALLARDO: In case there's a need for  
22 reference.

23 (Witness leaves the stand 10:52 AM.)

24 MR. THOMAS: He was going to take his records to  
25 check the date.

Dr. Rauchwerger - Plaintiff - Direct

1 THE WITNESS: You know, just to sort of.

2 THE COURT: Well, I don't know even know what the  
3 issues are. So, just go ahead and just leave the records  
4 there for the time being.

5 THE WITNESS: You want me to step all the way  
6 outside; right?

7 THE COURT: Yes.

8 (Pause.)

9 All right. So, counsel, what's your objection?

10 MR. GALLARDO: My objection is: He is testifying  
11 as to the first time he saw this patient. This was  
12 6/28/2017. And, he told this jury that he read an MRI.  
13 And then he started to interpret that MRI for the jury.  
14 There is no reference in this note for having him read the  
15 MRI.

16 THE COURT: Well, counsel, you've got a big,  
17 thick file there. It may not be in his initial note. Is  
18 that your problem?

19 MR. GALLARDO: It's not in his notes. It's not  
20 in his file.

21 THE COURT: You mean he never looked at the MRI?  
22 There's no indication in any of his reports that he looked  
23 at the MRI?

24 MR. THOMAS: Of course there is.

25 MR. GALLARDO: He has the record there. He has

Dr. Rauchwerger - Plaintiff - Direct

1 no indication the first date that he read the MRI.

2 THE COURT: Why are you limited on the first  
3 date?

4 MR. GALLARDO: Because that's what he's  
5 testifying to.

6 THE COURT: No.

7 Counsel, look, my question is very simple: Is  
8 there a report in his file, anywhere, where he discussed  
9 the MRI?

10 MR. GALLARDO: Any report where he's discussed  
11 an MRI?

12 THE COURT: Yeah.

13 MR. GALLARDO: I'm not sure that there is.

14 MR. THOMAS: Yes. There, certainly, is counsel.

15 You know, this is a game that I'm not having very  
16 much fun playing.

17 MR. GALLARDO: What date are you talking about?

18 MR. THOMAS: Look at his September 23rd, 2019  
19 narrative report; where, he talks about the magnetic  
20 resolution imaging study of the lumbosacral and the  
21 cervical that says: "L5-S1 disc herniation and central  
22 foraminal narrow."

23 It's all here. It's in his records. It's in his  
24 report. You don't want him to take his record, but he was  
25 going to find it specifically.

Dr. Rauchwerger - Plaintiff - Direct

1 MR. GALLARDO: Two years later. He's  
2 testifying --

3 THE COURT: Counsel, you keep saying two years  
4 later. He didn't question him if he saw the MRI on his  
5 initial visit.

6 Was that your question?

7 MR. THOMAS: No.

8 MR. GALLARDO: Yes, it was, your Honor. We were  
9 talking about his initial visit.

10 THE COURT: All right.

11 So, look, if he has a report in his file about  
12 his review of the MRI and he sets forth his opinion; he's  
13 allowed to testify to that.

14 But, counsel, just don't offer any cumulative  
15 evidence. You already called a radiologist; al right? I  
16 mean, you could go through this very quickly.

17 MR. THOMAS: Judge, he's objecting to the --

18 THE COURT: I know.

19 MR. THOMAS: -- to the arthritis and degenerative  
20 change. Those were the two questions that I was going to  
21 ask about the film and move on.

22 But, if counsel is going to object because that's  
23 the basis of his defense; I should be able and entitled to  
24 ask this witness; who looked at the films, who looked at  
25 films across his practice.

Dr. Rauchwerger - Plaintiff - Direct

1 THE COURT: Right. It's part of his diagnosis.

2 Yeah. Why shouldn't he?

3 That's my ruling. If he looked at the MRI films  
4 and relied on the MRI's in formulating his diagnosis, and  
5 he wrote about that in his report; he could testify as to  
6 that.

7 MR. GALLARDO: Two years later.

8 But, if I may, your Honor?

9 THE COURT: Go ahead, counsel. State your  
10 objection. Go ahead.

11 MR. GALLARDO: While the jury is out, I objected,  
12 your Honor, several times to this witness testifying as to  
13 what pain Mr. Dojce was feeling.

14 He's a pain management doctor. He's not, you  
15 know, he can't get into Mr. Dojce's head and explain  
16 exactly what pain he was feeling.

17 Moreover, your Honor, that's the first part of my  
18 objection.

19 The second part of my objection -- which, I think  
20 is more essential -- is that this witness testified that in  
21 his opinion that he passed out. And, during that -- and I  
22 objected. And, during that objection your Honor said to  
23 the jury: It looks like he passed out.

24 I would ask -- and my argument, the whole  
25 argument here, our argument is centered on that he did not

Dr. Rauchwerger - Plaintiff - Direct

1 pass out. By your Honor saying: It looks like he passed  
2 out, it's putting in the jury's mind that the Court has  
3 taken now the impetus of fact-finder and that he passed out  
4 during that picture -- in that frame.

5 THE COURT: Okay.

6 I, certainly, didn't make any ruling that he  
7 passed out. All I said was he looked like he passed out.

8 MR. GALLARDO: Okay.

9 THE COURT: That's all he asked him. And he  
10 asked him that as a point of reference.

11 MR. GALLARDO: Your Honor, the defense is  
12 prejudiced by that statement. I note my objection.

13 THE COURT: All right.

14 MR. THOMAS: Can we call the doctor back, your  
15 Honor?

16 THE COURT: So, I'm just wondering; what do you  
17 want me to tell this jury?

18 You want me to tell them that you disagree with  
19 the fact that he passed out.

20 MR. GALLARDO: I would like the Court to tell the  
21 jury that the Court has no opinion as to whether he passed  
22 out or not. That's the most important part. And that they  
23 should not take anything that the Court said as an opinion  
24 or statement of fact. That is their prevue.

25 THE COURT: All right.

Dr. Rauchwerger - Plaintiff - Direct

1 MR. THOMAS: Judge, the question was: What does  
2 it look like? Everybody sees what it shows. The video  
3 shows what it shows.

4 THE COURT: All right. All right.

5 MR. THOMAS: Can we bring the doctor back?

6 THE COURT: You could bring him back. Bring the  
7 jury back.

8 MR. GALLARDO: Thank you, your Honor.

9 COURT OFFICER: All rise. Jury entering.

10 (Jury enters at 10:57 AM.)

11 (Witness takes the stand at 10:57 AM.)

12 THE COURT: Have a seat. Sorry. Thank you.

13 All right. Ladies and gentlemen, there was some  
14 questioning about whether or not Mr. Dojce passed out, or  
15 whether it looked like he passed out.

16 I, certainly, don't know if he passed out. And,  
17 that is going to be up to you decide whether he passed out  
18 or not. There's not an agreement on that fact. Okay?

19 So, certainly, whatever I said about that should  
20 not be taken by you as a finding by me that he passed out;  
21 all right?

22 Okay.

23 MR. THOMAS: May I continue, your Honor?

24 THE COURT: You may.

25 MR. THOMAS: Okay.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. As we were saying before we took a break, you reviewed  
2 an MRI of the lumbar spine?

3 A. Yes.

4 Q. And in your review of the MRI of the lumbar spine, in  
5 your knowledge and experience, did you see any evidence of  
6 arthritis in his lumbar spine?

7 A. No.

8 MR. GALLARDO: Objection.

9 A. A 38 year old --

10 THE COURT: Overruled.

11 A. You know, when I saw Mr. Dojce --

12 Q. Doctor, if you could speak into the microphone?

13 A. Sure.

14 When I saw Mr. Dojce he was a 38 year old gentleman.  
15 I mean, a 38 year old person does not have arthritis of the  
16 spine.

17 MR. GALLARDO: Objection, your Honor.

18 A. It is clearly known. It is well documented, you do  
19 not see arthritic changes.

20 THE COURT: Overruled.

21 I think I already overruled it, but go ahead.

22 MR. THOMAS: You did.

23 A. You cannot, you know -- and even like regular back  
24 pain, it only starts occurring towards the late 40s, early 50s.  
25 It doesn't -- with no trauma. That's what the literature is.

Dr. Rauchwerger - Plaintiff - Direct

1 It's been always like that, and it will always be like that.

2 Q. Did you see any evidence of degenerative disc disease  
3 that would cause a pain complex that Mr. Dojce presented with  
4 when you saw him?

5 A. Absolutely not.

6 MR. GALLARDO: Objection, your Honor.

7 THE COURT: Overruled.

8 You could answer the question.

9 Q. Answer it again.

10 A. No, absolutely not.

11 Again, he's a 38 year old man. There's absolutely  
12 nothing on -- I would be embarrassed to say that he had -- he  
13 has degeneration. Because, you know, it just doesn't. It does  
14 not happen in a 38 year old person.

15 Q. What about the fact that he was working in  
16 construction, and worked as a laborer, and was in good shape,  
17 and was a swimmer, and was muscly, and athletic.

18 What about that?

19 A. So, again, actually the body does not, you know -- how  
20 do you -- you can't prevent aging, but you could delay it. And,  
21 that's through physical activity, you know?

22 So, actually laborers, unless there's some significant  
23 trauma, they actually tend to stay younger. They're stronger.  
24 We know they're stronger. There's more blood flow. There's  
25 more activity. So, you will delay the aging process; unless

Dr. Rauchwerger - Plaintiff - Direct

1 there's some type of traumatic event.

2 Q. And based on what you just said, did you learn whether  
3 Mr. Dojce ever had a traumatic event, an accident, an injury,  
4 surgical procedure, any medical treatment to his lumbar spine  
5 before April 21st, 2016 when this accident occurred?

6 A. No. That was the first time that I'm aware of that he  
7 suffered a traumatic injury.

8 Q. And based on that clinical presentation, and knowing  
9 the history of no prior accidents, and being asymptomatic before  
10 the day of this accident; do you have an opinion, within a  
11 reasonable degree of medical certainty, whether the accident of  
12 April 21st, 2016 was a competent producing cause of these spinal  
13 injuries?

14 MR. GALLARDO: Objection, your Honor.

15 THE COURT: Overruled.

16 You could answer the question.

17 A. I'm positive it's there. It's all at one level which  
18 is typical of a traumatic injury in a young person.

19 Again, older people have multiple levels. And  
20 surgeons are, actually, you cannot always know which level to  
21 operate. That's how my specialty came out. But, when a younger  
22 person gets injured it's, usually, one level. It's very easy to  
23 figure out that that's what happened. Because, you don't have  
24 any peripheral that's going to affect your judgment or  
25 reasoning.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. And is that what we see here with regard to the lumbar  
2 spine? It's really one level --

3 A. Correct.

4 Q. -- with an obvious herniation?

5 A. Correct.

6 Q. Now, the fact that this disc -- and we've already had  
7 an anatomy lesson from doctors who testified -- that this  
8 intervertebral disc, this disc material is now pushing into the  
9 space where the nerve root is.

10 And I have my friend "Bones" here. If you decide you  
11 want to use this for a demonstrative; please, do. I also have a  
12 smaller version. If you feel it will be helpful; please, let me  
13 know. You know what, I'll leave this up here.

14 A. Sure.

15 (WHEREUPON, a demonstrate aid is given to the  
16 witness.)

17 Q. So, when this disc herniates into this area, how does  
18 that effect sensations of pain?

19 A. So, first of all, for a disc to herniate it has to  
20 tear.

21 So, there are two things that happen with tears:

22 1 is: When it tears it leaks chemicals. So, you get  
23 a chemical. Those chemicals are, like, an irrelevant. It's  
24 like throwing poison on your, you know, an irritant on your  
25 skin. So, that irritates the nerves. So, they're going to get

Dr. Rauchwerger - Plaintiff - Direct

1 pain on the specific nerve root that's affected.

2 And then there's a mechanical compression, meaning the  
3 disc popping out. So, there's two things that go on there that  
4 causes the pain.

5 So, you know, it's not only that, that that becomes a  
6 problem. And I actually, you know, put this in my notes. And I  
7 even tested Mr. Dojce and did procedures on it.

8 So, when you have -- actually, can I just quickly go  
9 over the anatomy? I'm just going to quickly go over the anatomy  
10 which is what I do with all patients.

11 MR. THOMAS: Your Honor, can the witness kindly  
12 step down?

13 THE WITNESS: Can I do that?

14 THE COURT: Yeah. Sure.

15 A. Just so you understand.

16 Q. Why don't you step down in front of the jury; if, you  
17 think that's more helpful.

18 A. Sure.

19 (WHEREUPON, the witness testifies in front of the  
20 jury.)

21 MR. GALLARDO: If I may?

22 THE COURT: Yes.

23 MR. GALLARDO: Thank you, your Honor.

24 A. So, this is the model of the spine. Front of the  
25 spine. Back of the spine. If you look through my stomach, this

Dr. Rauchwerger - Plaintiff - Direct

1 is what you're going to see. If you look through my back, this  
2 is what you're going to see. Five bones in the lower back:  
3 Five, four, three, two, one. You always count up. The higher  
4 you go, you always count up.

5 In between each bone is a spongy material called the  
6 disc. Obviously this isn't, like, a sponge to wash dishes.

7 Q. Just a little louder and a little slower.

8 A. Yeah.

9 There are joints in your spine, like there are joints  
10 in your arms and legs. These are the facet joints; okay?

11 In the center is a spinal cord. So, the spinal cord  
12 ends in the beginning of the lower back. It doesn't come all  
13 the way down.

14 Nerve roots come out of the spinal cord like a tree  
15 has branches. So, the bottom third of the spinal cord, when the  
16 nerve roots come out of the right side, they go to the right  
17 leg. Left side, left leg.

18 So, when you have a traumatic event; okay? What  
19 happens in a traumatic event the disc pops out. It tears and  
20 pops out; okay? And when it pops out, two things happen. It  
21 releases chemicals; which, can irritate the nerves.

22 And it can also, if the mass that comes out compresses  
23 it, you have a mechanical problem.

24 So, when the nerve is affected two things happen; you  
25 get a sensory and motor disfunction.

Dr. Rauchwerger - Plaintiff - Direct

1           Sensory is, like, pain and numbness. And the motor  
2           dysfunction is the weakness that goes to the muscles.

3           So, it's not that simple, like, you know. There's a  
4           lot of things variably involved. And even if you repair it, the  
5           nerve is damaged.

6           It's sort of like a car I tell the patients. You  
7           know, you have this beautiful car. It gets into an accident.  
8           You take it to the shop and it just doesn't drive the same;  
9           right? That's, exactly, what the body is.

10           Now, I do want to tell you though, especially, in a  
11           young person; it's not just the disc that gets popped out. If  
12           you look at the spine, you see, like, how it's called a  
13           tri-complex. You see how it's like, one, you know, it's like --

14                           (Court reporter clarification requested.)

15           A.    It's like each bone. You see the bones are attached.  
16           This makes a functional unit it's called. This is a functional  
17           unit: Two bones and a joint; okay? This is considered a joint,  
18           part of the joint, and this is a joint. These are called the  
19           facet joints.

20                           (Indicating.)

21           A.    So, when this disc gets popped out, just to let you  
22           know, you don't just have pain here. There are capsules here  
23           and these get teared off.

24                           (Indicating.)

25           A.    So, you have pain coming from the disc. You have pain

Dr. Rauchwerger - Plaintiff - Direct

1 coming from the joints. You have the nerves that are affected  
2 either from the chemicals and the compression.

3 Now, I actually did -- I know Mr. Dojce's case very  
4 well. I've been treating him for a long time. Not only did I  
5 do epidurals on him, it's called lumbar epidural steroid  
6 injections.

7 What I did was: I tried to give several with an x-ray  
8 machine. It's very guided to deposit the steroids to stop the  
9 inflammation.

10 Also did what is called facet joint injections; which,  
11 I injected into the joints because those were very painful.

12 And every time he got this temporary relief, or he  
13 got, you know, some relief, but it wasn't a lot because of the  
14 severity.

15 But, you know, it was clearly his response based on my  
16 physical exam, based on the MRI, and the history it clearly  
17 shows. And, you know, if I could tell you my notes really show,  
18 like, when he bends forward he has pain that was pushing out on  
19 the disc, you know, exacerbating. When he went back, it hurt  
20 him because these joints were rubbing against each other. The  
21 nerve is all irritated. So, you know, this is typical of a  
22 functional unit that's been affected.

23 And, you know more so that it's affected from trauma.  
24 Because, again, there's no where on the MRI --

25 MR. GALLARDO: Objection, your Honor.

Dr. Rauchwerger - Plaintiff - Direct

1 MR. THOMAS: Your Honor, he's in the middle of  
2 answering.

3 A. Yeah, there's no where on the MRI that has --

4 THE COURT: Counsel, what's the objection? I  
5 mean you can't just -- I can't figure out what your  
6 objection is.

7 MR. GALLARDO: My objection is as to causation.  
8 We know this is trauma. Outside the scope of the 3101D.

9 THE COURT: All right. Overruled. Overruled.

10 MR. GALLARDO: Thank you, your Honor.

11 A. Okay.

12 So, I even mentioned this in my notes. At the time  
13 was, you know, when I'm dealing with what is called facet joint  
14 injections I need to, you know, you could do them. You have --  
15 there's a couple of reasons to do it. There either has to be  
16 some type of arthritis there. Or you have to -- if there's no  
17 arthritis -- which I do not have that in my notes that there was  
18 arthritis. My notes clearly state there's just a herniated  
19 disc.

20 So, when I examine him I saw -- I had him extend his  
21 back, it hurt him. I also knew from just research, not my  
22 research. The people who I stand on their shoulders, the  
23 doctors before me. They have figured -- they know that when the  
24 disc gets thrown off, these joints are going to be effected.  
25 And, that's what I did. I went in and checked for that.

Dr. Rauchwerger - Plaintiff - Direct

1                   And he did get some sort of relief. But, you know,  
2 depending on the damage you move forward to surgery. There's  
3 only so much we could do.

4                   Q. Doctor, when this disc material herniates out?

5                   A. Right.

6                   Q. Is that a permanent condition?

7                   A. Yeah. It's damaged.

8                   Any type of thing that happens in your body is  
9 damaged. You know, again, doctors are -- I explain to patients,  
10 you know, everyone -- we are guilty of this where we say: Your  
11 good.

12                   You know, what we do is we prevent things from getting  
13 worse. And we manage where you are. And, everybody knows this.  
14 You know, as you get older and you get hurt you're like, well, I  
15 can't do that anymore. Let's not make it worse. Let's just  
16 stop. You know, let's work on what we have now.

17                   That's what we do. We prevent things from getting  
18 worse. And, you know, we manage with what we have right now.

19                   Q. You don't have magic fingers? You can't just snap it  
20 back into place?

21                   A. I wish.

22                   Q. Doctor --

23                   A. Can I say something?

24                   I always make a joke with the patients. You know, the  
25 only way we are going to get perfect is finding the Fountain of

Dr. Rauchwerger - Plaintiff - Direct

1 Youth. That's the best medicine. But, unfortunately, none of  
2 us can -- nobody knows where that is.

3 Q. In terms of facet injections, epidural steroid  
4 injections: You tell me if any of this helps to, sort of,  
5 explain to the jury what it is that you were just talking about.

6 A. Yeah. Can I --

7 Q. And I if will mark that. Just tell me which ones you  
8 want and then I'll ask them to be marked.

9 (WHEREUPON, photos are shown to the witness on  
10 the table in front of the jury box.)

11 A. You could use this one. This one is what I did for  
12 him.

13 Q. Okay?

14 A. And, that's what I did for him, here.

15 Q. Okay.

16 A. This looks like a burning; which is you know, his pain  
17 was to, you know --

18 Q. You didn't do that on him?

19 A. Yes. I didn't do that.

20 Q. Anything else here help?

21 A. In terms of what I did?

22 MR. GALLARDO: Your Honor, I would ask that this  
23 not be done not right in front of the jury. Everything is  
24 being shown to the jury.

25 MR. THOMAS: No, it's not. The jury can't see

Dr. Rauchwerger - Plaintiff - Direct

1 this.

2 MR. GALLARDO: It's right in front of the jury,  
3 for the record.

4 MR. THOMAS: Okay. Fine. I have a copy for  
5 defense counsel.

6 Your Honor, I wish to introduce these into  
7 evidence for demonstrative purposes.

8 MR. GALLARDO: Your Honor, we just got them this  
9 instance.

10 MR. THOMAS: Oh, okay.

11 MR. GALLARDO: So, may I take a moment to look at  
12 them?

13 THE COURT: All right.

14 Ladies and gentlemen, we'll take a short break;  
15 all right?

16 COURT OFFICER: All rise. Jury exiting.

17 (Jury exits at 11:11 AM.)

18 MR. THOMAS: So, you have no objection to these  
19 three?

20 MR. GALLARDO: No objection.

21 MR. THOMAS: So, we'll mark them as Plaintiff's  
22 18.

23 THE CLERK: They're all collectively 18?

24 MR. THOMAS: Collectively 18, yes.

25 THE CLERK: In evidence?

Dr. Rauchwerger - Plaintiff - Direct

1 MR. THOMAS: Yes.

2 Let's do 18-A, B, and C.

3 (WHEREUPON, the item previously received and  
4 marked for identification is received and marked in  
5 evidence as Plaintiff's Exhibit 18-A in Evidence.)

6 (WHEREUPON, the item previously received and  
7 marked for identification is received and marked in  
8 evidence as Plaintiff's Exhibit 18-B in Evidence.)

9 (WHEREUPON, the item previously received and  
10 marked for identification is received and marked in  
11 evidence as Plaintiff's Exhibit 18-C in Evidence.)

12 (Recess taken.)

13 THE COURT: You could bring them in.

14 COURT OFFICER: All rise. Jury entering.

15 (Jury enters at 11:21 AM.)

16 THE COURT: Have a seat. Thank you.

17 All right. Counsel, you may continue.

18 MR. THOMAS: Thank you, Judge.

19 Q. Doctor, as I was saying: Any of these illustrations  
20 going to help you explain to the jury some of the procedures  
21 that you performed on Mr. Dojce?

22 A. Sure.

23 Q. All right.

24 Let's start with Plaintiff's Exhibit 18-A for  
25 demonstrative purposes. Again, if you need to step down.

Dr. Rauchwerger - Plaintiff - Direct

1 (WHEREUPON, Plaintiff's Exhibit 18-A in Evidence  
2 is shown in open court, with the jury present, on  
3 screen.)

4 A. Yes, I will step down; if, that's okay?

5 (WHEREUPON, the witness approaches the screen.)

6 A. So, this is basically what I showed you in the model,  
7 but with a little extra.

8 Basically here is your disc. This is what's called  
9 the vertebral body. And then there's joints over here between  
10 here that you see, as well. And of course here is the spinal  
11 cord. And from the spinal cord there are nerve roots that come  
12 out.

13 (Indicating.)

14 A. Remember I told you that the spinal cord ends in the  
15 beginning of the lower back? Well, the nerves travel in what's  
16 called the thecal sac. And as the sac nerve get's to that  
17 level, they start coming out here. And, that's what you see  
18 here.

19 (Indicating.)

20 A. So, basically the thecal sac is -- you know, I tell  
21 patients is, like, do you ever go to the fish store and they put  
22 the fish in the bag, you know with water? That's what the  
23 thecal sac is, basically. It's a sac that keeps the spinal cord  
24 nerves, like, protected before they come out of the level of the  
25 spine. And it keeps them nourished with fluid.

Dr. Rauchwerger - Plaintiff - Direct

1 So, that's what you see there.

2 Q. And the first operative procedure you did to address  
3 his pain complex was an?

4 A. Lumbar epidural steroid injection.

5 Q. Tell the jury.

6 MR. THOMAS: And, we'll put up 18-C.

7 (WHEREUPON, Plaintiff's Exhibit 18-C in Evidence  
8 is shown in open court, with the jury present, on  
9 screen.)

10 Q. What is an epidural steroid injection?

11 A. Yes. So, the spinal cord and the nerve roots are in  
12 this space; which, is called the epidural space.

13 (Indicating.)

14 A. And, basically, when the disc pops out it's going to  
15 push on the nerve, or irritate it while that nerve root is in  
16 the epidural space.

17 So, that's where we go in. What we do is, under x-ray  
18 guidance, we sort of -- well, I'll just tell you how it is.

19 We bring the patient to the hospital. They lay on  
20 their stomach. We clean their back. And then with an x-ray  
21 machine we put the needle into the epidural space. This is the  
22 canal. It's broken into what is called the thecal sac where --  
23 the thecal sac where I told you is where the nerves roots are  
24 coming off the spinal cord before they come out.

25 When they come out, there's another area called the

Dr. Rauchwerger - Plaintiff - Direct

1 epidural space. And then they completely exit.

2 So, we give the medication in that epidural space.

3 So, the question is: Why don't we, you know, give the  
4 medication in the thecal space. Like, why don't I just punch it  
5 through? Well, that's a complication. Because you hear  
6 patients have, like, pregnant woman they get headaches from  
7 their epidurals. And we don't want to do that.

8 So, what we do is: Instead of going directly in, we  
9 go up to a certain point and deposit the medication there. And  
10 that steroid will beat those nerves that are irritated.

11 And we hope -- so, basically, what we're doing is:  
12 We're trying to give a steroid, like, an antiinflammatory that  
13 will stop the irritation because it's wholly an inflammatory  
14 process. And we hope at the same time the disc that popped out  
15 will shrink or reabsorb. But, that doesn't happen. It's like  
16 25 percent of the time it will just shrink a little bit. You  
17 know shrink but not enough, always, to get back to where it's  
18 completely functional. Or, I should say, you know, more  
19 functional.

20 Q. And, did Mr. Dojce get any relief from this procedure?

21 A. If he did it was temporary. Again, you know, it is  
22 true they are not -- you know, it's sort of like a very small  
23 percentage of people get complete relief and they're done. I  
24 would say it's about 15 to 20 percent, at best. Most of them  
25 it's sort of to control the pain, and make it better, and get

Dr. Rauchwerger - Plaintiff - Direct

1 you functional.

2 So, you know, what we try to do is get you back.

3 Like, if you're completely, you know, if you're completely at  
4 zero; we try to get you back to 80 percent, 85 percent. If we  
5 could get you back to 100 percent; that's great. But, you know,  
6 that's really rare. Most of the time what we're trying to do is  
7 get you -- stop it from getting worse. And get you to a level  
8 where, you know, you will be functional.

9 Q. And, how many series of these epidural steroid  
10 injections did you give him?

11 A. I think I did, at least, two before. And, then I even  
12 did after the surgery. But, I did two before. You know, I did  
13 one. And then I tried again. I was hoping the effect would  
14 one. And then because it was holding, it wasn't holding. I  
15 started looking at a different area, hoping that, that area  
16 maybe more of the pain is coming from that area.

17 So, again, he had different areas. But, the whole  
18 functional unit was not good. That's where you get into the  
19 surgery.

20 Q. And, then you said you did facet injections?

21 A. Yes. So that was after the two epidurals.

22 Q. Okay. Let's put that. Plaintiff's Exhibit 18-B.

23 (WHEREUPON, Plaintiff's Exhibit 18-B in Evidence  
24 is shown in open court, with the jury present, on  
25 screen.)

Dr. Rauchwerger - Plaintiff - Direct

1           A.    So, here's a clearer picture. This is exactly what I  
2 did. I went into the joints of the spine. And, you know, tried  
3 to -- again, remember I told you that whether the disc get's  
4 popped out it falls off track? So, when the disc pops out this  
5 falls off track.

6                               (Indicating.)

7           A.    So this is going to get infected. Instead of being  
8 nicely lined up, it's like that. And in the process you're  
9 tearing the capsules.

10                              (Indicating.)

11           A.    So, that becomes it's own inflammatory source. So,  
12 that's why we injected that.

13                              And that's the reason why we do a fusion by the way.  
14 If you do a fusion, that's the whole idea behind the fusion.  
15 It's not just, like, decompressing. Like, you got to treat that  
16 and fuse it so it doesn't move. Because that becomes a source  
17 of pain as well.

18           Q.    Anything else you want to explain to the jury with  
19 this diagram?

20           A.    I think, you know, just there's different ways of  
21 doing it. But, this is what I did. And I think I did one more  
22 time where we were trying to get as the nerves come out from the  
23 joints. So, there's different ways to is approach it.

24                              You always want to try, you know, if you're getting  
25 some initial success, but it's not holding, then you try a

Dr. Rauchwerger - Plaintiff - Direct

1 different path on that same thing. You know, you don't put out  
2 a fire just like that. You put out fires by different angles of  
3 spraying the water. I mean, you see firefighters go like that,  
4 for the most part.

5 (Indicating.)

6 Q. It's interesting that you use the word "fire"  
7 because -- tell the jury, who else used the word "fire" in  
8 relation to this case?

9 A. Mr. Dojce, actually.

10 He explained in his notes, he gets burning and it's  
11 like on fire, yeah.

12 So, that's typical of nerve damage. Anyone who uses  
13 burning, fire, that's a typical -- especially the burns, pins  
14 and needles, numbness; that all means that there's nerve damage.

15 Q. Thank you, Doctor. If you could have a seat, I'd  
16 appreciate it.

17 (Witness retakes the witness stand.)

18 Q. While we are talking about Mr. Dojce specifically --  
19 and, again, if you need to refer to your notes; please, do.

20 Tell us the overall complaints that he had with regard  
21 to the injuries to his spine from this accident that you were  
22 treating him for?

23 A. I mean, you know, he complained of back pain and the  
24 muscles spasms. I did also on him what's called trigger point  
25 injections trying to calm down the muscles because he had

Dr. Rauchwerger - Plaintiff - Direct

1 spasms.

2 But the main thing was that the nerve damage, that  
3 burning pain that went down his leg, because there was nerve  
4 damage. And, I mean -- I gave him nerve medications. He was  
5 begging me to give him something that, you know, would help him  
6 sleep. Because pain is worse at night for him. And I gave him  
7 this medication called Amitriptyline.

8 Q. Can you spell that?

9 A. I think so. Yeah. A-M-I. I can write it. When I  
10 write it I'll be able to spell it. Let me just get it. So,  
11 A-M-I-T-R-I-P-T-Y-L-I-N-E.

12 And I gave him on 25 milligrams. It's a pretty potent  
13 neuropathic pain medication. I give it to him at night. What I  
14 like about this drug is you take it at night because it helps  
15 not only with pain, but it helps sleep at the same time. It  
16 controls the pain at night when the pain is at its worse.

17 Your body is -- your body secretes hormones at night  
18 that make your pain receptors more sensitive. And that's why I  
19 give that medication. If you ever hear -- just for your own  
20 knowledge -- you know, you hear patients don't sleep at night,  
21 you know anyone, like cancer patients, anyone, he couldn't sleep  
22 at night because he was in so much pain. That's because at  
23 night your body releases hormones that make the receptors  
24 sensitive. And, therefore, you will always have more pain.

25 So, it's critical to try to get that pain. He would

Dr. Rauchwerger - Plaintiff - Direct

1 complain nonstop about that night time pain. So, that's the  
2 reason why I gave him that medication.

3 Q. Do you have an opinion, within a reasonable degree of  
4 medical certainty, whether he's inability to sleep at night and  
5 the increased pain that occurs at night had an affect on his  
6 quality of life?

7 MR. GALLARDO: Objection, your Honor.

8 A. I mean, his whole entire -- I mean, he's in tremendous  
9 amount of pain. It is so obvious. I mean, his quality of life,  
10 like I said, you could see it. Like, in his quality of life has  
11 decompensated.

12 I mean, even with me. I think I'm doing the best I  
13 can. But, it's not where I want him to be. I would like for  
14 him to be better. But, you know, there is significant damage.

15 And, he uses very key terms, like burning. You know,  
16 he's very specific. He's like, you know, in his complaints.  
17 He's very specific every time throughout the times that I've  
18 been seeing him; he's telling you that its burning. He's not  
19 saying -- well, he's burning. He's not, like, changing his  
20 history. It's very specific of where his pain it coming from.

21 And where I'm objecting, and the response he's getting  
22 and where we're injecting; everything correlates, you know, to  
23 the damage of where -- in his spine.

24 Q. Will he ever be back to the position that he was  
25 before this accident?

Dr. Rauchwerger - Plaintiff - Direct

1           A.    Never.  It is absolutely not.  This is well known.  We  
2 call this a failed back, you know, a failed back surgery  
3 syndrome, meaning that surgery didn't help and there's nothing  
4 we can do about it.

5           And, unfortunately, this is a well known diagnosis.  
6 It's well known that the surgeons are going to do surgery and  
7 the patients are not going to get better.  It's always something  
8 that we have to do.  We have to do the surgery when nothing else  
9 works.  And we hope for the best.

10          Q.    So, if I understand everything you've said to us thus  
11 far; you're basically taking a multi-modality approach to his  
12 treatment and care?

13          A.    Absolutely.  That's what you're supposed to do.

14          Q.    Both with medication, as well as injections and  
15 therapy?

16          A.    Yes.

17                And we make sure that he does his home stretching  
18 exercises.  I'm always asking him.  It's all in my notes.  I  
19 always ask him, are you doing your home stretching exercises  
20 everyday.  I'm making sure he's taking his meds.  He's always,  
21 you know, make sure he has his refills.

22                He's very consistent in what he's doing.

23          Q.    And you were treating him before he had this lumbar  
24 fusion.  And you continued to treat him even after Dr. Borah did  
25 the lumbar fusion?

Dr. Rauchwerger - Plaintiff - Direct

1 A. Yeah. I treated him even before the first surgery.

2 Q. Before of the laminectomy?

3 A. Yeah, we were trying. And, trying everything. We  
4 were trying to avoid surgery. We were trying, believe me.

5 Part of my job is true to try to prevent surgery, you  
6 know, by getting the pain under control. But if you can't, you  
7 can't. I mean, it's unfortunate, but.

8 Q. And, did his pain complaints improve after these  
9 surgeries?

10 A. No.

11 That's why -- I feel it got worse, to be honest with  
12 you. I keep on recommending a spinal cord stimulator.

13 Q. Okay. Let's talk about that.

14 A. Yeah.

15 Q. If he told you that his pain has not improved and he's  
16 still having a high level of pain. And he's had this cervical  
17 fusion, lumbar fusion; what is the next step?

18 A. Look, the next step, in my opinion, is to sort of just  
19 try to control the pain to get it to where his quality of life  
20 improves and he could be more independent. And when I say "more  
21 independent", meaning his activities of daily living.

22 This is what we care about more. That he can take  
23 care of himself. That he can cook for himself. He can bathe  
24 himself. You know, take care of the basics. You know, that he  
25 doesn't have to rely on.

Dr. Rauchwerger - Plaintiff - Direct

1           And, like I said, quality of life; so, he's not  
2 sitting at a table and he's like lashing out because he's in  
3 pain. And, unfortunately, everybody else is miserable because  
4 he's miserable; which, is normal. You don't want to see your  
5 family member or friend be miserable.

6           So, that's my job to try to do that.

7           Q. And a spinal cord stimulator, what is that?

8           A. So, a spinal cord stimulator has been around for  
9 years. It's been around since 1967 when they did it. It's  
10 prevalent. There's, actually, six companies that make the  
11 device. It's the company that make your pacemaker.

12           You know, what surgeons do is what we learned over the  
13 year is: Like, the surgeons fix the house, but they can't fix  
14 the wiring. And that's what the spinal cord stimulator does.  
15 It fixes the wiring, you know, to the body.

16           There's damage to his nerves. The wiring, the way  
17 pain is, you know, the way things are interpreted because of the  
18 damage. He's going to have pain.

19           The spinal cord stimulator is, basically, a pacemaker  
20 that's put in the back. And it uses programs, like with a  
21 pacemaker, to control the interpretation of how the signals are  
22 coming back and forth between the spinal cord and the nerves in  
23 the leg. And, then you know, to try to control it that they are  
24 not pathological.

25           And I do just want to add something that's very

Dr. Rauchwerger - Plaintiff - Direct

1 important. What you have to realize is that: When you have  
2 damage to your body, it's a damaged part that's going to age.  
3 So, when Mr. Dojce saw me at 38 -- and he's now in his 40s --  
4 that damage is a damaged nerve, a damaged back that has gotten  
5 older. So, it's not a -- it's not like it got damaged -- it's  
6 damaged and it's getting older. So, you know, the damage is  
7 there. And, with aging on top of it, you know, it get's worse.

8 So, now you have two problems. You have someone  
9 that's damaged, that's getting worse just by the regular  
10 progression of you getting older.

11 Just like your heart. You could have a heart attack  
12 and, you know, they put stints in it. The heart is damaged.  
13 But, they fixed it. But, as it gets older, the heart is  
14 expected to, you know, get weaker and fail. And, so, a damaged  
15 heart that's getting weak and failing because of the aging  
16 process.

17 Q. And, now, you know he's had multiple surgeries. He's  
18 been on pain medications. He's had all types of other  
19 procedures to try to address this.

20 What does his future look like?

21 A. I mean, this is somebody who is going to see me  
22 monthly for the rest of his life. That's it.

23 And, we are going to have periods where -- he's always  
24 going to have pain. And he's going to have periods where  
25 there's going to be flareups, like really bad flareups. And,

Dr. Rauchwerger - Plaintiff - Direct

1 I'm going to say that we needed to do an epidural again. We  
2 need to try it. We're going to have to do this.

3 And, you know, there are other parts that are affected  
4 by the surgery. You know, there's what's adjacent segment  
5 disease. There's other parts that are going to be affected.  
6 Because your anatomy is not the normal anatomy anymore.  
7 Remember, the anatomy has changed because he fused it. That's  
8 not a normal process. And there will be secondary consequences;  
9 for that which will be treated.

10 Q. I believe it was Dr. Brisson who said that when you  
11 fuse one level, you're worried about the adjacent levels.

12 A. Correct.

13 Q. That's what you just mentioned?

14 A. Correct. Correct.

15 Q. And the affect that it has on the adjacent levels?

16 MR. GALLARDO: Objection, your Honor.

17 THE COURT: Okay. Try not to lead.

18 Q. And you agree with it?

19 A. Yeah. Yeah. I mean I don't agree with -- I mean,  
20 it's obvious. It's known. It's established. It's known.  
21 There's nothing to agree. It's known.

22 Q. And, Doctor, do you have any familiarity with the cost  
23 of maintaining this therapy and this treatment. The cost of  
24 pain management and the various procedures?

25 A. Absolutely. I'm all the time at the hospitals. You

Dr. Rauchwerger - Plaintiff - Direct

1 know, they tell us what it's costing us. They're telling us  
2 what it's going to cost, you know, the patients. The insurance  
3 companies don't want to approve things. They want the patient  
4 to self-pay. They tell us what the cost is going to be.

5 Q. And, if you want to refer to your records.

6 I just want to go through a couple of different areas  
7 and ask if you can tell the jury what you anticipate the cost  
8 will be for these.

9 A. Sure.

10 Q. First, let's start with the monthly pain management  
11 visits. And, you said for the rest of his life?

12 A. Yeah. He needs medication. And he needs to be  
13 evaluated. Absolutely.

14 First of all, I got to make sure that he doesn't have  
15 any side effects from the meds. These are not just -- you know,  
16 he's on Naproxen. So, we have to make sure he doesn't develop  
17 any gastro stomach problems -- stomach or kidney problems. And,  
18 if he does, I have to refer him to a specialist.

19 He's on different medications that could have heart  
20 rate functions. So, I have to see that.

21 I mean, just because a patient is on it doesn't mean  
22 that as they get older they could be able to tolerate it. That  
23 means things are going to have to change. It happens all the  
24 time. What it is good for two or three years is going to  
25 change.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. You have to monitor him?

2 A. Excuse me?

3 Q. You have to monitor him.

4 A. Yes, absolutely, of course. That's the standard of  
5 care. In fact, you are not allowed to give meds more than two  
6 refills. Because, you know, that's what they expect that in the  
7 time change that there may be a change.

8 And, when it comes to opioid medication that has to be  
9 monthly for very good reasons.

10 Q. So, what do you estimate the approximate cost for  
11 monthly pain management visits for the rest of his life?

12 A. Well, now what their recommendations are is what I  
13 listed was, hold on, I believe I put 350 is what the visit is.

14 Q. 350 a month?

15 A. Yep.

16 Q. Every month for the rest of his life?

17 A. Yeah. Absolutely.

18 Q. And, with regard to physical therapy?

19 A. Usually, three times a week.

20 So, this is not something that, you know, just like  
21 you have to do exercises everyday. This is something that needs  
22 coordinated effort. Make sure they're doing it the right way.  
23 You know, there are injuries. They're not causing other  
24 problems.

25 So, all of our patients, you know -- not just mine,

Dr. Rauchwerger - Plaintiff - Direct

1 everyone in pain management. They are continuing to go to  
2 physical therapy. And, you see in the older people, like your  
3 elders, your grandparents. You know, they go all the time if  
4 they have that ability for that reason. Physical therapy is  
5 working on general stuff. And they're not even injured. They  
6 just have regular old age that they're going because of.

7 Q. Approximate cause?

8 A. One hundred twenty-five, usually.

9 Q. What's that?

10 A. One hundred twenty-five.

11 Q. \$125 per session?

12 A. Yeah.

13 Q. And, that's about three times a week?

14 A. Correct.

15 Q. Pharmacological management?

16 A. Yes.

17 Q. Medication?

18 A. Yeah.

19 Q. Just give us the estimated cost of that per-month?

20 A. Fifteen hundred.

21 Q. Interventional treatment.

22 And, please explain to the jury first what I mean by  
23 interventional treatment?

24 A. So, those are those injections that we do. They are  
25 not injections done in the office. It's not recommended by our

Dr. Rauchwerger - Plaintiff - Direct

1 societies. They could have serious complications. They do  
2 require monitoring. They do require sedation at times.

3 So, these are done in a hospital, with an x-ray  
4 machine, in an operating room with an anesthesiologist, you  
5 know, monitoring the patient.

6 And they require to be sedated. We don't want them  
7 moving. They're getting the medications from the  
8 anesthesiologist. There's operating costs because you're using  
9 the hospital. And then there's procedural cost.

10 So, all these injections entail that.

11 Q. Could you give us an approximate --

12 A. So, usually an injection is around \$5,000 between the  
13 hospital, the anesthesia, and me, you know, the pain manager.  
14 That runs the hospital; which is very, you know?

15 Q. And, that's once a year? More than once a year?

16 A. Oh, no. No. No. No. No.

17 Someone who has this type can easily get an injection  
18 one every three months. And actually Medicare allows -- people  
19 who have regular, old damage from degenerative, you know, they  
20 get it every three months. Medicare allows that. That's your  
21 government.

22 Q. So, that could be easily over 20, \$25,000 a year?

23 A. Yes. Yeah.

24 I mean, you know, 25,000 is, sort of, give or take,  
25 you know. There will be good years and bad years. You know,

Dr. Rauchwerger - Plaintiff - Direct

1 one year he may need only two, or one. And then the other year  
2 he may need three or something else.

3 Q. Neuro modulation hardware.

4 A. Yes.

5 Q. As you said, he may need a pain stimulator of some  
6 kind.

7 A. Yes.

8 Q. Do you have any knowledge about the estimated cost?

9 A. Yes. Sure. Sure.

10 Q. Please, tell us.

11 A. So, a spinal cord stimulator is a pace maker. That  
12 requires not just me, that requires a neurosurgeon; okay? We do  
13 that together. That's done in an operating room. It requires  
14 general anesthesia. It's a whole thing.

15 And that's a real surgery, by the way. You know, I do  
16 surgical procedures. You know, doctors do surgical, but you  
17 know, this is done with, usually, a neurosurgeon at least in New  
18 York and most of the states.

19 And, basically, you're going into the epidural space  
20 by the spinal cord. You place these wires. And then you're  
21 putting them in. So, we need -- you need somebody on hand.  
22 Because even if you're doing it by yourself the hospitals  
23 require a neurosurgeon to be on call if there's a problem. And,  
24 certainly, if there's a complication from this, like an  
25 infection, that's going to require a neurosurgery. So, they are

Dr. Rauchwerger - Plaintiff - Direct

1 usually involved all the time.

2 Q. Approximate cost of having to do that?

3 A. One hundred thousand easy. The device alone is like  
4 30, 40,000. So, you're talking about -- and the hospital  
5 expenses, you're talking about another 30. And then you have  
6 the new neurosurgeon; which, is another specialty that requires  
7 a lot of skill.

8 Q. And, does that pain stimulator need to be tuned up --

9 A. Yes.

10 Q. -- or changed out?

11 A. Yes.

12 The life span is easily -- so, the company gives a  
13 five year guarantee. Usually the average is seven. They could  
14 go up to ten before they are changing it.

15 Q. So, I want you to assume that Mr. Dojce has about a 30  
16 year life-expectancy give or stake. He would need multiple.

17 A. Yeah.

18 We see that, usually, about two, you know, two times a  
19 year most people on average get it changed out. We have a  
20 couple people get three. But, it's really two is what we see.

21 Q. Any discounts if you do --

22 A. In todays healthcare system that's not happening.

23 Q. Okay.

24 And in your opinion, within a reasonable degree of  
25 medical certainty, is Mr. Dojce a candidate for any future

Dr. Rauchwerger - Plaintiff - Direct

1 lumbar surgeries?

2 A. Yeah. Well, for his adjacent segments he will need  
3 it. Definitely the sacroiliac joints. I mean, it is well known  
4 five years out that patients who have a fusion, it's not just  
5 above the fusion but below and they get sacroiliac fusions.

6 There's actually -- this -- we certainly -- they  
7 found, you know, a cause of this. And there's, like, just so  
8 much, like, medical innovation now within -- not just focusing  
9 above the fusion, but below it; which, is the sacroiliac joints.

10 He had an L5-S1 fusion to the sacroiliac joints;  
11 right? Can I get the model to let's them know where it is, just  
12 so they know.

13 Q. Sure.

14 (WHEREUPON, a demonstrative aid is handed to the  
15 witness.)

16 A. These are the sacroiliac joints, by the way. These  
17 are the sacroiliac joints.

18 (Indicating.)

19 A. We used to focus everything above. But now we know --  
20 it's not just well known -- that 50 percent of the people are  
21 going to develop pain right here. These are the sacroiliac  
22 joints.

23 (Indicating.)

24 A. So, it's not just adjacent segment disease above, but  
25 there's below. And, like I said, but the main thing is surgical

Dr. Rauchwerger - Plaintiff - Direct

1 and pain management is the innovation to start treating these.  
2 I do these by myself. My surgical college do it. We are  
3 starting to go from big to minimally invasive; which, is called  
4 MIS, Minimally Invasive Spine. You know, that's something that  
5 I definitely would offer and expect that Mr. Dojce will need.

6 Q. And are you familiar with the general surgical costs,  
7 anesthesia fees, hospital fees for doing this kind of --

8 A. Yes.

9 Q. -- fusion surgery?

10 A. Yes.

11 So, it's 65,000. And that's to the most minimally  
12 invasive. That's with recent technology.

13 They used to put even bigger hardwares. Now, we're  
14 putting in what's called bone grafts and fusing them; which, is  
15 expensive. It's very expensive.

16 But, before they were even using bigger hardware like  
17 big rods and screws they were using. But, all of this cost  
18 money, you know. So, that's what it is.

19 Q. And, finally, since this is musculoskeletal,  
20 neurological, orthopedic visits, neurological visits,  
21 neurologist, things like that; the average or general cost for  
22 those kind of visits?

23 A. Yeah. Yeah. I mean, your -- this is a  
24 comprehensive -- any type of pain management is comprehensive.  
25 You have to have colleagues involved if things are not going --

Dr. Rauchwerger - Plaintiff - Direct

1 you know, if there's complications with hardware, just like had  
2 surgeries. If there's a new surgical problem everybody has to  
3 be sort of coordinated. And, you know, it's expected to say,  
4 you are going to have to go.

5 Mr. Dojce does see a neurologist all the time.

6 Q. Ballpark figure with --

7 A. At least three times a year I would say each, you  
8 know, either one or the other is kind of, you know, that would  
9 be the safe thing.

10 Q. Do you have a ballpark as to what --

11 A. The cost? Yeah, same thing like 300. You know, 300.

12 Q. Three hundred?

13 A. Yeah.

14 Q. And, that's per visit?

15 A. Yes.

16 Q. \$300 not \$300,000.

17 A. No. No. \$300; yes.

18 Q. And now, Doctor, I want to talk, if you could help the  
19 jury understand something about his overall emotional  
20 well-being. Psychological well-being as he's dealing with this  
21 ongoing permanent pain complex.

22 What can you tell us about that based on your  
23 knowledge and evaluation of Mr. Dojce?

24 MR. GALLARDO: Objection, your Honor.

25 A. Oh, yes. Every --

Dr. Rauchwerger - Plaintiff - Direct

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THE COURT: Well?

MR. THOMAS: I'll rephrase the question.

MR. GALLARDO: It's outside the scope of --

(WHEREUPON, everyone is talking at the same time, and court reporter clarification is requested.)

MR. GALLARDO: It's outside the scope of the 3101D and outside his expertise. He's not a psychologist.

THE COURT: Well, the 3101D as well as his report. So, show him the report, counsel.

MR. THOMAS: Judge, I showed him all the reports. He's seen them all.

THE WITNESS: Can I just interject?

THE COURT: All right. Wait. Ssshhhh. All right.

MR. THOMAS: I'll rephrase the question.

Q. When it comes to treating a patient who has a pain complex, do you treat the whole patient?

A. Yes.

We, actually -- there's pain psychologists out there that we work with. And pain psychologists --

THE COURT: All right. He just asked you yes or no.

THE WITNESS: Yes.

THE COURT: Go ahead.

Q. And, is relates to Mr. Dojce, do you believe that his

Dr. Rauchwerger - Plaintiff - Direct

1 pain complex has caused some either psychological, emotional,  
2 or --

3 THE COURT: All right. So, counsel -- look, I  
4 don't have the reports in front of me. Show him where  
5 that's set forth in the report.

6 MR. THOMAS: I'll do it this way.

7 Judge, I would like to offer into evidence, I  
8 believe based on stipulation, Lutheran Medical Records.

9 MR. GALLARDO: Your Honor, if we may approach?  
10 This is a psychologist. He's not calling a psychologist.

11 THE COURT: All right. All right. Come up.  
12 Come up.

13 (WHEREUPON, there is a discussion held off the  
14 record at the bench among the Court and counsel.)

15 (Whereupon the following takes place on the  
16 record in open court in the hearing and presence of the  
17 jury.)

18 MR. THOMAS: Judge, I'll withdraw the question.

19 THE COURT: Is this gentleman going to be a  
20 witness?

21 MR. THOMAS: Yes, that's Dr. Vora.

22 THE COURT: All right. He has to step outside.

23 MR. THOMAS: Dr. Vora, if you could just wait  
24 outside. Thank you.

25 Q. Dr. Rauchwerger, what effect does pain have on

Dr. Rauchwerger - Plaintiff - Direct

1 anxiety?

2 A. It increases it.

3 Q. What effect does pain have on pressure?

4 A. It increases it.

5 Q. What effect does pain have on hopelessness?

6 A. It increases it.

7 Q. What effect does pain have on your self-image?

8 A. It increases it.

9 Q. Are you aware of these concepts as it relates to pain  
10 management in your practice?

11 A. Absolutely. This is what we are trained in.

12 Q. Could you tell us if Mr. Dojce has exhibited any kinds  
13 of anxiety: Depression --

14 MR. GALLARDO: Objection.

15 THE COURT: Okay. Let me be clear: If it's in  
16 the report, he could testify to it.

17 MR. GALLARDO: It's not.

18 Q. Doctor, are those concepts in your report?

19 A. Yes, they are --

20 MR. GALLARDO: Your Honor, they are not.

21 THE COURT: Okay. Show me. Show me.

22 MR. GALLARDO: You want me to show you something  
23 that's not there?

24 MR. THOMAS: Counsel, you've been wrong about a  
25 lot of things.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. Doctor, could you point out in your report where you  
2 dealt with those issues dealing with anxiety, and depression,  
3 and hopelessness, and concerns for the future?

4 A. Yeah.

5 I mean he tells me he can't sleep at night.

6 THE COURT: Okay.

7 Just show me the report, Doctor. That's the  
8 question.

9 THE WITNESS: Where it says that he has anxiety?

10 THE COURT: Yeah.

11 THE WITNESS: It's not going to say that.

12 MR. GALLARDO: Objection. I move to strike.

13 THE COURT: No. No. In the report where you  
14 discuss those things.

15 THE WITNESS: Oh, where I discuss that he's --  
16 well, the Amitriptyline is also an antidepressant.

17 THE COURT: All right.

18 THE WITNESS: But, so, you know --

19 THE COURT: Okay.

20 Just show me in the report where you discuss  
21 these things.

22 MR. GALLARDO: Your Honor, move to strike.

23 THE WITNESS: Well, I have a ton of notes to go  
24 through. I'll have to go through.

25 (Pause.)

Dr. Rauchwerger - Plaintiff - Direct

1 Q. Doctor, in the sections that deal with physical exam?

2 A. Yes.

3 Q. You talk about neurological, psychiatric?

4 A. Oh, yeah. Yeah. Yeah. I'm sorry. Okay.

5 Q. Okay.

6 What is the significance of you, as a pain management  
7 physician, having a section in your exam that deal with  
8 neurological psychiatric?

9 MR. GALLARDO: Your Honor, we actually found it.  
10 If we may approach?

11 MR. THOMAS: Oh, Judge if he found it then can  
12 the Doctor testify?

13 THE COURT: Look, is it in the --

14 MR. GALLARDO: It says "psychiatric --

15 THE COURT: I've been trying to get an answer to  
16 my question for the last 15 minutes.

17 Is it discussed in the report?

18 MR. GALLARDO: No, your Honor.

19 THE COURT: All right. Come on up.

20 (WHEREUPON, there is a discussion held off the  
21 record at the bench among the Court and counsel.)

22 (Whereupon the following takes place on the  
23 record in open court in the hearing and presence of the  
24 jury.)

25 MR. THOMAS: Your Honor, I wish to offer into

Dr. Rauchwerger - Plaintiff - Direct

1 evidence copies of the Lutheran Hospital record,  
2 specifically, the December 7th, 2016 admission --

3 MR. GALLARDO: December 7th?

4 MR. THOMAS: Yeah. And, we'll use your Bates  
5 stamp copies.

6 MR. GALLARDO: Yes.

7 MR. THOMAS: How's that?

8 THE COURT: All right. Any objection, counsel?

9 MR. GALLARDO: Your Honor, as long as all of the  
10 Lutheran Hospital records are coming in, I have no  
11 objection.

12 MR. THOMAS: Again, subject to redaction.

13 MR. GALLARDO: All the records are subject to  
14 redaction.

15 THE COURT: All right. So, that's your  
16 objection, subject to redaction, fair enough.

17 MR. THOMAS: Fine.

18 THE COURT: So, the Lutheran Hospital records  
19 will be received into evidence.

20 (WHEREUPON, the item previously received and  
21 marked for identification is received and marked in  
22 evidence as Plaintiff's Exhibit 19 in Evidence.)

23 MR. THOMAS: Very good.

24 Q. Doctor, you're aware that he went to Lutheran Hospital  
25 for treatment --

Dr. Rauchwerger - Plaintiff - Direct

1 A. Yeah.

2 Q. -- during the course after this accident and multiple  
3 times?

4 A. Yes.

5 Q. I want to show you -- and, this would be plaintiff's  
6 exhibit?

7 THE CLERK: Nineteen.

8 Q. -- 19 in evidence. And at the bottom of each page is  
9 a Bates stamp number. And I want you to turn at page 70.

10 (WHEREUPON, Plaintiff's Exhibit 19 in Evidence is  
11 shown in open court, with the jury present, on screen.)

12 MR. THOMAS: Dan, could you help me out here and  
13 zoom in on the dates?

14 Q. And he went to the hospital on December 7th, 2016.  
15 You've seen these notes; correct, Doctor?

16 A. Yes.

17 Q. And he gave a history of presenting with chest pain.  
18 History provided by the patient and a language interpreter was  
19 used on this particular visit. You saw that; right, Doctor?

20 A. Yeah.

21 MR. THOMAS: Scroll down.

22 Q. "37 year old with PMHX".

23 What does then mean?

24 A. Present Medical History.

25 Q. With present medical history of anxiety. "Herniated

Dr. Rauchwerger - Plaintiff - Direct

1 disc. SP."

2 What does that mean?

3 A. Status post.

4 Q. "Status post fall nine months ago. Today presented  
5 with CO"?

6 A. Complaint of.

7 Q. "Sore throat and chest pains times three days. As per  
8 patient he was lifting a heavy bed at home two weeks ago and  
9 didn't feel anything. But, then three days ago he started  
10 experiencing pain on the left side of chest. Aching.  
11 Exacerbate by movement and relieved by rest. Throat being sore  
12 especially on swallowing." AW?

13 A. I'm sorry. AW? As with.

14 Q. "As with chills at home"?

15 A. Yeah. Yeah.

16 Q. "Had initial dry cough that resolved by taking", OTC?

17 A. Over the counter.

18 Q. "Over the counter Cepacol."

19 Here we go.

20 "Came from Greece nine months ago and reports being  
21 under a lot of stress due to legal issues, especially with boss  
22 from work as he wanted to have work compensation".

23 MR. GALLARDO: Objection, your Honor.

24 This should be redacted. He's going far afield  
25 here.

Dr. Rauchwerger - Plaintiff - Direct

1 THE COURT: All right. It says "stress". All  
2 right.

3 MR. GALLARDO: Move to strike.

4 Q. "Reported thoughts of suicidal ideations. Given  
5 recent stress but doesn't have a plan in mind. Has been  
6 prescribed Ativan for insomnia which he takes regularly."

7 Suicidal ideation: Have you ever had to deal with  
8 that in your practice of pain management?

9 MR. GALLARDO: Objection, your Honor.

10 THE COURT: All right. You read the record.  
11 Next.

12 Q. What does that mean?

13 MR. GALLARDO: Objection.

14 THE COURT: All right. Counsel, the record is  
15 in.

16 Q. And then; "Past medical history." What does PT --  
17 A. Post Traumatic Stress Disorder.

18 Q. And in all of your knowledge and information in  
19 treating this patient do you know what caused his PTSD?

20 MR. GALLARDO: Objection, your Honor.

21 THE COURT: Sustained.

22 MR. GALLARDO: Objection, your Honor.

23 THE COURT: Sustained.

24 MR. GALLARDO: He's answering.

25 THE WITNESS: Okay. I won't answer.

Dr. Rauchwerger - Plaintiff - Direct

1 Q. And you treated him for his disc displacement --

2 A. Correct.

3 Q. -- on his lumbar spine?

4 A. Correct.

5 Q. Doctor, do you have an opinion, within a reasonable  
6 degree of medical certainty, whether Mr. Dojce will ever be back  
7 to the way he was before the injuries from this accident?

8 A. Never. I'm 100 percent that he'll never be back to  
9 where he was. There's no doubt in my behind.

10 Q. He will have pain and discomfort for the rest of his  
11 life?

12 A. Absolutely.

13 Q. Thank you. I have nothing further.

14 THE COURT: All right. Counsel, do you need a  
15 minute?

16 MR. GALLARDO: If I could have a minute, your  
17 Honor; yes.

18 THE COURT: All right. So, then we'll take  
19 another short break.

20 COURT OFFICER: All rise. Jury exiting.

21 (Jury exits at 12:01 PM.)

22 (recess taken.)

23 COURT OFFICER: Ready, your Honor?

24 THE COURT: Yes. Bring them in.

25 COURT OFFICER: All rise. Jury entering.

Dr. Rauchwerger - Plaintiff - Cross

1 (Jury enters at 12:12 PM.)

2 THE COURT: Okay. Have a seat. Thank you.

3 Whenever you're ready counsel, your witness.

4 MR. GALLARDO: May I inquire, your Honor?

5 THE COURT: You may.

6 CROSS-EXAMINATION

7 BY MR. GALLARDO:

8 Q. Good morning, Doctor.

9 A. Good morning.

10 Q. Sorry. Good afternoon.

11 A. Yes.

12 Q. Good afternoon, jury.

13 I am going to -- can you hear me now?

14 MR. THOMAS: I can hear you.

15 Q. Doctor, we've never met; have we?

16 A. No.

17 Q. So let me introduce myself. My name is Domingo,  
18 Domingo Gallardo. And I am an attorney for the defendants in  
19 this case.

20 Prior to this case you have met Mr. Thomas; is that  
21 correct?

22 A. Yes.

23 Q. As a matter of fact, you testified for him on a case  
24 just this year, the Sanchez case in Queens?

25 A. Yes.

Dr. Rauchwerger - Plaintiff - Cross

1 Q. Okay.

2 So, you testify quite often for patients?

3 A. No.

4 Q. How often do you testify?

5 A. I've testified maybe a handful of times, definitely  
6 under ten in my career.

7 Q. And one of those ten was for Mr. Thomas?

8 A. Yes.

9 Q. And, by the way, that case wasn't just for Mr. Thomas.  
10 That case was also for Lipsis, Shapey, the attorneys firm in  
11 this case; is that correct?

12 A. Okay.

13 Q. Is that a yes? You don't have to say "okay."

14 A. Yes. Yes. Yes. Yes. Yes.

15 Q. So, I want to talk about some key concepts. Would you  
16 agree that patient history matters?

17 A. Yes.

18 Q. Would you agree that having a discussion with a  
19 patient about how the accident happened matters; is that  
20 correct?

21 A. Yes. To some extent.

22 Q. "To some extent?"

23 Well, you would like to know if they dropped a hammer,  
24 or they fell down a set of stairs, or they fell backwards, or  
25 something like that?

Dr. Rauchwerger - Plaintiff - Cross

1 A. Yes. Yes. We would like to get the overview of what  
2 happened.

3 Q. Because all of those could have different dynamics;  
4 correct?

5 A. Okay.

6 Q. Because if you fell backwards, or you fell down a  
7 flight of steps you might hurt different parts?

8 A. Okay. Yes.

9 Q. And you rely on a patient to give you an accurate  
10 history of what happened; correct?

11 A. To give me the history. Accurate -- to give me an  
12 accurate -- I don't need an accurate. But, I need to get the  
13 major points.

14 Q. You don't need it to be accurate, sir?

15 A. I need it to be -- when you're saying "accurate" do I  
16 need the minuet details? I need the most important parts. The  
17 essentials.

18 Q. Okay.

19 And that's for treatment?

20 A. That for -- I need the essentials to come up. And  
21 then I do a history. A physical exam. And then I look at the  
22 imaging studies. And then I come up with the diagnosis. And I  
23 work through that diagnosis.

24 Q. And the history of how this happened is part of that;  
25 is that correct?

Dr. Rauchwerger - Plaintiff - Cross

1 A. Yes. Of course.

2 Q. So, do you know when this accident occurred?

3 A. April 21st, 2016, according to my notes.

4 Q. Okay.

5 And you saw him for the first time in 2017, about  
6 June 28th, 2017; is that correct?

7 A. That's correct?

8 Q. So, that's about a year and 14 months later; is that  
9 correct?

10 A. Okay. Yes. That's correct.

11 Q. And, during that time he went to the hospital a couple  
12 of times; is that correct?

13 A. Yep.

14 Q. And he had been seeing an orthopedic surgeon; is that  
15 correct?

16 A. And he's been seeing a neurologist; correct.

17 Q. He's been seeing a neurologist. And, he had seen a  
18 neurologist in that year a couple -- a number of times; right?

19 A. Okay. Yes.

20 Q. And he was in a great deal of pain; correct?

21 A. Correct.

22 Q. But, he didn't come to you, a pain management expert,  
23 for about 14 months; is that fair to say?

24 A. Yes.

25 Q. Okay.

Dr. Rauchwerger - Plaintiff - Cross

1 So, I have that entry from 2017, the 28th of June.

2 MR. GALLARDO: And counsel has been kind enough,  
3 for a fee, to let him use his Elmo?

4 MR. THOMAS: I'm not so sure anymore.

5 MR. GALLARDO: The fee will go up. I understand.

6 MR. THOMAS: No fee. Just be nice. It's upside  
7 down.

8 MR. GALLARDO: There's nothing there. So, it  
9 can't be upside down. It's off.

10 MR. THOMAS: Leave it to the technician. He'll  
11 center it for you.

12 MR. GALLARDO: Could you center that for me?

13 (WHEREUPON, a photo is shown in open court, with  
14 the jury present, on screen.)

15 Q. So, first in the yellow.

16 So, he came to you with an Albanian interpreter;  
17 right?

18 A. A ha.

19 Q. So, there's no question as to the fact that you went  
20 through the interpreter; is that correct? I mean, you didn't  
21 speak to him in English if he had an interpreter there.

22 A. He was able to -- he had an interpreter to help him.  
23 But, yes. I mean, he's able to express some of the things also.

24 Q. So, for the most part he was able to communicate with  
25 you, but the interpreter helped; is that a fair accuracy?

Dr. Rauchwerger - Plaintiff - Cross

1 A. That is fair.

2 Q. So, again, this is 6/28/2017. Okay.

3 So, it says: "Patient was cutting plywood with wrong  
4 saw which led to jerking of machine, deep laceration in right  
5 thigh." Okay?

6 "During the process, in an attempt to regain composure  
7 and stop bleeding patient lost consciousness leading to collapse  
8 on steps and falling to the ground."

9 A. Okay.

10 Q. Is that what he told you?

11 A. So, that's what I made of based on what we're saying  
12 and some of the keywords that I wanted to use to, you know, to  
13 formulate what's going on.

14 Q. Because -- and you saw the film.

15 Because in your mind's eye, the cause of this accident  
16 was: He cuts himself. He goes to some steps. And he passes  
17 out. And he causes this trauma to his back.

18 Is that correct?

19 A. I did not -- that's not what I have.

20 The jerking of the machine was the main thing. That  
21 the machine malfunctioned. And during the process he cut  
22 himself. And jerking, you know, the awkward movement and  
23 everything.

24 Q. So, it was the jerking of the machine that caused the  
25 trauma?

Dr. Rauchwerger - Plaintiff - Cross

1 A. The jerking -- well, sort of the kickback and  
2 everything, sure.

3 Q. So, it caused him to, like, hurt his back?

4 A. That can happen. Sure. Absolutely.

5 Q. Okay.

6 And, as far as this being caused by a fall, you didn't  
7 understand it to be caused by a fall. This was just added;  
8 right?

9 MR. THOMAS: Objection to what this is, your  
10 Honor.

11 Q. Let me break that question down.

12 THE COURT: All right. Rephrase the question.

13 MR. GALLARDO: I will rephrase, your Honor.

14 Q. So, as far as you understood, this accident happened  
15 because of the jerking of a machine and not a fall; correct?

16 A. Yeah.

17 Q. All right.

18 And you just through in the: "That during the process  
19 of regaining composure to stop bleeding, patient lost  
20 consciousness leading to a collapse on the steps and falling to  
21 the ground."

22 That wasn't necessary for your diagnosis?

23 A. No.

24 I mean, that's the whole thing of what happened from  
25 start to finish in his Albanian, you know, like the

Dr. Rauchwerger - Plaintiff - Cross

1 interpretation and the essentials of what happened.

2 But, you know, I formulate everything based on the  
3 history. You know, I have patients all the time, you know --

4 Q. Did he ever tell you that, when the machine jerked I  
5 fell?

6 A. He told me he jerked back like that; yeah. I mean,  
7 yeah, he lost his footing.

8 Q. He lost footing. Now he told you -- what did he tell  
9 you? Tell me exactly what he told you.

10 So, he lost footing and --

11 A. Hold on. Hold on. I'll tell you exactly.

12 "Patient suffered fall after loosing grip with wrong  
13 tool used for cutting. Which led to jerking machine and deep  
14 laceration to the right thigh."

15 So that's the main thing.

16 Q. So, tell me what happened. What he told you happened.

17 A. Well, I can't go through the body. I mean, I think  
18 Mr. Thomas showed the film to you, exactly what -- you know.

19 Q. Wait. Wait. That's important.

20 Mr. Thomas showed us a film --

21 A. I mean --

22 Q. Sir? Doctor?

23 Mr. Thomas showed us a film of him falling on the  
24 patient --

25 (WHEREUPON, both the witness and the attorney are

Dr. Rauchwerger - Plaintiff - Cross

1 talking at the same time and no record could be made.)

2 Q. -- stairs, set of stairs.

3 A. No. No. Let me correct. He did not.

4 We weren't over all of this. So, I'm going to tell  
5 you again. From my understanding of the history, he was using  
6 the machine. And, I specifically said: Wrong tool. Like, I'm  
7 not a construction guy. So, I can't go and say what type of --  
8 what specifically was wrong with the tool. I don't know.

9 Q. I'm not asking you, Doctor. If you --

10 A. Can I finish? Let me finish.

11 Q. I will let you finish. I'm just asking you to stick  
12 to my question.

13 A. I am. I'm explaining things. I'm a doctor. I  
14 explain. I don't just say. That's what doctors do. You don't  
15 want to go to a doctor --

16 THE COURT: All right. Doctor.

17 A. So, basically, you know, my understanding was that he  
18 used this machine that gripped and pushed him back. There was a  
19 malfunction. And in the process this whole thing, there were  
20 secondary events that occurred.

21 Q. Okay. Are you done?

22 A. Yeah, I'm done now.

23 Q. When he pushed him back, do you understand that he  
24 fell? Or did you understand that he didn't fall?

25 What do you understand? Yes or no. Fall or no fall?

Dr. Rauchwerger - Plaintiff - Cross

1 A. During the pushing back he sliced his leg.

2 Q. I know. And, the question is, Doctor, with all due  
3 respect. I just want to you answer this one question.

4 A. I don't believe that he fell to the ground as, you  
5 know, during that time period.

6 Q. Okay.

7 You believe he fell over here during the process of  
8 attempting to gain his composure and when he lost consciousness.  
9 That's what you believe.

10 (Indicating.)

11 A. Well, when you showed him falling down, that's how I  
12 interpreted it using his words.

13 Q. The jury will look at that many times, again.

14 Now, when you say he was falling down, you didn't see  
15 him laying down?

16 A. Well, those are the words that -- how we describe it  
17 when they explain it. How it's easy to, sort of, when you're  
18 putting an essential down, and before you get a full  
19 understanding, you're just taking down essential words before  
20 you could formulate exactly everything of how it happened.

21 Q. Okay.

22 So, you're basically explaining that?

23 A. I did.

24 Q. Okay. Thank you, Doctor.

25 Now, you testified -- Doctor, you're a pain management

Dr. Rauchwerger - Plaintiff - Cross

1 doctor; right?

2 A. Yes.

3 Q. Okay.

4 You're not a surgeon?

5 A. I have surgical training, but yeah. I mean, I'm not  
6 like a surgeon spine -- well, I mean, I do have surgical  
7 training. And I'm considered now, I guess, an MIS, Minimally  
8 Invasive Spine Surgical Specialist. But, I'm not on the surgeon  
9 level of the surgeons that operated on him; yeah.

10 Q. You're not an orthopedic surgeon?

11 A. I'm not an orthopedic spine surgeon; no.

12 Q. And, by the way, do you know who the surgeons are that  
13 operated on him?

14 A. Sure. Dr. Vora and Dr. Brisson. It's in my notes.

15 Q. Okay. Good.

16 A. It's in my notes.

17 Q. Now, Dr. Brisson he's an experienced surgeon; is that  
18 correct?

19 A. Yes.

20 Q. And would you differ to him when it comes to the spine  
21 and back with respect to surgical procedures?

22 A. Okay.

23 Q. Yes?

24 A. Well, if he feels that there's an indication to  
25 operate, and he's a surgeon; he's going to make that decision

Dr. Rauchwerger - Plaintiff - Cross

1 with the patient.

2 Q. What about with his decision or indication with  
3 respect to prognosis?

4 A. Prognosis?

5 Q. Yeah, a prognosis?

6 A. Well, he's not a pain doctor. So, he could comment  
7 on the functionality of the spine but not on, you know.

8 Q. I'm not asking about pain, Doctor. I'm asking about  
9 functionality of the spine?

10 A. I think we are both capable of doing it. Yeah,  
11 absolutely. I'm just as capable as he is. Yeah, I am  
12 absolutely.

13 Q. Okay.

14 Let me ask you this. Let's go one by one.

15 A. Sure.

16 Q. You testified earlier that you believe that -- and  
17 it's part of the economic issue you said -- that Mr. Dojce is  
18 going to need another spinal surgery?

19 A. Yes. For sure.

20 Q. A lumbar surgery?

21 A. Not a lumbar. A sacroiliac fusion. But, yes, you  
22 could put that as a lumbar. Yes.

23 Q. Yes.

24 A. It's not a lumbar. It's sacroiliac joint fusion.

25 But, yes, that encompasses the spine, if you want to say -- if

Dr. Rauchwerger - Plaintiff - Cross

1 you want to say globally.

2 Q. And, you testified that it's because of the loss of  
3 movement in the upper vertebra once the lower vertebra --

4 A. Yes.

5 Q. -- is fused; is that correct?

6 A. Yeah. Absolutely.

7 Q. Okay.

8 And, is it fair to say that that's because of the loss  
9 of, I believe doctor, the doctor yesterday said it was lordosis?

10 A. Yes. So, when you're talking about -- do you want me  
11 to --

12 Q. No. Doctor. Doctor, could you just tell the jury  
13 what the appropriate --

14 A. So, if you were to say --

15 Q. No, Doctor, let me ask the question. I'm sorry.  
16 We're driving the reporter, Mr. Frankel crazy.

17 My question is: This curvature, it's called lordosis?

18 A. Yes.

19 Q. How is that spelled?

20 A. Lordosis? L-O-R-D-O-S-I-S.

21 Q. Okay. It's for the record, Doctor.

22 A. Okay.

23 Q. So, lordosis: That's the natural curvature; right?

24 A. Okay.

25 Q. And, your position earlier was that he's going to need

Dr. Rauchwerger - Plaintiff - Cross

1 more surgical intervention because of the loss of lordosis; is  
2 that correct, or instability?

3 A. So, I don't think that's the -- it's not just the  
4 lordosis. It's a couple of -- what's really going on is: What  
5 happens is the spine, all the pressure that he gets over there  
6 it goes up and down. There's extra stress. The spine has to  
7 move; okay? It's true. But, lordosis is a curvature.

8 Q. Is it because of the lordosis or not? Or is it  
9 lordosis and something else?

10 A. It's mainly because that you're taking away movement,  
11 the movement that's there. And there's extra stress above and  
12 below the joints; yes.

13 So, that's one of the reasons you loss your lordosis.  
14 But, that's not the only -- that's not the typical -- that's not  
15 the only reason.

16 There are people who lose their lordosis and still  
17 function.

18 Q. I'm not asking the question of the reason he lost his  
19 lordosis.

20 I'm asking you whether or not the loss of lordosis is  
21 one of the reasons, or the reasons that you're saying that he is  
22 going to need additional surgery?

23 That's my question, sir.

24 A. I'm not -- no. I don't think only the lordosis -- if  
25 he's losing lordosis I think his function will be altered. But,

Dr. Rauchwerger - Plaintiff - Cross

1 I don't think that's the only reason why he would need surgery.

2 Q. Would you be surprised to hear that Dr. Brisson  
3 yesterday testified that in modern surgery they took into  
4 account the loss of lordosis. So, he'd have a much more stable  
5 spine?

6 MR. THOMAS: Objection.

7 There was no testimony as to that.

8 THE COURT: All right.

9 Q. I'm sorry. Wait. Wait. Let me correct the record.  
10 Counsel is right.

11 So, the testimony was not yesterday; which yesterday  
12 was the second. It was on the 1st?

13 A. Okay.

14 Q. Okay?

15 A. But, it doesn't matter.

16 Q. Doesn't matter?

17 A. I mean, you're asking me a surgeon --

18 Q. Sir, not asking you --

19 MR. THOMAS: Your Honor, he can't keep  
20 interrupting him.

21 THE WITNESS: Can I explain?

22 THE COURT: Look. He's not looking for  
23 explanations. He's looking for short simple answers.

24 THE WITNESS: Okay. Sure.

25 Q. So, let's look. The fusion was at L5 --

Dr. Rauchwerger - Plaintiff - Cross

1 A. S1.

2 Q. S1; which, is the last disc; right?

3 A. Correct.

4 Q. So, you would agree that there would be no need for  
5 fusion below that?

6 A. No. You do need fusion below that.

7 Q. Oh, okay.

8 A. You will need fusion. I said that in my --

9 Q. Okay. Okay. Okay. No.

10 So, you are saying that there will be need for fusion  
11 below the last disc?

12 A. I said 50 percent. You're asking me what I said. I  
13 said, the studies clearly show that 50 percent of the people,  
14 after having a lumbar fusion, will develop sacroiliitis and will  
15 need a fusion. I definitely said that.

16 Q. Okay.

17 A. I always said that.

18 Q. I'm not questioning what you said.

19 With respect to the disc above that?

20 A. A ha.

21 Q. Your testimony is that that may need a fusion?

22 A. Yes.

23 Q. And, that would be L4-L5?

24 A. Yes.

25 Q. And, you're giving quite a bit of certainty too that;

Dr. Rauchwerger - Plaintiff - Cross

1 is that correct?

2 A. To be honest with you, I would differ that to  
3 Dr. Brisson on his experience on that. Because that's pretty  
4 much, he's going to see that right away if there's, like, a disc  
5 problem and he needs surgery.

6 Let me finish.

7 If he's going to need surgery, he's going to tell you  
8 from a surgical perspective.

9 Now, as a pain management doctor --

10 Q. I'm not asking you. Let me --

11 MR. THOMAS: Judge, he's in the middle of an  
12 answer.

13 THE COURT: All right. Okay.

14 Look, let's get the ground rules. He's going to  
15 ask you simple questions.

16 THE WITNESS: A-ha.

17 THE COURT: Please, try to answer them as simply  
18 as you can.

19 THE WITNESS: Okay.

20 THE COURT: If it calls for a yes or no. Stop  
21 with the yes or no.

22 THE WITNESS: Okay.

23 THE COURT: He's not asking you for long  
24 explanations.

25 THE WITNESS: Okay.

Dr. Rauchwerger - Plaintiff - Cross

1 THE COURT: He's not doing that. If he is, he'll  
2 make that clear. All right?

3 THE WITNESS: Okay. Thank you.

4 THE COURT: So, try not to give long explanations  
5 when you answer his questions.

6 THE WITNESS: Sure.

7 Q. So, we have Dr. Brisson's testimony from yesterday.

8 A. Okay.

9 MR. THOMAS: Judge, I don't know why he's putting  
10 a copy of the transcript on the screen.

11 MR. GALLARDO: So I could ask him a question  
12 based on what Dr. Brisson said without any uncertainty. I  
13 could read it to him.

14 MR. THOMAS: So, why don't you read it to him?

15 THE COURT: Look, he could look at the testimony.

16 MR. THOMAS: Could you identify what it is?

17 MR. GALLARDO: It's Dr. Brisson's testimony from  
18 the 1st. And it starts at page 631 of the record; okay?

19 And, if you could just leave it there. Thank  
20 you.

21 Q. It's: "Question: Could you tell us given the  
22 plaintiff's age and what could be expected to happen on his  
23 levels, either above or below the area that was fused?

24 "Answer: Well, below is easy. it's resolved.

25 It's the sacrum. Nothing is going to happen to the

Dr. Rauchwerger - Plaintiff - Cross

1           sacrum."

2           Do you see that question and that answer?

3           A.    Yes.

4           Q.    I have one question:  Was Dr. Brisson wrong?

5                   MR. THOMAS:  Objection.

6                   THE COURT:  In your opinion.  You could answer  
7           that question.

8           A.    I think he's wrong.  There would be something.

9           Q.    Okay.

10          A.    Yeah.

11          Q.    And, then:  "As far as other levels, namely L4-L5,  
12           statistically, there's no way to prove, statistically, there's  
13           an increased risk."

14                    "So, statistically, there's no way to prove  
15           statistically that there's an increased risk.  It's not  
16           terrible, but it exists having what we call a junctional disc  
17           breakdown and needing additional surgery."

18          A.    Okay.

19          Q.    Do you see that statement?

20          A.    Yeah.  Sure.

21          Q.    So, Dr. Brisson said:  "At L4-L5, or just above it  
22           there is an increase, but it's statistically not an incredible  
23           risk."

24                    Would you agree with that?

25          A.    Okay.

Dr. Rauchwerger - Plaintiff - Cross

1 Q. Yet, you are telling these ladies and gentlemen of the  
2 jury, I want to be clear -- you're telling them that he's going  
3 to need additional back surgery; yes or no?

4 A. Yes.

5 Q. Okay. Thank you. I'll take that back.

6 (Pause.)

7 Q. Now, are you familiar -- hold on a second. I'm going  
8 to need my medical cheat sheets.

9 Are you familiar with a term called osteophytes?

10 A. Yes.

11 Q. And, they are bone spurs, as well? They're called  
12 bone spurs?

13 A. Okay. Yes.

14 Q. And, are you familiar with a term called disc  
15 desiccation?

16 A. Yes.

17 Q. And, degenerative disc disease.

18 A. Yes?

19 Q. And spondylosis.

20 A. Yes.

21 Q. And, would you agree that the term spondylosis refers  
22 to a degenerative condition of the spine?

23 A. We use it more in older people. But, I would, you  
24 know, if I have it in a younger person -- I mean, I never seen  
25 it in a younger person.

Dr. Rauchwerger - Plaintiff - Cross

1 Q. Sir, I didn't ask you the age. I'm just trying to get  
2 simple concepts down.

3 A. Sure.

4 Q. Spondylolysis is a degenerative condition; alright?

5 A. Okay.

6 Q. Yes?

7 A. Not necessarily, but go.

8 Q. Okay. Okay. I'll accept that as an answer, at this  
9 point.

10 With respect to spondylosis, you said that it occurs  
11 in older people; correct?

12 A. Spondylosis?

13 Q. Yes, spondylosis.

14 A. I said arthritis. I didn't say spondylosis.

15 Q. Okay. I'm asking you -- I'm sorry.

16 Does spondylosis occur in older people?

17 A. Yes.

18 Q. Or would it occur in someone who is 38 years old;  
19 which, was Mr. Dojce's age at the time of the accident?

20 A. I mean, it could have been part of the whole trauma  
21 situation if it did. But, I don't recall having seen that.  
22 But, it can.

23 I mean if something happens it happens. It would be  
24 documented. I mean, you know.

25 Q. You would agree that spondylosis is degenerative?

Dr. Rauchwerger - Plaintiff - Cross

1 A. No. No. Because it's like trauma that occurs. So,  
2 it can develop out of the trauma.

3 Q. What is exactly -- is what is exactly --

4 MR. GALLARDO: I'll withdraw that. We'll get to  
5 that.

6 A. Okay.

7 Q. And, spondylosis causes -- when you get spondylosis  
8 you also occur over time you get what's called osteophytes; is  
9 that correct?

10 A. Okay.

11 Q. And, osteophytes are, kind of, bone spurs; right?

12 A. Yeah, okay.

13 Q. And spondylosis is the dessication of the disc, the  
14 drying?

15 A. Spondylosis is not dessication of the disc.

16 Q. Okay.

17 It's the flattening out of the disc?

18 A. No. That's not what spondylosis is.

19 Q. But you get osteophytes. Can you get disc herniations  
20 from spondylosis?

21 A. No, it's two different things.

22 Spondylosis refers to --

23 THE COURT: Okay.

24 THE WITNESS: All right. You don't want me to  
25 explain. I'm sorry. I'm sorry.

Dr. Rauchwerger - Plaintiff - Cross

1 A. No, you're using the wrong terms.

2 Q. Would you agree, sir, that with respect to Mr. Dojce  
3 at the age of 38, when this accident happened, he was within the  
4 window to have developed spondylosis and osteophytes?

5 A. No.

6 Q. In other words, it's not just for older people?

7 A. I don't know. Could you clarify your question?

8 Q. Okay.

9 Why don't I tell you -- why don't we look at  
10 Dr. Brisson's testimony from yesterday.

11 MR. GALLARDO: I'm looking at page 150 of the  
12 testimony of Dr. Brisson. It's over two pages. So, I'm  
13 going to give you 150 and 151.

14 MR. THOMAS: 650.

15 MR. GALLARDO: I'm sorry. 650, line 25:

16 "Now, Mr. Dojce was born [REDACTED]. So,  
17 by" --

18 And then page 651:

19 "So by my calculation of the time of the accident  
20 he was 38. So, would you agree it was within the window  
21 where you might get spondylosis?"

22 That's degenerative disease.

23 "Where you might get osteophytes?"

24 And, the answer was: "That's what I said to the  
25 jurors right now. The answer is: Yes."

Dr. Rauchwerger - Plaintiff - Cross

1 So, would you agree with Dr. Brisson?

2 A. I mean, listen, you're asking -- that's the patient if  
3 he's seeing unusual -- if he's seeing, like, that's his  
4 catch-man of patients of where he is, and he sees that, he could  
5 then say.

6 But, you know, I see people, you know, much further  
7 out than him. I see people much younger than him. I see people  
8 who --

9 Q. Much further out than him?

10 A. Yeah. So, my experience is --

11 Q. What do you mean by "much further". Later on from the  
12 accident?

13 A. No. No. No. No.

14 I mean, I'm seeing patients -- so, he asked me about  
15 the fusion.

16 Q. No, sir, sir, sir. No. No.

17 (WHEREUPON, both the witness and the attorney are  
18 talking at the same time, and no stenographic record  
19 could be made.)

20 THE COURT: You are talking over each other. One  
21 at a time. All right. There's no question.

22 Q. I'm going to ask you the question again, sir: Did you  
23 agree with Dr. Brisson; yes or no? That's simple.

24 A. Could you.

25 Q. Did you agree with the statement that I just put up

Dr. Rauchwerger - Plaintiff - Cross

1 that --

2 A. That spondylosis occurs in a 38 year old?

3 Q. Yes. Spondylosis and osteophytes; yes or no?

4 A. I'm going to say the majority -- you're taking like  
5 the majority: No. I'm going to say over 90 percent: No.

6 We're talking about esoteric cases. You're talking  
7 about, like, these esoteric things that come: No. I mean, in  
8 general: No.

9 And even if he had it, you don't treat --

10 MR. GALLARDO: Judge, I don't have a question  
11 pending.

12 THE COURT: All right. Fair enough.

13 Next question.

14 (Pause.)

15 THE WITNESS: Can I say something? No? All  
16 right.

17 (Pause.)

18 Q. Doctor, you've spoken about a series of issues  
19 regarding future treatment of Mr. Dojce; is that correct?

20 A. Correct.

21 Q. You gave us some numbers.

22 For instance, you spoke about physical therapy?

23 A. A ha.

24 Q. Correct?

25 And, you said that he was going to need it three times

Dr. Rauchwerger - Plaintiff - Cross

1 a week; is that correct?

2 A. Yes.

3 Q. Going forward.

4 Would you agree that past history is the best  
5 indicator of what's going to happen in the future?

6 MR. THOMAS: Objection.

7 Q. Yes or no?

8 THE COURT: You could answer the question.

9 A. No.

10 It depends on if it was done right, or, you know. But  
11 go ahead. No, I don't want to say past history. No.

12 Q. It's not the best indicator?

13 A. Not always. It depends on the situation.

14 Q. Okay.

15 A. So, ask me the question.

16 Q. Let me ask you this, yeah, Doctor?

17 A. Yeah.

18 Q. You're saying that he's going to need, in the future,  
19 at \$125 a session, three sessions going forward. That's about  
20 156 sessions a year; is that fair?

21 A. Okay. Yes.

22 Q. Okay.

23 Do you know how many sessions of physical therapy he  
24 had in 2016?

25 A. How many was he allowed to have?

Dr. Rauchwerger - Plaintiff - Cross

1 Q. Doctor, do you know how many he had? Doctor, if you  
2 want -- he certainly could have had all he wanted?

3 A. I could --

4 THE COURT: Doctor? Doctor?

5 Don't ask him a question. You answer his  
6 questions.

7 THE WITNESS: But, he doesn't let me explain it.

8 Q. Doctor, we could be here all day.

9 (WHEREUPON, both the witness and the attorney are  
10 talking at the same time, and no stenographic record  
11 could be made.)

12 THE COURT: All right.

13 Look: There's a very simple question. Do you  
14 know how many times he went to physical therapy in 2016?

15 Very simple question.

16 A. I don't know the answer.

17 Q. Does zero might ring a bell?

18 A. If it's possible. If he wasn't allowed to.

19 Q. Okay. You know what doctor? Fair is fair.

20 MR. GALLARDO: Do we have the physical therapy?

21 Q. We have the physical records in evidence. So, with  
22 the Court's permission, I'll give them to you.

23 A. Sure, no problem.

24 MR. GALLARDO: May we approach the witness?

25 (Pause.)

Dr. Rauchwerger - Plaintiff - Cross

1 Q. These are the physical therapy records subpoenaed?

2 THE COURT: Are they in evidence?

3 MR. THOMAS: Not yet. He hasn't offered them.

4 MR. GALLARDO: I offer them into evidence, your  
5 Honor.

6 MR. THOMAS: No objection.

7 MS. LEVIN: That would be Defendant's B.

8 THE COURT: All right.

9 So, Defendant's B will be received into evidence  
10 without objection.

11 (WHEREUPON, the item previously received and  
12 marked for identification is received and marked in  
13 evidence as Defendant's Exhibit B in Evidence.)

14 MR. THOMAS: And, could you just say the name of  
15 the facility?

16 MS. LEVIN: 1 on 1 Physical Therapy.

17 Q. Doctor, I submit to you that he received no physical  
18 therapy in 2016. Would you like to check?

19 (WHEREUPON, papers are handed to the witness.)

20 A. No.

21 Q. Would you agree with that then?

22 A. If you say so.

23 Q. I don't have to say so. I put them in front of you.

24 A. Okay. So, I believe you.

25 Q. Okay. And, then in 2017 -- because Ms. Levin was kind

Dr. Rauchwerger - Plaintiff - Cross

1 enough to look at those reports -- do you know how much physical  
2 therapy he had?

3 A. I guess: None.

4 Q. No, you're wrong. He had six.

5 A. Okay.

6 Q. Okay?

7 And, when you first saw him in June of what, 2018  
8 (SIC)?

9 A. A ha.

10 Q. June 28; right?

11 A. Yep.

12 Q. So, you saw him halfway in the year.

13 A. Okay.

14 Q. Did you tell him, at that time, that he would benefit  
15 from physical therapy.

16 A. I wrote that. Physical therapy.

17 Q. Okay.

18 So, you saw him halfway in the year; right?

19 A. Okay.

20 Q. So, by my calculations -- I am horrible at math -- but  
21 156 divided by half is what; close to 80 but not quite, about  
22 76?

23 A. Okay.

24 Q. So, you would have expected him to have, like, 70 at  
25 least appointments of these at three times a week; right?

Dr. Rauchwerger - Plaintiff - Cross

1 A. Yes or no? I mean, ideally, yes.

2 Q. Okay.

3 Do you know how many times he went to physical therapy  
4 that year?

5 A. How many?

6 Q. Thirty-two.

7 Would you like to count?

8 A. No.

9 Q. Okay.

10 Now, with respect -- and you treated him, you  
11 continued to treat him, you saw him a numerous times; is that  
12 correct?

13 A. Yes.

14 Q. And he was seeing other doctors. He was seeing  
15 orthopedists; is that fair to say?

16 A. Yes.

17 Q. Okay.

18 And he was seeing a neurologist; correct?

19 A. Yes.

20 Q. Are you aware of that?

21 A. Yes.

22 Q. So, he was seeing a ton of doctors; okay, and during  
23 this period.

24 But, he only went to physical therapy 32 times that  
25 year. And, you believe that going forward this jury should

Dr. Rauchwerger - Plaintiff - Cross

1 award him 156 times a year and that's what they should  
2 calculate. Is that what you want? What you believe?

3 A. Yes.

4 Q. Okay.

5 Now, with respect to 2019: You continued to treat him  
6 in 2019; is that correct?

7 A. Correct.

8 Q. And did you tell him that he would benefit from  
9 physical therapy?

10 A. Of course.

11 Q. Okay.

12 And, he saw many other doctors; is that correct?

13 A. Okay. Yes. Of course.

14 Q. Of course. He saw orthopedics?

15 A. Yes. Yes. Yes, he did.

16 Q. He saw a neurologist?

17 A. Yes.

18 Q. We are going to have a ton?

19 A. Yeah, yeah, yeah, he did. Go on.

20 Q. Okay.

21 And do you know how many times of the 156 visits that  
22 you say this gentleman needs, do you know how many times he went  
23 to a physical therapy that year?

24 A. Probably none; maybe.

25 Q. No.

Dr. Rauchwerger - Plaintiff - Cross

1 A. How many?

2 Q. The most, this was the most.

3 A. I have to look at my notes.

4 Q. It's right there. It's right there.

5 A. Okay.

6 But, please tell me where and then I could answer your  
7 question. But, I'm not understanding what you're asking.

8 Q. I'm telling you that you have physical therapy records  
9 right in front of you. That Ms. Levin took the time to count  
10 through them.

11 A. Right.

12 Q. But, I don't want you to believe that they are  
13 accurate. If you need the time, take the time to count through  
14 the physical therapy.

15 And, I am telling you that our records, those records  
16 show that he had physical therapy in 2013 -- 2019, not 156  
17 times. But 35 times?

18 A. Can I answer?

19 Q. Would that be accurate?

20 A. You looked at it. But, I can answer your question.  
21 If I can explain very quickly.

22 Q. I'm not asking you --

23 THE COURT: All right. He doesn't want an  
24 explanation.

25 THE WITNESS: I know he doesn't want me to

Dr. Rauchwerger - Plaintiff - Cross

1 explain. That's the problem.

2 THE COURT: All right, doctor. Please. Please.

3 A. You're asking me --

4 Q. Doctor.

5 THE COURT: All right.

6 THE WITNESS: Sorry. Sorry.

7 Q. Doctor, 2019: 35 visits; is that correct?

8 A. If you say so.

9 Q. You have the records.

10 A. I'm not going to look at the records.

11 Q. Okay.

12 A. Because we're -- I'm not going to look at the records.

13 Just tell me what you know, and then I can answer your  
14 questions.

15 Q. Okay. 2020, all right?

16 A. Okay.

17 Q. He went to -- he had 18 physical therapy visits?

18 A. Okay.

19 Q. 2021.

20 A. Okay.

21 Q. He had ten physical therapy visits.

22 A. Okay.

23 Q. 2022: He saw you in 2022; right?

24 A. Yeah. Yeah.

25 Q. Again, he saw lots of doctors during this period;

Dr. Rauchwerger - Plaintiff - Cross

1 right?

2 A. Okay.

3 Q. Yes or no?

4 A. Yes. Yes.

5 Q. Okay.

6 Do you know that he had no physical therapy visits  
7 that year?

8 A. Possible.

9 Q. Okay.

10 2023: It is now November, and he's seen you, I think,  
11 four times since then; right?

12 A. Yes.

13 Q. Have you told him in those four times, you know,  
14 physical therapy is important?

15 A. Hold on. Let's get the note.

16 THE COURT: All right. Think of a place to stop.

17 MR. GALLARDO: This is as good a place as any  
18 your Honor.

19 THE COURT: All right. Let him answer the  
20 question.

21 A. Yep.

22 "Retrial physical therapy when pain optimally  
23 controlled."

24 I say it all the time.

25 Q. You said to go to physical therapy?

Dr. Rauchwerger - Plaintiff - Cross

1 A. Absolutely.

2 Q. And would it surprise you that he has no physical  
3 therapy entries for 2023? He has not gone to physical therapy?

4 A. That does not surprise me.

5 MR. GALLARDO: Okay. I could end there for the  
6 afternoon.

7 THE COURT: Okay.

8 Ladies and gentlemen, we will stop you here for  
9 lunch. 2:10 I will see you. All right?

10 COURT OFFICER: All rise. Jury exiting.

11 (Jury exits at 12:48 PM.)

12 THE COURT: While you are being cross-examined  
13 you can't have any discussion.

14 THE WITNESS: Oh, no. I was just asking him  
15 about something.

16 (Lunch recess.)

17 \* \* \* \* \* A F T E R N O O N S E S S I O N \* \* \* \* \*

18 (Witness retakes the stand at 2:12 PM.)

19 (Awaiting the jury.)

20 THE COURT: All right.

21 You could bring them in.

22 COURT OFFICER: All rise. Jury entering.

23 (Jury enters at 2:17 PM.)

24 THE COURT: Good afternoon, everyone. Please  
25 have a seat. Everybody have a seat.

Dr. Rauchwerger - Plaintiff - Cross

1 All right. Counsel, you may continue your cross.

2 MR. GALLARDO: If I may inquire?

3 Thank you, your Honor. Thank you, ladies and  
4 gentlemen of the jury. Thank you, court staff. Counsel.

5 Q. Doctor, I'm going to -- this is cross. So, I'm going  
6 to ask you a series of questions. And, I will ask if you can  
7 answer them yes or no, please answer them yes or no. If you  
8 can't answer them yes or no, let me know. And, I'll either  
9 rephrase it, or move on?

10 A. Okay.

11 Q. Okay?

12 Doctor, we were talking before the break about the  
13 physical therapy that the plaintiff has undergone. And, I gave  
14 you the records for 1 on 1 Physical Therapy.

15 I think you still have them; is that correct?

16 A. Correct.

17 Q. Are you familiar with 1 on 1. Have you ever heard of  
18 it before?

19 A. I've heard of them, but not, you know.

20 Q. Okay.

21 Have you heard of a company called Back to Health --

22 A. No.

23 Q. -- physical Therapy?

24 Well, I want you to assume -- remember we talked about  
25 2016? And I said to you that the plaintiff had zero physical

Dr. Rauchwerger - Plaintiff - Cross

1 therapy.

2 I want you to assume that he, actually, went to  
3 another company which was Back to Health. And, he had six. Are  
4 you familiar with that? Does that number --

5 A. No.

6 Q. And Back to Health I counted six. Do you have any  
7 reason to dispute that?

8 A. No.

9 Q. Okay.

10 And, if the plaintiff had been prescribed 12 weeks of  
11 physical therapy, and at three times a day -- three sessions a  
12 week for 12 weeks, he had been prescribed that in 2016; is that  
13 something that you would find aberrational or normal given the  
14 circumstance? Prescribing 12 weeks of physical therapy, three  
15 sessions each week?

16 A. Each week, so three sessions -- I just want to  
17 clarify. Three sessions for four weeks?

18 Q. Yeah. I think it said 12 weeks?

19 A. And, when was this done?

20 Q. This is in 2016, after the accident.

21 A. I think, you know, he should keep on having it, you  
22 know, depending on his situation.

23 Q. But, the fact he only went six after that  
24 prescription; that would not be in keeping, certainly, with what  
25 you are telling the ladies and gentlemen of the jury he needs;

Dr. Rauchwerger - Plaintiff - Cross

1 is that correct?

2 If he only went six times in all of 2016; that's not  
3 in keeping with what you testified with?

4 A. Correct.

5 Q. Thank you.

6 Now, with respect to your treatment: I want to talk  
7 about the injections. So, he comes to your office in 2017?

8 A. Yes. 6/28/2017.

9 Q. Okay.

10 So, you did a steroid lumbar injection on  
11 October 25th, 2017?

12 A. Okay.

13 I got to take a look. Yeah.

14 Q. And, you did one on December 6th, 2017; is that  
15 correct?

16 A. Hold on. October 25th, 2017 and December 6th, 2017.  
17 Yes.

18 Q. Okay.

19 And, your position with respect -- and this would be  
20 interventional treatment. The interventional --

21 A. Correct.

22 Q. -- treatment part that you spoke about?

23 A. Correct.

24 Q. And you said that was going to cost between 20 and  
25 \$25,000 a year going forward; is that correct?

Dr. Rauchwerger - Plaintiff - Cross

1 A. Correct.

2 Q. But, in 2016 you just did those two injections; is  
3 that correct?

4 A. Correct.

5 Q. And is it fair to say that the cost of each -- you  
6 charged for those injections about \$900 an injection; is that  
7 correct?

8 A. I didn't charge anything.

9 Q. Well, your office charged.

10 A. No, my office didn't charge.

11 Q. Your office doesn't charge money?

12 A. No.

13 Q. How do you collect money?

14 A. Because that's what the insurance paid. We don't  
15 divvy it up.

16 Q. Well, actually, the insurance paid \$336.69.

17 A. So, I don't -- my employer charges and decides what  
18 they set.

19 Q. So, your employer decides what the costs are going to  
20 be?

21 A. No.

22 I don't know what they -- why they put that. It may  
23 be their rates or their agreements. That's how these things  
24 work.

25 Q. Here's the reason I'm asking, Doctor.

Dr. Rauchwerger - Plaintiff - Cross

1 A. Sure.

2 Q. You came in here and did you not tell the ladies and  
3 gentlemen of the jury that you know what things cost?

4 A. Yes.

5 Q. You do; right?

6 A. A ha.

7 Q. Well, I'm just asking you a simple question: What you  
8 charge for things. Do you know --

9 A. Well --

10 Q. Let me ask the question.

11 Do you know what you charge for things?

12 A. I do.

13 Could I answer your question?

14 Q. You just did, sir.

15 A. No. You said 2017.

16 Q. Yes.

17 A. We're in 2023 now.

18 Q. Okay.

19 A. So, costs go up.

20 Q. But, I don't have a question on that, sir.

21 A. Okay. You said --

22 Q. You can talk about it. But, that's not my question.

23 My question was -- and clearly it was in 2017.

24 A. A ha.

25 Q. My question is: Is it fair to say that your office

Dr. Rauchwerger - Plaintiff - Cross

1 charged \$900 an injection, and you got paid \$336.69?

2 A. If that's what you say they charged, that's what they  
3 charged. I don't have any access to that, at that time. So, I  
4 can't comment.

5 Q. But, you're projecting going forward a charge of 20 to  
6 \$25,000 a year for these type of services?

7 A. Correct. Correct.

8 Q. Okay.

9 Next, moving on to 2018. You did bilateral lumbar  
10 facet joints injections; is that correct?

11 A. Correct.

12 Q. And you also did never block injections?

13 A. Median nerve blocks.

14 Q. What's that?

15 A. It says that I did lumbar facet intraarticular joint  
16 injections and neo-branch injections --

17 Q. Correct.

18 (Court reporter clarification requested.)

19 A. Lumbar facet intraarticular facet joint injections.  
20 And, lumbar facet intraarticular joint injections. And lumbar  
21 medial branch blocks.

22 Q. And, the medial nerve block injection, that's the  
23 epidural?

24 A. No. That's the facets.

25 Q. That's the facets?

Dr. Rauchwerger - Plaintiff - Cross

1 A. Yes.

2 Q. The lumbar steroid injection, that's the epidural?

3 A. Lumbar -- well they both have steroids in it.

4 Q. No. But the one --

5 A. Yeah. I showed you both of them have steroids in it.

6 Q. Sir, let me finish my question and it will be a lot  
7 faster.

8 There is one that you gave with through help of film  
9 and that's commonly called the epidural. Woman get it when  
10 they're pregnant; right?

11 A. Can I explain it?

12 Q. No, I just want to know which one is which?

13 A. But, I can't answer your question because you're  
14 mixing things up.

15 Q. Well, here's the thing. I don't want to mix things  
16 up. So, that's why I'm asking you this; and, it's a yes or no  
17 question.

18 The lumbar steroid injection: Is that what you would  
19 refer to -- is that an epidural? Yes or no?

20 A. Could you rephrase the question, again?

21 Q. Okay.

22 Would a lumbar steroid injection be commonly known as  
23 an epidural?

24 A. I mean, if you want to say that to move things along;  
25 I'll say that.

Dr. Rauchwerger - Plaintiff - Cross

1 But, a lumbar steroid injection could be anything.  
2 You're saying lumbar steroid injection in the lumbar.

3 Q. Let me ask you this.

4 A. Yeah, I mean --

5 Q. Let me phrase it this way. I'm just trying to figure  
6 out which is which. You gave --

7 A. So, I could explain it to you and then you could ask  
8 your question.

9 Q. No. No. Let me ask the question.

10 A. Okay.

11 Q. You gave lumbar -- and I'll move on. If we can't come  
12 to an understanding, I'll just move on.

13 You gave lumbar steroid injections; right?

14 A. Lumbar epidural steroid injections.

15 Q. Oh, it's a lumbar epidural steroid injection?

16 A. Yeah.

17 And, then there's lumbar facet --

18 Q. Wait. Wait. Wait. Lumbar epidural steroid  
19 injection.

20 A. Okay.

21 Q. And, then also you gave facet joint injections?

22 A. Lumbar facet joint injections; which, is also  
23 steroids.

24 Q. Okay.

25 But, you don't put epidural on that one. That one

Dr. Rauchwerger - Plaintiff - Cross

1 doesn't have the word "epidural" on it. Could we agree on that?

2 A. Correct.

3 Q. Okay.

4 Could we agree that the epidural is the more serious  
5 of all the injections that you've given?

6 A. No.

7 They're both used in the operating room. And they're  
8 both used with fluoroscopy.

9 Q. Okay.

10 A. There are both at the spine. Actually, the facets --  
11 okay. You don't want me to explain it. Sorry.

12 Q. You've done this before. He's going to get up and  
13 redirect you.

14 A. Okay. Go ahead. Yes.

15 Q. And you could explain to your heart's content? Okay?

16 A. I want to explain it to you. So you know.

17 Q. We could have a cup of coffee some day and you could  
18 explain it all to me. But, today -- since we are in front of  
19 these good ladies and gentlemen -- I will follow protocol and  
20 cross-examine you; okay?

21 MR. THOMAS: Your Honor, next question?

22 Q. So, the medial nerve block injections.

23 A. Yes.

24 Q. Does that have the word "epidural" in it?

25 A. No.

Dr. Rauchwerger - Plaintiff - Cross

1 Q. Okay.

2 The lumbar steroid injection we already said it's a  
3 lumbar epidural steroid injection; correct?

4 A. Correct.

5 Q. And then there's another thing called a trigger point  
6 injection?

7 A. Correct.

8 Q. Okay.

9 So, now that I know all of these; the 2017 you gave  
10 lumbar epidural injections; correct?

11 A. Lumbar epidural steroid injections.

12 Q. Got. Got it.

13 A. Say it correctly.

14 Q. And then in 2018 you gave --

15 A. Lumbar facet --

16 Q. No. No. Let me finish, sir. That's not the one I'm  
17 asking.

18 I'm asking about February 14th, 2018 you gave a  
19 bilateral lumbar facet joint injection; is that correct?

20 A. In 2014 a lumbar facet --

21 Q. 2018.

22 A. Yes, I'm reading it.

23 "Lumbar facet intraarticular joint injections."

24 2018 a lumbar medial branch -- it's lumbar facet  
25 medial branch nerve block. But in July 25th, 2018 -- that's

Dr. Rauchwerger - Plaintiff - Cross

1 what I was trying to explain to you in the anatomy.

2 Q. Is it fair to say that you gave in 2018.

3 And do you recall that he had his first set of  
4 surgeries in 2018?

5 A. Okay.

6 Q. Is that correct?

7 A. That is -- let's see.

8 Q. All right. Let me tell you where to go.

9 A. I have it.

10 Q. March 22nd, 20 --

11 MR. THOMAS: Nineteen.

12 MR. GALLARDO: I'm sorry.

13 Q. So, this is before he had the surgeries?

14 A. Correct.

15 Q. Okay.

16 So, before he had the surgeries you gave him, in 2017,  
17 the lumbar epidural steroid injections. But, you didn't give  
18 any of those in 2018. No lumbar epidural steroid injections in  
19 2018; is that correct?

20 A. Correct.

21 Q. And in 2019 he has the surgery; right?

22 A. Okay.

23 Q. And you give him no injections?

24 A. Correct.

25 Q. Does it seem like he's get getting a little better?

Dr. Rauchwerger - Plaintiff - Cross

1 A. No.

2 Q. Okay.

3 And then in 2020 you give a lumbar epidural injection;  
4 is that correct?

5 A. Say that again? Yes. I know I gave him after. Yes.

6 Q. Okay.

7 A. But, I know what you're talking about. But, yes.

8 Q. Okay.

9 I know you know what I'm talking about, sir.

10 A. I know my patient. And I know my treatments. So,  
11 yes. I know I give him after.

12 Q. Okay.

13 So, and then in 2021 you give two trigger point  
14 injections?

15 A. Yes.

16 Q. Would you agree trigger point injections re not as  
17 serious as epidurals?

18 A. Well, they're not as -- I wouldn't say "not as  
19 serious". They certainly could cause damage. There's no doubt  
20 about it. Please don't -- there's plenty of literature and  
21 malpractice cases that they do.

22 But, they to require skill and yes.

23 Q. I'm sure they require skill, sir. I'm not going out  
24 there and administering one, I swear.

25 A. Right. Yeah.

Dr. Rauchwerger - Plaintiff - Cross

1                   But they are not as required image guidance -- well,  
2 they do require it. Because now we are doing an ultrasound for  
3 safety. But, yes. They're not as -- they don't require an  
4 operating room like the epidurals and the facets.

5           Q.    So, in 2021 you give the two trigger point injections;  
6 is that correct?

7           A.    Correct.

8           Q.    And in 2022 you give three trigger point injections;  
9 is that correct?

10          A.    Correct.

11          Q.    And this year I saw no injections?

12          A.    Correct.

13          Q.    Okay.

14                    Would you agree that he's getting better?

15          A.    No.

16          Q.    Okay.

17                    Now, you were shown some records from Lutheran  
18 Hospital from -- let me see.

19                           (Pause.)

20          Q.    From December; is that correct? December of --

21                    MR. GALLARDO: Counsel, do you have the  
22 records --

23                    MR. THOMAS: 2016.

24                    MR. GALLARDO: 2016.

25          Q.    Okay.

Dr. Rauchwerger - Plaintiff - Cross

1 I'm going to show you some Lutheran Hospital records  
2 from other times he went to the hospital. And, I'm going to ask  
3 you a couple of questions based on that.

4 MR. GALLARDO: So, if you would be so kind as to  
5 turn on the Elmo.

6 (WHEREUPON, Plaintiff's Exhibit 19 in Evidence is  
7 shown in open court, with the jury present, on screen.)

8 Q. So, I'm going to be showing you page 4, Lutheran  
9 Hospital records from the date of accident: 4/21/2016?

10 MR. THOMAS: That's Plaintiff's Exhibit 19 in  
11 evidence.

12 MR. GALLARDO: Let's see if we could focus that a  
13 little bit. Thank you.

14 Q. Could you see it, sir?

15 A. Okay.

16 Q. All right.

17 So, do you see what it says? "Chief complaint." It  
18 says "lacerations"?

19 A. A ha.

20 Q. Is that consistent with the history that he gave you  
21 with respect to a fall; where, his chief complaint had just  
22 laceration? Or did you see him for back problems due to a fall?

23 A. It was together.

24 Q. Okay.

25 But, there it just says "laceration"; would you agree?

Dr. Rauchwerger - Plaintiff - Cross

1 A. Yes.

2 Q. There's no indication -- have you seen these records  
3 from Lutheran Hospital, April 21st, right after the accident  
4 when the ambulance takes him to Senior Care.

5 Mr. Thomas already read to the jury some of the  
6 ambulance reports from Senior Care.

7 A. I can't answer that. I don't recall. You know, I've  
8 seen the records, but I can't recall when.

9 Q. So, then it says: "Patient BIBA".

10 What does that mean?

11 A. Brought in By Ambulance.

12 Q. Okay.

13 "For lacerations sustained from electric saw that's  
14 about two to 1-inch. No active bleeding noticed."

15 Do you see that?

16 A. A ha.

17 Q. And, do you see where it says "pain"? What does it --

18 A. "No pain."

19 Q. What did does it say? "No pain."

20 Is that consistent with what you observed when you  
21 first saw him in June of 2017?

22 A. I could see that happening; yes.

23 Q. Okay.

24 Same visit.

25 (WHEREUPON, another page of Plaintiff's Exhibit

Dr. Rauchwerger - Plaintiff - Cross

1 19 in Evidence is shown in open court, with the jury  
2 present, on screen.)

3 Q. Same visit. Same visit. 4/26.

4 Do you see what it says about his preferred language?

5 A. It says "English".

6 Q. Okay.

7 You said that you spoke to him sometimes in English  
8 when you see him at your office; is that correct?

9 A. Well, you know, we communicate. Yes. It's not the  
10 greatest. But, I mean -- he understands enough by now that we  
11 can converse; yes.

12 Q. Would you say, sir, that he would be capable of  
13 communicating; I hit my back, by pointing to his back in  
14 English?

15 A. Not at that time. Well, not at that time when he had  
16 a more serious injury.

17 Q. Oh, okay.

18 So, here's the rest of the entry, what's HPI?

19 A. History of Present Illness.

20 Q. Okay. It's basically what happened to him; right,  
21 sir?

22 A. A ha.

23 Q. So, here we are: 4/21/2016. It's 11:09. The  
24 accident occurred at 10:00 o'clock in the morning. It's 11:09  
25 in the morning.

Dr. Rauchwerger - Plaintiff - Cross

1                   And what history does he give, sir? Could you tell  
2 the ladies and gentlemen of the jury?

3                   (Pause.)

4                   Q. It says: "37 year old male, no sign" -- what's PMHX.  
5 Prior Medical History?

6                   A. Okay.

7                   Q. So, no prior with -- what is PW? Presented with?

8                   A. Okay.

9                   Q. "Laceration to the right thigh. Patient STS," what  
10 is that?

11                   A. I don't know.

12                   Q. Okay. STS?

13                   A. You tell me. I don't know.

14                   Q. Okay.

15                   And, "at work using machinery when sustained  
16 accidental injury to the right thigh. Positive bleeding.  
17 Controlled in the field. Patient able to ambulate without  
18 difficulty."

19                   A. Okay.

20                   Q. Oh, I'm sorry. STS, would that be states -- "so  
21 patients states at work using machinery when sustained  
22 accidental injury to the right thigh, positive bleeding.  
23 Controlled in the field. Patient able to ambulate without  
24 difficulty. Denies loss of function or motion to ARE".

25                   I think they are missing an A, but --

Dr. Rauchwerger - Plaintiff - Cross

1 MR. THOMAS: Objection to what he thinks, your  
2 Honor.

3 THE COURT: I'm sorry?

4 MR. THOMAS: Objection to what counsel thinks.  
5 He's reading a document.

6 THE COURT: All right. Well, you could ask him  
7 if he knows what that means.

8 Q. Do you know what that is. Do you know what they may  
9 have meant by the 'R' and the period?

10 A. 'R'?

11 Q. Yeah, 'R'.

12 A. I. Location?

13 Q. No. Right here. Right here. You see that?

14 (Indicating.)

15 A. 'R'? 2-R. I don't know, motion to area, maybe.

16 Q. There you go. I agree.

17 A. I don't know.

18 Q. Okay.

19 So, would you agree that that is not consistent with  
20 what you heard on June 2017 when you first see him?

21 A. Some of it is consistent. Actually, the part of the  
22 thigh is consistent with what I heard.

23 Q. Okay.

24 A. In his history; yes.

25 Q. All right.

Dr. Rauchwerger - Plaintiff - Cross

1           So, he has -- so, he's examined that day. And I'm  
2 going to show you the next page of that day, that record.

3                         (WHEREUPON, another page of Plaintiff's Exhibit  
4 19 in Evidence is shown in open court, with the jury  
5 present, on screen.)

6           Q.    It says "neck"; right?

7           A.    Okay.

8           Q.    "Full ROM." What does that mean?

9           A.    Full Range of Motion.

10          Q.    Full range of motion. Okay.

11                         What's the next thing say; "back"?

12          A.    "Normal appearance."

13          Q.    Okay.

14                         MR. GALLARDO: Thank you.

15          Q.    Sir, so are you familiar that after this accident,  
16 after that date, the first date he went to the hospital -- so,  
17 he goes to the hospital on the 21st; right?

18          A.    Okay.

19          Q.    And then he's -- goes back to the hospital on the  
20 29th, eight days later. In the interim I want you to assume --  
21 and I'll show you the pictures later.

22                         The pictures are taken at his attorney's office; okay?

23          A.    Okay.

24          Q.    So, are you familiar with the hospital records from  
25 the 29th, Kings County Medical Center?

Dr. Rauchwerger - Plaintiff - Cross

1 A. I may have seen it. I may not. If you show it to me  
2 I'll tell you if I've seen it.

3 Q. Okay.

4 Let me show it to you and you tell me if you've seen  
5 it.

6 (WHEREUPON, records are shown in open court, with  
7 the jury present, on screen.)

8 Q. Okay. There you go. This is from the 29th, Kings  
9 County Hospital Records?

10 MR. THOMAS: No, it's not.

11 MR. GALLARDO: What do you mean it's not?

12 MR. THOMAS: It's not. February 16th.

13 MS. LEVIN: That's the print date.

14 MR. GALLARDO: That's the print date.

15 Here's the first page.

16 MR. THOMAS: Which one are you looking at? Right  
17 here?

18 (Indicating.)

19 MR. GALLARDO: Yes.

20 Q. All right.

21 What's the "CC" stand for?

22 A. Wait. Could you go back with the date of birth? I  
23 mean what is that February 2007? What is that? No. No. Go to  
24 the other way. Up there, Friday, April -- no. Go back. Go  
25 back. It says -- no, go the other way. I just want to make

Dr. Rauchwerger - Plaintiff - Cross

1 sure.

2 MS. LEVIN: There you go.

3 A. April 29th, 16 (SIC) of 2003. So, you are going back  
4 to that?

5 Q. No, sir. We'll start with the first page.

6 A. Yeah, show me.

7 Q. First page of the letter.

8 MR. THOMAS: It's up here. Kings County  
9 Hospital. Center.

10 Q. Walk in ER. Do you see that?

11 And then I'm going to the third page. And we can go  
12 through the entire record.

13 A. Wait. Wait. Wait. Hold on. Could you put back  
14 that, please? Could you put back that page? Put it back. Let  
15 me see something.

16 (attorney complies.)

17 THE WITNESS: Go up. Okay. 2016. Okay. Go  
18 ahead.

19 Q. May I ask you a question about the area I wanted to  
20 question you about? Thank you, sir.

21 (WHEREUPON, a record is shown in open court, with  
22 the jury present, on screen.)

23 Q. "CC", that means Chief Complaint; is that correct?

24 A. Yes.

25 Q. Okay.

Dr. Rauchwerger - Plaintiff - Cross

1 And what does it say?

2 A. "Injury to knee, lower leg, ankle or foot."

3 Q. Okay.

4 Pain level?

5 A. "No pain", it says.

6 Q. Okay.

7 What does he state?

8 A. "I hurt my right leg and back eight days back."

9 Q. Okay.

10 Is that consistent with what he told you when he went  
11 in on June 8th -- June of 2018; is it, the first time you see  
12 him?

13 A. Saw him --

14 Q. We are going to use that?

15 A. Yeah. Yeah. 8/23/2017.

16 Q. Okay.

17 Are those injuries consistent with what he told you?

18 Would you say that those injuries are not consistent with what  
19 he told you; would you agree with me?

20 A. I don't recall your question.

21 Q. Would you agree with me that those injuries are not  
22 consistent with what he reports to you in June of 2018? Would  
23 you agree with that?

24 A. I'm not understanding your question.

25 Q. Okay. Maybe if I show you another piece?

Dr. Rauchwerger - Plaintiff - Cross

1 A. No. No. Just explain what you want.

2 Q. No, sir. I'm moving on. No. No. No. Sir, I'm  
3 moving on. Thank you.

4 A. I don't understand what you're trying to ask.

5 Q. Okay. Okay.

6 MR. THOMAS: Can we mark Kings County? You want  
7 to mark it?

8 MS. LEVIN: Sure. We'll put it into evidence.

9 MR. THOMAS: Defendant's C?

10 MS. LEVIN: Defendant's C.

11 (WHEREUPON, the item referred to is received and  
12 marked Defendant's Exhibit C for Identification.)

13 Q. So, I'm going to the 16th page of that record; okay?  
14 And, history presented. Is that HP, means History  
15 Presented?

16 A. Yes.

17 Q. Okay.

18 A. HP. Wait. Wait. Say that again.

19 Q. HPI?

20 A. History of present illness.

21 Q. Okay. History of Present illness.

22 "Patient states he cut his leg eight days ago at work  
23 and then fell down four stairs with loss of consciousness."

24 A. Okay.

25 Q. Is that consistent with what he had said before, sir?

Dr. Rauchwerger - Plaintiff - Cross

1 And, is it consistent with what he told you in June of 2018; if  
2 you know?

3 A. Okay.

4 I mean, he's giving me a description of the history.  
5 Yeah, it sounds similar; yeah. Okay.

6 Q. Okay.

7 Let me ask you this: It says there lipoma?

8 A. Okay.

9 Q. What's a lipoma?

10 A. A fatty tumor.

11 Q. You've written on the issue; right? Isn't it in your  
12 CV. I saw you wrote an article with respect to lipomas?

13 A. Yes.

14 Q. You did. So, you know what a lipoma is; right?

15 A. Yes.

16 Q. All right.

17 MR. GALLARDO: May I approach the evidence, your  
18 Honor?

19 THE COURT: You may.

20 Q. Now, it said he had a lipoma in his lower back  
21 midline; is that correct?

22 Do you want me to put it backup?

23 A. One second.

24 (WHEREUPON, Defendant's Exhibit C for  
25 Identification is shown in open court, with the jury

Dr. Rauchwerger - Plaintiff - Cross

1 present, on screen.)

2 A. You could put it back.

3 Q. It says "lower midline lipoma"; right?

4 A. All right.

5 Q. That's, like, a fatty cyst, a lipoma?

6 A. It's not a cyst.

7 Q. It's fatty tissue? You know what?

8 A. It's a fatty tissue. Yes.

9 Q. I'm going to do something. I'm going to ask you to  
10 explain to the ladies and gentlemen of the jury what a lipoma  
11 is.

12 A. That's not a problem.

13 A lipoma is, like, when a fat becomes encapsulated.  
14 And, you know, it's a mass of fat. That's it. It's not  
15 painful.

16 Q. It's benign.

17 A. Correct.

18 Q. Sometimes you remove it just because it gets in the  
19 way. But, for the most part it's benign?

20 A. Most of the time; yes.

21 (WHEREUPON, a photo is shown in open court, with  
22 the jury present, on screen.)

23 Q. Now, with respect to the lipoma, I want you to assume  
24 this picture was taken about the same time. Because he sai that  
25 eight days after he took the picture at his attorney's office?

Dr. Rauchwerger - Plaintiff - Cross

1 A. Okay.

2 Q. Is that the lipoma they are talking about, right  
3 there?

4 (Indicating.)

5 A. I have no idea. I cannot look at a picture and say if  
6 somebody has a lipoma or not.

7 Q. You can't; right. You can't tell that that's not a --  
8 can you see herniations through the skin?

9 A. No.

10 Q. Okay. Thank you.

11 MR. THOMAS: Finished?

12 MR. GALLARDO: No. No. Not quite done yet.

13 Q. So, do you know that -- so, he went to the hospital on  
14 the 21st of April. He went back the 29th of April. You just  
15 saw that.

16 Did you know that he went to the hospital again on May  
17 11th, 2016?

18 MR. THOMAS: Your Honor, I'm going to object.

19 This is beyond the scope of my direct. I didn't  
20 go through these hospital records with this witness.

21 A. Well, I don't know that. I don't recall.

22 THE COURT: All right. So, he doesn't know that.

23 But, again, counsel, it has to relate to the  
24 direct.

25 MR. GALLARDO: Your Honor, if I may: I'm just

Dr. Rauchwerger - Plaintiff - Cross

1 getting to it. Because records were shown --

2 THE COURT: All right. So, let's see where we  
3 are going.

4 MR. GALLARDO: The witness was shown records from  
5 December of that year, the hospital records. So, I'm just  
6 getting to December.

7 Q. Okay.

8 So, this is 2016. I'm sorry, it's actually time of  
9 triage is -- the date is actually May 6th. It's not May 11th.  
10 I misspoke before.

11 (WHEREUPON, Plaintiff's Exhibit 19 in Evidence is  
12 shown in open court, with the jury present, on screen.)

13 MR. THOMAS: Lutheran.

14 MR. GALLARDO: This is Lutheran.

15 MR. THOMAS: Exhibit 19 in evidence.

16 Q. It says -- again, it has the history; is that correct?

17 A. Yeah.

18 Q. And could you read the history to the ladies and  
19 gentlemen of the jury?

20 A. "Presents with lower back pain times 14 days. Patient  
21 reports he fell down the stairs, five stairs. Hit the back and  
22 head. No loss of consciousness times 3. Why done CT also no  
23 pathology."

24 Q. Okay. That's enough. That's enough.

25 I'm just curious, I guess my question is: When he

Dr. Rauchwerger - Plaintiff - Cross

1 says he fell down five sets of stairs, is that consistent with  
2 your notes from June of 2018?

3 A. Let me just take a look.

4 MS. LEVIN: Seventeen.

5 A. So, I don't have that he fell down steps.

6 Q. Okay. Got it.

7 So, now, you believe -- and you're telling these  
8 ladies and gentlemen of the jury that he suffered a traumatic  
9 incident on the 21st of April, 2016 when this alleged accident  
10 occurred.

11 Is that your testimony?

12 A. I'm saying that exactly. Exactly what I said before.

13 Q. Okay.

14 And it was the incident that created both cervical  
15 herniations and the lumbar herniations; of which, this good jury  
16 has already heard evidence as to surgery; is that correct?

17 A. I cannot comment on the cervical. But, I can comment  
18 on the lumbar; yes.

19 Q. Okay.

20 And was that a serious life-changing injury that  
21 occurred ed on September 21st -- I'm sorry, April 21st?

22 A. April 2016.

23 Q. Would you agree that was a life-changing injury?

24 A. I would think so.

25 Q. So, this man was debilitated?

Dr. Rauchwerger - Plaintiff - Cross

1 A. He is.

2 Q. Okay.

3 Do debilitated people move furniture?

4 MR. THOMAS: Objection, your Honor.

5 THE COURT: Yeah, okay.

6 THE WITNESS: I can answer that, if you want.

7 MR. THOMAS: Objection.

8 THE COURT: I'm going to sustain the objection.

9 Q. I'm going to skip forward to the December. So, I'm  
10 getting to -- I skipped some medicals; so, we could get you out  
11 of here. But, I'm just going to skip forward to the -- I'm  
12 going to skip forward to the Langone Systems Healthcare. And,  
13 this is the December 2016 hospitalization that Mr. Thomas showed  
14 you before.

15 MR. THOMAS: This is also Lutheran, Plaintiff's  
16 Exhibit 19 in evidence?

17 MR. GALLARDO: You put this in, didn't you?

18 MR. THOMAS: Yes.

19 You said NYU Langone. But, it's listed as  
20 Lutheran medical center.

21 (WHEREUPON, Plaintiff's Exhibit 19 in Evidence is  
22 shown in open court, with the jury present, on screen.)

23 Q. What does it say he was doing that day, sir?

24 A. It says, "he was lifting bed at home two weeks ago and  
25 he didn't feel anything then. But three days ago he started

Dr. Rauchwerger - Plaintiff - Cross

1 experiencing pain on left side of chest."

2 Q. Okay.

3 So, we know he was lifting a heavy bed sometime three  
4 weeks in December; is that correct?

5 MR. THOMAS: Objection, your Honor?

6 Q. Is that correct?

7 A. If that's the note. That's the note.

8 THE COURT: All right. I missed the whole thing.  
9 So, what did it say?

10 MR. GALLARDO: It says, your Honor: "As per  
11 patient, he was lifting heavy bed at home two weeks ago."

12 THE COURT: Okay.

13 And, what's your question to the witness?

14 MR. GALLARDO: So, I'm just asking him. This  
15 means that this patient, who's debilitated, was lifting a  
16 heavy he bed in December of 2016.

17 MR. THOMAS: Objection.

18 THE COURT: Well, he's not an expert on that.

19 THE WITNESS: Yeah, I don't know what you're  
20 asking.

21 MR. GALLARDO: I'm almost done, your Honor. If I  
22 could review my notes and then I will sit down.

23 (Pause.)

24 Q. I'm just going to ask you: Spondylosis, is that also  
25 known as osteoarthritis?

Dr. Rauchwerger - Plaintiff - Redirect

1 MR. THOMAS: Objection. Asked and answered.

2 THE COURT: We'll do it one more time.

3 A. No.

4 Q. Thank you. Thank you.

5 MR. THOMAS: Briefly, Judge.

6 A. Spondylosis is --

7 THE COURT: All right.

8 REDIRECT EXAMINATION

9 BY MR THOMAS:

10 Q. Dr. Rauchwerger?

11 A. Yes.

12 Q. Could you explain to this jury why someone like  
13 Mr. Dojce, everything you know about him, did he make complaints  
14 about neck or back pain on the day that he was injured?

15 A. Yes.

16 MR. GALLARDO: Objection, your Honor.

17 THE COURT: All right.

18 MR. THOMAS: Judge, there is part of his --

19 THE COURT: I know. But, how is he going to know  
20 that?

21 THE WITNESS: I do know. I do know.

22 THE COURT: You do know?

23 THE WITNESS: Yes, of course.

24 MR. GALLARDO: Judge?

25 THE WITNESS: Hold on.

Dr. Rauchwerger - Plaintiff - Redirect

1 MR. GALLARDO: It calls for hearsay, your Honor.

2 THE WITNESS: It's not a hearsay. It's part of  
3 pain management.

4 THE COURT: Doctor, please; all right.

5 THE WITNESS: Sorry.

6 THE COURT: I'm going to sustain the objection.

7 Q. Doctor, did you ever hear of the term "masking" when  
8 it comes to pain?

9 A. Absolutely.

10 Q. Please explain to the jury what that means?

11 A. Yeah.

12 So, there's what's called primary and secondary pain  
13 generators. This happens all the time.

14 When you have a primary pain generator that's what the  
15 body focuses on. And that's it. It's very simple. And it  
16 happens all the time.

17 Patients get hurt. And all they are complaining about  
18 is they have a fracture. If they get into a car accident, they  
19 have a fracture. But, they have other injuries that requires  
20 surgeries. The body focuses on the worse area of pain. Whereas  
21 the most life-threatening to it, that fight or flight response.

22 In terms of -- he's asking why. It's very simple.  
23 The biggest organ in your body is your skin, by the way. That's  
24 an organ. It's not -- skin is an organ, just like your liver,  
25 just like your heart; okay? What happened was that there was a

Dr. Rauchwerger - Plaintiff - Redirect

1 laceration there; which, the body responds to. Which is more  
2 life-threatening -- that's a life-threatening injury, your  
3 physical being -- the barrier is opening between the outside and  
4 inside of the body. There's an opening.

5 That's what the body is going to focus on. That's  
6 what your fight or flight response is going to focus on, no  
7 matter what.

8 And, again, it can take a week, two weeks before the  
9 body even registers. Or the body -- subconsciously, he's  
10 acknowledging it. But, the body -- that's what the person is  
11 going to focus on. That's just how it is. It's always been  
12 like that. And it always will be like that.

13 Q. So, the fact that he had an injury to his thigh, and  
14 he didn't voice complaints about his spinal injuries until eight  
15 days later, does that mean he didn't injury his spine in this  
16 accident?

17 A. I'll even go back further.

18 When the EMS came that's what they were focusing on.  
19 The most life-threatening problem. They're not focusing on a  
20 back problem.

21 That's why these notes that you see, like the ER  
22 doctors, they see him for five or ten minutes. They're just  
23 trying to get, you know, what's the most life-threatening? What  
24 they need to take to do and get them out. That's how it works  
25 unfortunately. And that is how it works in the ER.

Dr. Rauchwerger - Plaintiff - Redirect

1           That's why, you know, eventually the patient goes and  
2 it takes time before they see the right specialist and get to  
3 the right care. And that's just how it is in our healthcare  
4 system.

5           Q. And counsel asked you, since you didn't give him  
6 injections this year, he must be getting better.

7           Do you remember that?

8           A. Yeah.

9           It's not that he doesn't -- first of all.

10           THE COURT: I guess you know what his question is  
11 going to be. Go ahead.

12           THE WITNESS: No. No. I mean, I saw it from  
13 when I was asking me.

14           Q. He didn't want you to explain. I'm going to ask you  
15 to explain?

16           A. Yeah, I want explain what he was referring to, you  
17 know, the injections. There's certain -- that's what he's  
18 asking me about prices and everything.

19           There's a bunch of injections that he may need. Will  
20 he need all? No. But the overall cost is that.

21           Some years he will need a couple of epidurals. Some  
22 years he'll need this. Some years he'll need a combination.  
23 Some years more. Some years not. What I projected is a plan  
24 that he needs and he may need.

25           Let's put it this way, as a doctor, I am supposed --

Dr. Rauchwerger - Plaintiff - Redirect

1 with any patient, is what they're going to need. What they may  
2 need. We don't, as doctors, tell people: You don't need this.  
3 What happens when they do need it? Then it's not available.

4 So, that's not something that we are going to do as a  
5 doctor. He may -- that's why we always write a care plan: May  
6 need this. May need that. You know, as it goes along in the  
7 care.

8 And that doesn't mean we go back to what we've done  
9 originally. Happens all the time.

10 Q. Did Mr. Dojce injure his spine in this accident?

11 A. Yes, he did.

12 Q. And, are those injuries permanent in nature?

13 A. He had surgery. Absolutely.

14 Q. And we will he need lifelong care because of the  
15 injuries from this accident?

16 A. Yes.

17 MR. THOMAS: Your Honor, I have no further  
18 question's.

19 THE COURT: Counsel?

20 MR. GALLARDO: No further questions.

21 THE COURT: All right. Doctor, you may step  
22 down.

23 (Witness leaves the stand at 2:55 PM.)

24 THE COURT: We'll take a five minute break,  
25 ladies and gentlemen.

Dr. Rauchwerger - Plaintiff - Redirect

1 COURT OFFICER: All rise. Jury exiting.  
2 (Jury exits at 2:56 PM.)  
3 COURT OFFICER: Ready, your Honor?  
4 THE COURT: Yep.  
5 COURT OFFICER: All rise. Jury entering.  
6 (Jury enters at 3:03 PM.)  
7 THE COURT: Have a seat. Thank you, everybody.  
8 Have a seat.  
9 Okay. Counsel, call your next witness.  
10 MR. THOMAS: Your Honor, at this time we call  
11 Dr. Vora to the witness stand.  
12 THE CLERK: Right this way.  
13 (Witness takes the stand at 3:03 PM.)  
14 THE CLERK: Good afternoon.  
15 Please, remain standing and raise your hand.  
16 (Witness complies.)  
17 THE CLERK: Do you swear, and/or affirm the  
18 testimony you're about to give this Court and jury will be  
19 the truth, the whole truth, and nothing but the truth?  
20 THE WITNESS: Yes, I do.  
21 THE CLERK: All right. Please be seated. Pull  
22 up the chair to the microphone.  
23 (Witness complies.)  
24 In a loud, clear voice please state and spell  
25 your name for the record, slowly.

Dr. Vora - Plaintiff - Direct

1 THE WITNESS: Dr. Vagmin Vora: V-A-G-M-I-N,  
2 Vora, V-O-R-A.

3 THE CLERK: Address?

4 THE WITNESS: 1414 New Kirk Avenue, Brooklyn, New  
5 York 1-1-2-2-6.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. THOMAS:

9 Q. Doctor, you gave me the courtesy of looking at your  
10 file before you took the stand?

11 A. Yes.

12 Q. Let me give that back to you.

13 (WHEREUPON, papers are handed to the witness.)

14 Q. Good afternoon, Dr. Vora.

15 A. Good afternoon.

16 Q. Dr. Vora, please tell the jury what kind of doctor are  
17 you?

18 A. I'm an orthopedic spine surgeon.

19 Q. And more specifically, what do you do as an orthopedic  
20 spine surgeon?

21 A. Do spine surgery from the neck down to the lower back.

22 Q. Did you bring your file with you?

23 A. Yes.

24 Q. And, again, aside from letting me look at it before  
25 you took the witness stand, where do those records come from?

Dr. Vora - Plaintiff - Direct

1 A. From our office, electronic medical records.

2 Q. All right.

3 And do you maintain those records in your custody and  
4 control since they were generated?

5 A. Yes.

6 Q. And, is it you and your office that generated those  
7 records?

8 A. Correct.

9 Q. And who is the patient?

10 A. Petrika Dojce, D-O-J-C-E.

11 Q. And has Mr. Dojce been your patient?

12 A. Yes.

13 Q. Did you treat him as a treating physician?

14 A. Yes.

15 Q. And there's a model of the spine there, part of it.

16 And then there's model of the spine here. I just want to bring  
17 that to your attention; if you need it to make any -- during the  
18 course of discussion, if you need to -- although I will tell  
19 you, that this jury has already had a very good lesson on the  
20 anatomy. And we don't need to waste your precious time going  
21 through some of the basics, again. But I just want to let you  
22 know that it's available for you.

23 Could you tell the jury a little about your  
24 educational background and work experience?

25 A. I did my orthopedic residency in Bombay University in

Dr. Vora - Plaintiff - Direct

1 Bombay, India.

2 And then I did spine fellowship at Hospital for  
3 Special Surgery in New York. That was one year.

4 And then I did an orthopedic pediatric spine  
5 fellowship at Cincinnati Children's Hospital Center in  
6 Cincinnati, Ohio.

7 I've been in practice of spine surgery since 2004.  
8 So, it's been awhile.

9 And, I've done several cases of cervical and lumbar  
10 fusions, microdiscectomy and decompressions including sacroiliac  
11 joint fusions.

12 Q. And, Doctor, have you been qualified as an expert in  
13 courts before coming to court, this Court, today?

14 A. Yes.

15 Q. Have you testified in court before?

16 A. Yes.

17 Q. Have you ever testified in Brooklyn?

18 A. No.

19 Q. This is your first time?

20 A. Yes.

21 Q. Well, welcome to Brooklyn.

22 A. Thank you.

23 Q. Doctor -- I'm sorry.

24 MR. THOMAS: Judge, I would like for the doctor  
25 to be recognized in the field of orthopedic surgery, and

Dr. Vora - Plaintiff - Direct

1 more particularly spine surgery.

2 MR. GALLARDO: No objection, your Honor.

3 THE COURT: All right.

4 So, the doctor can render his opinions in the  
5 field of orthopedic surgery, as well as spine surgery.

6 Q. Okay.

7 Doctor, your notes that you have with you, those are  
8 copies; correct?

9 A. Correct.

10 MR. THOMAS: Your Honor, at this time I wish to  
11 offer into evidence Dr. Vora's medical records that he  
12 brought with him; so, he could use it as evidence.

13 MR. GALLARDO: Your Honor, I believe that  
14 Dr. Vora works for Brooklyn Premiere Orthopedics Group.

15 To the extent that it's a complete set, I don't  
16 know if it's just Dr. Vora's treatment. Because other  
17 doctors -- there are notes from other doctors in the  
18 records as I've seen.

19 Q. Are those a complete set of your records?

20 A. They are only mine. Not other doctors.

21 MR. GALLARDO: Then I would object, your Honor. I  
22 believe that the entire premier --

23 MR. THOMAS: Judge, I have no objection to  
24 offering the entire set of records from --

25 THE COURT: All right.

Dr. Vora - Plaintiff - Direct

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But these are the doctors --

MR. GALLARDO: Yeah.

THE COURT: All right.

Look: Why shouldn't they come into evidence?  
They are his records. His business record regarding the  
care and treatment of the plaintiff.

MR. GALLARDO: I would, respectfully, they are in  
complete.

THE COURT: Well, I don't know if they are  
incomplete. There might be other records, but these are  
admissible medical records.

MR. GALLARDO: Correct.

THE COURT: So, overruled.

MR. THOMAS: Plaintiff's Exhibit 20, your Honor.

(WHEREUPON, the item previously received and  
marked for identification is received and marked in  
evidence as Plaintiff's Exhibit 20 in Evidence.)

Q. And, if you need to refer to them, by all means.

So, Doctor, when Mr. Dojce first presented to you, can  
you tell us what complaints he made?

A. He complained of neck pain; which, radiated to the  
upper extremities. And lower back pain; which, radiated to the  
lower extremity; particularly, the right side.

Q. Did you learn how he came to have these complaints of  
pain in his spine?

Dr. Vora - Plaintiff - Direct

1 A. He was evaluated for neck and low back pain, secondary  
2 to a work related injury on 4/21/2016.

3 He was working as a laborer at a construction site  
4 when he saw a grinder that he was working with. Got stuck and  
5 jumped back into his right thigh causing deep incision. He  
6 fainted. And, he lost blood. Fell back. Hitting his lower  
7 back, neck, and head.

8 That's the reason why he manifested with these  
9 symptoms.

10 Q. And, you've seen the injury to his thigh?

11 (WHEREUPON, Plaintiff's Exhibit 14 in Evidence is  
12 shown in open court, with the jury present, on screen.)

13 A. Yes.

14 MR. GALLARDO: May I, your Honor, just walk  
15 around?

16 MR. THOMAS: Plaintiff's Exhibit 14 in evidence.

17 Q. But, that's not the reason why you treated him;  
18 correct?

19 A. Correct.

20 Q. So, your focus was, again?

21 A. On the spine only.

22 Q. And, when you were presented with these spine  
23 complaints, did you have a benefit of reviewing any objective  
24 diagnostic testing?

25 A. Bear with me, please.

Dr. Vora - Plaintiff - Direct

1 (Pause.)

2 A. At that time, I believe I reviewed the MRI of the  
3 cervical and lumbar spine. I do not have the MRI reports with  
4 me. But, I do remember what problem he had.

5 MR. THOMAS: Plaintiff's Exhibit 2-A in evidence.

6 (WHEREUPON, Plaintiff's Exhibit 2-A in Evidence  
7 is shown in open court, with the jury present, on  
8 screen.)

9 Q. This is the cervical MRI. Do you remember seeing this  
10 film?

11 A. Yes.

12 Q. And the May 15th, 2016 lumbar.

13 (WHEREUPON, a photo is shown in open court, with  
14 the jury present, on screen.)

15 Q. Do you remember seeing this film?

16 A. Yes.

17 Q. Do you read MRI films in the course of your practice?

18 A. Many times, all the time.

19 Q. And in looking at these MRI films from 2016, do you  
20 see any evidence of arthritic changes?

21 A. No.

22 Q. Do you see any evidence of osteophytes, or  
23 degenerative changes?

24 A. No.

25 Q. Do you see any evidence of herniated intervertebral

Dr. Vora - Plaintiff - Direct

1 discs?

2 A. No.

3 Q. Can you tell us, what level that you performed --  
4 since this is up right now, what level did you perform surgery  
5 his low back?

6 A. L5-S1.

7 Q. And if you can tell us either by your model or  
8 pointing to this on the screen here; where that is?

9 A. That would be this level.

10 (Indicating.)

11 Q. And did the MRI confirm that he needed some surgical  
12 repair at that location?

13 A. Yes.

14 The MRI indicated there was a disc herniation more to  
15 the right at L5-S1, narrowing the neural foramen. So, the  
16 neural foramen is, essentially, where the yellow nerves come  
17 out, through the foramen. And it was narrowing that foramen.  
18 So, it's not exactly in the middle. It was off to the side.  
19 So, that particular cut doesn't show the side.

20 Q. But, in this colorized version of the lumbar spine at  
21 the L5-S1, that was the location --

22 A. Correct.

23 Q. -- that you addressed?

24 A. Correct.

25 Q. And, again, did you learn whether Mr. Dojce had any

Dr. Vora - Plaintiff - Direct

1 history, prior history of issues, complaints, testing, surgical  
2 procedures, or any issues with that area of the spine before  
3 this accident?

4 A. No.

5 Q. "No" you didn't learn? Or, no he didn't have?

6 A. No, he didn't have. He didn't tell us.

7 Q. And, what's the significance of having no prior  
8 medical history in the lumbar spine, and then being presented  
9 with this condition that we see on this film?

10 A. That the injury resulted in his symptoms that caused  
11 this disc herniation.

12 Q. Do you have an opinion, within a reasonable degree  
13 ever medical certainty, whether the accident of April 21st, 2016  
14 was a competent producing cause of his injury and complaints to  
15 his L5-S1 disc?

16 A. Yes.

17 Q. What is that opinion?

18 A. That the injury that he sustained on 4/21/2016  
19 resulted in the disc herniation; which, subsequently resulted in  
20 him requiring surgery.

21 Q. And tell the jury how many surgeries did you do on  
22 Mr. Dojce?

23 A. Two.

24 Q. Which one did you do first?

25 A. I did the lumbar spine microdiscectomy surgery first.

Dr. Vora - Plaintiff - Direct

1 Q. Okay.

2 Let's take a look at --

3 (Pause.)

4 Q. Doctor, have you seen this illustration already?

5 (WHEREUPON, a photo is shown in open court, with  
6 the jury present, on screen.)

7 Q. Is this the surgery that you performed on March 22nd,  
8 2019?

9 A. Be yes.

10 Q. And tell the jury why you performed this surgery?

11 A. So, the patient had a disc herniation at L5-S1. But,  
12 it was pushing against the nerve root on the left side.

13 So, for argument's sake let's say this is the left  
14 side. It was pushing against this nerve that was coming out  
15 from the foramen.

16 (Indicating.)

17 A. So, that's the reason why we had to do the surgery;  
18 so, as to create more space for the nerve so the nerve has  
19 space. So, potentially, his life would improve after the  
20 surgery.

21 Q. And when you first evaluated him prior to performing  
22 this surgery, did you believe that this was the appropriate  
23 surgery to do on his lumbar spine?

24 A. No. I believe he needed a more involved surgery, a  
25 lumbar fusion. The lumbar fusion was denied. We were denied

Dr. Vora - Plaintiff - Direct

1 authorization for the surgery.

2 MR. GALLARDO: Objection, your Honor.

3 THE COURT: What's the objection, counsel?

4 MR. GALLARDO: He's going into insurance issues.

5 MR. THOMAS: Judge, he just said that he needed  
6 authorization. That's all he said.

7 MR. GALLARDO: But, Judge.

8 THE COURT: All right.

9 MR. GALLARDO: Move to strike, your Honor.

10 THE COURT: All right. Go ahead.

11 MR. THOMAS: May I continue?

12 Q. As I was saying, since the original procedure that he  
13 wanted to perform was not authorized you went with this  
14 procedure?

15 A. Yes.

16 Q. And what was this procedure meant to do in terms of  
17 dealing with the pain complex that Mr. Dojce had presented with?

18 A. So, Mr. Dojce presented with back pain, as well as  
19 right leg pain. This procedure was intended to relieve him of  
20 the right leg pain.

21 We wouldn't have addressed his back pain to any  
22 significant extent.

23 Q. And based on the fact that he was your patient, and  
24 you continued to follow him, did this surgery, the first surgery  
25 that you did, this microdiscectomy; did it give any relief?

Dr. Vora - Plaintiff - Direct

1 A. No.

2 Q. So, he was still a candidate for the more invasive  
3 procedure?

4 A. That is correct.

5 Q. And tell the jury, what was that second procedure that  
6 you performed on his lower spine?

7 A. I didn't perform the second procedure.

8 Q. I'm sorry. Sorry. Sorry. Sorry.

9 What was the procedure that he, ultimately, had  
10 performed on his lower spine?

11 A. The ultimate procedure is -- the procedure that he  
12 ultimately had was a lumbar fusion; which, essentially  
13 involved -- well, it involves, basically, preventing motion at  
14 the last segment; that's the L5-S1 segment.

15 All the segments move. The lumbar fusion blocks  
16 motion at that segment. There's various ways to do it. But, it  
17 blocks motion on that segment. Bones grow from one segment to  
18 the other.

19 So, that it blocks motion. And, hopefully it relieves  
20 the back pain.

21 Q. And, again, that was done by Dr. Brisson?

22 A. I believe so, yes.

23 Q. But, you performed another surgical procedure on  
24 Mr. Dojce; correct?

25 A. Yes.

Dr. Vora - Plaintiff - Direct

1 Q. What was that procedure?

2 A. That was a cervical fusion procedure.

3 Q. And, again, when you say "surgical fusion" you mean  
4 the neck?

5 A. Correct.

6 Q. And when you said "lumbar", you mean the back?

7 A. Correct.

8 Q. And, when did you perform this procedure on Mr. Dojce?

9 A. It was performed on 5/21/2019.

10 Q. And, where did you perform this procedure?

11 A. You mean the location of the facility?

12 Q. Yes. What facility did you perform it?

13 A. At Lutheran Hospital.

14 Q. Okay.

15 So this is not a procedure that's done in your office?

16 A. Oh, no. No

17 Q. And, so, he was admitted to the hospital for this  
18 procedure?

19 A. Yes. It was outpatient surgery done in the hospital.

20 Q. And how many of these type of surgeries have you done  
21 in your experience?

22 A. I stopped counting after the first 100. And that was  
23 over a decade ago.

24 Q. And, tell the jury, what was this C5-6 anterior  
25 cervical discectomy and fusion meant to address?

Dr. Vora - Plaintiff - Direct

1           A.     This was meant to address pain going down his arms,  
2     tingling and numbness in the upper extremities. It does help  
3     the neck pain to some extent. However, neck pain relief is less  
4     predictable.

5           Q.     Now, Dr. Brisson has already testified that he did  
6     this lumbar fusion. And talked about how bone graft is put into  
7     this inter-body cage. The cage was screwed in.

8                     And, you did a similar type of procedure in his neck;  
9     correct?

10          A.     Correct.

11          Q.     Where did you get the bone graft from?

12          A.     It is cadaver bone.

13                     And also while preparing that disc space -- so, this  
14     is the lumbar spine. But, the neck, obviously, has smaller  
15     spine, but it has a similar anatomy. They have a disc in the  
16     front like that.

17                             (Indicating.)

18          A.     And when you take the disc out, there's also a bit of  
19     bone that's trimmed off the edges. And we use that bone, along  
20     with a cadaver bone, mix it. Put it in the cage; which, then  
21     sits in the space. And, the cage is anchored to the vertebra.

22          Q.     So, you actually physically remove this disc material?

23          A.     Correct.

24          Q.     And when this disc material herniates; can it repair  
25     itself?

Dr. Vora - Plaintiff - Direct

1 A. No.

2 Q. And what about blood supply to this disc material? Is  
3 there much blood supply there?

4 A. The disc is supplied only on its outer-fibers with  
5 blood vessels. The inner fibers don't get any blood vessels.  
6 And, therefore, once a disc herniates it doesn't ever get back  
7 to its original state because there's no blood supply.

8 Q. So, when you remove this disc, what happens to the  
9 space between, for example in this case, the C5 and the C-6  
10 vertebra.

11 A. So, then there's a hollow. We could see -- literally,  
12 we could see the spinal cord right at the back end. Because we  
13 go from the front of the neck. Take the disc out. Once this is  
14 gone, you'll see the spinal cord right at the back end.

15 You cannot leave it like that. Because if you leave  
16 it, then it will collapse. If it collapses the patient will get  
17 chronic neck main.

18 So, we put a spacer. It's a metal cage that contains  
19 bone and then anchor it. There's numerous ways of doing it.  
20 Once we put an actual piece of bone graft with a plate, or you  
21 put a metal cage with bone graft and anchors. But, the basic is  
22 that the height has to be maintained.

23 Q. So, is this is like carpentry work; isn't it?

24 A. It is.

25 Q. Do you do your carpentry work, Doctor, at home?

Dr. Vora - Plaintiff - Direct

1 A. No.

2 Q. Okay.

3 Now, tell the jury what are some of the risks of this  
4 procedure?

5 A. Of course, the most common thing that people get  
6 worried about is getting paralyzed and becoming a quadraplegic  
7 after the surgery.

8 Yes. There's a very low chance that would happen;  
9 especially, if you've been doing it for awhile.

10 And, the other risks are the central tube. From there  
11 is the spinal cord. It's actually, basically, the spinal fluid.  
12 And that cord is covered with a thin membrane called the dura.

13 If the dura ruptures, the spinal fluid leaks out. If  
14 the spinal fluid leaks out, the patient could get headaches  
15 post-surgery.

16 Blood complications are common in just about any  
17 surgery. Infection. And, also, peculiarly a complication  
18 associated with cervical spine; which, can be a life-threatening  
19 and dangerous complication; which, is known as is vertebral  
20 artery injury.

21 The vertebral artery are two arteries running on the  
22 side of the neck. They run through the a small foramen in the  
23 bone. It's anchored by the foramen. So, it runs through those  
24 foramen. But, where the disc lies, it is exposed on the side.  
25 If one goes too far, one can clip that vessel and there could be

Dr. Vora - Plaintiff - Direct

1 blood loss that could lead to death.

2 Q. If you look at the spine model here, you see at the  
3 top of the neck there; is that what you're talking about?

4 (Indicating.)

5 A. Yes.

6 The red thing here is the vertebral artery. So, let's  
7 see: One, two, three, four, five, six. That's the disc that  
8 you would take out. If you go too far to the side, one would  
9 hit the red structure. And, that's bad.

10 Q. But, in the hands of a skilled surgeon, Mr. Dojce, you  
11 would say, had a successful procedure?

12 A. Yes.

13 Q. What about revision surgeries. Do you do revision  
14 surgeries?

15 A. Yes.

16 Q. Tell the jury, what's that?

17 A. The whole purpose of the surgery is that the bone  
18 should fuse from segment to the other.

19 Very low rate. But sometimes the bone does fuse, grow  
20 from one segment to the other. Then one has to do a revision;  
21 which, might involve going through the back of the neck, and  
22 doing additional fixation. Or, redoing the surgery from the  
23 front.

24 In the lumbar spine, one can involve redoing the  
25 microdiscectomy. Because it is still narrow and constricted, or

Dr. Vora - Plaintiff - Direct

1 doing a lumbar fusion like this next procedure. Because  
2 microdiscectomy procedure did not work.

3 Q. And the fact that Mr. Dojce had both a cervical fusion  
4 and a lumbar fusion, is that going to affect his mobility?

5 A. Yes. In the sense -- first of all, the back pain  
6 never goes away completely, neither does the neck pain. So,  
7 he's going to be chronically -- he's going to have chronic low  
8 back and neck pain, and chronic restriction of movement of the  
9 neck, as well as lower back.

10 So, yes. He's mobility restricted. And, his pain is  
11 going to be chronic.

12 Q. Did you treat him with any medication?

13 A. Yes.

14 Q. Can you tell the jury what type of medications he was  
15 on?

16 A. Mostly painkillers and muscle relaxers.

17 Q. And, will he need to be on those the rest of his life?

18 A. Depending on the intensity of the pain, most likely.  
19 Yes.

20 Q. And, the surgeries that you performed; do they have a  
21 shorter lifespan, a longer lifespan in terms of life-expectancy?

22 Could you tell us whether or not he's ever going to  
23 need another surgery?

24 A. In terms of life-expectancy, I mean, the surgery  
25 should not typically affect life-expectancy, per se.

Dr. Vora - Plaintiff - Direct

1           But, yes. Additional surgeries may be required in the  
2 future. Especially, once you fuse one segment in the spine, the  
3 segments above and below have to take on the roll of that  
4 segment, the motion of that segment. They can wear down faster;  
5 which, may require surgery in the future.

6           It's completely unpredictable at what stage. And  
7 whether he will require surgery. But, he could. And, that's  
8 true for the cervical as well as the lumbar spine.

9           Q. You don't have a crystal ball; do you, Doctor?

10          A. Absolutely not.

11          Q. And do you anticipate that Mr. Dojce, at some point in  
12 the future, may need some sort of further or future spinal  
13 surgery to address any issues as he continues on in his aging  
14 process?

15          A. It is possible.

16          Q. Doctor, when is the last time you saw Mr. Dojce?

17          A. October 3rd, 2019. Yes, October 3rd, 2019.

18          Q. And, can you tell us: As of the time of your last  
19 visit with him, what were his -- what was his overall condition  
20 with regard to his spine?

21          A. He continued to have low back pain. His neck -- he  
22 also continued to have neck pain, his particular symptoms had  
23 improved in his upper extremities. But, he continued to have  
24 upper and lower back pain.

25                 And, that's essentially the way he was.

Dr. Vora - Plaintiff - Direct

1 Q. And your overall assessment of his condition as of the  
2 last time you sawed him?

3 A. At that time I believe I recommended additional  
4 nonsurgical treatment. I also documented that he had continued  
5 symptoms.

6 And I recommended him to consider a lumbar fusion for  
7 the lower back. And, he was supposed to followup with me three  
8 months after.

9 Q. Let me talk about permanency. What could you tell the  
10 jury about permanency with regard to the injuries sustained in  
11 this accident, and the pain complex that he's relayed to you?

12 A. So, I do believe that he is still in significant pain.  
13 I didn't do the lumbar fusion surgery. Dr. Brisson did it.  
14 But, I believe even after that he still is in a fair amount of  
15 lower back pain. He still has neck pain.

16 And, I do believe, at this point, he's 100 percent  
17 disabled from all work.

18 Q. Let me hear you say that again. "At this point, you  
19 believe he is?"

20 A. A 100 percent disabled from all work.

21 Q. So, he will not be able to go back and be a laborer  
22 like he was before?

23 A. No, I don't believe so.

24 Q. He will not be able to do any other sort of heavy duty  
25 work: Lifting, pushing, pulling, things like that?

Dr. Vora - Plaintiff - Direct

1 A. That is correct.

2 Q. Your overall recommendation and treatment plan for  
3 Mr. Dojce, based on everything you know about his condition;  
4 what would you say that would be?

5 A. Overall recommendation would be, basically at this  
6 point, he's disabled from all work.

7 Can't see him doing any kind of work. Because work  
8 would require some amount of repetitive motion. And I don't  
9 believe that he's capable of indulging repetitive motion.

10 Q. Is he going to need medication?

11 A. He most likely will.

12 Q. Is he going to need therapy?

13 A. Yes.

14 Q. Is he going to need future testing?

15 A. Yes.

16 Q. Is he going to need any future -- aside from the  
17 surgeries that we discussed, Dr. Rauchwerger talked about  
18 implantation of a pain stimulator.

19 Are you familiar with that?

20 MR. GALLARDO: Objection, your Honor.

21 It's not in his records. It's cumulative.

22 THE COURT: You got that done already.

23 MR. GALLARDO: A spine stimulator.

24 THE COURT: Well, you already got that in anyway.

25 MR. THOMAS: I understand.

Dr. Vora - Plaintiff - Direct

1 Q. I just want to know if you're also in agreement that  
2 he's going to need --

3 THE COURT: All right. Then show me the  
4 agreement.

5 I don't want to go through this again.

6 MR. THOMAS: Judge, it says it right here. It's  
7 number eight.

8 MR. GALLARDO: It's cumulative, your Honor.

9 MR. THOMAS: It's cumulative? Really.

10 THE COURT: Is it in his report?

11 MR. THOMAS: It's in his report. Yes, it is.

12 THE COURT: All right. So, go ahead.

13 Q. All right.

14 Doctor, the same way I asked Dr. Rauchwerger about the  
15 cost of future procedures, and we will ask you as well if you  
16 could reference future medical care, life kind of care?

17 MR. GALLARDO: May I ask what the witness is  
18 looking at? I don't know what page in the report.

19 Counsel, what page are we talking about?

20 Q. Doctor, tell us what page you are looking at in your  
21 report, that's in evidence?

22 A. The note is of May 26th, 2022. I'm looking at page 5  
23 and page 6.

24 Q. Okay.

25 There's a section there that says, "recommendation

Dr. Vora - Plaintiff - Direct

1 treatment plan"?

2 MR. GALLARDO: Your Honor?

3 A. Yes.

4 Q. And, in that note it indicates medications, including  
5 opiate pain relievers, muscles relaxants, antiinflammatory  
6 medications.

7 And you projected a cost, per-month, over the cost of  
8 his life?

9 MR. GALLARDO: Your Honor, objection.

10 I haven't seen that. May I look at the note?

11 MR. THOMAS: You know what, Judge, just because  
12 he says he hasn't seen it.

13 MR. GALLARDO: That's --

14 THE COURT: Look, I don't know if there's a  
15 report with that in it or not. If you have the report,  
16 show it to him counsel.

17 MR. GALLARDO: Your Honor, I would note that I  
18 was never shown what's before -- when we broke, I was never  
19 shown what the doctor brought.

20 I assumed that it was what I had seen before.

21 MR. THOMAS: These are his records.

22 MR. GALLARDO: Your Honor, I was never shown what  
23 the Doctor brought.

24 THE COURT: All right.

25 MR. GALLARDO: So, I would ask for a break so I

Dr. Vora - Plaintiff - Direct

1 could look at what the doctor brought.

2 THE COURT: All right.

3 We'll take two minutes, and then we'll go right  
4 into the cross.

5 MR. GALLARDO: That's fine, your Honor.

6 THE COURT: All right.

7 So, we'll take a short break.

8 COURT OFFICER: All rise. Jury exiting.

9 (Jury exits at 3:30 PM.)

10 (Recess taken.)

11 MR. GALLARDO: Your Honor, may I make a record?

12 THE COURT: Yes, counsel.

13 MR. GALLARDO: Your Honor, this witness testified  
14 that the last time that he saw the Defendant was in October  
15 of -- the year of his surgery, October of 2019.

16 We were given a report -- we were told that he  
17 had before him just his records. The representation was  
18 made, and I agreed, that the document should be marked into  
19 evidence. And your Honor marked it into evidence based  
20 upon that representation.

21 All the while, the witness has been reading from  
22 a report dated May 26th, 2022, some two years, almost two  
23 years after he last saw this patient. And the report was  
24 authored by a doctor --

25 THE COURT: Come on, counsel. You know, that is

Dr. Vora - Plaintiff - Direct

1 kind of improper.

2 MR. THOMAS: Judge?

3 MR. GALLARDO: And, it's authored by a doctor.

4 THE COURT: Right. So, he's reading a report  
5 from another physician -- Doctor, could you step outside  
6 for a second?

7 THE WITNESS: Sure.

8 (Witness exits the courtroom.)

9 MR. GALLARDO: Your Honor, I respectfully move to  
10 strike the entire testimony.

11 THE COURT: You know, why are you making such a  
12 mess of this record?

13 MR. THOMAS: Judge, I'm not. How is it --

14 THE COURT: Here he is going down the report of  
15 another doctor, okay, that he didn't author. And you  
16 already called that doctor.

17 MR. THOMAS: Judge, I didn't call that doctor.

18 Counsel said he doesn't object to all the records  
19 going in.

20 THE COURT: No. No. No. No.

21 MR. THOMAS: And, I said, fine.

22 THE COURT: All right.

23 Look: This doctor did make it clear, on the  
24 record, that these are his records; all right?

25 And I took it to mean that these are records that

Dr. Vora - Plaintiff - Direct

1 he prepared. So, if he's reading reports of other doctors  
2 in this file, he can't do it; okay.

3 MR. THOMAS: Judge, these were the reports that  
4 he took, that he has control over.

5 As counsel said from the beginning, he has no  
6 objection to all the records going in. I said, fine.

7 THE COURT: No. No. All his records going in.

8 MR. THOMAS: Yeah, but they are his records too.

9 THE COURT: I was in the same courtroom when all  
10 of this was taken place.

11 And I don't have any problem with his records  
12 going in. But, that is not his records.

13 MR. THOMAS: Judge, they are his records from his  
14 office.

15 THE COURT: Why? Just because they're in his  
16 file? I mean, he puts them in the file, that makes them  
17 his records?

18 MR. THOMAS: They are from his office.

19 THE COURT: So, does that make it his records?

20 MR. THOMAS: Yes.

21 THE COURT: All right. We fundamentally  
22 disagree. We disagree. We disagree. All right?

23 MR. GALLARDO: Your Honor, I move to strike the  
24 entirety of the testimony.

25 THE COURT: So, you could very simply just call

Dr. Vora - Plaintiff - Direct

1 one doctor and just have all the reports in one file.

2 And then you would save a lot of money.

3 MR. THOMAS: Judge, my question is very specific  
4 to this doctor: Based on the last time that you saw him --

5 THE COURT: Counsel, look: If you have a report  
6 that he authored, or he's running an opinion that he needs  
7 a spinal cord modulator, or whatever it's called, he could  
8 testify.

9 If you don't, then he can't testify. And, what I  
10 see is going on here; he is reading from another doctor's  
11 report with all that stuff in it; all right?

12 MR. THOMAS: Judge, again, they're records from  
13 Brooklyn Premiere Orthopedic; which, has been offered into  
14 evidence, the entire record. These were the records that  
15 this doctor brought for the purpose --

16 THE COURT: So, again, counsel -- I'll relive it.  
17 We'll take all the time we need.

18 Again, he specifically asked this doctor: Are  
19 these your records? Are these records that you prepared?

20 At least that's what I thought he asked him;  
21 okay?

22 And he said, "yes." Okay?

23 And, they're clearly not. Okay? They are not  
24 his records. In fact, they are records of a doctor that  
25 authored the report; what, two years after he last saw him?

Dr. Vora - Plaintiff - Direct

1 MR. GALLARDO: Yes. Yes, your Honor. Two years  
2 after this doctor.

3 THE COURT: All right. Come on.

4 So, that's my ruling.

5 MR. THOMAS: Very good, Judge.

6 THE COURT: I'm not striking his entire  
7 testimony.

8 MR. GALLARDO: Your Honor, the damage has been  
9 done.

10 THE COURT: All right. So, make your record. Go  
11 ahead. Make your record.

12 MR. GALLARDO: Your Honor, the damage has been  
13 done. If your Honor is not going to strike the entirety of  
14 the testimony --

15 THE COURT: I mean, it's cumulative first of all.

16 MR. GALLARDO: I would ask that your Honor strike  
17 that portion of the testimony where he refers to the need  
18 for a back stimulator; which is not in his records.

19 And that he's totally disabled; which, is not his  
20 records.

21 And all his testimony about what this patient is  
22 going to need. Because none of it is in his record.  
23 Because he just saw him post-surgery. And you heard him  
24 testify --

25 THE COURT: Yeah, counsel, why are you going

Dr. Vora - Plaintiff - Direct

1 through, like, using him as your lifecare planner? You  
2 just callid your lifecare planner.

3 MR. THOMAS: I don't need to. He did two  
4 surgeries.

5 THE COURT: I know. But, why are you doing it?  
6 You're making a big mess here.

7 MR. THOMAS: I don't mind if you want to voir  
8 dire him.

9 THE COURT: I don't want to voir dire him.

10 All right. But, again, you are going through the  
11 same thing that you just went through with your last  
12 expert. And, it's not his thoughts. You're just having  
13 him read another physician's report.

14 MR. THOMAS: Judge, it's not another treating  
15 physicians report. It's from the same practice.

16 THE COURT: All right. I don't want to go over  
17 that.

18 I'll go over it again. I'll go over it again;  
19 okay? I'll go over it three times.

20 It's not his record, counsel. Look, your  
21 obligation as a plaintiff's attorney in order to call a  
22 physician to testify, you have to disclose the report. The  
23 report has to set forth all his findings.

24 You can't put all the reports of all the treating  
25 doctors in one file, and have one doctor talk about all the

Dr. Vora - Plaintiff - Direct

1 reports. You can't do it. And, you know that. Why do I  
2 have to say this 100 times?

3 It doesn't make it admissible just because it's  
4 in his file.

5 MR. THOMAS: No, Judge.

6 But, again, my understanding is that they are in  
7 the same practice. He's the doctor who performed the  
8 surgery. He has access to all the records and all the  
9 files from this office.

10 He's not testifying about another treating  
11 physician that he's not affiliated or associated with.

12 MR. GALLARDO: Your Honor, I move to strike.

13 THE COURT: I know. You strike. You want his  
14 entire time. You want a mistrial, and everything else.

15 MR. GALLARDO: Your Honor, could carve out --  
16 while I would like the entire testimony stricken, your  
17 Honor could at the very least and strike

18 THE COURT: I'm going to strike any testimony  
19 about the stimulator as cumulative.

20 All right? And it is cumulative.

21 MR. THOMAS: Very good, your Honor. I'll move  
22 on.

23 MR. GALLARDO: The disability. Everything that  
24 he testified about that.

25 THE COURT: I don't know why we're -- all right.

Dr. Vora - Plaintiff - Direct

1           Whatever.

2                   MR. THOMAS: I'm ready to move on, Judge.

3                   THE COURT: All right.

4                   MR. GALLARDO: Will your Honor give a curative  
5           instruction?

6                   THE COURT: Yes.

7                   MR. GALLARDO: I have these records that was  
8           given to me by the witness.

9                   MR. THOMAS: Yes, please keep the doctor's  
10          records together.

11                   MR. GALLARDO: Is that all he has?

12                   MR. THOMAS: That's what he brought.

13                   (Awaiting the jury.)

14                   MR. THOMAS: Judge, I will say for the record the  
15          entire record from Brooklyn Orthopedic is here; which, we  
16          are going to offer into evidence.

17                   THE COURT: Well, if it's in evidence, it's in  
18          evidence. Okay. So offer it.

19                   MR. THOMAS: All right. Fine.

20                   At this time, I wish to offer the entire record  
21          from Brooklyn Premier Orthopedic Center for Musculoskeletal  
22          Disorders that treated the plaintiff for years.

23                   THE COURT: All right.

24                   MR. GALLARDO: I object, your Honor. I object.

25                   Because there was a representation made that this

Dr. Vora - Plaintiff - Direct

1 doctor was going to testify as to his 3101D.

2 THE COURT: First of all.

3 MR. THOMAS: Here's a treating physician.

4 MR. GALLARDO: Okay.

5 And you're read from another doctor's report.

6 And you're representing to me that it's his report.

7 And I'm sitting here. And my client is  
8 getting --

9 THE COURT: All right.

10 Number 1: did you serve the exchange for those  
11 records? Are they business records?

12 MR. THOMAS: They're business records.

13 THE COURT: No. No.

14 Look: Did you serve the exchange that laid the  
15 foundation that they are business records?

16 Or, did you just subpoena them?

17 MR. THOMAS: I believe there's a certification  
18 that's attached.

19 THE COURT: Well, take a look.

20 (Pause.)

21 THE COURT: Counsel, we're these certified, the  
22 records, from this facility?

23 MR. GALLARDO: This?

24 THE COURT: No. No. No. The one that came in  
25 from your subpoena. Did they come in that exchange?

Dr. Vora - Plaintiff - Direct

1 MR. THOMAS: Yes. Judge, this is --

2 THE COURT: Show it to him.

3 (Recess taken.)

4 MR. GALLARDO: I would just ask that, that aspect  
5 be stricken. Because it is not his record.

6 THE COURT: Counsel, look: I understand that he  
7 didn't author the report.

8 However, if the records otherwise come into  
9 evidence, he's allowed to read them.

10 MR. GALLARDO: You know, your Honor, I  
11 respectfully -- since this is a witness that's being called  
12 as a treating; he's supposed to stick to his report.

13 It's not a 3101D situation. He's going  
14 far-a-field of his report reading another doctor's report.

15 THE COURT: I don't know why we're spending so  
16 much time on this spinal stimulator; when you already got  
17 that in.

18 MR. THOMAS: Judge? Judge, I'm ready to move on  
19 like I said.

20 THE COURT: I know, but I got to strike the  
21 testimony about the spinal stimulator.

22 MR. THOMAS: That's fine.

23 THE COURT: All right. Bring them in.

24 (Pause.)

25 THE COURT: Are we ready?

Dr. Vora - Plaintiff - Direct

1 MR. THOMAS: We are ready.

2 THE COURT: I want to get the doctor back.

3 COURT OFFICER: All rise. Jury entering.

4 (Jury enters at 3:47 PM.)

5 (Witness retakes the stand at 3:47 PM.)

6 THE COURT: Have a seat, ladies and gentlemen.

7 All right. So, ladies and gentlemen, after some  
8 discussion, any testimony you heard from this witness  
9 regarding the necessity of a spinal cord stimulator will be  
10 stricken from the record; okay?

11 So, you may continue, counselor.

12 MR. THOMAS: Thank you, Judge.

13 Q. Doctor, based on the world of information that you  
14 were provided, including the physical examinations and your  
15 surgical procedures that you performed on Mr. Dojce; do you have  
16 an opinion, within a reasonable degree of medical certainty,  
17 whether Mr. Dojce's injuries, his disabilities, and his need for  
18 future treatment were causally related to the accident of  
19 April 21st, 2016?

20 A. Yes.

21 Q. Please tell the jury why?

22 A. I believe the patient was pain free prior to the  
23 injury. And, after the injury he started complaining of neck  
24 pain, upper extremity, radiculose, extreme pain going down the  
25 arms, as well as lower back pain, and pain going down the legs.

Dr. Vora - Plaintiff - Cross

1           So, I do believe that the injury caused his symptoms;  
2           and which, eventually, necessitated surgery to the neck, as well  
3           as the lower back.

4           Q.    Doctor, thank you very much.  I have no further  
5           questions.

6                       MR. GALLARDO:  Your Honor, if I may inquire?

7                       THE COURT:  You may.

8           CROSS-EXAMINATION

9           BY MR. GALLARDO:

10           Q.    Good afternoon, Dr. Vora.

11                       My name is Domingo Gallardo.

12                       MR. GALLARDO:  And if you could take that down,  
13           counsel, I would much appreciate it.  Thank you.

14           Q.    Dr. Vora, we never met before; is that correct?

15           A.    That is correct.

16           Q.    Okay.

17                       And, you've testified at trial before?

18           A.    Yes.

19           Q.    Okay.

20                       And, have you ever testified for Mr. Thomas?  I don't  
21           think you have, have you?

22           A.    No.

23           Q.    And what are you being compensated?  I know you were  
24           here earlier today.  I saw you sitting outside.  So, what are  
25           you being compensated is my question?

Dr. Vora - Plaintiff - Cross

1 A. Oh, I don't directly get compensated. I'm an employee  
2 of the practice.

3 Q. Well, what is the practice being compensated?

4 A. I do not know. I do not get into those details.

5 Q. So, you spent most of the day here today. I saw you  
6 in the beginning of the morning like 11:00?

7 A. About 11:30.

8 Q. And, you didn't see patients; right?

9 A. That is correct.

10 Q. So, you don't know what you're being paid? You don't  
11 know what your practice is being paid?

12 A. That is correct. I don't get into business side. I'm  
13 an employee.

14 Q. Okay.

15 A. I get a W-2.

16 Q. Doctor, you testified that the last time you saw --  
17 your last surgery -- the two surgeries you performed were in  
18 2019?

19 A. Yes.

20 Q. And the last time you saw him, you saw him in October  
21 of 2019; is that correct?

22 A. Correct.

23 Q. And the last time -- and he was supposed to comeback  
24 to you in two weeks?

25 A. I believe three months.

Dr. Vora - Plaintiff - Cross

1 Q. Okay. I thought you said two weeks earlier, but fair  
2 enough.

3 But, you never saw him again after that?

4 A. Correct.

5 Q. To this date, you are testifying as to Mr. Dojce's  
6 condition despite -- you're his treating physician. You  
7 consider yourself his treating doctor?

8 A. Yes.

9 Q. Okay.

10 And you're testifying as to his current condition and  
11 future condition. And he never came in to see you, before  
12 coming here, to testify before this jury; is that correct?

13 A. Correct. With a qualification.

14 May I?

15 Q. No.

16 Doctor, you get a redirect. If you can answer yes or  
17 no, I prefer it if you could answer yes or no. This is a cross.  
18 You know what a cross is?

19 MR. THOMAS: Objection, your Honor. He's giving  
20 a lecture here.

21 THE COURT: All right.

22 So, if you could answer yes or no; that would be  
23 great. If you can't, you'll let him know.

24 Q. Okay? Is that okay?

25 A. Yeah, that's fine.

Dr. Vora - Plaintiff - Cross

1 Q. Okay.

2 Doctor, I'm going to -- your attorney has been kind  
3 enough to allow me to use his Elmo from time to time?

4 MR. THOMAS: I'm not getting so kind anymore.

5 MR. GALLARDO: Oh, come on. This is not  
6 personal.

7 MR. THOMAS: Sure, it's not.

8 (WHEREUPON, a photo is shown in open court, with  
9 the jury present, on screen.)

10 Q. So, this is your first -- he had been to your practice  
11 before your first visit; is that correct?

12 A. I can't recall.

13 I believe this particular note is from a previous  
14 electronic medical record; which, I do not have. The printout  
15 of which I do not have with me.

16 Q. So, you didn't bring this note with you?

17 A. No.

18 Q. Okay.

19 MR. THOMAS: Well, Judge, if this isn't his note  
20 that's in evidence then --

21 THE COURT: This is not in evidence.

22 MR. GALLARDO: This is his note. I'm about to  
23 prove it's his note. I'll get his signature page.

24 He testified to --

25 MR. THOMAS: Your Honor, I'm just asking that he

Dr. Vora - Plaintiff - Cross

1 mark it.

2 THE COURT: All right.

3 Before you show it to the jury, just make sure  
4 it's in evidence.

5 MR. GALLARDO: May I mark the note from  
6 August 6th, 2019; which, is Dr. Vora's first visit with  
7 Dr. Vora (SIC)?

8 THE CLERK: Are we marking it for ID?

9 MR. GALLARDO: Yes.

10 May we move it into evidence? You referred to  
11 it, counsel.

12 MR. THOMAS: I have no objection to moving the  
13 entire medical record --

14 MR. GALLARDO: No. I'm asking you about this  
15 note, counsel.

16 MR. THOMAS: Well, then you need to show it to  
17 me.

18 MR. GALLARDO: Okay.

19 (WHEREUPON, papers are handed to the plaintiff's  
20 attorney.)

21 THE CLERK: Defendant's 'D' for ID.

22 (WHEREUPON, the item referred to is received and  
23 marked Defendant's Exhibit D for Identification.)

24 THE COURT: Any objection, counsel?

25 MR. THOMAS: No objection.

Dr. Vora - Plaintiff - Cross

1 THE COURT: All right.

2 So, Defendant's 'D' will be received into  
3 evidence.

4 (WHEREUPON, the item previously received and  
5 marked for identification is received and marked in  
6 evidence as Defendant's Exhibit D in Evidence.)

7 (WHEREUPON, Defendant's Exhibit D for  
8 Identification is shown in open court, with the jury  
9 present, on screen.)

10 Q. Okay.

11 This has been accepted, your note of August 6th, 2019;  
12 okay?

13 A. Yes.

14 Q. And, do you see I'm just going to question -- ask  
15 questions with respect to the highlighted portion.

16 "A translator was supplied by law offices."

17 That was Lipsis Shapey; right?

18 A. I don't recall.

19 Q. Okay.

20 And, "patient states that he had a work related  
21 accident on 4/21/2016. Patient states he was working as a  
22 laborer at a construction site when a saw/grinder that was  
23 provided got stuck and jumped back into his right thigh causing  
24 a deep incision."

25 Do you see that?

Dr. Vora - Plaintiff - Cross

1 A. Yes.

2 Q. And, then it says: "Patient states he fainted due to  
3 loss of blood. Fell back hitting his lower back and neck and  
4 head."

5 Do you see that?

6 A. Yes.

7 Q. And, this was the history upon which you were basing  
8 your treatment; is that correct?

9 A. Correct.

10 Q. So, you were basing your treatment and your opinion  
11 that this accident is related to this fall based upon the  
12 representation that he fell and hit his lower back, neck, and  
13 head.

14 Is that true sir; yes or no?

15 A. Correct.

16 Q. Okay.

17 Now, Doctor, with respect to needing further -- with  
18 respect to surgery. You said something that I wanted to go  
19 over.

20 Did you testify that he may need more surgery because  
21 the disc above and below may become unstable?

22 A. No.

23 Q. Okay.

24 So, that's not -- let me make this statement: Is it  
25 fair to say that the disc below the surgery; which, has been in

Dr. Vora - Plaintiff - Cross

1 the lumbar and cervical spine, that it's not likely, or that he  
2 will need surgery in the disc above and below?

3 A. That's not what I said.

4 Q. Okay.

5 I'm asking you; that's not true that statement?

6 A. What you're saying, your second statement is false.

7 Q. Okay.

8 Well, will the disc above the surgery become less  
9 stable? Yes or no?

10 A. It's not about stability.

11 Q. Okay.

12 Will the disc above the surgery become susceptible to  
13 surgery?

14 A. Yes.

15 Q. And, that's may be surgery; is that correct?

16 A. Correct.

17 Q. We don't -- so, you can't definitively say if he's  
18 going to need surgery?

19 A. No.

20 Q. And your testimony that if that surgery is necessary,  
21 it's not about stability?

22 A. Not necessarily.

23 Q. Okay. I have no further questions, thank you.

24 REDIRECT EXAMINATION

25 BY MR. THOMAS:

Dr. Vora - Plaintiff - Redirect

1 Q. Doctor, what's the name of the practice that you're  
2 employed by?

3 A. Brooklyn Premier Orthopedic Group.

4 Q. And even though this note was from 2018, there are  
5 other doctors in the practice; aren't there?

6 A. Correct.

7 Q. And do you take a joint approach in treating patients?

8 A. Yes. In the sense that everybody treats their  
9 specialty part.

10 Q. And, so --

11 MR. GALLARDO: Objection, your Honor. Scope.

12 MR. THOMAS: This is part of his cross.

13 THE COURT: He could answer of the question.

14 Go ahead.

15 Q. Counsel asked you --

16 MR. THOMAS: Withdrawn.

17 Q. The last time you saw him is not the last time he was  
18 at your practice though; correct?

19 A. Correct.

20 Q. So, when counsel asked you about the last time you saw  
21 him, and you wanted to give that qualification; please do?

22 A. The last time I saw him was 2019. But, he was seen in  
23 the practice, I think the last time, was May 26th, 2022.

24 There's a narrative report. Narratives are generated  
25 by the practice. It may have one particular surgeon signed off

Dr. Vora - Plaintiff - Redirect

1 on it. But, the doctors involved in the practice also have a  
2 look before he signed off on it.

3 We just -- the MRI one person signed off. That's  
4 fine.

5 Q. So, a narrative is just a summary of all the records,  
6 course of treatment, medication that --

7 MR. GALLARDO: Objection, your Honor, as to  
8 scope.

9 THE COURT: Overruled.

10 Q. Is that fair to say?

11 A. I'm sorry. Could you repeat the question?

12 Q. A narrative if a summary of all the records in the  
13 file?

14 A. Yes.

15 Q. And you are just one part of that team, if you will,  
16 that rendered care and treatment to Mr. Dojce?

17 A. Yes.

18 Q. And he continued to get care and treatment from your  
19 facility; even though you personally didn't see him?

20 A. Yes.

21 Q. And do you routinely rely on the care and treatment  
22 rendered by other medical professionals in your office?

23 MR. GALLARDO: Objection, your Honor.

24 Scope.

25 THE COURT: Yeah, well, go ahead. Overruled.

Dr. Vora - Plaintiff - Redirect

1 A. Yes.

2 Q. And, Doctor, counsel showed you this note. And asked  
3 you if your treatment was based on the history.

4 Is your treatment based on your history that's  
5 provided?

6 A. It's history, examination, imaging findings. It's all  
7 of those.

8 Q. So, if somebody presents to you with a back complaint,  
9 does it matter to you whether they fell off the first step of  
10 the ladder, or the second step of the ladder?

11 A. Not particularly, no.

12 Q. Okay.

13 Because you treat the complaints of pain and the  
14 issues presented regardless of how it happened?

15 A. Correct.

16 Q. And, finally Doctor, do you believe that Mr. Dojce's  
17 complaints of pain in his neck and his back are caused by  
18 anything other than the injuries from the accident of  
19 April 21st, 2016?

20 A. No.

21 Q. Thank you, very much. I have no further questions,  
22 Judge?

23 MR. GALLARDO: I have nothing further, your  
24 Honor. It's fine.

25 THE COURT: All right.

Dr. Vora - Plaintiff - Redirect

1 Doctor, thank you very much. You may step down.

2 (Witness leaves the stand at 3:59 PM.)

3 THE COURT: All right. I believe we are done for  
4 the day.

5 MR. GALLARDO: I think so.

6 MR. THOMAS: Judge, I have six more witnesses; if  
7 we could? No, I'm kidding.

8 THE COURT: I don't think that's fine, counsel.

9 So, we are done for the day.

10 THE WITNESS: Will they stay here?

11 THE COURT: Just leave that there for now. Yes.  
12 Thank you, Doctor.

13 All right. So, just to remember: Monday we are  
14 not in session. Tuesday we are off. So, I'm not going to  
15 see you until Wednesday; okay?

16 And, then as you know, Friday we are off -- no.  
17 So, when is Veterans Day?

18 MR. THOMAS: Friday.

19 THE COURT: Friday; okay? So, we're off two days  
20 next week: Tuesday and Friday.

21 And, I'll let you know the schedule again when I  
22 see you on Wednesday. Okay? Thank you.

23 COURT OFFICER: 10:00 o'clock on Wednesday?

24 THE COURT: Yes. One second.

25 (Pause.)

Dr. Vora - Plaintiff - Redirect

1 THE COURT: All right.

2 So, Wednesday looking at my book here, we are  
3 going to get kind of a late start. So, be here at 11:00;  
4 okay?

5 So, 11:00 o'clock Wednesday. Thank you.

6 COURT OFFICER: All rise. Jury exiting.

7 (Jury exits at 4:01 PM.)

8 THE COURT: So, with all of that, counsel, you  
9 will be finished on Wednesday; right?

10 MR. THOMAS: Yes.

11 I plan on calling my client on Wednesday morning  
12 and finishing with him.

13 THE COURT: Well, you didn't start with him.

14 MR. THOMAS: We started with my client already.

15 THE COURT: Don't mind me.

16 MR. THOMAS: Provided the translator is here  
17 we'll finish with the plaintiff. And, then I have my  
18 economist; who, shouldn't be very long.

19 THE COURT: Okay.

20 And, how many witnesses do you have, counsel?

21 MR. GALLARDO: We have -- Ms. Levin?

22 MS. LEVIN: Yes. We have four witnesses.

23 THE COURT: Okay.

24 MS. LEVIN: Actually five, five witnesses. And I  
25 have them mostly scheduled. And, I could share that with

Dr. Vora - Plaintiff - Redirect

1 you.

2 THE COURT: All right.

3 MS. LEVIN: So far, I got one witness for  
4 Thursday. And I'm trying to get a separate one for  
5 Thursday the 9th.

6 THE COURT: Okay.

7 MS. LEVIN: I have one witness for Tuesday the  
8 14th, and two witnesses for the 15th.

9 THE COURT: So, that's five; right?

10 MS. LEVIN: Right. Five.

11 THE COURT: So, you got two for Tuesday and two  
12 for the 15th. So, two for the 14th. Two for the 15th.

13 MS. LEVIN: So far, I have one for the 14th.  
14 It's flexible right now. I'm trying to move them so that  
15 we could do two in one day.

16 THE COURT: All right.

17 MS. LEVIN: I have two for the 9th. One for the  
18 14th. Two for the 15th.

19 THE COURT: All right. All right. So, we are  
20 coming to an end.

21 MR. THOMAS: Would you like a requested charge?

22 THE COURT: You could give me a requested charge.  
23 I mean it's pretty straight forward on the verdict form.

24 MR. THOMAS: It is. But, with regard to the  
25 verdict sheet I believe we'll be asking for a specific

Dr. Vora - Plaintiff - Redirect

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items of damages.

THE COURT: Yeah. Well, what I'm going to do is  
I have --

MR. THOMAS: Judge, does this need to be on the  
record?

THE COURT: No. No. We're off-the-record.  
(WHEREUPON, there is a discussion held off the  
record at the bench among the Court and counsel.)

(WHEREUPON, court is recessed and the case  
adjourned to Wednesday, November 8, 2023 at 11:00 am.)

\* \* \* \* \*

Certified to be a true and accurate record of the  
above proceedings.

Robert Frankel

Robert Frankel, CSR  
Senior Court Reporter

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