

1 SUPREME COURT OF THE STATE OF NEW YORK.
2 COUNTY OF SUFFOLK ::::: PART 37

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3 ILDO LOPES,
4 Plaintiff,

5 -against-

INDEX NO.
605044/2018
TRIAL EXCERPT

TESTIMONY OF
ARIC HAUSKNECHT, M.D.

8 COUNTY OF SUFFOLK and GIBSON &
9 CUSHMANE CONTRACTING, LLC,

10 Defendants.

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11 October 31, 2024
12 Riverhead, New York

13 B E F O R E:

14 Hon. Joseph Farneti
15 Acting Supreme Court Justice

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DIRECT - HAUSKNECHT - THOMAS

1 MR. THOMAS: Your Honor, at this time we call
2 Dr. Aric Hausknecht.

3 THE COURT: Dr. Hausknecht, please step up, sir.
4 Follow the instructions of my uniformed officer.

5 Be careful stepping up.

6 COURT OFFICER: Remain standing when you reach the
7 top, remain standing and face the clerk.

8 A R I C H A U S K N E C H T, having been first
9 called, was duly sworn and testified under oath as
10 follows:

11 COURT CLERK: You can be seated. State your name
12 and your business address, please.

13 THE WITNESS: My name is Aric Hausknecht. My place
14 of business is 19 East 37th Street, New York, New York.

15 THE COURT: Can I just have the spelling --

16 THE WITNESS: First name is Aric, A-R-I-C, last
17 name Hausknecht, H-A-U-S-K-N-E-C-H-T.

18 THE COURT: Thank you, Doctor.

19 Mr. Thomas.

20 MR. THOMAS: Thank you, Judge.

21 DIRECT EXAMINATION

22 BY MR. THOMAS:

23 Q Good afternoon, Doctor.

24 A Good afternoon.

25 Q Doctor, please tell the jury what type of doctor are

DIRECT - HAUSKNECHT - THOMAS

1 you?

2 A I am a neurologist and a pain management specialist.

3 Q What is a neurologist, pain management specialist?

4 A Neurology is the field of medicine that deals with the
5 treatment and evaluation of disorders of the nervous system.
6 The nervous system includes the brain, the spinal cord and the
7 nerve roots and peripheral nerves. A pain management specialist
8 specializes in the treatment, evaluation of pain and the affects
9 of that pain that an individual is in. As a pain management
10 specialist, I see a lot of people that have headaches, neck
11 pain, back pain, numbness, weakness. It's my responsibility to
12 determine what's causing that problem, and it's my
13 responsibility to determine what type of treatment might be
14 appropriate for that patient to help alleviate their symptoms,
15 include the quality of their life, get them back into their
16 usual routine.

17 So different types of treatment include
18 rehabilitations, might be physical therapy or chiropractic
19 adjustments or acupuncture. It might include different
20 medications like anti-inflammatory or muscle relaxers or
21 painkillers, or it might include some type of injection, like a
22 trigger point injection or an epidural steroid injection or a
23 nerve block, or possibility of even another surgery.

24 Q Are you a practicing physician?

25 A I am. I'm Board certified in neurology and I'm also

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1 certified in pain management. I have a practice primarily in
2 Manhattan. I also have a satellite office in the Bronx and
3 Forest Hills, Queens, and affiliated with several different
4 hospitals including Beth Israel Center, Mount Sinai, and New
5 York Presbyterian Columbia.

6 Q Please tell the jury a little about your educational
7 background and work experience.

8 A Sure. I graduated from Duke University in 1987,
9 majoring in physical anthropology. I graduated from Mount Sinai
10 Medical School in 1991 with a medical degree. I completed my
11 medical internship training in 1992 at Beth Israel Medical
12 Center in Manhattan. I completed my neurology residency
13 training program in 1995 at New York Hospital Memorial Sloan
14 Kettering Cancer Center, and I've been in private practice since
15 1995.

16 Q Have you been offered as an expert in the field of
17 neurology and pain management in the State of New York?

18 A I have. I am Board certified in neurology and I'm
19 certified in pain management. That's basically the highest
20 level of qualification that a physician can achieve in those
21 fields. And I have previously been accepted as an expert.

22 Q Can you tell the jury what does it mean to be Board
23 certified?

24 A Board certification, as I just mentioned, is basically
25 the highest level of qualification that you can achieve in your

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1 field of specialty. So as a neurologist, after successfully
2 completing an accredited neurology residency practice and
3 passing a series of examinations, a neurologist is granted the
4 privilege to sit for the board exam, or the final exam. The
5 board exam for me in 1996 was a full day of multiple choice
6 questions on a test, and then another full day of an oral
7 examination, a verbal exam, in front of a board of examiners.

8 Q Do you know the name Ildo Lopes?

9 A Sure.

10 Q Were you his treating physician, one of his treating
11 physicians?

12 A Yes. He's my patient. I've been treating him since
13 2017 for an injury he sustained. He's been to my office about
14 30 or 40 times since then.

15 Q Are you being compensated for your time away from the
16 office?

17 A I am. Normally, I would be my Manhattan seeing
18 appointments. My fee for time away from the office is \$1,000
19 per hour.

20 MR. THOMAS: Your Honor, at this time I would wish
21 to offer Dr. Hausknecht as an expert in the field of
22 neurology.

23 MR. GRILLO: If I may not necessarily a voir dire,
24 may I ask one question?

25 THE COURT: Only way I know of doing that is voir

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1 dire. So in the nature of voir dire, I'll give you one
2 question.

3 MR. GRILLO: Just for clarification.

4 VOIR DIRE EXAMINATION

5 BY MR. GRILLO:

6 Q Good morning, Dr. Hausknecht.

7 A Good afternoon.

8 Q You're not being offered as an expert in radiology.

9 A I'm not sure that's radiology. I'm not a radiologist,
10 but I certainly have expertise.

11 THE COURT: Should there be any objection in
12 realtime --

13 MR. GRILLO: With respect to that, none, your
14 Honor. No objection.

15 THE COURT: Thank you.

16 CONTINUED DIRECT EXAMINATION

17 BY MR. THOMAS:

18 Q Dr. Hausknecht, did you bring Dr. Lopes file with you
19 today?

20 A I did.

21 Q Has that file been in the custody and control of your
22 office since creating those notes?

23 A Yes.

24 MR. THOMAS: Your Honor, with the Court's
25 permission, if the doctor needs to refresh his recollection,

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1 may he review or refer to his file in the course of his
2 testimony?

3 THE COURT: With the representation by Dr.
4 Hausknecht that that is his original office filed maintained
5 by him personally and his staff, I will allow the doctor to
6 refer to that, Doctor, at any time. I would just indicate,
7 if he is referring to that, he so indicate on the record so
8 everyone understands that he's testifying from memory or the
9 document itself. Under those conditions I will allow it.

10 Next question.

11 MR. THOMAS: Thank you.

12 Q Doctor, I want to you assume that there is an opening
13 statement by one of the defense counsel that Mr. Lopes didn't
14 seek treatment from you until 2018, would you agree with that?

15 A No, that's not accurate. He was seen in my office
16 initially, and I'm going to refer to the date on 10-19-17, so
17 that was nine days after his fall. He had previously been seen
18 by Dr. Shein, an orthopedist, who had identified that he had
19 sustained a head trauma, and told him to see a neurologist and
20 told him to see him nine days after the -- -

21 THE COURT: Just a clarification, Doctor. Is it
22 your testimony that the first time the plaintiff presented
23 to you for treatment is the 19th of October, 2017?

24 THE WITNESS: That's correct.

25 THE COURT: Thank you.

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1 Q Please tell the jury what you learned when he first
2 presented to you, what type of history did you take, and what
3 did you learn about Mr. Lopes' condition?

4 A Mr. Lopes indicated to me that he was in the course of
5 employment as a bridge painter, that he had fallen approximately
6 20 feet, hit his head, hit his back. Wasn't really sure if he
7 lost consciousness, but definitely felt dazed. He had started
8 having some pain, but finished out --

9 Q Doctor --

10 A -- too much pain to continue work after that and went
11 to see his orthopedist, who he had seen a few years prior for
12 some neck and back pain that he was having.

13 And when he saw me he had complaints referable to his
14 head, neck and back, specifically. And I'm going to just refer
15 to my report for the sake of accuracy.

16 He was having headaches and dizziness, and he described
17 his vision as going dark. He denied any nausea or vomiting, and
18 he denied any difficulty with his thinking, his ability to
19 recall information or speak or understand. But clearly as I was
20 talking to him, he wasn't processing information properly.

21 And as a trained neurologist, I was able to identify
22 that even though he denied these complaints, he was having
23 cognitive difficulties.

24 He complained of neck and back pain with shooting pain
25 into his left buttocks and thigh associated with numbness,

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1 tingling and cramping, and weakness of his left leg. He was
2 having difficulty sitting, standing, lifting and walking.

3 He was not taking any medications and had been unable
4 to return to work.

5 Q And just so we're clear, what language did you
6 communicate with Mr. Lopes in?

7 A He's primarily Portuguese speaking, but he speaks
8 Spanish relatively well. I'm fluent in Spanish, so we conversed
9 in Spanish.

10 Q And after take the history from him, what was the next
11 -- withdrawn.

12 You took a history about this accident. Did you
13 actually ask him about his past medical history?

14 A Yes. He indicated to me that he had been involved in a
15 prior motor vehicle accident and had some treatment for his neck
16 and back. This was, I believe, in 2013. He had completed a
17 course of treatment, was feeling better and went back to work.
18 He stopped treating and wasn't having any problems at that point
19 in time.

20 Q Did you do an examination on him?

21 A I did.

22 Q Tell us about that.

23 A My physical examination -- and once again I'm going to
24 refer to my report. I did a comprehensive neurological
25 examination focused on his head, neck and back, since those were

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1 the areas that he was complaining of and those are the areas
2 that I specialize in. When I did the mental status examination,
3 I noted that there was a partial receptive aphasia. Aphasia is
4 the ability to process information and speak. A receptive
5 aphasia refers to the ability of an individual to comprehend or
6 understand what's being said to them. So his ability to
7 understand what I was saying, his ability to follow commands,
8 follow instructions, was impaired.

9 THE COURT: Doctor, could you stop for a moment?
10 I'm going to ask you to speak into the microphone. While we
11 can hear you audibly in the courtroom, we also have an
12 interpreter assisting Mr. Lopes by remote with a headset, so
13 if I can ask you to speak a little slow, so for the mental
14 health of my stenographer.

15 THE WITNESS: You can tell me to slow down.

16 THE COURT: I'll tell you. It will be fine.

17 A On cranial nerve examination I noted that there was
18 horizontal nystagmus on right lateral gaze and vertical
19 nystagmus on up and down gaze. Nystagmus is an abnormal
20 movement or oscillation of the eye when you're looking from
21 place to place.

22 So for example, if I ask a person to follow my finger
23 towards the left, normally their eye can focus right on my
24 finger and the eyeball stays still. In this case he could not
25 keep his eyeball still on my finger, there was an oscillating

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1 movement on lateral gaze to the right, and up and down gaze.
2 And this is a relatively common finding in patients that have
3 head trauma, concussions, because it disrupts the integration,
4 or the pathways within the brain.

5 So your ability to fix your vision on a particular spot
6 requires the integration of several different systems within the
7 brain. It includes the visual systems, what your optic nerve is
8 feeding into your occipital lobe, it includes the vestibular
9 system, your inner ear canals that tell your brain -- your
10 head's position to face. It also includes what's called
11 proprioceptive receptors, which are in the muscles of the nerves
12 of the neck.

13 So normally if I move my head like that and I'm looking
14 at that light, everything is telling me the same thing, my inner
15 ear is saying here's your head, your eyes are saying here's your
16 eyes, and your nerves are saying here's your neck. If there's
17 an imbalance between those systems, the brain doesn't know what
18 to do. So if the vision is saying you're here, but you're inner
19 ear is saying you're there, your eyes are going to keep moving
20 back and forth because it's not really sure where it's supposed
21 to be. So in this case this was a objective finding that he had
22 sustained a pretty significant concussion.

23 When I examined his motor system or strength, he had
24 some weakness in his shoulders, the abductors, his -- or his
25 ability to raise up his arms. He had some weakness in grip

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1 strength in both hands. He had weakness of the left hip
2 extensor, or the ability to push your leg backwards. His
3 reflexes and sensory exam were normal.

4 When I examined his neck and back, there was cervical
5 and lumbosacral paravertebral tenderness. Cervical is the neck,
6 lumbosacral is the lower back, paravertebral would refer to the
7 tissues around the spine, so the muscles and the subcutaneous
8 tissue there.

9 There was also spasm in the lower back region. Spasm
10 is an involuntary tightening of a muscle typically due to an
11 underlying injury, such as a slipped disc or a pinched nerve.

12 The Spurling maneuver was positive on the left and the
13 straight leg raise testing was positive on the left. The
14 Spurling maneuver is performed by taking a person's head in your
15 hands, bending it to the side, bending it backwards and putting
16 pressure down on top. If there's been damage to the spine, such
17 as a torn ligament or tendon or sub-disc or a pinched nerve and
18 you put that kind of stress from the head onto the spine, it can
19 reproduce the patient's symptoms. And this is what's called the
20 Spurling maneuver.

21 The straight leg raise test is similar, but it's for
22 the lower back. So a person sits on their table, their legs are
23 hanging down, and you slowly raise one of the legs up to 90
24 degrees, or as far as you can get it within, again, in the lower
25 back. If there's been some type of damage to the structures of

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1 the spine or impingement of the nerve, when you perform this
2 maneuver it puts pressure or stress on that injured area and can
3 reproduce the patient's symptoms.

4 I checked the range of motion both actively and
5 passively in his neck and back. Active range of motion refers
6 to asking a patient to perform a movement. So for example, if I
7 ask an individual to bend his head to the left as far as it goes
8 and I measure that angle with a special tool called a
9 goniometer, that would be active left lateral flexion. If I
10 then take his head in my hands, push it to the left as far as it
11 would go so it won't go any further and measure that angle, that
12 is passive range of motion. So passive range of motion is
13 performed manually by the examiner, active range of motion is
14 performed voluntarily by the patient.

15 Q And did you compare his -- the modalities, the movement
16 of his neck and back to some normal number?

17 A Yeah. There are published guidelines as to what is
18 considered to be the normal range of motion for the neck and
19 back. New York State has guidelines, American Medical
20 Association has guidelines.

21 Q And the finding of limitation or restriction in these
22 ranges of motion, what was the significance of those findings?

23 A Well, they were objective findings that were consistent
24 with what he was telling me, which is that he had injured his
25 neck and back and was having neck and back pain. So it was an

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1 indicator to me that there was some type of damage to his spine
2 and, and it -- and on that basis I recommended that he go get
3 some MRIs of his neck and back and eventually some nerve testing
4 for his neck and back.

5 Q Doctor, can I ask you to give us a brief anatomy
6 lesson?

7 MR. THOMAS: Your Honor, at your --

8 THE COURT: Timing before we switch to that
9 demonstration.

10 Ladies and gentlemen, normally we break for lunch
11 between ten to or a little past ten to. It's my
12 understanding, and I will allow the Doctor to step down for
13 purposes of demonstration on the models which have been
14 stipulated to by counsel, rather than starting that process
15 now, we're going to take a lunch break. I'll ask you to be
16 back by 2:00. I'd like to be back on the record before 2:10
17 and 2:15.

18 This is the first time we're physically separating
19 outside the building -- but again, in a couple of days
20 you'll be reciting them in your head before I get into the
21 next sentence.

22 Do not forge or express any opinion about the case.
23 Do not discuss it between and amongst yourselves. Do not
24 allow the case to be discussed in your presence. If anyone
25 attempts to talk to you about this case despite you telling

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1 them not to, you need to bring that fact to my attention
2 without discussing that fact or any other fact you feel you
3 need to bring to my attention with your fellow jurors. No
4 research of any kind. No communication with any
5 third-party. And I appreciate your time and attention. And
6 I'll see you back in the building, let's make it five after
7 two, and we'll hopefully be back on the record by 2:15.

8 All rise as the jury exits for the luncheon recess.

9 Stay right there, Doctor.

10 (Whereupon, the jury exits the courtroom.)

11 THE COURT: Anything of a procedural nature before
12 we break for lunch?

13 (Whereupon, all counsel answered in the negative.)

14 THE COURT: Soft two. Let's make it 2:00, 5 after.
15 I'd like to give you at least an hour and 15, usually by the
16 time you get out of the building and get going. So I'd like
17 to make one more comment on the record.

18 I'd like to thank each of the attorneys for their
19 collegiality and their professionalism, and it's very much
20 appreciated by everybody on this side of the bench. Thank
21 you.

22 (Whereupon, the proceeding was interrupted for the
23 luncheon recess.)

24 COURT OFFICER: All rise.

25 COURT CLERK: Case on trial continued. All parties

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1 and counsel present.

2 THE COURT: Ready for the panel?

3 MR. THOMAS: I just ask if we can stipulate to two
4 anatomy images.

5 THE COURT: Doctor, can you step up?

6 (Whereupon, the Witness resumed the stand.)

7 THE COURT: I'll remind you you're still under
8 oath. I'll remind you again in front of the jury. Make
9 yourself comfortable.

10 THE WITNESS: Thank you.

11 THE COURT: Are we marking something for ID?

12 MR. GRILLO: Apparently we have a computer image,
13 Judge.

14 THE COURT: Is it going to be published on the big
15 screen or --

16 MR. THOMAS: Yes. That was the plan.

17 THE COURT: Okay. If I have a stipulation, that's
18 fine. Put the stip on the record, get unanimous consent, no
19 problem.

20 MR. THOMAS: For demonstrative purposes only.

21 MR. GRILLO: There's a picture of the brain I have
22 no issues with. Now we're getting into neurons and axions
23 and everything else that none of this was disclosed in.
24 It's strictly in the middle of testimony. I'm not trying to
25 be difficult, Judge, but --

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1 THE COURT: I'm going to give you the opportunity
2 to make your own records. I thought I had given a fairly
3 good hint on the earlier application with respect to the
4 point of view that demonstrative illustrations, particularly
5 if it's just not of the intact anatomy, if it is altered
6 anatomy or anatomy illustrated by some condition, trauma or
7 something else, the danger of prejudice in the jury
8 believing that that is a depiction of the actual injury of
9 the plaintiff rather than the MRI or the X-ray or the CT
10 scan, there's a danger there. And I customarily will
11 sustain that objection if that danger exists.

12 MR. GRILLO: I have no issue --

13 THE COURT: Intact anatomy, I don't have a problem.

14 MR. THOMAS: Then I'm --

15 THE COURT: Yeah, I understood your point, Mr.
16 Thomas.

17 MR. THOMAS: I know you're with me, Judge.

18 MR. GRILLO: The intact brain diagram I have no
19 issue with, Judge.

20 THE COURT: Excellent.

21 MR. GRILLO: That's the human brain anatomy with
22 the various lobes, I have no issue with that. It's generic,
23 it's fine.

24 THE INTERPRETER: We're not hearing. Sorry, we're
25 not hearing the lawyers.

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1 THE COURT: Counsel, they didn't have their
2 microphones on.

3 And thank you for chiming in. I appreciate that.

4 MR. GRILLO: Sorry about that.

5 THE INTERPRETER: Sorry.

6 THE COURT: We're better? Karen?

7 THE INTERPRETER: Are you speaking because I can't
8 hear you.

9 MR. THOMAS: This is the plaintiff speaking. I
10 hope you can hear me.

11 THE INTERPRETER: Now I can.

12 THE COURT: Gentlemen, I know it's difficult, but
13 with the headset, the interpreters, I'm going to ask you all
14 to bear with us in terms of the process.

15 But just with respect to this, we have a
16 stipulation with respect to the illustration of the brain
17 showing the various sections.

18 MR. GRILLO: Yes.

19 MR. THOMAS: Yes, Your Honor. Thank you.

20 THE COURT: Is there someone who can identify that
21 for the record?

22 MR. THOMAS: Sure, Judge. It's a colored
23 illustration entitled human brain anatomy.

24 THE COURT: Thank you.

25 MR. GRILLO: What I would ask, your Honor, I

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1 understand it's not going into evidence.

2 THE COURT: No. It should be marked for ID and
3 somehow preserved.

4 MR. THOMAS: Yes. I will print out a copy.

5 THE COURT: No, I agree. And counsel is indicating
6 that they will print a copy and that will become marked as
7 an ID exhibit for purposes of preservation of the record.

8 MR. GRILLO: I would like to potentially utilize it
9 during the defense case. That's the other issue.

10 THE COURT: As you are fully welcome to do.

11 MR. GRILLO: Thank you.

12 MR. THOMAS: No problem.

13 THE COURT: Excellent. Any other procedural or
14 substantive issues?

15 MR. THOMAS: No, Judge. Ready to proceed.

16 THE COURT: Excellent. Shall we bring the panel
17 in?

18 THE INTERPRETER: I'm sorry, your Honor.

19 THE COURT: I'm sorry?

20 THE INTERPRETER: Your Honor, are you going to
21 swear us in, the interpreters? We still haven't been sworn.

22 THE COURT: Oh, you haven't been sworn in today?

23 THE INTERPRETER: No.

24 THE COURT: Raise your right hand, please. On the
25 record.

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1 Do you swear to simultaneous interpret from English
2 to Canterbury Portuguese, Portuguese as necessary to English
3 for purposes of providing a contemporaneous interpretation
4 for the plaintiff, Mr. Lopes?

5 THE INTERPRETER: Yes, I swear. Karen Figueroa for
6 the record.

7 THE INTERPRETER: And Elizabeth?

8 ELIZABETH: I do, to the best I can.

9 THE COURT: Thank you.

10 All set, Jim.

11 COURT OFFICER: All rise, jury entering.

12 THE COURT: All rise, please.

13 (Whereupon, the jury enters the courtroom.)

14 THE COURT: Jury still entering. You may be seated
15 when you reach your seats. I'll give you a moment to settle
16 in.

17 All jurors are present. Does counsel waive the
18 roll call?

19 MR. THOMAS: So waived.

20 MR. GRILLO: So waived.

21 THE COURT: You may be seated.

22 Doctor, I remind you that you're still under oath
23 for purposes of Direct Examination.

24 Mr. Thomas.

25 MR. THOMAS: Thank you, Judge.

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1 THE COURT: You're welcome.

2 CONTINUED DIRECT EXAMINATION

3 BY MR. THOMAS:

4 Q Good afternoon, Doctor.

5 A Good afternoon.

6 Q I hope you had a nice lunch.

7 A Thank you.

8 Q Doctor, before we broke I asked if you could educate
9 the jury with a little anatomy lesson, and again we have a model
10 here if you think that will be helpful.

11 MR. THOMAS: And with the Court's permission, if
12 the Doctor can leave the witness stand.

13 THE COURT: Doctor, you're permitted to step into
14 the well for purposes of demonstrating to the jury based
15 upon questions asked by Mr. Thomas. Just be careful
16 stepping down and wherever you're comfortable and wherever
17 you're comfortable placing the models so that the jury can
18 view your demonstration. Without objection.

19 Q So, Doctor, what are we looking at here?

20 A So this is a plastic, anatomic model of the human
21 spinal column. This is the top, this is the bottom, here's the
22 front, here's the back, here are the pelvic bones with the hip
23 joints and here's the base of the skull.

24 The human spinal column is divided up into three
25 separate parts; the cervical spine or the neck, the thoracic

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1 spine or the upper and middle back, and the lumbosacral spine or
2 the lower back. The spinal column is made up of separate bones.

3 THE INTERPRETER: I can't hear you.

4 THE COURT: So.

5 THE INTERPRETER: Only the Doctor.

6 THE COURT: I understand that. We're going to get
7 him a microphone right now. Hold on.

8 Do the best you can, Doctor. We're going to try to
9 reach out to our tech people to see if we can get you a
10 remote mic. We'll going to allow you to use the lectern for
11 purposes of demonstration.

12 THE INTERPRETER: All right. If he can start
13 again, I'd appreciate it. Thank you.

14 THE COURT: No problem.

15 A The spinal column is made up of separate bones known as
16 the vertebrae, and they stack up on top of each other.

17 In the cervical spine there are seven vertebrae
18 numbered C1 to C7. In the thoracic spine there are 12 vertebrae
19 numbered T1 to T12. In the lumbosacral spine there are five
20 vertebrae numbered L1 to L5. The L5 vertebrae attaches to the
21 sacrum and the coccyx, which is your tailbone. The C2 and C1
22 vertebrae attach to the base of the skull.

23 In between each of these bones is as piece of soft,
24 cartilage tissue known as the disc. So the disc acts as a shock
25 absorber between the bones and it's connected by a series of

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1 tough ligaments or connective fibers that connect one bone to
2 the next and keep that disc in place. So this complex between
3 the bones, the ligaments and the discs creates stability, but
4 allows for flexibility of the spine so we're able to stand
5 upright, we're able to bend forwards and backwards and sideways
6 and twist left and twist right.

7 Within the spinal column there are a number of
8 different openings running from the top to the bottom. It's
9 what's known as the central canal or the spinal canal. At each
10 level, right next to the disc, on each side, the left and the
11 right, is what's called the neural foramen.

12 MR. GRILLO: Doctor, not to interrupt.

13 Your Honor, would it be okay for us to move
14 around --

15 THE COURT: I granted you permission at the
16 beginning of the case.

17 MR. GRILLO: I didn't realize where the Doctor
18 would stand, and he put this right in front of me. I can't
19 see.

20 THE COURT: That's not a problem. And counsel is
21 welcome, in the words of Southwest Airlines, feel free to
22 move about the courtroom.

23 MR. GRILLO: Thank you. Sorry, Doctor.

24 THE COURT: Please continue, Doctor.

25 A Sure. So in the central canal, running from the base

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1 of the skull all the way down to the lumbar spine is the spinal
2 cord. So the cord goes up and down. And at each level in the
3 spinal cord is what's known as the neural foramen and the nerve
4 roots.

5 So the nerve roots exit the spinal cord. In the neck
6 those nerve roots go into the arms and hands. In the lower back
7 those nerve roots go into the back and legs.

8 The nerves are kind of like two-way streets. They
9 provide information to the spinal cord and to the brain and they
10 also provide information to the arms and legs and the muscles of
11 the arms and legs. So, for example, if you decide --

12 MR. PUZO: Objection. Is there a question? I lost
13 track of the question.

14 THE COURT: It's just a general --

15 MR. PUZO: It's a narrative answer.

16 THE COURT: I'll allow it with respect to a general
17 demonstration with respect to two of the models. We're
18 almost finished.

19 A So the nerve roots are two-way streets. They provide
20 information to the arms and legs, for example, to contract or to
21 relax. They also provide information back to the spinal cord
22 and the brain, such as position or temperature or pain.

23 Sometimes the disc in between the bones can slip out of
24 place, what's known as a disc herniation or a disc bulge. So if
25 those ligaments that keep that disc in place get stretched or

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1 torn, a piece of that soft cartilage tissue can push out or push
2 through that defect. If it pushes on the nerve root, it can
3 cause what's known as a pinched nerve or a sciatica or
4 radiculopathy. If it presses on the spinal cord it can cause
5 spinal cord compression, also known as a myelopathy.

6 THE COURT: Frame a question, Counsel.

7 Q As a neurologist, how do you identify or diagnose a
8 disc protrusion of some kind that's affecting the nerve root?

9 THE COURT: Mr. Thomas, do you need the Doctor in
10 the well for further demonstration, or may he return to the
11 stand?

12 MR. THOMAS: I ask that question that way because I
13 think it's the preface. He might need the model for one
14 more time.

15 THE COURT: Go ahead, sir. Just want to give you a
16 gentle reminder.

17 MR. THOMAS: Thank you.

18 A So the most sensitive way to diagnose a slipped disc is
19 with imaging studies, particularly an MRI, but it can also be
20 diagnosed clinically based upon the patient's symptoms and the
21 findings on examination. It can also be diagnosed using
22 electrodiagnostic testing or nerve testing. But the disc
23 itself, to see what it looks like, where it is, how big it is,
24 MRI is definitely the best tool that we have.

25 Q And Doctor, once again looking at this model, because I

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1 can pull it apart, I've taken a piece of the model off, what do
2 I have in my hand right here?

3 A That would be the disc removed from between the two
4 vertebral bones with a small piece of that disc sticking out,
5 what's known as a disc herniation.

6 Q And the location of that herniation in relation to the
7 herniation towards the posterior, meaning the back or the
8 anterior meaning the front, how does that affect, if it all, the
9 nerve?

10 A The disc itself has nerve receptors on it. So if you
11 have an injury to a disc it can cause pain. However, if you
12 have an injury to a disc that's pushing on the nerve roots or
13 pushing on the spinal cord or causing inflammation or irritation
14 of the nerve roots or the spinal cord, it would typically
15 produce a symptom known as radiculopathy or pinched nerve.

16 Q And then finally with this model you said that there
17 are holes where the nerves come out, the foramen?

18 A That's correct.

19 Q The holes where the nerves come out in the neck and
20 back, where do these nerves go?

21 A The nerves in the neck go into the arms and hands. The
22 nerves in the back go into the legs and feet. The nerves
23 themselves, as well as the disc and the bones, are numbered
24 according to their position. So it's C1 through C7, L1 through
25 L5. So the L5-S1 disc is the disc between the lowest lumbar

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1 vertebrae and the sacrum. So this is the L5-S1 disc.

2 And the cervical spine, the C7 vertebrae, which this
3 protrusion is known as a lamina process. If you feel right
4 between your shoulder blades, the base of your neck, that's that
5 piece of bone that you're feeling right there. That would be
6 C7. C4, C5, I mention because that's where his injury was, is
7 basically right in the middle of the neck.

8 Q Anything else you want to explain to the jury with the
9 use of these models?

10 A I think that covers it, unless you have any
11 particular --

12 THE COURT: You can return to the stand now.

13 THE WITNESS: Thank you.

14 THE COURT: Be careful stepping up, sir.

15 THE WITNESS: Okay.

16 MR. THOMAS: Thank you.

17 THE COURT: Counsels are settled. Next question.

18 Q Doctor, you mentioned something about the type of
19 diagnostic testing that you use as a neurologist to identify
20 some of these abnormalities. What are those tests again?

21 A So a slipped disc or a disc herniation or a disc bulge,
22 MRI or magnetic resonance imaging is the best technique to
23 visualize structural pathology.

24 Q And did you, in fact, see any MRI films of Mr. Lopes'
25 neck or back?

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1 A I did. I ordered them, and I looked at the reports and
2 as well as the films.

3 Q By the way, who referred Mr. Lopes to you?

4 A That would be his orthopedist that he saw initially,
5 Dr. Shein.

6 Q I want you to assume for a moment that counsel for the
7 County, Mr. Puzo, told this jury that he didn't seek medical
8 attention until sometime after the accident and when he did it
9 was a chiropractor. Can you tell the jury, what kind of doctor
10 is Dr. Shein?

11 A He's an orthopedic doctor.

12 Q And if you saw Mr. Lopes nine days after the accident
13 and he was referred to you by Dr. Shein, then is it fair to say
14 that he went to Dr. Shein before he was referred to you?

15 A It is. I have Dr. Shein's note and he was seen by
16 Dr. Shein on October 17th, so he saw him seven days after the
17 fall. And Dr. Shein recommended that he see a neurologist for
18 his head injury, and he saw me two days later.

19 Q Thank you, Doctor.

20 And now you ordered these MRIs. Are there different
21 types of MRIs?

22 A There are.

23 Q Tell us about that.

24 A MRI is an abbreviation for magnetic resonance imaging.
25 It's a radiological technique that is performed using strong

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1 magnetic fields. It is very useful for imaging soft-tissue
2 structures such as discs, nerves, spinal cord and the brain. It
3 can also give a clinician a three-dimensional picture of a
4 particular point in space.

5 So, for example, if I'm concerned about this disc
6 that's out of place, using the MRI I can look at it from front
7 to back, from side to side and from top to bottom. So I can get
8 a three-dimensional picture of what this disc looks like.

9 Q Is that the only MRI that you requested was of the
10 spine?

11 A In this case it was his head, his neck and his back.

12 Q Can you tell us what the results of those MRIs were?

13 A Sure. He had numerous MRIs. The ones that you are
14 referring to are the initial set?

15 Q Yes, if you can.

16 A Okay.

17 Q And you've seen the actual films, correct?

18 A The films and the reports, yeah, but just for the sake
19 of accuracy, once again I'm going to refer to my report for
20 dates, et cetera.

21 So there was a neck MRI done on 10-27-17, which showed
22 a disc herniation at C4-5 contacting the spinal cord.

23 There was an MRI of the lumbar spine, 10-27-17, which
24 revealed a disc bulge at L5-S1 with anterolisthesis or slippage
25 of the bones on top of each other.

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1 There was an MRI of the brain on 10-27-17, which
2 revealed reduced FA, or fractional anisotropy values in the
3 right frontal lobe and the splenium of the corpus collosum.

4 FA, or fractional anisotropy, is a special type of MRI
5 sequence that helps to measure the -- how the deep white matter
6 in the brain is functioning. So in this case it was abnormal.
7 It was an indication that there was damage to some of the deep
8 white matter in this particular part of the brain; the right
9 frontal lobe and the splenium of the corpus collosum, which is
10 basically the connection between the right and left lobes.

11 Q Doctor, I have a diagram, anatomy of the brain. If I
12 show that to you, would that be helpful to explain to the jury
13 where these portions of the brain are that you are talking
14 about?

15 A Yes.

16 MR. THOMAS: With the Court's permission, your
17 Honor?

18 THE COURT: It can be demonstrated on the larger
19 screen?

20 MR. THOMAS: Yes.

21 THE COURT: If you can put that in place, Jim.
22 Counsel, you're invited to relocate.

23 And again it's my understanding, Mr. Thomas, that
24 this is going to be marked as -- a physical copy of this
25 will be marked as Plaintiff's Exhibit 16 for identification

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1 only?

2 MR. THOMAS: For demonstrative purposes.

3 THE COURT: I have 16 ID only for demonstrative
4 purposes.

5 Are you able to see that screen, Doctor?

6 THE WITNESS: I am.

7 THE COURT: Thank you.

8 Q Doctor, this demonstrative exhibit, what are we looking
9 at?

10 THE COURT: Microphone, Counsel?

11 MR. THOMAS: Oh, I'm sorry.

12 Q This demonstrative exhibit, please tell us what we're
13 looking at.

14 A This is an illustration of the human brain looking from
15 side to side, so from left to right.

16 Q And there are different colors with different names.
17 Tell us what that is.

18 A The brain is divided up into several different areas as
19 illustrated in this picture. The frontal lobe is in the front,
20 the parietal lobe is in the middle, the occipital lobe is in the
21 back, the temporal lobes are on the side. Beneath that is the
22 cerebellum, which is concerned more with balance and
23 coordination, and then the brain stem going into the spinal
24 cord.

25 THE COURT: Doctor, what's our orientation in terms

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1 of point of view on this demonstration?

2 THE WITNESS: So the pink would be the back. The
3 purple would be the back. If you were to take a person's
4 head, rotate it 90 degrees and look at it from the side,
5 this is the view that you would be seeing.

6 THE COURT: Thank you.

7 A So this is what's known as a sagittal view. The
8 different parts of the brain generally are responsible for
9 different functions. So, for example, the frontal lobe is
10 important in executive function and motor planning. The
11 parietal lobe is important in sensory integration. The
12 occipital lobe is primarily concerned with visual input. The
13 temporal lobe primarily involved in memory and speech.

14 The left side of the brain generally controls the right
15 of the body. The right side of the brain generally controls the
16 left side of the body, but having given that generalization, the
17 brain is a very complex organ and there is integration between
18 all of these different parts of the brain.

19 So, for example, if you see and hear something scary
20 like a dinosaur, the information that pours into your brain all
21 of a sudden, which would be vision, hearing, maybe even smell,
22 is going to be processed quickly and your frontal lobe is going
23 to fire off and it's going to make you run away. And this all
24 happens very quickly because of the integration of these
25 different parts of the brain. The neural connections.

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1 What happens in a brain trauma, in a diffuse axonal
2 injury, is some of these connections are disrupted. So, for
3 example, when I was explaining nystagmus, the imbalance between
4 the different systems of the brain, this is what happens in a
5 diffuse axonal injury, also known as shear injury. The
6 integration between the different parts of the brain, the
7 different systems of the brain, is affected.

8 Q Can you tell us just a little bit about what an axon is
9 and how it relates to a diffuse axonal injury?

10 A Sure.

11 THE WITNESS: Your Honor, may I stand up here?

12 THE COURT: Absolutely, as long as you can use the
13 microphone.

14 THE WITNESS: Yeah, I think I can.

15 A So nerve cells or neurons are made up of separate
16 parts. The cell has a base, which is known as the dendrite, and
17 the dendrite is kind of like the roots of a tree. It's thick
18 and planted into the brain tissue.

19 There's the axon, which is kind of like the trunk of
20 the nerve cell and there are the dendrites which are the
21 branches of the nerve cell. So a nerve cell is kind of like a
22 tree, sort of swaying in the wind a little bit, it's rooted
23 firmly in the ground, there's a little sway to it. And the
24 branches touch the other branches and they communicate with each
25 other by releasing neurotransmitters, or chemicals, which

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1 creates a deep polarization, or small electrical shock, that
2 goes from one nerve cell to the other.

3 The base of the nerve cell, the dendrites, is much
4 denser than the axon and the branches because the base contains
5 a lot of the cell apparatus, the nuclei, the Golgi, the
6 retinaculum, the mitochondrion, so it's very dense, as opposed
7 to the axons and the branches which are much lighter, less
8 dense. There's a much higher fatty content to them, and this
9 fat actually acts as an insulation to make that electricity
10 travel quickly.

11 This is important because what happens in an axonal
12 injury is that there is a shear force, so it's either a flexion
13 or extension or rotation that occurs to the nerve cell. If that
14 force is great enough to crack or bend that nerve cell, it can
15 no longer communicate with the nerve cell next to it, and this
16 interrupts the normal flow of neuronal activity within the
17 brain.

18 The brain itself consists of two different matters.
19 There's the gray matter, which is on the outside, and there's
20 the white matter, which is on the inside. The gray matter
21 contains the cell body, that heavy dense part of cell, and the
22 white matter contains the axon and the dendrite, or the trunk
23 and the branches of the cell.

24 So if there's a force that comes to bear on the head
25 which is a direct hit, or in a flexion/extension, because of the

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1 difference in density, the gray matter is going to move less
2 than the white matter. It's physics. The gray matter is
3 denser, it takes more force to move it than the white matter
4 which is less dense, less heavy.

5 So this creates that shearing force between the gray
6 matter and the white matter. And once again, if that shearing
7 force, that hurricane wind that comes through is enough, it's
8 going to break the branch or bend the branch or bend the trunk,
9 twist the trunk, and when that happens, those nerve cells aren't
10 functioning properly anymore. This happens on a more diffuse
11 level. You can't necessarily see it on an MRI or CAT scan.
12 It's what we know occurs when doing post mortem studies on
13 patients that have traumatic brain injury.

14 Q And did Mr. Lopes sustain a diffuse axonal injury in
15 his brain as a result of this accident?

16 A In my opinion, with a reasonable degree of medical
17 certainty, he did. His clinical presentation, including the
18 mechanism of injury, his subjective complaints, my findings on
19 physical exam, the results of the MRIs that were done, three of
20 them, the results of the EEG or brain wave tests that were done,
21 I think 4 or 5 of them, were all consistent with diffuse axonal
22 injury, which is the underlying pathophysiologic mechanism for a
23 traumatic brain injury, or TBI.

24 Q And if you can tell the jury, from a clinical
25 presentation, what signs or symptoms did Mr. Lopes present with

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1 that help to confirm this finding and opinion?

2 A The symptoms that he presented with initially were
3 headaches, dizziness, nausea, problems with sleep. The signs or
4 objective findings on physical exam included his inability to
5 process information, known as the receptive aphasia. It
6 included the abnormal eye movements, or the nystagmus. It was
7 confirmed objectively by the MRIs. It was confirmed objectively
8 by the EEGs and was further supported by more detailed
9 neurocognitive and neuropsychological testing that was performed
10 by myself and others.

11 Q Can you tell the jury the difference between objective
12 testing and subjective testing?

13 A Well, it's kind of an awkward question. I'm not really
14 sure what subjective testing is, but subjective versus
15 objective. Subjective would be a symptom or a complaint. It
16 would be what a person is saying or doing. So if a person comes
17 in and says I'm feeling dizzy, that's a subjective complaint.
18 That's what the person is saying or doing. As an outside
19 observer, I don't know if this person is dizzy or not.

20 Objective would be what I actually can observe visually
21 or using my hands. So, for example, in this case he complained
22 of dizziness, and when I examined him he had nystagmus. No
23 wonder he was dizzy, right? So this is an objective finding
24 that I made when I saw him that supported his subjective
25 complaint. It was consistent with what he was saying.

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1 Q These MRIs and EEG results, is that something that can
2 be faked?

3 A No. These tests are also objective, meaning that it's
4 completely independent of what the person is saying or doing.
5 No matter what the person is saying or doing, he can't affect
6 what the MRI shows, he can't affect what the EEG shows.

7 Q So in short, the testing that was done, what do we call
8 the battery of tests that you performed on Mr. Lopes to render
9 your opinions?

10 A Well, TBI, or traumatic brain injury, is a clinical
11 diagnosis. It's based upon the evaluation of the patient, the
12 history, the physical exam, the results of diagnostic testing,
13 like MRIs and EEGs, so I would call it a battery of TBI
14 evaluation tools.

15 Q You don't rely on just one test result, correct?

16 A That's correct.

17 Q And did you, with the benefit -- withdrawn.

18 How long did you see and treat Mr. Lopes for the
19 injuries from this accident?

20 A I mean, he's been seen up to a couple of months ago.
21 And as I said, he's been in my office over the past 7 or 8 years
22 about 30 or 40 times.

23 Q And are all those office visits part of your record?

24 A They are.

25 Q Let's talk about -- withdrawn.

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1 Is there anything else that you want to talk about in
2 terms of testing or diagnostic test results other than what
3 you've already talked about before we move on to the next
4 subject?

5 A I think we didn't really explain what an EEG is.

6 Q Let's talk about that. Thank you.

7 A So EEG, also known as electroencephalography --

8 MR. GRILLO: Doctor, sorry to interrupt.

9 Your Honor, are we done with this? Can we move on?

10 MR. THOMAS: Do you want to show the EEG?

11 THE WITNESS: Oh, I don't know. It's up to you.

12 MR. GRILLO: I didn't mean to interrupt. I'm
13 sorry.

14 THE COURT: No. It's okay. I was on the cusp. If
15 we were going to change subjects, that would be my next
16 question, but --

17 MR. GRILLO: Sorry about that.

18 THE COURT: No need to apologize.

19 MR. THOMAS: I got one question first.

20 THE COURT: Go ahead.

21 Q Would it help the jury if they saw the EEG test, or
22 they wouldn't really know what they were looking at?

23 A They wouldn't know what they were looking at.

24 MR. THOMAS: Okay. They can sit down, Judge. I'll
25 take the screen down.

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1 THE COURT: Thank you.

2 Counsel's resituated. Next question.

3 Q You said you did multiple EEG testing?

4 A That's correct.

5 Q Why would you do multiple EEG testing?

6 A The EEG, what's known as electroencephalography, is
7 basically an electrical measurement of brain activity, similar
8 to an EKG is for the heart. So EEG electrodes are placed along
9 the scalp in standardized locations, and the resting electrical
10 activity of the brain is measured by a computer.

11 There are normal resting activities and there are also
12 abnormal or pathologic rhythms that can be identified. EEGs can
13 be useful in identifying certain neurological conditions, such
14 as seizures or such as brain injury or encephalopathy. There
15 can be changes over time in the electrical activity, and that's
16 why its useful to perform serial EEGs so you can follow the
17 evolution of any abnormalities.

18 Q In the world of information that you were provided,
19 including all the test results, your physical examinations, the
20 diagnostic testing, did you render an impression, an overall
21 impression about Mr. Lopes' condition and whether it was in any
22 way causally-related to the accident of October 10, 2017?

23 A I did.

24 Q What is that impression?

25 A In my opinion, with a reasonable degree of medical

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1 certainty, his traumatic brain injury was causally related to
2 the fall that occurred on 10-10-17. He had no prior history of
3 head trauma or any neurologic problems affecting his brain. He
4 had a significant trauma with associated head trauma and started
5 experiencing these symptoms right away; headaches, dizziness,
6 nausea, problems processing information. And unfortunately it's
7 persisted to this day, and in my opinion it was the trauma from
8 the fall that caused it.

9 Q Did he make any complaints to you about depression and
10 anxiety?

11 A Eventually, over the course of time, he did develop
12 anxiety and depression, as well as difficulty sleeping. In
13 response to these complaints I did refer him to a psychiatrist,
14 who he has continued to treat with to date and has been
15 maintained on several different medications that have helped to
16 alleviate some of his symptoms. And I also -- that would be
17 Dr. King and his associates. And I also referred him to a
18 psychologist who is Portuguese speaking, Dr. DaSilva, and he did
19 therapy with Dr. DaSilva for a couple years.

20 Q Doctor, as a result of the world of information, your
21 course of treatment, what plan did you prescribe for Mr. Lopes
22 for his course of therapy and treatment going forward?

23 A Well, the plan was different for his head, neck and
24 back. As far as his head injury is concerned, I referred him
25 for cognitive rehabilitation, or memory therapy. I referred him

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1 for psychological counseling. I referred him for psychiatric
2 treatment. I prescribed various medications to him and
3 coordinated those medications that were being prescribed by his
4 psychiatrist.

5 As far as the neck and back, initially I arranged for
6 him to get some physical therapy and chiropractic treatments,
7 prescribed some different medications, anti-inflammatories and
8 muscle relaxers. After about 3 or 4 months he wasn't really
9 doing that well with those treatments, and I recommended that he
10 go for injections. I referred him for epidural steroid
11 injections for his neck and back. Those gave him a little bit
12 of relief, but not particularly much, and at that point I
13 suggested that he seek a surgical. I referred him to Dr.
14 Merola. And ultimately, he had surgery at the level of L5-S1.

15 Q Just so we're clear, Dr. Merola is the spine surgeon?

16 A That's correct.

17 Q Was Mr. Lopes a candidate for spinal surgery when you
18 referred him?

19 A In my opinion he did require spinal surgery at that
20 point in time. He had been symptomatic for almost two years.
21 He had already done lots of different treatments, as I said,
22 therapy, medications, epidurals for the neck and back, and was
23 in tremendous pain and really couldn't function well on a
24 day-to-day basis.

25 Q Do you have an opinion, within a reasonable degree of

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1 medical certainty, whether Mr. Lopes was disabled from his
2 routine activities including his job, his work as a bridge
3 painter, as a result of the injuries from this accident?

4 A I did. In my opinion I felt that he was totally
5 disabled. I don't think there was any work that he could do
6 because of the multiple injuries that he sustained, not just his
7 neck and back, but his neurologic, neurocognitive and
8 neuropsychological symptoms. He was having headaches, he was
9 feeling dizzy, he was having problems following instructions, he
10 was feeling anxious and depressed, having problems sleeping,
11 feeling drowsy during the day. Just not functioning on a level
12 that would be consistent with maintaining gainful employment.

13 Q And finally, Doctor, do you have an opinion, within a
14 reasonable degree of medical certainty, whether the signs,
15 symptoms and complaints that Mr. Lopes has presented with
16 initially and continued to present with through the course of
17 therapy, whether those conditions are permanent in nature?

18 A I do.

19 Q What is that opinion?

20 A In my opinion his condition is permanent in nature.
21 He's been symptomatic for over seven years. He's already had an
22 extensive course of treatment. He's going to continue to have
23 these same symptoms, more or less. He's going to have good days
24 and bad days. That's typical for these types of injuries. But
25 he's never just going to wake up one day and be back to his

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1 healthy normal self and be able to go back to work and do the
2 things that he could do before.

3 Q Doctor, is there anything else that you want this jury
4 to know other than what you've already testified to as it
5 relates to your area of specialty?

6 A I think that covers it. You know, I spoke with him
7 today and he was explaining to me that --

8 MR. PUZO: Objection as to speaking with him today.

9 THE COURT: Sustained.

10 MR. THOMAS: Your Honor, I have no further
11 questions.

12 Thank you, Doctor. These gentleman might have some
13 questions for you, okay?

14 THE WITNESS: Okay.

15 THE COURT: Mr. Grillo.

16 MR. GRILLO: Thank you.

17 THE COURT: For purpose of cross-examination.

18 MR. GRILLO: Thank you.

19 CROSS-EXAMINATION

20 BY MR. GRILLO

21 Q Good afternoon, Dr. Hausknecht.

22 A Good afternoon, Counsel.

23 Q Dr. Hausknecht, can we agree -- I've never
24 cross-examined you in court before, I've never questioned you in
25 court before?

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1 A Not that I recollect.

2 Q We've never met until today?

3 A Not that I recollect.

4 Q Can we agree, sir, that this is not your first time in
5 court?

6 A Yes.

7 Q Can we agree, sir, that you testify on a fairly regular
8 basis?

9 A I'm not sure what you mean regular, but I think this is
10 my third or fourth time in 2024. Generally I testify about 5 or
11 6 times a year on behalf of patients that I've been treating in
12 my office.

13 Q So we can agree on that, right?

14 My understanding is you've been licensed to practice
15 medicine in New York State since 1999, right?

16 A 1992.

17 Q Oh, I apologize. You graduated medical school in '91?

18 A Correct.

19 Q And then you became licensed to practice law --
20 practice medicine in New York State. Excuse me. You actually
21 went into business with your dad and brother, didn't you?

22 A I did.

23 Q Now, as far as the facility, Complete Healthcare,
24 founded by you in 1999?

25 A Correct.

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1 Q And can we say -- would you agree with me, sir, fair
2 statement, you've testified in courts all over the state for at
3 least the last 25 years; fair statement?

4 A More or less.

5 Q More or less. How many times do you testify in court?

6 A In total throughout my career?

7 Q Yeah.

8 A I don't have a specific number. Like I said, this year
9 I think it's 3 or 4 times. The last five years maybe 5 or 6
10 times a year. Before that a little bit more frequent, more like
11 8 or 10 times a year. A couple hundred times.

12 Q A couple hundred times. Okay. Great. And you know
13 this, you can order, right? People who go to court, lawyers can
14 actually order what's called a verdict search, where they can
15 get every case you've actually testified on?

16 A I mean, I don't know what lawyers can do. I know what
17 a verdict search is. It doesn't necessarily mean that I've
18 testified on these cases, but my name would be attached to it.

19 Q But sure, this isn't the first time a lawyer's actually
20 stood up in court in front of a jury and questioned the number
21 of times you've testified in court, right?

22 A Sure.

23 Q Sure. Not the first time, right?

24 A Not the first time.

25 Q Your hourly rate, a thousand dollars an hour, correct?

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1 A Correct.

2 Q So with respect to this case, are you able to estimate
3 how many hours you've charged for your work on this case?

4 A I don't know. How many more questions do you have for
5 me?

6 Q I've got plenty.

7 A Okay. Then I'll let you know.

8 Q Let's talk about today first. When did you start
9 billing a thousand dollars an hour, was it when you walked into
10 court or something else?

11 A When I left at 8:30 this morning.

12 Q Left from where?

13 A From Manhattan to drive here.

14 Q Did you do any billing on this case before today? Did
15 you review your file?

16 A Not billable, but I did review it, yes.

17 Q What do you mean, not billable?

18 A I didn't bill for it. I reviewed the file.

19 Q So as of today, so your -- for lack of a better term,
20 your on the clock right now at a thousand dollars an hour since
21 8:30 this morning?

22 MR. THOMAS: Objection. Asked and answered, Judge.

23 THE COURT: It's a prefatory question. Overruled.

24 You may answer.

25 A Yes.

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1 Q So as you said, the longer I question you, the better
2 for you, is that what we're getting at?

3 MR. THOMAS: Objection, your Honor.

4 THE COURT: I'll allow it. From a financial
5 perspective is the intention.

6 A I don't know that it's better for me, but, it's, you
7 know, I get paid -- like it's pretty obvious I get paid by the
8 hour.

9 (Court reporter interrupts due to cross-talk.)

10 THE COURT: One at that time, gentlemen.

11 And ladies and gentlemen, this is the first time
12 I've had to inject myself into the conversation. In normal
13 conversation outside of the courthouse we can talk at the
14 same time, we can finish each other sentences, we can follow
15 what the other person said while we're saying something new.
16 In the courtroom, I have an obligation, it's almost like red
17 light/green light, one person speaks at a time.

18 I'll just ask both counsel and the witness to keep
19 that in mind.

20 MR. GRILLO: Thanks.

21 THE COURT: You're welcome.

22 MR. GRILLO: Could I get the last question and
23 answer? I'm sorry.

24 (Whereupon, the requested portion was read back in
25 open court.)

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1 MR. GRILLO: I'll move on.

2 Q Dr. Hausknecht, you said you reviewed your file. In
3 preparation for court today, you said you reviewed your file.
4 Is that the file in front of you?

5 A Yes.

6 Q Can you with agree, sir, that in conjunction with your
7 appearance here today, we also served a subpoena on your office
8 to have you produce your file here in court, do you recall that?

9 A I don't have any personal knowledge of that, but I
10 don't dispute it.

11 Q I want to you assume that was done, fair enough?

12 A Sure.

13 MR. GRILLO: Sorry about the movement.

14 Q So that's your file there?

15 MR. GRILLO: If I may, your Honor?

16 THE COURT: Yes.

17 Q I want to --

18 THE COURT: Hold up. Go ahead, Mr. Grillo. I
19 apologize. To the microphone. I realize it's somewhat
20 different than what we're used to, but...

21 MR. GRILLO: No worries, no worries.

22 Q Dr. Hausknecht, I want you to look at what's been
23 entered into and is stipulated into evidence. These are your
24 records, Plaintiff's Exhibit No. 2. This is what was sent to
25 court by your office as your file. (Handing.)

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1 COURT OFFICER: Plaintiff's Exhibit No. 2, in
2 evidence, presented to the witness.

3 THE COURT: Is there a question?

4 Q Doctor, can we agree, just by a visual inspection, that
5 what was sent to court is substantially less than what you
6 brought in your folder today, correct?

7 MR. THOMAS: Objection.

8 THE COURT: Overruled. He may question on this
9 issue.

10 A No, I disagree. First of all, this is almost two years
11 old, so the patient has continued to treat, so there would be
12 more records in here. And also, these are the records that were
13 created in my office. These are the records of other doctors.
14 That would not be part of the subpoena. So those subpoenaed
15 records would reflect the records that were created in my office
16 when this was sent in January of 2023.

17 Q So let's go -- thank you, Doctor.

18 So let's go to your initial report, shall we, that's in
19 your folder. It's also in court, okay? That's when you first
20 saw Mr. Lopes.

21 THE COURT: Which exhibit -- would you like him to
22 use his office file or the subpoenaed records?

23 MR. GRILLO: His office file.

24 Thank you, your Honor.

25 THE COURT: Just so we're clear what we're looking

1 at.

2 That's it, Jimmy.

3 Q So we can agree, your initial meeting of Mr. Lopes was
4 October 19, 2017, correct?

5 A Correct.

6 Q You know, as you sit here today, the purported accident
7 took place on October 10th of 2017, agreed?

8 A October 10th, was the accident. I don't know what you
9 mean by purported; but, yeah, he fell 20 feet.

10 Q I'll withdraw the word purported because there's a
11 question about the mechanism of the accident, that's why I say
12 purported.

13 So with that said, so you saw him nine days after the
14 accident, correct?

15 A Correct.

16 Q And you went in there -- when he came in to see you, I
17 think your testimony was that he spoke Portuguese. You don't
18 speak Portuguese, correct?

19 A No.

20 Q And to the extent that you somehow communicated with
21 him because you're fluent in Spanish, and he was able to
22 communicate in Spanish, correct?

23 A Correct.

24 Q Can we agree, sir, in one of your reports, starting
25 with the first one on October 19th of 2017, do you list or

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1 describe your communication with him in Spanish?

2 A I never would. I don't believe it would be in these
3 reports. I never would do that.

4 Q Okay. You could have also spoken to him in English,
5 could you not have?

6 A And I could have wrote I spoke in English, but I just
7 don't do that.

8 Q Well, no, because -- well, no, I'm not going to ask you
9 why. But you did not identify the manner in which you spoke to
10 him, correct?

11 A I would have to review all the records. But I would
12 assume that's correct. It's not my usual and customary practice
13 to indicate whether I'm speaking in English or Spanish. I'm
14 bilingual.

15 Q Well, didn't you give him, later in your course of
16 treatment didn't you give him a series of cognitive testing that
17 you oversaw yourself?

18 A Yes.

19 Q What's a MoCA test?

20 A A Montreal Cognitive Assessment.

21 Q What did you administer the MoCA test to Mr. Lopes in,
22 was it English, Spanish, Portuguese, or something else?

23 A Definitely not Portuguese. Probably Spanish, but I
24 would have to check to confirm.

25 Q With the Court's permission, if you want to refresh

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1 your recollection, please look at the MoCA testing that you did.

2 A In 2021, the form itself is in English.

3 Q Okay. Please tell the members of the jury what a --
4 what a MoCA test is.

5 A It's a Montreal Cognitive Assessment. So it assesses
6 different areas of brain function, specifically visual, spatial
7 and executive function; naming, memory, attention, language,
8 abstraction, delayed recall and orientation.

9 Q Thank you. How long did it take you to administer this
10 MoCA test to Mr. Lopes?

11 A I don't recall exactly, but in general it takes about
12 30 or 40 minutes to administer the test.

13 Q And we can agree, as you sit here today, October 31st
14 of 2024, you do not have an independent recollection as to what
15 language you administered the MoCA test to him?

16 A I don't. But it would be usual and customary that we
17 would administer a test in the language that the person
18 understands best. And if he couldn't understand it, we wouldn't
19 do the test.

20 Q Okay. So again, I appreciate the explanation. But as
21 you sit here today, what is it, Doctor, what language? You
22 don't know, do you?

23 A Doesn't matter. It's either English or Spanish.

24 THE COURT: Counsel, excuse me.

25 Doctor, listen to the question; answer the question

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1 that's asked. Don't volunteer any --

2 THE WITNESS: He already asked me.

3 THE COURT: Doctor, listen carefully to what I'm
4 saying. It doesn't matter the response you just gave, it's
5 not responsive to the question asked.

6 Next question.

7 Q So as you sit here today, you don't know what language
8 you administered the test in. You're making assumptions it's
9 either English, it's either Spanish. It's not Portuguese,
10 right? You don't speak Portuguese?

11 A You just asked me five questions. I'm not sure that I
12 can answer.

13 Q You want me to break them down?

14 A Yes.

15 Q Okay, I will.

16 THE COURT: Counsel, here's the deal. I don't mean
17 to go red light/green light, but I will.

18 MR. GRILLO: Sorry.

19 THE COURT: I didn't think we would be there on Day
20 1, so let's try to avoid that. One at a time, please. And
21 that goes for both of you.

22 Next question.

23 Q Doctor, did you administer the MoCA test in English?

24 A I don't recall.

25 Q Doctor, did you administer the MoCA test to Mr. Lopes

1 in Spanish?

2 A I don't recall.

3 Q And, Doctor, did you administer the MoCA test in
4 Portuguese?

5 A No.

6 Q Okay. So we can be clear then, can we not, that his
7 native language was never utilized by you in administering a
8 cognitive brain test to him, correct?

9 MR. THOMAS: Objection; asked and answered.

10 THE COURT: I'll allow it.

11 A It would have been English or Spanish, not Portuguese.

12 Q So that's your way of saying Portuguese wasn't
13 utilized?

14 MR. THOMAS: Your Honor.

15 THE COURT: I'll allow it. It's cross-examination.

16 You can answer.

17 A It was either English or Spanish.

18 THE COURT: Thank you.

19 Next question.

20 Q Now, can we agree, sir, that whenever -- when you're
21 coming to court -- withdrawn.

22 Can we agree, sir, when you see a patient for the first
23 time, it's important that No. 1, it's a two-sided discussion,
24 correct? You want the patient to be as truthful with you about
25 what their symptoms are and what their history is, correct?

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1 A I mean, I don't know what you mean by truthful, but I
2 want the patient to explain what they're feeling to me, yes.

3 Q So, well, you would want that said to you truthfully.
4 You wouldn't want a patient to come in and either lie or not
5 recall or be mistaken about something, right?

6 A I'm not sure what you're talking about.

7 Q I'm trying to get at the voracity, if voracity plays a
8 role in taking a patient's history.

9 Would you want a patient who is coming in and saying I
10 have a particular history, would you want them to be truthful
11 with you, yes or no?

12 A I would want a patient to be as accurate and complete
13 as they possibly can, yes.

14 Q Fair. I'll take that.

15 With respect to a patient's history, pivotal, would you
16 not say, in making an assessment of somebody's physical state
17 when you first see them?

18 A Important, yes.

19 Q Very.

20 MR. THOMAS: Objection.

21 THE COURT: Sustained.

22 Don't testify, Counsel. Next question.

23 MR. GRILLO: Sorry. Okay.

24 Q Looking at your report, your initial report of October
25 19th of 2017 --

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1 THE COURT: Let me know when you have it, Doc.

2 THE WITNESS: I have it.

3 THE COURT: Thank you.

4 Q -- about two-thirds of the way down there, Doctor, past
5 medical history, do you see that?

6 A Correct.

7 THE COURT: If we're going to read, just do it
8 slowly.

9 MR. GRILLO: Thank you, Judge.

10 Q Can we agree, sir, this history that was taken by --
11 was taken by you of the plaintiff, correct?

12 A Correct.

13 Q And you reported his history as negative, correct?

14 A Correct.

15 Q What does that mean?

16 A Non contributory.

17 Q Non contributory. Non contributory.

18 Can we agree, based on your view of this, Mr. Lopes
19 denied any significant history of head, neck or back problems,
20 correct?

21 A Correct.

22 Q And going to the top of the report, it says, Initial
23 Neurological Office Visit, well -- and you wrote this letter --

24 THE COURT: Start over, Counsel. You changed in
25 the middle of the sentence. It's very difficult for the

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1 reporter to follow that.

2 MR. GRILLO: Understood.

3 Q You addressed your initial report to Dr. Shein,
4 correct?

5 A Correct.

6 Q And to the extent that you had Dr. Shein's records
7 available, correct?

8 A Not on that date, but subsequently I did.

9 Q Okay. And can we agree, sir, that from the day you
10 first saw him until today, there's been no mention of any prior
11 history, medical history with respect to Mr. Lopes except of a
12 motor vehicle in 2013; is that correct?

13 A His past medical history, after I obtained records and
14 discussed it with him, was a motor vehicle accident in 2013,
15 where he treated for his neck and back. And I think he's
16 currently under treatment for diabetes as well.

17 Q Okay. Did you ever see any prior medical records from
18 Dr. Shein's office throughout the course of your treatment of
19 Mr. Lopes, or prior to your testimony here today?

20 A Yes.

21 Q And can we agree, sir, that there are certain records
22 contained in your folder regarding Mr. Lopes' complaint of
23 unremitting back pain for the past 34 years, are you aware of
24 that, sir?

25 MR. THOMAS: Objection.

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1 THE COURT: I'll allow it.

2 You may answer.

3 A I have the reports, but I don't think that's an
4 accurate statement. I think that's a typo.

5 Q Okay. But what's interesting is, on direct examination
6 there was no mention of this, correct?

7 MR. THOMAS: Objection, your Honor.

8 THE COURT: I'll allow it.

9 Q Can I see your folder for a second?

10 THE COURT: Officer.

11 MR. GRILLO: Yes. Your Honor, just for some
12 guidance, if there are certain documents individually --

13 THE COURT: We're going to give you a yellow sticky
14 pad and allow you to mark what you like so the folder can be
15 reassembled in its original form.

16 MR. GRILLO: Thank you.

17 THE COURT: You're welcome. Again, if you need
18 additional space, maybe we can borrow real estate, a little
19 bit of counsel's desk.

20 MR. GRILLO: I'm fine.

21 THE COURT: You're fine.

22 MR. GRILLO: Yes. Thank you.

23 I'll do this one at a time, your Honor.

24 THE COURT: Take your time.

25 Q Dr. Hausknecht, can we agree that in your folder

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1 there's a report dated October 7th of 2015, completed by Martha
2 Castro, physician's assistant, dictating for David Shein. Have
3 you seen that document?

4 A I don't have my file in front of me so I can't confirm
5 it without looking at it, but I'll take your representation.

6 Q I'm going to make a representation. And I'll show you
7 the document and see if you agree with me, fair enough?

8 A I'll take your representation. I trust you.

9 Q This is a 46-year-old male -- this is dated October 7th
10 of 2015. (Reading:) This is a 46-year-old male who comes in --

11 THE COURT: Counsel, can you read slowly?

12 MR. GRILLO: Sorry.

13 MR. THOMAS: Your Honor, is he reading from a
14 document in evidence?

15 THE COURT: He's reading from a file. If you need
16 to be heard on this, it's one thing. If it's contained in
17 any one of the exhibits in evidence, you need to let me know
18 that. If it's not, you need to let me know that. If it's
19 something on which the Doctor relied for the purpose of his
20 treatment, there's a lot of ways in referring to it. So at
21 this point I don't have any valid basis for an objection,
22 I'm going to overrule it unless there's a more definite
23 articulation of the objection.

24 MR. THOMAS: My objection is, if he wants to read
25 from it, then put it into evidence.

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1 THE COURT: It's his examination, Counselor. I
2 appreciate the recommendation, but it's Mr. Grillo's
3 examination. Overruled.

4 You may continue, Mr. Grillo.

5 MR. GRILLO: Thank you.

6 Q Dr. Hausknecht, your initial report was to Dr. Shein,
7 correct, the orthopedist?

8 A Correct. He's the one that referred the patient to me.

9 Q And to the extent that you drafted this initial report,
10 you subsequently came into possession of records from 2015, did
11 you not?

12 A I did.

13 Q One of the those records is from Miss Castro, a PA,
14 physician's assistant working for Dr. Shein. She actually
15 dictated a report in Dr. Shein's name.

16 MR. THOMAS: Objection on what someone else did,
17 Judge.

18 THE COURT: Well, with respect to what he relied on
19 for the purpose of his treatment, overruled.

20 Please continue, Mr. Grillo.

21 Q (Reading:) October 7, 2015. This is a 46-year-old male
22 who comes in complaining of lower back pain radiating down his
23 left lower extremity with associated paraesthesia.

24 What is paraesthesia?

25 A Be like a tingling sensation.

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1 Q (Reading:) He tells me this has been going on for the
2 past 34 years. He's had physical therapy without any
3 significant improvement.

4 In addition, there's a reference in there to,
5 (Reading:) Past Medical History. He underwent surgery to his
6 right wrist in the past.

7 That's in there as well, right, Doctor?

8 THE COURT: Is there a question coming, Counsel?

9 Q Doctor, are you aware that those injuries are in that
10 report from 2015?

11 A I don't have the report in front of me, but I'll take
12 your representation.

13 Q Thank you.

14 (Reading:) Treatment plan, same day. At this time I'm
15 putting him in a lumbar corset. I need an MRI of his lower back
16 and EMGs for his lower extremities. I will see him soon after
17 the MRI and EMGs are completed. If he has any problems, he will
18 contact the office immediately. If he develops increased pain
19 and numbness, dysesthesia, or change in bowel or bladder
20 functions, he has to contact the emergency room. He should be
21 cautious and use the lumbar corset at all times. I don't want
22 him to pick up anything heavy. October 7th of 2015.

23 You saw that?

24 A Yeah.

25 Q Okay. In addition, did you happen to see a medical

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1 record in conjunction with your preparation for testimony today,
2 as well as your report to Dr. Shein dated September 15th of
3 2014, from a Dr. Richard Harvey, chiropractor?

4 A I did. But I did not have that the first day that I
5 saw this patient.

6 Q Okay. Well, you had it before you testified on direct
7 examination, right?

8 A Sure.

9 Q And you've made certain statements about the causality
10 of the subject accident of October 10th of 2017, without a
11 mention of any prior injury. You're saying it's all related to
12 this accident on October 10th of 2017, correct?

13 A I was asked about his causation of his brain injury,
14 and that was the question that I answered. I wasn't asked about
15 a question about his neck and back. But in my opinion, with a
16 reasonable degree of medical certainty, this fall was a
17 substantial cause of his neck and back problem and aggravated
18 his prior underlying neck and back injuries.

19 Q What's the mechanism of his injury?

20 A He fell.

21 Q Fell where?

22 A Off a bridge 20 feet.

23 Q 20 feet. Did you see Dr. Merola's report?

24 A It's part of my file.

25 Q Okay. You know he told Dr. Merola he fell 12 feet?

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1 MR. THOMAS: Objection, your Honor.

2 THE COURT: I'll allow it. It's the plaintiff's
3 testimony for medical treatment. Overruled.

4 A I'm not sure what he told Dr. Merola. You'd have to
5 ask Dr. Merola. I know he told me that he fell 20 feet, and
6 that was consistent with Dr. Shein's records as well.

7 Q Do you know what he fell on?

8 A I think he struck a metal beam, and then fell onto some
9 kind of steel clip.

10 Q How do you know that?

11 A Based upon the records I reviewed.

12 Q Did you read any of his -- you know we took a
13 deposition of Mr. Lopes, right?

14 A I don't know that, no.

15 Q Did you read his testimony about how, in his own words,
16 the accident happened?

17 A No.

18 Q Okay. So this whole idea of him hitting a beam --

19 THE COURT: Counsel, microphone.

20 Q This whole idea of him hitting a beam, hitting a metal
21 clip, this is something you're going on based on your
22 recollection from seven years ago?

23 MR. THOMAS: Objection.

24 THE COURT: I'll allow. He may answer.

25 A It's based in part of what I recollect and based in

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1 part of what I read in the records.

2 Q But you've never read his deposition testimony,
3 correct?

4 A You just asked me that. No.

5 Q He also, when he brought the lawsuit against the County
6 of Suffolk, there's what's called a 50-H hearing, where he was
7 deposed pursuant to Municipal Law 50-H. Did you read that
8 testimony?

9 A No.

10 Q Do you think it would be important to know what the
11 patient said under oath relative to the mechanism of injury?

12 MR. THOMAS: Objection.

13 THE COURT: Overruled.

14 A Only if it was different from the fact that he fell 20
15 feet. If he said fell 20 feet, he fell 20 feet.

16 Q How about what he landed on?

17 A It could potentially impact my opinions, but probably
18 not.

19 Q So I want you to assume, based on a review of the
20 records, that there will be testimony, if not now --

21 MR. THOMAS: Objection.

22 THE COURT: I'll allow it.

23 Q -- in the future that when Mr. Lopes fell, he didn't
24 land on the ground, he didn't land on a barge, he landed on
25 tarpaulin that was laying -- that was on top of the water

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1 beneath the bridge, would that change your opinion about whether
2 or not Mr. Lopes sustained a traumatic brain injury in this
3 case?

4 A I don't understand. You're saying he landed on like a
5 trampoline, is that what you're saying?

6 Q Well, no. I think if you read the --

7 MR. THOMAS: Objection, argumentative. Move to
8 strike.

9 THE COURT: Motion to strike granted.

10 Frame a proper question, Counsel.

11 Q Sure. Well, I think Dr. -- I'm going to give you the
12 scenario so you can understand it. Mr. Lopes is working, for
13 lack of a better term, on a barge, he's sandblasting the
14 undercarriage of a low drawbridge in Westhampton. You with me?

15 A How many feet above --

16 THE COURT: We're going do get there, sir. One
17 piece at a time.

18 Q I want you to assume, depending on who you ask, that
19 height of that bridge is anywhere from 20 to 12 feet, the
20 undercarriage.

21 A Which one is it?

22 Q Well, you'll see if you read the transcript --

23 THE COURT: Sustained.

24 Counsel, no need to argue, no need to get into a
25 conversation. Just please ask a question.

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1 Q Okay. I want you to assume that he's working and that
2 he falls off of a scaffold, he falls backwards. The work that
3 he's doing is, he's cleaning off paint in the undercarriage of
4 the bridge using a hose, okay? There are tarps, plastic tarps
5 that are draped over the boat and the water to collect all the
6 debris that falls so it doesn't go into the water. And I want
7 you to assume that Mr. Lopes testified that when he fell
8 backwards, he landed on the tarp that was floating on the
9 surface of the water, that he didn't strike a hard object, that
10 he did not strike --

11 MR. GILBERT: Objection.

12 THE COURT: I'm going to allow it. He's prefacing
13 a question -- excuse me. One at a time. When you hear my
14 voice, I shouldn't hear yours.

15 He's prefacing a question based on facts he's
16 asking the witness to assume, based on a good-faith basis
17 from prior sworn testimony. Overruled.

18 Please continue.

19 Q I want to you assume that he landed on the water.

20 MR. THOMAS: Objection, your Honor. That's not
21 what it says in the transcript.

22 THE COURT: With respect to that, Counsel, I don't
23 want to be in a position of having to strike this testimony
24 later on finding out it's not supported by the record or any
25 report or sworn testimony of the plaintiff. Conduct

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1 yourself accordingly.

2 MR. GRILLO: Yes. I brought out the fact that
3 there's dis --

4 THE COURT: Counsel, Counsel.

5 MR. GRILLO: I'll --

6 THE COURT: Let me make it real simple. You seem
7 to be pointing out that there may be some contradictory
8 reports depending upon the source and when they were made.

9 MR. GRILLO: Correct.

10 THE COURT: Conduct yourself accordingly.

11 MR. GRILLO: Okay.

12 Q So I want to you assume hypothetically, Doctor, if
13 there's testimony that he didn't land on a hard surface but
14 rather he landed in the water, would that change your diagnosis
15 in any way?

16 MR. THOMAS: Same objection.

17 THE COURT: Overruled. He says if there's
18 testimony. It's a mighty big if. And if there's not, you
19 know how to make the application, Counsel.

20 Go ahead, Mr. Grillo.

21 MR. THOMAS: Thank you.

22 Q Would that change your opinion?

23 A It wouldn't change my opinion, no. In general, the
24 higher the fall, the more forceful, the more damage is going to
25 be done. The harder the surface, the more damage is going to be

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1 done. But a 12-foot fall onto water, or a 20-foot fall onto
2 water, or a 12-foot fall onto a barge deck or a 20-foot fall
3 onto a barge deck, all those would be capable of causing these
4 types of injuries.

5 THE COURT: I'm going to take a very short break.

6 As I said this morning, ladies and gentlemen, I
7 like to take one mid-morning and one mid-afternoon break.
8 It's not a marathon.

9 So again, don't form or express any opinion about
10 the case. Don't discuss it between and amongst yourselves.
11 I'm going to take a ten-minute recess and we'll be back on
12 the record for continued cross-examination by Mr. Grillo.

13 All rise as the jury exits for a ten-minute recess.

14 COURT OFFICER: All rise.

15 (Whereupon, the jury exits the courtroom.)

16 THE COURT: All right. We're still on the record.

17 Doctor, you may step down.

18 The record is available for any applications you'd
19 like to make at this time.

20 MR. THOMAS: Yes, Judge. I'll wait for the Doctor
21 to step out.

22 THE COURT: Doctor, if you can step into the
23 hallway. No offense, sir. I'll need you back in ten
24 minutes.

25 And I'll set the table. I'll set the table for

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1 you, Mr. Thomas.

2 And I will caution both counsel, there's been
3 affirmative representation made and there's been distinction
4 drawn between reports by medical professions prior to this
5 occurrence that there's been an assertion by defense counsel
6 that there is a 50-H deposition under oath, as well as a
7 pretrial deposition under this index number with respect to
8 certain factual content which the doctor was asked to assume
9 in the form of a question posed by Mr. Grillo.

10 I'm going to ask counsel collectively to review
11 that to make sure we have a good-faith basis for it. I'll
12 give you some time to do it. If it's there, we'll move on.
13 If it's not, I'll entertain whatever application you might
14 have. Ten minutes.

15 (Whereupon, a brief recess was taken.)

16 (Back in open court, on the record as follows:)

17 COURT CLERK: Case on trial continues.

18 THE COURT: We're on the record.

19 Before we bring the panel back in, two things. I
20 have a superb stenographer who can keep up with anybody I
21 ever have, except for one attorney from Staten Island who
22 will remain nameless, and I have the additional requirement
23 of a contemporaneous interpretation. So I'm going to need a
24 little bit more time between my question and my answer, and
25 I'm going to have to insist on not speaking over one

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1 another. And I realize, particularly during
2 cross-examination, that that's everyone's tendency, so use
3 your best efforts. And I'll leave it at that.

4 MR. GRILLO: I already apologize to the court
5 reporter.

6 THE COURT: With respect to the issue here we were
7 discussing before the break, I'm prepared to continue if
8 counsel is prepared to continue.

9 MR. GRILLO: Yes.

10 MR. THOMAS: Well, Judge, I've just reviewed
11 portions of the 50-H that counsel just referenced; it said
12 that he supposedly fell on the water. That's not what he
13 said. In fact, he says he fell on a circle clamp.

14 THE COURT: Circle clamp.

15 MR. THOMAS: It actually says in the record C-I-R-C
16 clamp, that's a circ clamp.

17 "QUESTION: After you hit your head on the beam,
18 what happened next?

19 "ANSWER: I fell on the tarp, and beneath the tarp
20 there was a steel piece, circ clamp.

21 "QUESTION: So the tarp wasn't floating on the
22 water, it was on another beam?

23 "ANSWER: No, that's not -- that was not a beam, it
24 was a sea, S-E-A, clam. Circ clamp is a piece like this.

25 "QUESTION: Try to describe it. The court reporter

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1 can't take down a picture.

2 "ANSWER: It's like -- it's spelled like this,
3 C-I-R, C-L-A-M-P. It's a piece of metal that was down
4 there.

5 "QUESTION: But when you fell and you landed, you
6 landed inside the water?

7 "ANSWER: Between the barge and the water, outside
8 the barge."

9 MR. THOMAS: Judge --

10 Q (Reading:)

11 "QUESTION: But on top of the tarp --

12 THE COURT: Stop, gentlemen. We're on the record.
13 One attorney at a time. If you need to whisper in his ear a
14 directorial note, please feel free to do so...

15 MR. THOMAS: On page 36 of the 50-H, line 22 --

16 THE COURT: Slow.

17 Q (Reading:)

18 "QUESTION: But on top of the tarp?

19 "ANSWER: Yes, ma'am.

20 "QUESTION: Did any part of your body get wet?

21 "ANSWER: No, because I was inside the tarp."

22 THE COURT: Here's the point. I heard what you
23 said very clearly. He clearly says he was outside the
24 barge, tarp's on the water. There is a circ clamp. Whether
25 it's a clamp attached to the boat that they use for

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1 anchoring or whether or not he got wet, the question is, the
2 tarp was covering the water. He has a good-faith basis.

3 Overruled. You have your exception, for the
4 record. Let's continue.

5 MR. GRILLO: Thank you.

6 Your Honor, just to add to the record similar
7 testimony in his deposition transcript as well.

8 THE COURT: Got it. Good-faith basis.

9 MR. THOMAS: Respectfully except.

10 THE COURT: You have your exception. And now
11 you're welcome to take another one.

12 Bring in the panel, please.

13 MR. GRILLO: Can I go to the podium, or do you want
14 me to wait?

15 THE COURT: Why don't you wait. They're coming
16 through the gate. Day 1 is a little rough. You'll have the
17 choreography down by tomorrow.

18 MR. THOMAS: Page 35 of the deposition testimony, I
19 had earlier read in the 50-H hearing, page 35 from the
20 deposition testimony Line 3:

21 "QUESTION: Mr. Lopes, aside from your back, did
22 anything else immediately make contact with the ground as
23 you fell?

24 "ANSWER: My entire body. My entire body fell on
25 the floor."

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1 Judge, there's testimony in the deposition.

2 THE COURT: Here's the issue.

3 MR. GRILLO: Can you read the page before?

4 THE COURT: I'm familiar with it. I looked at it.
5 There's conflict, and it's subject to interpretation. But
6 it's still a good-faith basis in your -- in terms of my
7 instruction to the jury concerning experts, and these facts
8 are to be assumed based on questions, I'm comfortable with
9 the mechanisms in place. Your point is well taken. There's
10 a conflict between the 50-H. There's some elaboration in
11 the pretrial dep. It's sufficient to serve as the
12 predicate. I'm overruling the objection. You have your
13 exception.

14 MR. THOMAS: Thank you, Judge.

15 THE COURT: Bring the panel in.

16 COURT OFFICER: All rise, jury entering.

17 THE COURT: All rise, please.

18 Jury may be seated when they reach their seats.

19 All jurors are present.

20 Does counsel waive the roll call?

21 (Whereupon, all counsel answered in the
22 affirmative.)

23 THE COURT: Thank you.

24 You may be seated, Doctor. Again, I remind you
25 you're under oath.

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1 For purposes of continued cross-examination, Mr.
2 Grillo.

3 MR. GRILLO: Thank you.

4 THE COURT: You're welcome.

5 CONTINUED CROSS-EXAMINATION

6 BY MR GRILLO:

7 Q Doctor, just picking up on where we left off. I want
8 you to assume that there's testimony, again -- withdrawn.

9 You'll concede as of now you've never read Mr. Lopes'
10 deposition testimony, you've never read his 50-H transcript
11 relative to what he said under oath about how the accident
12 happened, correct?

13 A Correct.

14 Q Doctor, I want you to assume, based upon reading of
15 those documents, that there's testimony by Mr. Lopes that when
16 he fell, he fell onto a tarp that was floating on the water
17 between the bridge and the barge he was standing on and landed
18 on the water.

19 THE COURT: Overruled. I'll allow it.

20 You may answer, Doctor.

21 THE WITNESS: I don't think it was a question, but.

22 THE COURT: No, no. He wants you to assume that.

23 Q I want to you assume that.

24 THE COURT: Next question.

25 Q Assuming that were the case, that Mr. Lopes fell either

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1 12 feet, 20 feet, from scaffolding onto a tarp on the water on
2 his back, would that change your opinion in any way about
3 whether or not he sustained any type of injury in this
4 particular case?

5 A It doesn't change my opinion. As I stated before, in
6 general, the higher the fall, the more forceful the impact, the
7 more likely it is to cause damage. In general, the harder
8 surface or object that's struck, the more forceful the impact is
9 going to be, the more likely there's going to be damage. That
10 scenario also assumes that he didn't hit anything on the way
11 down, like a steel beam or land on anything like a steel clamp.

12 Q Sure, okay. Can we agree, sir, that at no point, from
13 the first time you saw Mr. Lopes until today, did he ever tell
14 you that he lost consciousness in this fall?

15 A You have my file. It's my understanding that he did
16 not lose consciousness but felt dazed.

17 Q And he said he felt dazed and dizzy, correct?

18 A Correct.

19 Q Going back to your explanation about objective and
20 subjective, do you remember that testimony?

21 A I do.

22 Q Can we agree, sir, that if somebody tells you they're
23 dazed or somebody tells you they're dizzy, that's a subjective
24 complaint, right?

25 A So is loss of consciousness.

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1 Q But you already told me he didn't lose consciousness.

2 A It's a subjective complaint. That's what the patient
3 is saying.

4 Q You don't have any special machines in your office, do
5 you, to check for dizziness, correct?

6 A Dizziness can come from a lot of particular potential
7 causes. There's no one machine that can check for dizziness,
8 per se. There are tests that can identify abnormalities that
9 are commonly associated with dizziness, but there's no magical
10 dizziness machine.

11 Q I appreciate the longwinded explanations --

12 MR. THOMAS: Objection, your Honor, to these
13 comments.

14 THE COURT: Sustained on the editorial.

15 Mr. Grillo, longwinded is not appropriate. Next
16 question.

17 MR. GRILLO: I'll withdraw it, Judge.

18 Q As far as dazed, same question: No special machines to
19 basically check if somebody's been dazed, correct?

20 A There's no machine that I'm aware of. That's a feeling
21 that a person has.

22 Q Okay. Great. Now, I want to back up a second and I
23 want to go back to the additional records in your file from
24 Dr. Shein's office. As you sit here today, I want you to let me
25 know if you recall seeing a report, I can hand it up to you, on

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1 Dr. -- dictated for Dr. Shein by his PA, Miss Castro, dated
2 November 16th of 2015, wherein she basically said --

3 MR. THOMAS: Objection.

4 THE COURT: I'll allow it. Relied upon for
5 treatment.

6 MR. GRILLO: I'll withdraw --

7 THE COURT: Are you going to summarize or are you
8 going to read?

9 MR. GRILLO: I'll summarize.

10 THE COURT: I know you're trying to be helpful, I
11 know you're trying to be responsive. I have the issue of a
12 reporter that can get it all down, but I also have the issue
13 of a contemporaneous interpreter interpreting for Mr. Lopes
14 from Portuguese to English, so I need a little space between
15 one person speaking and the next person speaking, including
16 myself. So let's take it from there.

17 If you're referring to a document and you want to
18 paraphrase, that may be subject to objection. If you want
19 to read from it from a document used for the purpose of
20 treatment, I'm not going to tell you how to try your case.
21 Go ahead.

22 MR. GRILLO: Thank you.

23 Q Dr. Hausknecht, in conjunction with your treatment of
24 the patient, you received records, did you not, sir, from
25 Dr. Shein's office?

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1 A I did.

2 Q In conjunction with the Dr. Shein records, there were
3 records that were dictated by Miss Martha Castro, a physician's
4 assistant in his office, for him?

5 A Once again, you have my file. But I'll accept your
6 assertion.

7 Q Thank you.

8 I want to direct your attention to a report of November
9 16th of 2015, nearly two years before the accident. Under
10 Imaging Studies, (Reading:)

11 I reviewed the X-rays of his lumbar spine that were
12 completed at a previous visit, and these show the presence of a
13 Grade 1 arterial-lythesis (sic) of L5 onto S1. Fair statement?

14 A Once again, I'll accept your representation. I don't
15 have the report in front of me.

16 Q Okay. But I can make the representation I'm reading
17 from a document in your file verbatim. So can we agree, knowing
18 that, sir, that two years prior to this accident the -- well,
19 withdrawn.

20 What is an arterial-lythesis?

21 A I think you're mispronouncing.

22 THE COURT: Antero.

23 Q Okay.

24 A Can I just see it?

25 Q Sure. How would you pronounce it?

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1 A I'd have to read it.

2 Q Under Imaging Studies. (Handing.)

3 A Anterolisthesis of L5 on S1. This is the slippage of
4 the bones.

5 Q Correct. I said anterior, did I not? I apologize.

6 A I think you said arterial.

7 Q My mistake.

8 THE COURT: Anterolisthesis.

9 Next question.

10 Q That's the slippage of the bone, correct?

11 A Correct.

12 Q Can we agree that's a congenital abnormality?

13 A Could be congenital, it could be acquired. But either
14 way it was before the 2019 fall.

15 THE COURT: 2017.

16 A I'm sorry. 2017.

17 Q So on study, this condition in his back was there two
18 years before the accident, fair enough?

19 A He said a preexisting condition of both his neck and
20 back. That's fair.

21 Q Okay. Thank you.

22 On this document, across the top it says workers'
23 compensation case. I know you're here as a treating physician.
24 As part of your practice, do you regularly testify?

25 MR. THOMAS: Objection.

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1 THE COURT: Counsel, where are we going with this?
2 In terms of context, be very cautious.

3 MR. GRILLO: Okay. I'm just talking in general.

4 THE COURT: I know what you're doing, but be
5 careful on your nomenclature.

6 MR. GRILLO: Can we just approach?

7 THE COURT: No. I understand what you're doing,
8 just be very careful. Be careful.

9 Q Well, you've been practicing for how many years?

10 MR. THOMAS: Objection; asked and answered.

11 MR. GRILLO: I'm trying to --

12 THE COURT: We know he's been licensed since '92,
13 he started the business in '99. Next question.

14 Q As part of your practice, do you provide testimony
15 before the Workers' Compensation Board?

16 MR. THOMAS: Objection; relevance.

17 THE COURT: I'm going to need a sidebar with the
18 reporter. We don't need the interpreter.

19 (Whereupon, a sidebar was held outside the hearing
20 of the jury.)

21 THE COURT: We're on the record in the back hallway
22 in chambers.

23 Mr. Gilbert and I made contact on the mention of
24 the Workers' Compensation Board. With respect to that, I
25 don't know what the experiential level of these tenures is,

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1 however, I could see some cause for concern and I'd rather
2 head it off at the pass than clean it up after the fact.

3 So state your concern with respect -- I haven't
4 heard the I word yet.

5 MR. GILBERT: But obviously, it's an insurance
6 concern that the jury is not supposed to be, not necessarily
7 hearing about; however, they're going to get some
8 information regarding that down the line. But I don't think
9 that that is exactly where Mr. -- I don't know where he's
10 actually going.

11 THE COURT: Which is why I wanted to stop it now
12 because I didn't want to do that in front of the jury
13 because I --

14 MR. GRILLO: To maybe an offer of proof as to where
15 he is going with this.

16 THE COURT: That's why we're back here. I have a
17 similar concern to Mr. Gilbert with respect to information
18 concerning other sources of payment or prior compensation.
19 That's a legal issue after the fact under certain sections
20 of the CPLR that I'll concern myself with at the appropriate
21 time. I just -- I'm being super cautious because we've
22 already done this case once, we don't want to do it again.

23 MR. PUZO: Can I suggest we do it as a state
24 agency?

25 THE COURT: We're outside the presence of the jury.

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1 MR. GRILLO: My only intention was to say workers'
2 comp for the first time, setting a fact that Dr. Hausknecht
3 has basically entered into a stipulation of settlement with
4 the New York State Workers' Compensation Board based on his
5 malfeasance and improper billing, and that he -- I have a
6 signed stipulation that --

7 THE COURT: You got a factual finding in that
8 stipulation?

9 MR. GILBERT: No.

10 THE COURT: Listen, I know how those work. Was
11 that a non admission? You can ask him about specific
12 conduct on cross-examination, but you're bound by his
13 answer. Let's get it straight now. You can ask the
14 question, but with respect to have you ever, there has to be
15 a good-faith basis. Is there a factual finding that he
16 committed wrongdoing? Then I would let you paint the
17 context of workers' compensation. If you couch it in the
18 abstract, have you ever been found to be or have you ever
19 done X outside of the context of workers' comp, I'll give
20 you that leeway. But if you're going to start with workers'
21 comp and there's no workers' comp finding, that's
22 objectionable.

23 MR. PUZO: He --

24 THE COURT: Stop. He's on the hook right now.

25 MR. GRILLO: I was trying to demonstrate that he's

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1 been practicing in the workers' comp space for many years.

2 THE COURT: What's that got to do with anything?

3 MR. GRILLO: He's giving -- he's given up a
4 significant --

5 THE COURT: He's given up as a result of a consent
6 decree or --

7 MR. GRILLO: Signed stipulation of settlement.

8 THE COURT: Any finding.

9 MR. GRILLO: There's allegations in this that's
10 been redacted.

11 THE COURT: Here's the deal. There's a reason
12 they're redacted. But in terms of -- if you have
13 independent information of an act, if he has ever committed
14 certain conduct, you're permitted to ask him that, but
15 you're bound by his answer and I'm not going to get into
16 collateral issues. You're bound. But I don't see the need
17 to couch it in the context of workers' comp unless we're
18 going to come back around and connect that for a finding
19 either by the attorney general or by a consent order with
20 the Workers' Compensation Board. This is a stip?

21 MR. GRILLO: It's a stipulation. Sorry.

22 THE COURT: You can, the fact that he enters into
23 that stip is not the proper question on cross-examination.
24 The proper question is to inquire about the conduct and
25 you're bound by his answer. They're not coaching him right

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1 now, they're not speaking to him while you're crossing him.
2 Rephrase it properly. I'll let you do it. Remember you're
3 bound by it. Don't pollute the record.

4 MR. GRILLO: If I can just speak to what's attached
5 to the stipulation of settlement.

6 THE COURT: What is it?

7 MR. GRILLO: It's an affidavit of voluntary
8 resignation signed by Dr. Hausknecht.

9 THE COURT: So what? Maybe he wanted to cut down
10 on his practice. Stop. Don't help me when you're winning.
11 It's not a good idea.

12 MR. GRILLO: I'm going to state for the record --

13 THE COURT: I'm going to prohibit you from asking
14 any other question. But with respect to specific conduct
15 that he engaged in, what conclusion a state agency,
16 particularly the Workers' Compensation Board came to, or
17 what stipulation he entered into in terms of his ability to
18 appear or not appear in front of them, whether he was --
19 you're not telling me he was debarred. This is a stip with
20 no factual finding.

21 MR. GRILLO: Judge.

22 THE COURT: Am I correct? Correct me if I'm wrong.

23 MR. GRILLO: There's two parts to it. There's a
24 stipulation on the cover sheet, then there's an affidavit of
25 voluntary resignation, if you will, Judge.

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1 THE COURT: Paragraph 2 says --

2 MR. THOMAS: I, Aric Hausknecht, acknowledge that
3 the Board issued a letter to me dated in -- that I had
4 submitted to the Board documentation containing false
5 statements in contravention of Workers' Compensation Board
6 Law Section 13-D on three occasions, and that I had treated
7 three workers' compensation claimants in a manner that was
8 inconsistent with the controlling regulations and medical
9 treatment guidelines.

10 THE COURT: It's not an admission. He's telling
11 you what the specifics were. My rulings stands.

12 What else do you have?

13 MR. GRILLO: There's more. There's Paragraph 3.

14 THE COURT: Is it going to change what I just
15 stated?

16 MR. GRILLO: That he voluntarily resigns and that
17 he's no longer authorized to render medical care and
18 treatment to any claimants, and further not be permitted to
19 review, variance, quotes, pursuant to 12 NYCRR Section 324.3
20 small b, 2, small i, a.

21 THE COURT: Doesn't change my logic.

22 What do you have, Mr. Puzo?

23 MR. PUZO: My position would be, I think we should
24 be able to question him. He does workers' comp. We can
25 call it a state agency. He treats patients in conjunction

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1 with -- I have the question written down. I'm trying to
2 remember. Let me rephrase.

3 Doctor, you have patients that were injured on the
4 worksite, yes? And these patients -- I know what it is.
5 You're authorized by a state agency to treat patients that
6 were injured on a worksite, yes? Yes. And a few other
7 questions. But the ultimate question is, you voluntarily --
8 you voluntarily resigned --

9 THE COURT: It's still collateral. The obvious
10 issue is the conduct that he committed that lead to it, and
11 that's not a quasi-judicial determination in terms of a
12 founded finding.

13 MR. PUZO: What Dr. --

14 THE COURT: No, no. If you notice Paragraph 2
15 stated, he acknowledges receiving a letter that's stated X.
16 That's doesn't give you any further footing -- the next
17 paragraph, in terms of what actually he voluntarily took,
18 doesn't bring me any closer. It's the conduct underlying it
19 that is proper cross-examination for the purpose of
20 impeachment and credibility only. That's my ruling. I'm
21 done. You have your exception for the record.

22 MR. GRILLO: Just a question. There's no follow-up
23 trying to show him a document to refresh him or have him
24 change his mind.

25 THE COURT: Listen, in terms of, they can use

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1 anything for ID. It depends on what his answer it. But it
2 depends what his answer is. And I'll exercise your thigh
3 muscles. Like Professor Fowler used to say, I'll make my
4 judgment in realtime.

5 MR. THOMAS: I was going to ask for a curative
6 instruction. This is hanging --

7 THE COURT: I'm -- that's my finding. You have
8 your exception, Mr. Thomas.

9 (Whereupon, the proceeding continued in open court,
10 on the record as follows:)

11 Back on the record. Let me know when you get set
12 up.

13 I apologize. There are certain occasions wherein I
14 have to discuss legal issues on the record outside the
15 presence of the jury. I make certain rulings on
16 applications of counsel. We're about to continue with the
17 cross-examination by Mr. Grillo.

18 MR. GRILLO: Thank you.

19 THE COURT: Thank you, sir.

20 CONTINUED CROSS-EXAMINATION

21 BY MR. GRILLO:

22 Q Dr. Hausknecht, did you ever submit false statements to
23 a governmental agency regarding your treatment of patients?

24 MR. THOMAS: Objection.

25 THE COURT: Overruled.

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1 A Never.

2 Q Specific to certain medical treatment guidelines, have
3 you ever treated -- specific to certain governmental medical
4 treatment guidelines, have you ever treated a patient in a
5 manner that was inconsistent with controlling regulations, state
6 regulations?

7 MR. THOMAS: Objection.

8 THE COURT: I'll allow it. Overruled.

9 A Not in my opinion.

10 Q When you say "not in my opinion," can we agree, sir,
11 that there's been certain state agencies that you've done work
12 with that you no longer can do work with?

13 THE COURT: Objection sustained.

14 MR. THOMAS: Motion to strike.

15 THE COURT: Motion to strike granted.

16 The jury will disregard that question and answer.

17 Q Now, Dr. Hausknecht, with respect to -- I want to
18 backup for a second. I know we talked about it earlier, but as
19 far as the MoCA test, the Montreal Cognitive Test, do you
20 remember that testimony?

21 A I do.

22 Q What is that administered for? Is that for cognitive
23 abilities?

24 A Yes.

25 Q Can we agree, sir, that the MoCA test is utilized to

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1 determine someone's cognition, correct? How they function?

2 A Yes.

3 Q And the whole idea of the diagram you showed about
4 executive function, the frontal lobe of the brain, how it works,
5 can we agree that's an important test?

6 A It can be, sure.

7 Q Was it important to you in rendering treatment to Mr.
8 Lopes?

9 A In part, yes.

10 Q Okay. Do you receive compensation for administering a
11 test like this?

12 A Potentially any service that I provide of a medical
13 nature is compensable, yes.

14 Q So the 30 to 40 visits that he's seen you for, those
15 are all compensable. You didn't do any of this for free,
16 correct?

17 A I don't know if they're all paid, but they're all
18 potentially compensable, yes.

19 Q But you certainly charged for all the services,
20 correct?

21 A Of course. I'm a doctor, the same way you're charging
22 for being here right now.

23 Q I just want to make sure there's nothing pro bono.

24 A This was not charity work.

25 Q I do pro bono work --

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1 MR. THOMAS: Objection.

2 THE COURT: That's a fair response. Let it slide.

3 Move on.

4 MR. GRILLO: I will.

5 Q I'd like -- I'm going to give you your file back.

6 THE COURT: Officer.

7 If you need more space, Doctor, you can put it
8 right here. (Indicating.)

9 Q Dr. Hausknecht -- I'm sorry. If you're ready.

10 THE COURT: Next question.

11 Q Dr. Hausknecht, can we agree, short of today when you
12 said you spoke to the plaintiff, the last time you saw him was
13 on May 7th of 2024, correct?

14 A Correct.

15 Q In looking at your file, unless you have an independent
16 recollection, can you tell me the last time you saw the
17 plaintiff before May 7th of 2024?

18 A It was about six months before then.

19 Q Do you have the specific date you saw him prior to
20 May 7th of 2024?

21 A 11/6/23.

22 Q Okay. And prior to that, sir?

23 A 8/21/23.

24 Q Now, going to your report of May 7th of 2024, on page 2
25 of your report you make certain findings, do you not, about his

1 past medical history?

2 A I do.

3 Q Okay. And you make reference to the fact that he's got
4 diabetes, and you also make reference for the first time that he
5 was involved in a prior motor vehicle accident on November 5th
6 of 2013.

7 A It's not the first time, but it is referenced there,
8 yes.

9 Q Okay. You make no reference to any of his prior
10 injuries, correct?

11 A I'm not sure which prior injuries you're referring to.
12 That's the only one I'm aware of that involves his neck and
13 back.

14 Q Okay. Are you aware of any other injuries he
15 sustained?

16 A There's some records about a shoulder injury, but
17 that's not pertinent to what I was treating him for. I was
18 treating him for head, neck and back.

19 Q Didn't you say that he had diminished grip strength in
20 his right hand, didn't you say that?

21 A Yeah.

22 Q Okay. And you're aware of the fact that there are
23 other records in your file showing a longstanding history of
24 rotator cuff impingement in his right shoulder, correct?

25 A Right. But that would affect his shoulder, not his

1 hand.

2 Q Are you aware of the fact, sir, that Mr. Lopes also had
3 three surgeries to his right hand?

4 A Yes.

5 Q Oh, you are?

6 A Yes.

7 Q And in what context was that done?

8 A The hand surgery?

9 Q Yes.

10 A I don't know. I wasn't treating him for his hand
11 surgery. Those are part of the orthopedic notes. I assume it
12 was in relation to a wrist problem.

13 Q To a wrist problem. Do you know if he was involved in
14 another accident on a bridge?

15 A I believe that's when he hurt his shoulder. But as far
16 as his head, neck and back goes, no, not that I'm aware of.

17 Q Do you have any knowledge of him being involved in an
18 accident on the Queensborough Bridge that he was painting back
19 in 2006?

20 A Not that I'm aware of.

21 Q Are you aware that he made similar allegations, that he
22 slipped and fell from a height, in 2006, injuring his hand?

23 A Once again, I wasn't treating his hand. I was focused
24 on his head, neck and back. Those were the areas I was
25 questioning him about and reviewing the records for.

CROSS - HAUSKNECHT - GRILLO

1 Q It would be important, would it not to you, sir, to
2 have as complete a history of Mr. Lopes as possible?

3 A As much as possible. The more information I have, the
4 better off I am. Information that's not important, I can
5 discard.

6 Q And the person who makes a decision as to whether or
7 not it's important is you, correct?

8 A That's right.

9 Q Okay. So now I want to go back -- well, we'll stay on
10 this for a second.

11 With respect to his mental status when you saw him on
12 May 7th of 2024, am I reading this correctly, patient -- do you
13 have it? I'm sorry. When you saw him on May 7th of 2024, how
14 did you communicate with him, with an interpreter, in Spanish,
15 or something else?

16 A In Spanish.

17 Q Okay. Again, you don't have -- there's not one entry
18 in any of your notes, am I correct, wherein you said you
19 communicated with the plaintiff in Spanish, correct?

20 A That's correct. I'm bilingual. That's not something I
21 would necessarily record in the report, the same way I wouldn't
22 record in the report that I communicated in English.

23 Q Correct. But again, for the first time today we're
24 hearing that you spoke to him in Spanish.

25 MR. THOMAS: Objection.

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1 THE COURT: I'll allow it.

2 A For the first time today I guess is the first time you
3 met me; so, yeah.

4 Q That's why I'm asking. Because there's not -- in that
5 entire stack of records there's not one reference about you
6 speaking to him in Spanish.

7 A Nor does it say that I spoke to him in English. I'm
8 bilingual --

9 (Whereupon, the court stenographer asks for
10 clarification.)

11 THE COURT: He's bilingual in both English and
12 Spanish.

13 Next question.

14 Q That's what I'm getting at. I want to understand,
15 especially if you're administering cognitive testing to
16 Mr. Lopes, I want to get at how you're communicating with him.

17 Can we agree how you communicate to someone can have an
18 impact, a significant impact on their testing, fair enough?

19 A Sure. If you don't understand what you're being asked,
20 yeah, it's going to impact your performance.

21 Q Okay. And as far as -- you use the term receptive
22 aphasia, right?

23 A Correct.

24 Q That's someone's ability to understand you?

25 A To understand and follow directions and instructions,

1 yes.

2 Q Okay. And similarly with expressive aphasia, it's how
3 someone communicates, correct?

4 A Expressive aphasia would indicate a deficit or
5 inability to communicate or express yourself.

6 Q Could somebody who speaks a different language have
7 difficulty expressing themselves in a different language? I'll
8 withdraw it. It came out improper.

9 So I'll ask it this way. If Mr. Lopes is a native
10 speaker of Portuguese, could he have difficulty expressing
11 himself in Spanish?

12 A Sure. He also can have difficulty in expressing
13 himself in Portuguese.

14 Q And you in English, as your native language, you could
15 have difficulty expressing yourself in Spanish as well, correct?

16 MR. THOMAS: Your Honor.

17 THE COURT: I'll allow it. He's making a point.

18 Overruled.

19 If you can answer it, Doctor.

20 A I mean, anybody can have problems expressing themselves
21 in any language, whether it's their primary language or
22 secondary language.

23 Q Well, you're making a claim, are you not, that make Mr.
24 Lopes sustained a traumatic brain injury, correct?

25 MR. THOMAS: Objection to making a claim, Judge.

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1 THE COURT: The doctor --

2 MR. GRILLO: Withdrawn.

3 THE COURT: -- is not making any claim. Sustained.

4 MR. GRILLO: Withdrawn. Sorry. Sorry.

5 Q You've rendered an opinion, have you not, sir, in court
6 that Mr. Lopes has sustained a traumatic brain injury?

7 A I have.

8 Q There are certain grades of traumatic brain injury, are
9 there not, or certain classifications?

10 A Yes.

11 Q And there's mild?

12 A Agreed.

13 Q Any other classifications you're aware of?

14 A Generally speaking, TBI can be severe, moderate or
15 mild. So a severe TBI would be somebody in a coma or vegetative
16 state. A moderate TBI would be somebody who's not independent
17 in their activities of daily living, requires assistance. And
18 mild TBI is somebody that has deficits that are considered to be
19 mild, so that they can still function, they just can't function
20 as well as they used to.

21 Q So I assume based on your classifications, your opinion
22 is that Mr. Lopes sustained a mild traumatic brain injury,
23 correct?

24 MR. THOMAS: Objection on his --

25 THE COURT: Sustained as to form only.

CROSS - HAUSKNECHT - GRILLO

1 Q Dr. Hausknecht, do you have an opinion as to the
2 classification of Mr. Lopes' traumatic brain injury?

3 A I do.

4 Q What is it?

5 A It's a mild TBI. He's not in a coma, he's able to take
6 care of himself, but he can't do what he used to do the same
7 way.

8 Q You've studied a lot, obviously. You've treated
9 hundreds of patients, thousands of patients, for that matter, in
10 your career?

11 A True.

12 Q Okay. Can we agree, sir, that mild traumatic brain
13 injuries usually resolve themselves within anywhere in a matter
14 of days to weeks?

15 MR. THOMAS: Objection.

16 THE COURT: I'll allow it. You may answer.

17 A It's clinical circumstance is different. Some people
18 can have a mild TBI with no or minimal symptoms that improves
19 quickly, some people can improve slowly over time, and some
20 people don't fully recover or improve.

21 Q Okay. But those are all with respect to mild TBIs,
22 correct?

23 A Correct.

24 Q Now, with respect to the fact that Mr. Lopes, I know
25 you didn't read his transcript, but I want to you assume that

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1 he's testified that he fell into the water, he got back up on
2 the barge, he worked for another, depending on which version of
3 the testimony, anywhere from one and-a-half to two hours
4 vacuuming on the barge after this alleged fall, then I want you
5 to assume that he left the worksite and he drove from
6 Westhampton Beach to Yonkers, would that, on his own under his
7 own power, would that change your opinion at all as to whether
8 or not Mr. Lopes sustained a traumatic brain injury?

9 MR. THOMAS: Objection to the form.

10 THE COURT: Overruled. I'll allow it.

11 You may answer.

12 A No, it doesn't change my opinion.

13 THE COURT: Next question.

14 MR. GRILLO: Thank you.

15 Q The fact that Mr. Lopes did not treat with a healthcare
16 provider for an entire week, does that change your opinion at
17 all as to whether or not Mr. Lopes sustained a traumatic brain
18 injury in this incident?

19 A No.

20 Q Okay. Now you talked a lot about EEGs, you talked a
21 lot of MRIs. Can we agree, sir, that any diagnostic test film
22 is subject to interpretation, correct?

23 A Correct.

24 Q As far as the MRIs that you ordered or the imaging that
25 you ordered, I think you said you ordered it in the latter part,

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1 I think it was October 27th of '17.

2 A It was ordered on his initial visit, but I believe
3 that's when it was performed.

4 Q I apologize. That's for clarifying.

5 So on his initial visit you ordered an MRI of the
6 brain, you ordered an MRI of the cervical spine, and an MRI of
7 his lumbar spine, correct?

8 A Correct.

9 Q With respect to those imaging, you ultimately saw --
10 did you see the report or the actual imaging on October 27th of
11 2017?

12 A Both.

13 Q Okay. Can we agree, sir, that the imaging studies that
14 we're talking about are subject to interpretation, correct?

15 A Yes.

16 Q So that someone -- a healthcare provider could look at
17 one MRI or diagnostic test film and another healthcare provider
18 could look at the very same imaging and arrive at two
19 conclusions, correct?

20 A It's possible.

21 Q Okay. So now, Doctor, I think we talked about this,
22 and you concede you're not a board certified radiologist,
23 correct?

24 A I'm not a radiologist.

25 Q You never testified in a Court of law as a radiologist?

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1 A Not as a radiologist, no.

2 Q Did you ever, prior to your testimony, reach out to the
3 radiologist who administered these tests to talk about their
4 findings?

5 A No. I looked at the films, I looked at the report, and
6 I agreed with the findings.

7 Q Okay. But this was your own interpretation. Did you
8 ever speak to the radiologist?

9 A My interpretation was the same as the radiologist, so I
10 had no reason to speak with him.

11 Q Got it. Okay. Now, with respect to -- sorry, some
12 literature. Are you familiar with the American Congress of
13 Rehabilitation Medicine?

14 A Not really, no.

15 Q Have you ever seen any studies by them regarding the
16 diagnosis for mild traumatic brain injury?

17 MR. THOMAS: Objection.

18 THE COURT: We're not there yet, but keep it in
19 mind. Overruled at this point.

20 A Not that I'm aware of.

21 Q Okay. Can we agree, sir, that there are certain
22 mechanisms involved in a traumatic brain injury?

23 A Sure.

24 Q And the diagnosis of it, right?

25 A Those are two different questions. But yes, there are

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1 mechanisms that cause traumatic brain injury and there's also
2 the diagnosis of traumatic brain injury.

3 Q And you need particular clinical signs, do you not, to
4 have a finding of a traumatic brain injury?

5 A A traumatic brain injury is a clinical diagnosis.

6 Q Okay. And again, sir, with respect to your diagnosis
7 of the traumatic brain injury, you're making -- you made this
8 claim of a, excuse me, you made this diagnosis of a traumatic
9 brain injury, what would your clinical findings in order to make
10 that?

11 A Based upon his -- the mechanism of injury, his
12 complaints, the headaches, dizziness, nausea. It was based upon
13 my physical findings on neurological exam, the nystagmus, the
14 difficulties with comprehension, the processing of information
15 and the results of the diagnostic tests, specifically the brain
16 MRI and the EEGs, further confirmed by the formal standardized
17 neurocognitive and neuropsychological testing.

18 Q Okay. So based on -- just going back to your last exam
19 of Mr. Lopes in May of this year, you checked his cranial
20 nerves, did you not?

21 A I did.

22 Q Under the cranial nerves you found that his pupils are
23 equally reactive to light, correct?

24 A Correct.

25 Q And then there's another finding with respect to

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1 extraocular movements are full. What does that mean?

2 A He's able to move his eyes left and right, up and down.

3 Q So with respect to nystagmus, that no longer existed,
4 correct?

5 A I did not appreciate nystagmus on that date, no.

6 Q So as of May of this year, there's no nystagmus of Mr.
7 Lopes, is there not?

8 A Not on that date, I did not appreciate it.

9 Q Okay. So this is something you appreciated in 2017,
10 correct, the nystagmus?

11 A It was present when he initially presented, it was
12 present on other dates. In May, I did not notice it.

13 Q In addition to that, you found that there is no, and
14 forgive me on the pronunciation, diplopia?

15 A Correct. That's double vision.

16 Q He didn't have double vision, right?

17 A He did not.

18 Q C & V, facial sensation is intact. What does that
19 mean?

20 A Cranial Nerve No. 5, the trigeminal nerve, provides the
21 innervation for the sensory input for the face, so there's
22 ability to feel touch on his face was intact.

23 Q And muscular expression and movement of the face is
24 within normal limits, correct?

25 A Correct.

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1 Q Hearing is grossly intact on both sides.

2 A Correct.

3 Q His ability to swallow and movement of the pallet is
4 intact.

5 A Correct.

6 Q There is disarth -- can you help me with that?

7 A Dysarthria or dysphonia. So he wasn't slurring his
8 words and his voice wasn't hoarse.

9 Q Shoulder shrug is symmetric and intact. Strength and
10 movement of the tongue is within normal limits.

11 So with respect to your examination of his cranial
12 nerves, everything was intact, completely functional, correct?

13 A On that date, yes.

14 Q Okay. Let's talk a little bit about his motor systems,
15 and that's his strength, right, musculature and how his strength
16 functions in his body, correct?

17 A Yes.

18 Q Examination of his motor systems, you concluded that
19 his motor strength testing reveals five minus/five weakness in
20 both shoulders and abductors. What does that mean?

21 A It was one grade below full strength or five minus.
22 And the shoulder abductors, which are basically the deltoid
23 muscle, so your ability to raise your arm up.

24 Q Where was, with respect to his prior shoulder surgery
25 you make no mention -- prior shoulder injury, there's no mention

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1 anywhere of that anywhere in this, correct?

2 A In this report it's not mentioned, no.

3 Q With respect to, you made another finding that he had
4 five minus five weakness in his right hip flexor and extensor,
5 correct?

6 A Correct.

7 Q And then motor strength testing reveals four plus five
8 weakness in his left hip flexor and extensor, do you see that?

9 A I do.

10 Q And in this sentence, (Reading:) The remainder of
11 motor strength is intact in the upper and lower extremities and
12 is graded as 5/5 in all myotomal group tested.

13 He's got full motor strength, correct?

14 A Except for the weakness that we just described, yes.

15 Q Okay. (Reading:) Volume is within normal limits and
16 there is no measurable atrophy.

17 What is atrophy?

18 A Muscle shrinkage.

19 Q So can we agree, Doctor, when people sustain
20 neurological injuries, when they're incapacitated, when they
21 lose of a particular limb or extremity, you do see atrophy, the
22 shrinking of muscle, correct?

23 A You can, sure.

24 Q But in this case, where you conducted an examination of
25 Mr. Lopes, you saw no visible atrophy, correct?

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1 A Correct.

2 Q Did he discuss with you at all that he had been a
3 continuing member of LA Fitness gyms?

4 A I didn't discuss with him what gym he was in, but I
5 instructed him on exercises to do for his neck and back, yes.

6 Q Okay. So you're aware of the fact that he was actually
7 participating in going to a gym on a regular basis, a LA Fitness
8 gym?

9 A I don't know what gym he was going to, but he was
10 exercising and I was encouraging him to do so.

11 Q Okay. And as a result, you make this other finding,
12 (Reading:) Muscle tone is within normal limits in the
13 extremities, and there is no palpable spasticity.

14 What does that mean?

15 A Muscle tone would refer to the tension of the muscle.
16 So the muscle wasn't soft, it wasn't hard. There was no spasm,
17 meaning it wasn't involuntarily contracting.

18 Q Okay, great. And you also made a final finding in this
19 paragraph, (Reading:) There's no dysmetria or tremors present.
20 What's the significance of that finding?

21 A Tremor would be a shaking, dysmetria would be lack of
22 coordination in a movement of a limb. These are sometimes signs
23 of neurologic injury. In this case they weren't there.

24 Q They weren't there. Okay.

25 And then you made another finding about his reflexes,

1 did you not?

2 A I did.

3 Q And I think you say that you use a hammer, a
4 neurological hammer, kind of like where you tap an extremity and
5 there's a response, correct?

6 A Correct.

7 Q So you tested his biceps. Help me out with
8 pronunciation.

9 A All the reflexes were normal.

10 Q That's what I want to get at. Thank you.

11 But you tested his arms, his legs, his Achilles, his
12 plantar in his foot. You tested every part of his body, his
13 reflexes were all normal?

14 A I wouldn't say every part of his body, but I tested the
15 usual and customary reflexes in his arms and leg.

16 Q And then you tested his sensory, correct?

17 A Yes.

18 Q You do that by light touch?

19 A That's correct.

20 Q That was within normal limits, correct?

21 A Yes, it was.

22 Q So, Doctor, but based on all of this, your position
23 remains that Mr. Lopes is disabled, correct, permanently
24 disabled?

25 A Absolutely.

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1 Q Okay. Now, with respect to this traumatic brain
2 injury, you're aware of the fact that he's got vehicles
3 registered in his name and that he routinely drives a car?

4 A He's capable of driving. I've never restricted him
5 from driving.

6 Q Okay. And as far as his physical activity, he's not
7 limited with respect to physical activity?

8 A He is limited, yes. There's certain things that he
9 can't and shouldn't do.

10 Q Okay. Now with respect to that, have you, prior to
11 testifying here today, have you discussed -- withdrawn.

12 Have you seen any surveillance video depicting
13 Mr. Lopes?

14 A No.

15 Q Has anybody discussed with you the prospect of
16 Mr. Lopes, there being surveillance video of Mr. Lopes that was
17 taken in 2024, 2023?

18 MR. THOMAS: Objection to prospect.

19 THE COURT: I'll allow it for purposes of framing
20 his next question. Overruled.

21 A I'm not aware of any surveillance video. I haven't
22 watched any surveillance video.

23 Q Well, would it be important for you to know if that
24 existed in making a diagnosis?

25 A Maybe, depending on what it shows.

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1 Q Sure. Okay. Now, I want to go back to the
2 relationship for a moment. You testified, and I want to read
3 some information to you.

4 THE COURT: Into the microphone, please, Counsel.

5 MR. GRILLO: Thank you.

6 THE COURT: I'm going to take a moment to
7 interrupt, Mr. Grillo. It's now 25 to 5. I would like to
8 complete this doctor today.

9 However, is there any difficulty with any of the
10 jurors staying a little past five today? If there is, just
11 let me know.

12 Okay. Please continue.

13 MR. GRILLO: Thank you.

14 Q Now, Dr. Hausknecht, we talked -- we talked early on in
15 your testimony about jury verdict reports. Can you agree with
16 me that if we did a jury verdict report on you and looked up all
17 the cases that you testified in over the last 25 or so years ago
18 you'd be identified in 228 cases?

19 MR. THOMAS: Objection.

20 THE COURT: Sustained as to form only. Doesn't
21 necessarily indicate testimony; he may have been listed.
22 Sustained.

23 Q Doctor, as you sit here today, can you tell me how many
24 cases you've actually testified in?

25 MR. THOMAS: Objection; asked and answered.

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1 THE COURT: Overruled. It's a more specific
2 question.

3 A I can't give you the specific number, but it's less
4 than that.

5 Q Less than 228?

6 A Yes.

7 Q How many cases have you actually testified in at trial?

8 A I said, I don't know the exact number. But I've been
9 testifying for about 25 years, on average maybe about five cases
10 a year.

11 Q So if we do the math, I think you said five to six.
12 But if we do five to six cases a year times 25?

13 A Do you need a calculator?

14 Q I think it's 150?

15 THE COURT: 125.

16 Q Giving you that range, either five to six, so you'll
17 concede, sir, will you not, that you've testified anywhere from
18 125, 150 times --

19 MR. THOMAS: Objection.

20 THE COURT: I'll allow it. If he can, he can
21 answer for himself.

22 A More or less, yes.

23 Q You're familiar with the Sacks and Sacks firm, are you
24 not?

25 A I am.

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1 Q And you're familiar with many of the lawyers who work
2 at the Sacks and Sacks firm?

3 A I'm not sure I understand your question. I know some
4 of the lawyers, yeah.

5 Q Okay. So do you know David Mayer?

6 MR. THOMAS: Objection. Are we going to go through
7 everybody at the firm?

8 THE COURT: I'm going to give him some leeway.
9 Overruled.

10 A I'm familiar with David Mayer.

11 Q Do you know he was the assigned attorney on this case?

12 A I have no idea.

13 Q Okay. You've obviously worked with Mr. Thomas before?

14 A I think on one prior occasion about ten years ago.

15 Q How about Mr. Gilbert?

16 A First time I ever met him.

17 Q Okay. How about Monty Doman, have you worked with him
18 from Sacks and Sacks?

19 A On occasion, sure.

20 Q And how about Dan Weir, have you worked with him?

21 A I do know Dan Weir, yes.

22 Q How about Evan Sacks, have you worked with him as well?

23 A I know who he is; I don't think I ever actually worked
24 with him. But I know him.

25 Q But respectfully, his brother Ken?

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1 MR. THOMAS: Your Honor.

2 THE COURT: I'm going to give him leeway. I'm
3 assuming that we're coming to a summary question at some
4 point. Overruled at this point.

5 Q You worked with his brother Ken, who is since deceased?

6 A I knew Ken, yes.

7 Q Okay. How about Wade Turnbull, T-U-R-N-B-U-L-L?

8 A I've seen his name. I know who he is.

9 Q Have you provided testimony in any of the cases he's
10 had?

11 A Not that I recall, but it's possible.

12 Q How about Joseph Cafora, C-A-R-F-O-R-A (sic)?

13 THE COURT: Mr. Grillo, I've given some leeway.
14 Get to your ultimate question, okay?

15 Q Can we agree, Dr. Hausknecht -- well, withdrawn.

16 Have you, in your practice, had occasion to have
17 patients referred to you from the Sacks and Sacks firm?

18 A On occasion, sure.

19 Q And conversely, have you had occasion to refer patients
20 who needed legal assistance to the Sacks and Sacks firm?

21 A Not that I can recall, no.

22 Q Okay. But you do recall having the Sacks firm refer
23 patients to you?

24 MR. THOMAS: Your Honor, asked and answered.

25 THE COURT: It's allow it. It's cross.

CROSS - HAUSKNECHT - GRILLO

1 You may answer, Doctor.

2 A On occasion, yes.

3 Q For how long -- when you say on occasion, how long does
4 that relationship go back? It goes back more than 20 years,
5 doesn't it?

6 A No, I don't think it's that long. Maybe 10 or
7 15 years, something like that.

8 Q Okay. I want to go back. Do you recall a case in
9 which you were actually retained, you actually testified in a
10 case called Benjamin McCumber (ph) v. Laire McGovern Bovis (ph),
11 that was venued in New York County in 2003, and in that case you
12 gave --

13 MR. THOMAS: Objection, your Honor. He asked if he
14 knows case.

15 THE COURT: I understand. Overruled at this point
16 based on the answer to a prior question.

17 Please continue, Mr. Grillo.

18 Q Do you have a recollection of being retained on a case
19 in 2003 by the Sacks firm we're talking about?

20 A I remember Benjamin McCumber. He was my patient. I
21 don't recall who his attorney was or whether I testified
22 20 years ago in this case.

23 Q I want you to assume, I'm reading from a jury verdict
24 reporter, that under Index No. 113548 of 2000, it was a 2000
25 index number that went to trial in New York in 2003, you

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1 actually testified in that case. Do you recall that?

2 A You just asked me that. I don't recall if I testified
3 20 years ago, no.

4 Q But can we agree you know Benjamin McCumber, he had a
5 case in New York in 2003?

6 A I don't know about his case, I don't know about his
7 trial. I remember him, he was my patient.

8 Q Okay. How about a case Michelle DiPietro (ph), as
9 conservative for Ronald DiPietro, Index No. 114038 of 2001,
10 trial in New York County in 2003, do you recall testifying in
11 that case for the Sacks and Sacks firm?

12 A I remember Ronald DiPietro. He was my patient. He had
13 a pretty bad brain injury. And I believe that I did testify in
14 that case, but I don't recall the details of the trial.

15 Q You'll take my representation, though, will you not,
16 sir, that that was a trial in New York in 2003?

17 A Okay. So what?

18 Q Well, because you're standing here --

19 THE COURT: Counsel, please don't -- I realize it's
20 getting a little late.

21 I'm going to ask you just to listen. So what's not
22 an appropriate response. If there's a question, I'm trying
23 to get this finished tonight for you, Doctor.

24 Go ahead, Mr. Grillo.

25 Q So what? The question is --

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1 THE COURT: I basically instructed him that that
2 was not an appropriate response.

3 New question, Mr. Grillo.

4 Q Can we agree, sir, that you testified for the Sacks
5 firm as far back as 2003, yes or no?

6 A I guess so, yes.

7 Q Okay. And if we go through the jury verdict reports,
8 count 1.... count 13 cases in your career where you've been
9 retained as an expert by the Sacks and Sacks firm. Can you --

10 A I don't know what the jury verdict report says, whether
11 it says that I'm retained as an expert. All that means is that
12 I treated that patient. But 13 cases in 20 years, it's
13 1.3 cases per year, maybe.

14 Q I appreciate the math. All I'm trying to get at is the
15 fact that you have a long -- you personally have a longstanding
16 relationship with the plaintiff's firm that goes back over
17 20 years.

18 A I treat bridge painters, I treat iron workers. I have
19 a relationship with those groups of people and their families.
20 If Sacks and Sacks happens to be their attorney, or anybody else
21 needs to be their attorney, then I become associated with that
22 law firm through the patient.

23 Q Okay. I just want to make sure we understand that
24 you're completely familiar with the entire litigation process,
25 correct?

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1 A I can't answer that question. I'm not sure what you're
2 saying.

3 Q Okay. What percentage of cases do you testify on
4 behalf of people who defend themselves in cases?

5 A I'm a doctor; I treat patients. And when my patients
6 have to come to court for a lawsuit, I come and testify on their
7 behalf. I'm obligated to. In terms of being an expert for
8 defense firms, I don't do that. I'm a treating doctor.

9 Q So we can agree then, sir, you've never stepped foot in
10 court on behalf of a defendant in litigation to refute claims?

11 A I wouldn't say never. When I first started out I used
12 to do that a little bit, but not for a really long time.

13 Q Okay.

14 THE COURT: Do you have much more, Mr. Grillo?

15 MR. GRILLO: I don't think so, Judge. Can I just
16 get a moment to walk over to the table?

17 THE COURT: Absolutely.

18 Q Just --

19 THE COURT: Into the microphone, please,
20 Mr. Grillo. I realize we're not used to doing that, but
21 under the circumstances I appreciate your efforts.

22 Q Now, I just want to look at your medical records very
23 quickly and -- I'm sorry.

24 THE COURT: Do you want the office file?

25 MR. GRILLO: No, I have them here.

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1 THE COURT: Thank you.

2 Q Well, before we go there, you can't tell us, as you sit
3 here today, how much you've actually billed for your treatment
4 of Mr. Lopes as you sit here today, correct?

5 A I don't know the exact amount, no.

6 Q Okay. If there were a reference to your initial
7 treatment in excess of \$10,000, would that be something that
8 would surprise you?

9 MR. THOMAS: Objection.

10 THE COURT: Overruled. It's a damages trial.

11 A Like I said, he's been in the office 30 or 40 times.
12 That would be what I would approximate if I had to guess what it
13 costs, yeah.

14 Q That's \$10,000, plus the thousand dollars an hour
15 you're receiving today, correct?

16 A Correct.

17 Q And how many patients do you currently treat?

18 A How many active patients are in my practice?

19 Q Yeah.

20 A I couldn't say exactly, but probably about 6- or 700.

21 Q Okay. And how many of those 6- or 700 are involved in
22 active litigation?

23 A I have no idea.

24 Q Okay. More than 20?

25 A More than 20 of the 700?

1 Q Yeah.

2 A Probably.

3 Q More than 100?

4 A Probably about that.

5 Q About 100. So again with the math, about 15 percent of
6 your practice involves patients who are actually litigants in
7 personal injury cases, fair enough?

8 A About 15 percent of my practice includes treating
9 patients that have been involved in injuries and I assume that
10 they have litigation, but that's not something that I'm privy
11 to.

12 Q Got it. Okay.

13 Now, can we agree, sir, I want to take you through --
14 and I'm sorry. I'm going to do this as quickly as possible.
15 Sorry about that.

16 We have the initial report on October 19th of 2017.
17 That's your first report, correct?

18 A Correct.

19 Q And your finding, your conclusion on page 4 is,
20 speaking of Mr. Lopes, (Reading:) He has a temporary total
21 disability. I have advised him to restrict his activities.
22 Prognosis is guarded. He will be followed here for continued
23 care.

24 Fair statement?

25 A Yes.

CROSS - HAUSKNECHT - GRILLO

1 Q Reading it accurately, right?

2 A Correct.

3 Q Then you see him again in November of '17, page 2.

4 (Reading:) He is totally disabled. I have advised him
5 to restrict his activities. Prognosis is guarded. He will be
6 followed here for continued care.

7 Next visit December 7th of '17, page 2, (Reading:) He
8 is totally disabled. I have advised him to restrict his
9 activities. Prognosis is guarded. He will be followed here for
10 continued care.

11 Then you see him again in January. He has a -- January
12 of '18, (Reading:) He has a total -- temporary, total
13 disability that I have advised him to restrict his activities.
14 He has not yet reached maximum -- maximal medical improvement.
15 Prognosis is guarded. He will be followed from here for
16 continued care.

17 And when's your next visit, Doctor?

18 A He was seen by my PA on 4/20/18.

19 Q When did you see him again?

20 A Well, I saw him with the PA.

21 Q What was the finding there?

22 A Regarding his disability?

23 Q Yep.

24 A Total disability.

25 Q Now, you understand that his lawsuit started in and

CROSS - HAUSKNECHT - GRILLO

1 around March of '18, correct?

2 A I have no idea when his lawsuit started.

3 Q I'd like you to move forward to October 23rd of 2018,
4 where you make a finding --

5 A Hold on. I don't have that report.

6 THE COURT: Take your time.

7 THE WITNESS: Okay.

8 THE COURT: He's got it.

9 Q You make a finding, (Reading:) With a reasonable
10 degree of medical certainty, his condition is causally-related
11 to the work injury that occurred on October 10th of 2017. He
12 has a temporary total disability. I've advised him to restrict
13 his activities --

14 THE COURT: Slowly.

15 Q I've advised him to restrict his activities. Progress
16 is guarded. He will be followed here for continued care.

17 That's the first time you make a statement about his
18 injuries being causally-related to this accident.

19 A I'm not sure what statement you're referring to, but
20 every visit here refers to a date of accident 10-10-17 and the
21 treatment that emanated from that accident.

22 Q I get that.

23 A Then why --

24 Q I'm talking about affirmative statement you don't make
25 until October 23rd of 2018. For the first time you say,

CROSS - HAUSKNECHT - GRILLO

1 (Reading:) With a reasonable degree of medical certainty, his
2 condition is causally-related to the work injury that occurred
3 on October 17th of -- October 10th of 2017. Excuse me.

4 A You're asking me, is that's the first time I made it?

5 Q Yeah.

6 A No, you're wrong. On the very first visit, 10-19-17,
7 right before the paragraph that you read, the same paragraph in
8 the other six reports that reads the same way, the same
9 terminology that's in there, (Reading:) With a reasonable
10 degree of medical certainty, his injuries are causally-related
11 to the work accident that occurred on 10-10-17. This was on
12 10-19-17.

13 Q And that was based simply on your initial discussion
14 with him, correct?

15 A I don't understand your question. You asked me before
16 if that was the first time I said it, and I told you no. It's
17 every single time. And now you're asking me, is it's based upon
18 what he told me?

19 Q No, is that based on what --

20 (Court reporter interrupts due to cross-talk.)

21 THE COURT: Gentlemen. It's late. I don't want to
22 go red light/green light. Question slowly. Answer slowly.
23 Time in between question and answer. We're one stop short
24 of red light/green light.

25 MR. GRILLO: Okay.

REDIRECT - HAUSKNECHT - THOMAS

1 Q As far as your treatment of Mr. Lopes, would you agree,
2 Doctor, that your treatment of Mr. Lopes became more significant
3 and more comprehensive subsequent to his lawsuit being started,
4 yes or no?

5 MR. THOMAS: Objection.

6 THE COURT: Overruled.

7 A Absolutely not.

8 THE COURT: Thank you. Next question.

9 MR. GRILLO: Okay.

10 THE COURT: Anything else, Mr. Grillo?

11 MR. GRILLO: Not at this time.

12 Thank you, Doctor. I appreciate it.

13 THE COURT: Mr. Puzo, anything for the record?

14 MR. PUZO: Nothing further.

15 THE COURT: Any Redirect?

16 MR. THOMAS: Briefly. May I stay here at counsel
17 table?

18 THE COURT: As long as you speak into the
19 microphone.

20 MR. THOMAS: Just to save the time so I don't have
21 to walk over there.

22 THE COURT: Outstanding. Let's let Mr. Grillo get
23 relocated.

24 REDIRECT EXAMINATION BY

25 MR. THOMAS:

REDIRECT - HAUSKNECHT - THOMAS

1 Q Dr. Hausknecht, you understand that the defense in this
2 case has paid an expert neurologist by the name of Adam M.
3 Bender to be their witness in this case, you understand that?

4 A I don't -- I'm not familiar with the details of this
5 case for litigation, but I will accept your representation.

6 Q I want you to assume --

7 MR. GRILLO: Objection.

8 THE COURT: Sustained. It's improper Redirect.

9 MR. GRILLO: Beyond the scope.

10 THE COURT: Next question.

11 Q Doctor, you agree it's important to be full, fair and
12 accurate in recordkeeping, would you agree with that?

13 A I would.

14 Q And that in medicine it's not uncommon that there are
15 errors in transcription?

16 A It can happen. Nobody's perfect. You try to be as
17 best as you can.

18 Q And in medicine when there's an error in transcription,
19 that error can continue to follow through until it's caught and
20 corrected?

21 A It happens commonly, yes.

22 Q Counsel was asking you about Dr. Shein's office, when
23 the PA said in her note in October of 2015 that a 46-year-old
24 male came complaining of back pain and that it's been going on
25 for 34 years. Do you remember that?

REDIRECT - HAUSKNECHT - THOMAS

1 A I do.

2 Q Doctor, if you do the math, it's 12-years old. He's
3 been complaining of back pain since 12-years old if 34 years is
4 accurate. Does that make sense to you as a medical doctor?

5 A It doesn't make sense to me as a medical doctor and as
6 a rational, logical human being. It's obviously a typographical
7 error that should have said 3 or 4 years.

8 Q And if he's claiming of back pain for 3 or 4 years,
9 that's consistent with the motor vehicle accident that he had
10 prior to that date, correct?

11 A I believe so.

12 Q And if there was another error in a note, as counsel
13 mentioned on his cross-examination, of Mr. Lopes fell 12 feet,
14 not 20 feet, did you see anywhere -- withdrawn.

15 How many records did you see and what Mr. Lopes told
16 you where it indicated that he fell from 20 feet off of
17 scaffolding?

18 A Well, that's what he told me and that's my
19 understanding of the injury was. I wasn't there. I don't know
20 for sure, but that's what he told me.

21 Q If there's one record that says 12 feet, would that be
22 inconsistent with all the other information that you had with
23 him falling 20 feet off a scaffold?

24 A It would be inconsistent.

25 Q And counsel told you -- withdrawn.

REDIRECT - HAUSKNECHT - THOMAS

1 Counsel asked you if you saw a surveillance video or
2 knew about a surveillance video, do you remember that?

3 A I do.

4 Q Do you remember what a surveillance video is?

5 A I do.

6 Q What do you understand a surveillance video to be?

7 A They hire a private investigator, they follow a guy
8 around and try to see if he's doing something physical that he's
9 not supposed to be doing.

10 Q And based on a world of information that you have in
11 this case, including your examinations with Mr. Lopes, can he
12 walk?

13 A Yes.

14 Q Can he talk?

15 A Yes.

16 Q Can he walk up a flight of stairs?

17 A Yes.

18 Q Can he drive?

19 A Yes.

20 Q Can he push a shopping cart in a supermarket?

21 A In limited capacity, yes.

22 Q And can he try and live as normal a life as possible?

23 A He should strive to be as normal and healthy as
24 possible, and I've encouraged him to do that.

25 MR. THOMAS: Thank you very much.

RECROSS - HAUSKNECHT - GRILLO

1 No further questions, Judge.

2 THE COURT: Mr. Grillo?

3 MR. GRILLO: Very briefly.

4 THE COURT: I'll give you more than brief. Make it
5 quick.

6 RECROSS-EXAMINATION BY

7 MR. GRILLO:

8 Q Doctor -- I'll stay here too.

9 THE COURT: Lift the mic.

10 Q Doctor, on the alleged typographical error of 34 versus
11 3 or 4 years, would you concede, sir, based on a read of that
12 record, Mr. Lopes had preexisting back issues for, at the very
13 least, 3 to 4 years before the subject accident, if not longer?

14 A I don't lend much credibility to that particular report
15 in terms of the timing. I believe that he had a prior accident
16 in 2013, where he injured his neck and back. I have records
17 from that, I have MRIs, the treatment records from that. I
18 think that's his prior neck and back problem, and I have opined
19 that I believe that that is, in part, responsible for his neck
20 and back. But I don't believe he had for 34 years or 3 or
21 4 years, I think he had from the car accident which was in 2013.

22 Q As far as the spondylolisthesis, you'd agree that
23 that's congenital, that's something he could have had --

24 MR. THOMAS: Objection. Beyond the scope.

25 THE COURT: It's beyond the scope of the Redirect.

RECROSS - HAUSKNECHT - GRILLO

1 MR. GRILLO: I'll withdraw that.

2 Q And Doctor, with respect to the car accident that you
3 just talked about, the first time you mentioned it was in your
4 May 7, 2024 report, correct?

5 MR. THOMAS: Objection, Judge.

6 THE COURT: Beyond the scope of the Redirect.

7 MR. GRILLO: Okay. I have nothing further.

8 THE COURT: Thank you.

9 Ladies and gentlemen, a little closer to 5:00 than
10 I would have liked, but that's fine. As you probably
11 ascertained it's not like TV, it's not all wrapped up in
12 20 minutes with commercials.

13 I appreciate your patience. I keep a careful watch
14 on the jury. It's obvious you're giving this case your
15 careful attention, and everyone on this side of that rail
16 appreciates the fact that this process takes you away from
17 your professional and personal lives. Today's Halloween.
18 I'm sure there's some other activities that you might be
19 wanting to attend to today.

20 Again, I give you the same precautions each day.

21 Do not form or express any opinion about the case.
22 Do not discuss it between and amongst yourselves. Do not
23 discuss it with any third parties. Do not allow it to be
24 discussed in your presence. If anyone attempts to talk to
25 you about this case despite you telling them not to, you

PROCEEDING

1 need to bring that fact to my attention without discussing
2 that fact or any other fact you need to bring to my
3 attention with your fellow jurors. No research of any kind,
4 Internet or otherwise. No discussions with third parties.
5 I don't want you to visit the site.

6 And importantly, everyone in your lives is going to
7 be very curious about your first day of trial. They're
8 going to ask you, hey, what's the case about? Judge
9 Farneti said I couldn't discuss it. That's the answer.
10 Stick to your guns and I appreciate it.

11 I'll ask that you be in the building somewhere
12 between 9:40 and 9:45 in the morning. I'd like to be on the
13 record by 10:00 o'clock and we'll see how the day develops.

14 And again, my personal and professional thanks for
15 your serving on this jury. I realize how difficult it can
16 be sometimes and how disruptive it is, but you have my
17 appreciation.

18 All rise as the jury exits for the evening recess.

19 COURT OFFICER: All rise.

20 (Whereupon, the jury exits the courtroom.)

21 THE COURT: Thank you, Doctor. Careful stepping
22 down. Safe trip home.

23 THE WITNESS: Thank you.

24 THE COURT: Any procedural or substantive issues
25 for the record before we break, Mr. Gilbert?

PROCEEDING

1 MR. GILBERT: The only thing I want to say is I
2 have --

3 THE COURT: I need you to -- do we need to be on
4 the record?

5 MR. GILBERT: It doesn't matter.

6 THE COURT: We're off the record. The record is
7 closed for the day.

8 (Time noted: 5:00 p.m.)

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