

COPY

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF QUEENS : CIVIL TERM : PART 16

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3 KAREEM DAVIS,

4 Plaintiff, Index No. 724812/2021

5 -against-

JURY TRIAL

6 THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING AUTHORITY,

7 Defendant.

-----X

8 Supreme Courthouse
9 88-11 Sutphin Boulevard
10 Jamaica, New York 11435
11 January 21, 2025

12 B E F O R E:

13 THE HONORABLE Claudia Lanzetta,

14 Supreme Court Justice

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

16 For the Plaintiff:
17 MILLS & EDWARDS, LLP
18 14 Penn Plaza, 21st Floor
19 New York, New York 10122
20 BY: DONTE MILLS, ESQ.

21 For the Defendants:
22 GOLDBERG & SEGALLA
23 711 3rd Avenue, Ste 1900
24 New York, New York 10017
25 BY: EMILIO F. GRILLO, ESQ.
BY: RICHARD J. FEMIA, ESQ.

MONICA JENKINS
VICTORIA BIFULCO
SENIOR COURT REPORTERS

1 THE CLERK: Come to order. We're on the record
2 with Trial Matter 724812 of 2021, Kareem Davis V. The City
3 of New York and New York City Housing Authority.

4 Counsel's your appearances, please?

5 MR. MILLS: Donte Mills of Mills & Edwards on
6 behalf of Plaintiff, Mr. Davis.

7 MR. GRILLO: Emilio Grillo of Goldberg & Segalla
8 on behalf of the Defendant, City of New, York New York City
9 Housing Authority. Good morning, Your Honor.

10 MR. FEMIA: Richard Femia of Goldberg & Segalla on
11 behalf of the City of New York, New York New York City
12 Housing Authority. Good morning, Your Honor.

13 THE COURT: Good morning, Everyone. So, just a
14 couple of things that I think we need to clear up before we
15 begin today. Excuse my voice. I'm not feeling 100%.
16 First and foremost I do want to apologize forgetting a
17 little bit loud on Friday afternoon.

18 I don't even like to loose my cool and I think I
19 did and it's not appropriate. Whether you do it or not,
20 it's not appropriate for me to do it. Be that as it may, I
21 think there's been a lot of frustration in this trial.

22 Maybe it was last week but hopefully it doesn't
23 spill over into this week. It was something that was
24 weighing on my mind a lot this weekend as was many of the
25 issues that came up throughout the course of last week and

1 including the commencement of the trial.

2 So, the two open applications I think we have were
3 regarding Ms. Kucsma's report and doctor or is he a doctor
4 or?

5 MR. MILLS: No, Mr. Provder.

6 THE COURT: Mr. Provder's report and just in terms
7 of preparedness for trials in general, what we rely on is
8 not only 3101 d which is a big one as far as expert
9 witnesses are concerned, we rely on some of the ones that I
10 again did some research to make sure I was on point, 22
11 NYCRR 202.37 and 22 NYCRR 202.17 H and G.

12 In terms of when we discuss rulings or I make
13 rulings, my part rules, those rules and I think in terms of
14 preparedness for this trial, there were many things that
15 were missed.

16 There's no other way to say it. I put on the
17 record the last time and I'll put it on again, my part
18 rules are pretty clear in terms of what I expect on day
19 one.

20 I did not get what I expected but I'm no longer
21 going to harp on that and we will deal with things as they
22 come up and we'll proceed with this trial the best way
23 possible.

24 I don't know if it was on or off the record but
25 and I also don't know if it was general frustration or

1 theatrics but there was a point where a mistrial was
2 discussed.

3 I want to address that because one it was never a
4 formal application. In any event, I don't think anything
5 that has happened is grounds for a mistrial in this case.
6 I think unfortunately it's general scheduling issues and a
7 lot of evidentiary issues that shouldn't have come in terms
8 of, again, preparedness and providing with notice or
9 sufficient notice enough of what we're dealing with.

10 So, that's the ground work that I'm going to lay
11 essentially for the following rulings. We're going to be
12 clear. We had Ms. Kucsma's report or supplemental report
13 and I also will note the Court gave counsel the opportunity
14 to submit written briefs regarding both of these rulings
15 over the weekend.

16 I did not get any briefs. I got two emails. I'm
17 noting I got one yesterday at 1 o'clock and then one
18 yesterday from plaintiff's excuse me at 1 o'clock and a
19 response from the defendants at about 6 o'clock last night.

20 So, as far as Ms. Kucsma's report or I should say
21 supplemental report, Ms. Kucsma is an economist. That's
22 her expertise, right. She can opine on that specific
23 discipline.

24 So, if she's using her expertise and her knowledge
25 to extrapolate numbers based on a W9, tax returns, things

1 like that. That's fine. That's within her expert
2 knowledge.

3 But what's not within her expert knowledge are
4 medical expenses. She has to rely on something else to be
5 able to glean those numbers. So, to make my ruling clear,
6 the supplemental report itself cannot come in but if you
7 would like to ask her questions about her opinion from 2018
8 to now, what the potential earnings would be, that's within
9 her knowledge.

10 She knows how to do that. That's fine. Are we
11 clear on that?

12 MR. MILLS: Yes.

13 MR. GRILLO: Yes.

14 THE COURT: As far as Mr. Provder is concerned,
15 again, his supplemental report is precluded because
16 essentially the examination that was done for that
17 supplemental report was done while we were on trial.

18 We started picking a jury December 17th and by
19 virtue of the Christmas break and scheduling issues, the
20 trial itself started on January 13th. The information for
21 the supplemental report it was not received by doctor --
22 Mr. Provder until January 10th when he examined your
23 client.

24 That's unacceptable. That is completely
25 insufficient notice. There's no way for defense counsel to

1 prepare for that type of report and to be able to respond
2 to it.

3 It's just not possible. It's during trial. He is
4 not a medical doctor where supplemental reports based on
5 recent examination are allowed to come in, right. He is
6 different.

7 If he was a medical doctor I would consider it but
8 to be honest with you, having an examination during trial
9 is unacceptable. So, that in of itself wouldn't come in
10 because of the prejudicial affects of counsel being able to
11 prepare.

12 So, that report is now precluded. He cannot
13 testify about his findings on that report and that's not
14 just the procedure that was previously precluded because it
15 wasn't pled. That is everything in that report. Are we
16 clear on that?

17 MR. GRILLO: Yes, Your Honor.

18 MR. MILLS: Judge. Will I have the -- I still
19 have the ability to question him about things that are in
20 evidence, right? So, from my understanding and I accept
21 Your Honor's ruling that he can't testify about his
22 communication with the Plaintiff or anything he learned I
23 guess that communication with the plaintiff but that
24 doesn't mean he didn't have the opportunity or even if he
25 didn't have the opportunity to look at the records that I

1 can't question him about things that are in evidence in the
2 case and ask his opinion if that factors into his opinion
3 here outside of his conversation with the plaintiff?

4 THE COURT: If there are items in evidence and he
5 has an opinion as to those, yes, you can ask him provided
6 it's within his expertise. I mean I don't really, I can't
7 imagine a question that would be relative to that but we'll
8 cross that bridge.

9 MR. GRILLO: If I may, Your Honor. Specifically
10 in addition to the preclusion of Provder you may recall
11 earlier in the beginning of trial we spent an absorbant
12 amount of time about Plaintiff's failure to provide a
13 supplemental bill of particulars regarding a lumbar
14 ablation procedure that was done in 2022 by Dr. Katzman
15 Your Honor precluded that as well.

16 There hear records in evidence that came in
17 certified, Judge, for treatment of the plaintiff.

18 MR. MILLS: I agree that's out. We're not putting
19 that in at all. Not to cut you off but I don't want to
20 waist time on stuff --

21 MR. GRILLO: I'm not waisting time. I want to
22 make a record. I understand Mr. Mills wants to take out
23 the ablation, it's precluded. Any incidental treatment
24 relative to that ablation, that's the concern I'm having,
25 Judge and to what degree if there's things in evidence, for

1 example, followups by doctor Merola for that matter.

2 His records are in evidence. He treated him
3 through 2023 for lumbar problems. These are, so what I
4 don't want to have Provder or any other doctor come in and
5 basically talk about the need for ongoing treatment for
6 that lumbar spine relative based on the fact he had this
7 lumbar procedure in 2022.

8 MR. MILLS: A non-issue. My experts know anything
9 related to that is out, no issue at all.

10 THE COURT: I agree. It's going to be a fine line
11 but I'm going to assume no one is going to cross it based
12 on the ruling.

13 MR. MILLS: What I plan to do so we know and you
14 know, I'm going to stop asking my experts about Mr. Davis
15 back prior to that procedure, not ask any questions about
16 the back after.

17 MR. GRILLO: Prior to 2022, okay. I don't know
18 the date of the procedure but okay.

19 THE COURT: Okay. Going forward, Gentlemen, you
20 know as well as I do, whether you like my ruling or not is
21 of no import. Right. The rulings I make and how they
22 affect your case, those are not grounds for mistrials.

23 You just might not like them and if you don't, you
24 have your remedies when the trial is concluded but to go as
25 far as discussing a mistrial because of what's been going

1 on here, I think was a little far field, a lot far field.

2 MR. MILLS: Judge, if I may, off the record.

3 THE COURT: Off the record.

4 (Whereupon, a discussion was held off the record.)

5 COURT OFFICER: All rise. Jury entering.

6 (Whereupon, the jury entered the courtroom and
7 upon taking their respective seats, the following
8 occurred:)

9 THE COURT: Good morning, Everyone. Hope you
10 enjoyed the nice long weekend. I did. Thank you so much
11 for braving the cold. I know it's ridiculous outside.
12 Thank you for being here.

13 We're going to get started right away. So, Mr.
14 Mills, you have a witness to call, correct?

15 MR. MILLS: Yes. Plaintiff calls Dr. Victor Katz
16 to the stand.

17 THE COURT: Dr. Katz. Remain standing, Dr. Katz,
18 we have to swear you in. Raise your right hand. Do you
19 swear or affirm that the testimony you're about to give is
20 the truth, the whole truth and nothing but?

21 THE WITNESS: I do.

22 THE COURT: State your name and business address
23 for the record spelling your name?

24 THE WITNESS: Yes, Your Honor. My name is Victor
25 Katz and I'm located at 153 Jefferson Avenue, Mineola, New

1 York.

2 THE COURT: Thank you, Dr. Katz. If you can speak
3 slowly and clearly like you are. Listen to the questions
4 that are asked and answer those question and I think you
5 will be good.

6 If you don't know or understand, those are
7 perfectly good answers and the attorney's will adjust
8 accordingly. Okay?

9 THE WITNESS: Okay.

10 THE COURT: Mr. Mills you may inquire.

11 DIRECT-EXAMINATION BY MR. MILLS:

12 Q Dr. Katz, I'm going to ask you some questions here
13 today. I will repeat what the judge said, ask you to keep your
14 voice up so that the court reporter can take everything down and
15 the jury back here can hear you; just tell us about yourself,
16 what's your occupation?

17 A So, I'm a board certified orthopedic spine surgeon and
18 that's what I do.

19 Q Give us a little bit about your background?

20 A You mean like my education?

21 Q Yup.

22 A So, after I finished high school I went to a seven year
23 medical program in city college called Sophie Davis. Got my MD
24 degree at Stony Brook in 1991. I did 2 residences. I did
25 residency in physical medicine rehabilitation.

1 I finished in 1995, got my board certification
2 then I went to be a surgeon so I went on to second
3 residency. I did a my internship at Cabrini Medical Center
4 in Manhattan.

5 And then I did my orthopedic residency at Catholic
6 Medical System Brooklyn and Queens. I finished in 2000. I
7 went to California and did my fellowship in spine surgery
8 at Seton Medical Center in California, in the San Francisco
9 area and I been in practice since 2002.

10 Q In practice, do you mean treating patients?

11 A Yes, Sir.

12 Q Do you still treat patients?

13 A I still treat patients.

14 Q You said you are board certified in the field of spinal
15 surgery; what does that mean to be board certified?

16 A So, when you finish your training you take a written
17 exam that you have to pass. Then after you're in practice for
18 two more years you have to take an oral exam which is you
19 present cases to a board.

20 There's like three physicians who are board
21 certified. They ask you any questions they want. If they
22 feel that you are worthy to be board certified based on
23 your knowledge, morals, character, all those
24 characteristics then I can become board certified.

25 Then I have to recertify every 10 years. I

1 re-certified about 8 years ago.

2 Q In your course of practice did you treat a Kareem
3 Davis?

4 A Yes, I did.

5 Q And are you, did you come here today prepared to give
6 testimony to a reasonable degree of medical certainty regarding
7 your treatment of Mr. Davis as a patient of yours?

8 A Yes.

9 MR. MILLS: Judge, at this time I offer Dr. Katz
10 as an expert in the field of orthopedic or spinal surgery,
11 ask he be allowed to testify and give his opinion to a
12 reasonable degree of medical certainty regarding the
13 treatment and medical condition of Kareem Davis related to
14 the incident of December 5th of 2 thousand and 15th, I'm
15 sorry December 3, 2015?

16 THE COURT: Any issue Counsel?

17 MR. FEMIA: No objection, Your Honor.

18 THE COURT: Without objection Dr. Katz is
19 qualified as an expert.

20 Q Dr. Katz, I'm going to walk you through your treatment
21 of Mr. Davis. I just want you to talk to us about it. We're
22 going to start with the introduction, right, when you first
23 began to treat Mr. Davis what did you believe you were treating
24 him for?

25 A Can I refer to my notes?

1 Q Absolutely. Did you bring your medical file here
2 today?

3 A Yes, I did.

4 MR. MILLS: You can refer to your medical file if
5 it will assist you in your testimony. I'm also going to we
6 have some toys here for you to play with and I'm going to
7 put up some other things that will assist, or you can let
8 me know if they will assist in your testimony.

9 I want you to use whatever is helpful to explain
10 to the jury Mr. Davis' condition. Give me one second.

11 MR. FEMIA: If we can approach before anything
12 goes up?

13 MR. MILLS: Nothing's going up yet. I will
14 certainly let you know before I show anything to the jury.

15 Q Okay. Doctor, you have your file in front of you?

16 A Yes, I do.

17 Q Tell us what did you begin treating Mr. Davis for and
18 when?

19 A So, I first saw Mr. Davis on March 1st of 2016. At
20 that time he came to me as a 37-year-old male. He was
21 complaining of primarily of neck pain with radiation down the
22 left arm and shoulder pain.

23 At that time I reviewed, I mean I examined him and I
24 reviewed whatever records that was available to me and at that
25 time I diagnosed -- one second. In a nutshell he basically

1 stated that he was involved in a work-related accident.

2 He said that he was working at a construction site,
3 something fell off a roof and hit him in the neck and shoulder,
4 left shoulder and he injured those body parts, neck, left
5 shoulder and his lower back for which I was see him at that
6 time.

7 His pain level at that time was about 5 or 6 out of 10.
8 He did not have any past medical history. He was taking Tylenol
9 and Motrin for the pain, no known allergies to medications. His
10 occupation is construction worker.

11 What he told me, he was not working since the time of
12 the. He was married with a family in apartment building. He
13 denied use of tobacco or alcohol use or drugs. Um, at that time
14 I reviewed MRI of his cervical spine which demonstrated a large
15 --

16 MR. MILLS: Let me stop you right there. I'm
17 going to use a portion of your file that I'm going to refer
18 to the jury with and I will go through different medical
19 records as you go through so the jury can kind of read
20 along during the process.

21 Q The medical records that you have, your records are
22 admitted these are medical records here Kareem Davis. Your
23 medical records are admitted into evidence as Plaintiff's
24 Exhibit Number 4.

25 The records that you produced during your treatment of

1 Mr. Davis, were they all produced consistent with the treatment
2 that he received and kept with your facility in that regard?

3 A Yes.

4 MR. MILLS: Okay. I'm going to go through
5 different parts of everything that's in there, okay, not
6 everything but only things related. I'm going to have you
7 scroll up as you talk.

8 Q Let's start on that first page. Is that the record you
9 were referring to in regard to your initial treatment of Mr.
10 Davis?

11 A That's one of the record this is what he actually
12 filled out when he came first to see me and shows the area what
13 he was complaining of pain, what the pain level was. He was
14 complaining of back pain 5 to 6 out of 10 and the shoulder and
15 neck was much more painful 8 out of 9 and he stated to me that
16 this all started after the work-related accident December 3,
17 2015.

18 Q And it indicates on that form if you scroll back up, my
19 neck is also hurting, right?

20 A Yes.

21 Q You were about to go through the film that you
22 reviewed, it's right on there, if you can use that to just tell
23 us what the film showed?

24 A So, is this the actual report or the actual film?

25 MR. FEMIA: Objection. What's being shown is a

1 report not a film.

2 THE COURT: What is it?

3 MR. FEMIA: What was said was that a film was
4 being showed to the jury.

5 MR. MILLS: It's a report of a film.

6 MR. FEMIA: I understand that. It's just not a
7 correct record of what's being shown to the jury.

8 THE COURT: Continue.

9 A So, this is a report done at Dynamic Medical Imaging
10 and if you look at impression the most significant of this is
11 the point 5 at C-6,7 level as a broad base disc herniation seen
12 across the disc space measuring 16 millimeters transverse
13 diameter by 3.5 millimeters and AP dimension producing a mass
14 effect upon the cord which means pressure on the cord.

15 There is some degree of cord flattening and canal
16 stenosis. It's supper imposed bulge and spurring. There's a
17 moderate bilateral foraminal stenosis.

18 THE WITNESS: Do we have the image that I showed
19 you before?

20 MR. MILLS: We do. Here's what I want to do,
21 Doctor, so it's clear to make is easy for the jury.

22 Q From your understanding Mr. Davis suffered injuries to
23 his neck, back and shoulder, correct, in that injury of December
24 3, 2015?

25 A Yes.

1 Q I want to break those into three separate parts. Let's
2 focus first on the neck. If you can describe for me, I can pull
3 up the image for you. If you want to start with this that will
4 be helpful, describe for me if you can what the injury to Mr.
5 Davis' neck was? Give me one second.

6 THE WITNESS: May I stand up, Judge.

7 THE COURT: If you need to, yes.

8 A So this is a model of the cervical spine. These are
9 the bones of the cervical spine between a disc this is the
10 mobile structures rotate it and flex and extend so forth.

11 Inside the column there's a spinal cord basically
12 protected by the bones. Every so often at every level there's a
13 nerve that comes out of the spinal cord to go to your shoulders
14 arms and so forth and, um, they go through something called a
15 foramen which are essentially another word for hole or opening.

16 So, what happens is in his particular case the disc
17 that was involved was the C-6,7 disc.

18 What happened was this disc basically protruded
19 posteriorly and pressed on these nerves. To be specific the one
20 on left side causing the shoulder and arm pain also cause
21 numbness, weakness and so forth.

22 So that was his pathology basically. The other
23 discs were although they were bulging they were not really
24 causing any symptoms. They were sort of incidental
25 finding. As we age some disc decrease water content turn

1 dark but they doesn't mean they're symptomatic.

2 In his particular case the one that I thought was
3 the most symptomatic here was C6,7 and then if you show me
4 the picture I can show the jury. The one we, the MRI. So,
5 as you can see this is an MRI image.

6 This is showing his head. This is the brain.
7 This is the spinal column like I showed you. Each one of
8 these cords is a bone and in between you have the discs.
9 You can see this particular disc is pooching into the canal
10 which is what we call herniated disc.

11 If you go to the next one, this is the herniation
12 that's pushing on his cord also causing foramen stenosis.
13 This is the frame I was telling you about which the nerve
14 is coming out.

15 You can see this side is bigger than that side
16 where it was being compressed causing shoulder and arm pain
17 going into his hand. Can you show me the next image. So,
18 this is just basically you can see it's the same herniated
19 disc which was in my opinion the pain generated that was
20 causing the problem.

21 Q Let me ask you something, Doctor, because Mr. Davis was
22 involved in an incident before, um, and the films or the studies
23 were very similar maybe the same, is there an indication of why
24 he would have been in pain after this incident as opposed to the
25 last incident where we showed a medical record where we said it

1 was resolved and not --

2 MR. FEMIA: Objection, Your Honor.

3 Q -- it was not affecting his day to day activity?

4 THE COURT: What's the objection.

5 MR. FEMIA: It was a narrative. It didn't contain
6 a question as well as being leading.

7 THE COURT: Mr. Mills, rephrase. It was a little
8 confusing.

9 Q Sure. Can you describe for me to a reasonable degree
10 of medical certainty the impact of Mr. Davis having a similar or
11 the same study done prior to this incident?

12 A I'm not sure I understand the question.

13 Q Sure. So, there was, Mr. Davis was involved in an
14 incident prior to the accident that happened on the December 3rd
15 of 2015, okay?

16 A Okay.

17 Q After that incident he had a study done that was very
18 similar or the same as the study that was done here but are you
19 aware that Mr. Davis went back to work after that incident?

20 A Yes.

21 Q Are you aware --

22 MR. FEMIA: Objection, Your Honor.

23 THE COURT: Hold on guys.

24 MR. FEMIA: Can we approach?

25 THE COURT: No need to approach. Objection

1 sustained.

2 Q Doctor, are you aware Mr. Davis was doing physical
3 labor at the time of this incident?

4 MR. FEMIA: Same objection, Your Honor.

5 THE COURT: Overruled.

6 A Yes. When he came to me, he told me he was working
7 full duty as a construction worker. As far as I understand to
8 do that type of job you can't be in pain and be a construction
9 worker doing heavy lifting, jackhammer work, all this other
10 stuff.

11 MR. FEMIA: Move to strike. Beyond the scope of
12 the question, Your Honor.

13 THE COURT: So stricken.

14 Q Doctor, is it consistent that you can have a film that
15 shows the same thing that's shown here but not be in pain or be
16 able to do the work that you just described?

17 MR. FEMIA: Objection.

18 THE COURT: Sustained.

19 Q Doctor, can you just, is it possible to have what's
20 shown in this study, um, without symptoms?

21 MR. FEMIA: Objection.

22 THE COURT: Overruled. That's a good question.

23 A It's possible. How likely it is, I'm not sure.

24 Q If there was a similar study showing the damage that's
25 shown here from a prior accident, would it be consistent that

1 Mr. Davis would have been able to perform the duties he was
2 performing at the time of this accident?

3 MR. FEMIA: Objection. Same question that was
4 asked before that I objected to and was sustained.

5 THE COURT: It is. Mr. Mills, I think you made
6 your point.

7 Q Doctor, let's talk about your treatment for this
8 injury; what did you do as a result of or what did you do in the
9 course of treatment for Mr. Davis after he came to your office
10 after his injuries of December 3, 2015?

11 A He came to me after being in physical therapy for quite
12 sometime, at least 6 to 9 months and he basically wasn't
13 improving. So, the first thing I did was I took him to the OR
14 and did an injection.

15 I did a cervical epidural injection which gave him some
16 temporary relief. I forget what date it was. It's in my
17 records. When I saw that injection helped him, to me that's
18 indication that surgery would also help him.

19 I took him to the OR and did a one level anterior
20 cervical discectomy and fusion. So, do you have a picture to
21 show?

22 Q I want to come back for a bit.

23 A That's the injection.

24 Q Tell us what that means, what you did?

25 A So, essentially that done in the operating room under

1 X-ray control. You put a needle into the patient neck while he
2 is sitting forward, bent forward and first you check the
3 position of the needle with the X-ray, then you inject die to
4 make sure you're in what they call epidural space not in the
5 cord you're outside the nerve root.

6 Once you check the position you inject medication and
7 the medicine you inject is Cortizone detrimental to be and a
8 little bit of Lidocaine and that usually eats at the source of
9 the pain. That can pinpoint that by giving him some temporary
10 relief.

11 If the injury or herniation is significant, it will not
12 work for a long time. Will work for a few weeks but won't cure
13 him of the problem.

14 Q From your understanding did this, did this epidural
15 injection cure him of the problem?

16 A It gave him temporary relief, didn't cure him of the
17 problem because his problem had actual nervous compression with
18 radiculopathy.

19 Q What does that mean?

20 A Pain down the arm with neurologic symptoms. It gave
21 him it identified the level and that affect that was the pain
22 but didn't cure him.

23 Q After this Cortizone Injection you were able to
24 identify what was causing Mr. Davis the pain?

25 A Correct.

1 Q Okay. And what was that?

2 A It was that disc C6, 7 disc.

3 Q All right. You can continue. So, after the injection?

4 A After that continued therapy obviously. When the pain
5 came back I offered him cervical treatment.

6 Q What was that cervical treatment?

7 A Anterior cervical discectomy fusion at C6, 7 level. Do
8 you have the pictures so I can explain?

9 MR. FEMIA: Your Honor, can we approach.

10 (Whereupon a discussion was held off the record.)

11 THE COURT: To the extent objection to the use of
12 the demonstrative evidence, overruled, the court will allow
13 it.

14 Q Doctor, I'm going to hand you this pad. You can point
15 to whatever you want that will help you and assist you in
16 talking about the procedure?

17 A So, basically, um, essentially what's described, so the
18 procedure involves taking patient to the operating room. He is
19 placed on his back and his neck is prepared. I make a small
20 incision about one inch incision on one of the creases of the
21 neck.

22 Then I don't cut anything. I have to move everything
23 to the side and get to the spinal column. Um, I put retractors
24 in and then once I have the disc, I remove the disc completely
25 to decompress the spinal cord and the nerve.

1 Once I completely remove the disc, can we play that
2 movie I showed you? It's a cartoon animation.

3 THE COURT: Mr. Mills, can you explain where this
4 comes from, the animation you are going to be using?

5 MR. MILLS: Me or the witness?

6 THE COURT: The witness.

7 THE WITNESS: It's a YouTube cartoon animation.

8 Q Do you use that to assist you in testifying?

9 A I use it to explain to patients before surgery what I'm
10 going to do. Usually it's available to everybody online.

11 MR. FEMIA: Your Honor, if I can quickly voir dir
12 on this?

13 THE COURT: Um, hum.

14 VOIR-DIR-EXAMINATION BY MR. FEMIA:

15 Q Do you know who made this video?

16 A I don't know.

17 Q Do you know when it was made?

18 A I don't know.

19 MR. FEMIA: Okay. Your Honor, it's an unknown
20 source from an unknown date on that we have never even
21 seen. I don't think that it's appropriate to be shown to
22 the jury. If you want to --

23 THE COURT: No.

24 EXAMINATION BY THE COURT:

25 Q Doctor, have you, assuming you've had the opportunity

1 to watch this video?

2 A Yes.

3 Q Numerous times?

4 A Yes.

5 Q Does it fairly and accurately represent the procedure
6 that you performed and did perform on plaintiff's cervical
7 spine?

8 A As much as a cartoon can, yes.

9 Q What does that mean?

10 A It's like I said it's the cartoon that explains to the
11 patient better than words what actually I do for the surgery.

12 THE COURT: But does it in any way deviate other
13 than it being a cartoon from the procedure that you
14 performed?

15 A No. It pretty much explains the procedure that I do.

16 THE COURT: The court will allow it.

17 (Whereupon, a portion of a video recording was
18 played in front of the jury.)

19 MR. FEMIA: Your Honor, I wasn't aware there was a
20 narrative.

21 MR. MILLS: No.

22 MR. FEMIA: All we heard was that it was the most
23 common surgery performed so far.

24 THE COURT: Let's make sure the sound is off.

25 MR. FEMIA: It's what the jury heard.

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THE COURT: And the jury will disregard that. You have another 2 minutes, Counsel, so make it work.

(Whereupon, Senior Court Reporter Victoria Bifulco began recording the following proceedings:)

1 THE COURT: Counsel, move on.

2 We'll try again later if we have time.

3 MR. MILLS: I don't know why the volume is
4 playing.

5 Q Let's go back to this, Doctor.

6 Just describe for us what it is you do.

7 A Basically after I make incision, I move everything to
8 the side. So after I get to the spine, I use the different
9 instruments to remove the discs completely, kind of like what
10 is shown here (indicating).

11 I move the discs completely and take away the
12 pressure off the nerve. I can't leave it like this because
13 then it will collapse down and actually compress the nerve
14 that is coming down. So I have to put something back in.

15 In this case I put in a PEEK cage which was filled
16 with synthetic bone, and then I put a plate.

17 Q Where did you get this synthetic bone from?

18 A It's available in the hospital. It's a product we
19 use as an adjunct to help the fusion, and then the plate looks
20 something like this (indicating).

21 Where we can show the different -- yeah, this one
22 (indicating). It looks not exactly like this, but it is
23 basically a titanium plate with four holes. The holes are for
24 screws. What it does is basically it holds the nerves in
25 place, kind of like a staple. The level fuses and usually

1 after nine to twelve months, that level becomes one. It kind
2 of heals together, and that's called a fusion.

3 So the procedure really has two parts. Part one is
4 the decompression with the neuro structures and part two is
5 the fusion.

6 Essentially, that's what that procedure is.

7 Q And is this --

8 A This is actually the patient's x-ray.

9 Q Mr. Davis?

10 A I think it is, right.

11 Q Yeah.

12 A That shows his plate from the frontal view. I don't
13 know if you have the lateral view to show, but that's one of
14 the views. We usually get two views.

15 Q What does this show?

16 If you could describe what this shows.

17 A So this is the plate, and there is one, two, three,
18 four screws that go into the bone to hold it in place while
19 these two levels mend together.

20 Q I want you to assume Mr. Davis testified that he
21 described it as a table.

22 Did he get that from you?

23 A No.

24 Q Did you describe this as putting a table in his neck
25 and --

1 MR. FEMIA: Objection.

2 Asked and answered.

3 MR. GRILLO: Asked and answered, your Honor.

4 Q How would you describe --

5 THE COURT: Overruled.

6 I'm sorry.

7 Just to clarify, his answer was no twice.

8 A On the lateral view it looks like a top with four
9 legs, but you don't have that, have you? Do you have the
10 lateral view?

11 Q I'll load it up. But you said it looks like a top
12 with four legs like a table?

13 MR. FEMIA: Objection.

14 THE COURT: Counsel, move on.

15 Q Can you describe for me what was done to Mr. Davis
16 before that surgery was performed to his body?

17 Where would you go in there? How would that be done,
18 Doctor?

19 A I thought I described all that.

20 I make the incision in the neck. I spread everything
21 apart to get to the spine basically.

22 Q That was done here in this case?

23 A Yes.

24 Q Okay. Let's talk about the surgical procedure to --
25 let's talk about Mr. Davis' shoulder.

1 Did you treat his shoulder?

2 A Yes.

3 Q For what?

4 MR. GRILLO: Could we go back to our seats?

5 THE COURT: Yes.

6 You can have a seat, Doctor, for now.

7 THE WITNESS: Thank you.

8 Q Let's talk about the treatment to Mr. Davis' left
9 shoulder.

10 Did you treat his left shoulder at all?

11 A Yes.

12 Q Describe for us what that treatment was.

13 A So before he got to me, he had a full course of
14 physical therapy which didn't really resolve it.

15 When I first saw him on exam, he had severe limited
16 range of motion in the shoulder. His diagnosis at that time
17 was partial tear of the rotator cuff and labrum and what we
18 call adhesive capsulitis. That's when the scar tissue forms
19 around the shoulder joint causing it to lose range of motion
20 and also causing pain.

21 Q Using what's in front of you there, would that assist
22 you in just describing for us the parts of the shoulder or the
23 areas that you are discussing?

24 A So this is a model of the shoulder (indicating).

25 This bone is your what we call humerus bone (pointing). This

1 is the scapular. This is just showing the ligaments around
2 the shoulder.

3 Sometimes when you get injured, over time
4 inflammation can lead to scar tissue formation. So that's
5 what happened in this case. And, well, I offered him
6 something called arthroscopic surgery.

7 What is arthroscopic surgery?

8 It's usually done under local or block with some
9 sedation. It's an outpatient procedure of the -- it's not an
10 open surgery where I cut the shoulder up. I make three little
11 holes. I make one hole in the back. I make one hole in the
12 front and I make one hole on the side.

13 And I use a camera. The camera is about four to five
14 millimeters wide, and I put it in and I examine the shoulder.
15 In this case essentially it was not a repair where I had to
16 show something together. It was more like a clean-up job.

17 I removed everything that was hanging loose, and I
18 removed some of his scar tissue called adhesions from the
19 shoulder to allow him to move the shoulder more freely.

20 The whole procedure took about 20 minutes, and he
21 went home about an hour later.

22 Q And now I want to talk to you about Mr. Davis' back.

23 Did you treat his back at all for -- as a result of
24 the incident that occurred on December 3, 2015?

25 A Yes, I did.

1 Q Tell us about that treatment.

2 A So for the back I felt that he was not a candidate
3 for surgical treatment. I felt he would improve with physical
4 therapy, medications and possible injections. And I did not
5 perform any procedure on his back.

6 Q What would make the difference, you said he had
7 herniation in his back?

8 A No.

9 Q No?

10 A He had --

11 MR. FEMIA: Objection, your Honor.

12 THE COURT: Hold on.

13 MR. FEMIA: Beyond the scope of the doctor's
14 testimony.

15 He didn't testify to that.

16 THE COURT: Sustained.

17 That was --

18 Q You said he had bulges his back, right?

19 A Yes.

20 THE COURT: Same objection.

21 Ask him a question.

22 MR. MILLS: Sure.

23 Q Doctor, you just said he had bulges in his back?

24 MR. FEMIA: That was the sustained objection, I
25 believe, your Honor.

Dr. Katz - Plaintiff - Direct

1 THE COURT: Counsel, asked him.

2 Q Doctor, did Mr. Davis just have a bulge in his back?

3 MR. FEMIA: That's the same question.

4 THE COURT: First of all, that's leading.

5 MR. MILLS: You are --

6 THE COURT: Ask it in a non-leading way and just
7 ask the question you wanted to ask.

8 MR. MILLS: Sure.

9 Q Doctor, is there a reason why you didn't recommend
10 surgery on Mr. Davis' back even though you saw something in
11 the MRI?

12 MR. FEMIA: Objection to the second part of
13 that.

14 THE COURT: Again, very leading.

15 Sustained.

16 Q Well, no, Doctor, you just testified --

17 THE COURT: Hold on a second.

18 He testified to a question that was objected to
19 and sustained, so you can't keep referring to that
20 testimony.

21 MR. MILLS: Okay. I'll start this section over,
22 Judge.

23 THE COURT: Okay.

24 Q Doctor, just describe for me the injury that Mr.

25 Davis sustained to his back as a result of the December 3,

1 2015, incident?

2 A I thought it was a sprain.

3 Q Is there a reason why you treated Mr. Davis with a
4 surgical procedure for his neck as opposed to a certain
5 procedure for his back or both?

6 A I am not sure I understand your question.

7 Q Sure. What caused you to perform the surgical
8 procedure on Mr. Davis' neck, the fusion?

9 MR. FEMIA: Objection.

10 Asked and answered.

11 THE COURT: Sustained.

12 He explained that.

13 MR. MILLS: Say it again.

14 THE COURT: He explained that.

15 MR. MILLS: What caused him to perform it.

16 MR. FEMIA: That was the whole narrative that we
17 just went through.

18 Q Doctor, what factors went into you recommending the
19 surgical procedure for Mr. Davis' neck?

20 MR. FEMIA: Objection.

21 Asked and answered. Form.

22 THE COURT: Mr. Mills, he just testified to that
23 extensively.

24 MR. MILLS: He testified to what he did, Judge.

25 I am asking him the factors that went into the

1 recommendation, not the surgery procedure itself. The
2 factors that went into the recommendation for the
3 procedure, not the procedure.

4 THE COURT: Prior to that he testified using the
5 demonstrative evidence that you provided as to why he
6 performed that.

7 MR. FEMIA: And he also testified as to what he
8 did perform before the surgery.

9 This was all addressed.

10 THE COURT: Thank you, Mr. Femia.

11 MR. FEMIA: Sorry, Judge.

12 Q Doctor, I want to ask you, did you have a
13 conversation with Mr. Davis about whether or not he should
14 have the surgery performed?

15 A Yes.

16 Q What were the factors of that conversation?

17 A Well, the surgeon looks at the patient. We take into
18 account the history, the physical exam, and the radiological
19 evaluation. All of these factors put together play a role in
20 why we would indicate a candidate for the surgery.

21 In this case I felt he absolutely needed surgery for
22 his neck.

23 Q Do you factor in the symptoms that he had?

24 A Yes.

25 Q And how do they factor into your evaluation?

1 A They were consistent with his exam and his
2 radiological evaluation.

3 Q Were you aware that prior to -- you testified that
4 you were aware that prior to December 3 of 2015, Mr. Davis was
5 a construction worker, correct?

6 MR. FEMIA: Objection.

7 THE COURT: Overruled.

8 A Yes. When he came to me, he was working full time as
9 a construction worker.

10 Q And did he indicate to you or were you aware that
11 after the accident of December 3, 2015, he was unable to work,
12 Doctor?

13 A Yes.

14 Q The injury that you just described for Mr. Davis,
15 let's start with -- we are going to separate them again.
16 Let's talk about the neck.

17 Is that injury a competent producing cause of pain
18 and suffering?

19 A Yes.

20 Q For the jury's understanding, does it hurt?

21 A Yes.

22 Q Was that injury that you described regarding his neck
23 and the treatment that you gave him as a result of those
24 injuries causally related to the accident of December 3, 2015?

25 A In my opinion, yes.

1 Q And the injuries that you just described with regards
2 to Kareem Davis next in the treatment -- well, the injuries
3 that you described, the treatment you gave him for that
4 injury, is that injury permanent?

5 A Yes.

6 Q Now, Mr. Davis was injured in 2015. We are now in
7 2025.

8 Have you seen in your course of treatment any
9 indication that Mr. Davis would go back to the condition he
10 was in before the accident of December 3, 2015 happened,
11 Doctor?

12 A What you do you mean by condition?

13 Q Will he -- the injury that he sustained from that
14 accident that you treated him for, is there any indication to
15 you that any pain related to that would go away completely at
16 any point based on your treatment of the injury that he
17 sustained?

18 A Completely, no.

19 Q No. Let talk about the left shoulder.

20 The injury that you described to the left shoulder,
21 that Mr. Davis received as a result of the incident on
22 December 3 of 2015, was that a competent producing cause of
23 pain and suffering?

24 A Yes.

25 Q So it hurts?

1 A Yes.

2 Q Is that injury that you described to his left
3 shoulder causally related to the accident of December 3, 2015,
4 Doctor?

5 A In my opinion, yes. He said he was not in pain
6 before the accident, and then after the accident, he felt pain
7 in both parts, shoulder and neck.

8 Q And the injuries he sustained to his left shoulder as
9 a result of that December 3, 2015 accident, is it permanent in
10 nature?

11 A Yes.

12 Q And, lastly, the back, the injury that you described
13 for which you treated him, is that a competent producing cause
14 of pain and suffering?

15 A I guess yes.

16 Q I don't want you to guess.

17 A I'm not sure what you are asking.

18 Is it causing pain now?

19 I don't know.

20 Q The incident when he came to you and you diagnosed
21 him with the strain on his back, is that a competent producing
22 cause of pain and suffering?

23 A At that time, yes.

24 Q Okay. And was that causally related to the accident
25 of December 3, 2015?

1 A Yes.

2 Q In that injury, is it permanent in nature?

3 A I don't know. Because I really didn't treat him
4 surgically for that.

5 Q Okay. And that injury he can get better from?

6 A Yes.

7 Q Let me ask you if you have something that shows on
8 images, even if you had pain at some point, can that pain go
9 away?

10 MR. FEMIA: Objection.

11 THE COURT: What's the objection?

12 MR. FEMIA: Form. Leading.

13 THE COURT: Rephrase.

14 Q Doctor, do you have an image that shows damage to
15 your body, does that indicate to you on the image itself
16 whether or not the patient is in pain?

17 MR. FEMIA: Objection.

18 THE COURT: Overruled.

19 A No. You can have images that are abnormal, and we
20 see that all the time where patients have no pain. And we
21 have patients who complain of pain, and the images are fairly
22 normal on the image itself. We don't treat images; we treat
23 patients.

24 So everything had to be taken together, the history
25 the exam, and the radiological evaluation. We put it all

1 together, and then we make a decision.

2 So you can have people walking around with injured
3 discs which are asymptomatic. They have no pain. So even if
4 the image is severe, it's not something that we would treat
5 automatically without talking to the patient and examining the
6 patient.

7 Q And you would factor in what the patient is doing,
8 right, any physical activity the patient is doing?

9 MR. FEMIA: Objection.

10 Leading again.

11 THE COURT: Overruled.

12 A Yes, of course.

13 Q And what else would you factor in?

14 A I said you don't treat images; you treat patients.

15 Q Just tell us what else you would factor in when you
16 are trying to determine whether a patient is a candidate for a
17 surgical procedure.

18 What would you factor in?

19 A Like I said before, we take into account the
20 patient's history, his employment, where he lives, his exam,
21 and his radiological evaluation, his pain level.

22 Q Do you factor that in?

23 A Yes.

24 Q Doctor, I want you to assume, and I know you know
25 some of this, but I want you to assume that the plaintiff

1 treated with Dr. Merola?

2 Are you aware of who that is? Do you know who that
3 is?

4 A I do.

5 Q You know what kind of doctor he is?

6 A He is a spine surgeon.

7 Q Would that treatment be consistent with the injuries
8 that Kareem Davis had treatment with a spine doctor --

9 MR. FEMIA: Objection.

10 Foundation. Also leading.

11 He asked if he knew who a doctor is and then
12 started talking about records.

13 MR. MILLS: Judge, the speaking objection you
14 said is --

15 THE COURT: Overruled.

16 A I am not aware of what treatment Dr. Merola provided,
17 so I'm not sure where you are coming from.

18 Q I want you to -- do you know when was the last time
19 you treated Mr. Davis?

20 A I do.

21 Q When was that?

22 A 2019.

23 Q And in the course of your treatment, did you do
24 follow up orthopedic visits with Mr. Davis?

25 A Yes.

1 Q I just want to -- I want you to take us through -- I
2 am going to give you a medical record, the follow up order for
3 orthopedic visits.

4 Can you just take us through that visit and describe
5 for us what is indicated in the medical records?

6 A Sure. This is dated October 12, 2017. Patient came
7 complaining with neck discomfort. Left shoulder stiffness.

8 He had history a of C6-C7 -- this is after the
9 surgery. ACDF surgery done on February 1, 2017. So it's
10 approximately eight months, nine months after the surgery.

11 At exam he had -- the incision was healed. There was
12 a little bit of a keloid formation in his incision. There was
13 a scar. His range of motion was limited.

14 Flexion was 40 degrees. Normal was 60 degrees.
15 Extension was 10 degrees. Normal is 30 degrees. Rotation was
16 30 degrees bilaterally. Normal rotation is about 80 degrees.
17 He had intact muscle strength, five out of five. Sensation
18 was intact.

19 He had a hip incision that was healed. There was
20 minimal tenderness to palpation.

21 The left shoulder revealed -- this was after the
22 surgery -- incisions are healed. Range of motion is still
23 limited. Forward flexion was zero to 150 degrees. Normal is
24 zero to 180 degrees. He had pain with external and internal
25 rotation, and he noted patient was also limited due to pain.

1 Examination of the lumbosacral spine revealed
2 moderate tenderness on palpation of the lumbosacral
3 musculature. He had decreased range of motion. He had
4 flexion of 30 degrees. Normal is 90 degrees. Extension was
5 10 degrees. Normal is 30 degrees. Raising was negative
6 bilaterally. Deep tendon reflexes are plus one and
7 symmetrical. And sensation was intact.

8 Then he goes through his diagnosis. He was status
9 post cervical surgery. Right hip pain. I'm not sure what
10 that came from. I think that was a typo. Left shoulder
11 rotator cuff syndrome. Early adhesive capsulitis in the left
12 shoulder. Lumbosacral bulging disc and lumbosacral
13 radiculopathy.

14 Patient was to continue Tramadol and Tylenol for mild
15 pain. I reviewed that Dr. Miller IME report. Dr. Miller felt
16 at that point he had reached MMI. That is status maximum
17 medical improvement.

18 And I disagreed with that because full recovery after
19 neck surgery takes about a year. And at that time he needed
20 to get a CAT scan, so that's what I wrote. He needs to
21 continue with his physical therapy. He will require a CAT
22 scan one year after the surgery to evaluate whether or not he
23 fused, as I explained before, and I recommended he continue
24 therapy for the left shoulder to maximize range of motion.
25 Follow up one month with x-rays.

1 Q Now, I want you to go ahead. You could continue. I
2 am going to the next page here.

3 A At that point I felt he was temporarily totally
4 disabled.

5 Q Okay. Just so we are clear, Doctor, after the
6 surgical procedure, Mr. Davis was still experiencing symptoms,
7 correct?

8 A Yes.

9 Q And his range of motion in both his shoulder and his
10 neck was limited, correct?

11 A Yes.

12 Q And he still needed treatment for the injuries -- did
13 he still need treatment for the injuries he sustained in the
14 incident of December 3, 2015?

15 MR. FEMIA: Objection.

16 THE COURT: What is the objection?

17 MR. FEMIA: He was leading him through a whole
18 course of questioning. I was leaving it alone until the
19 doctor answered yes or no to all these questions.

20 Therefore, it is clear he is leading him.

21 THE COURT: Sustained.

22 Be careful with your questions, Mr. Mills.

23 MR. MILLS: Understood.

24 THE WITNESS: Could I answer?

25 THE COURT: No.

1 Rephrase the question.

2 MR. MILLS: Yes.

3 Q Did Mr. Davis still require treatment after the
4 surgical procedure?

5 MR. FEMIA: Same objection.

6 THE COURT: That's the same question.

7 Q What happened after the surgical procedure?

8 A I continued to treat him, and at the time he still
9 required treatment.

10 MR. MILLS: Nothing further, Judge.

11 THE COURT: Thank you.

12 Mr. Femia, cross?

13 MR. FEMIA: Yes, Judge.

14 But before cross, I would like to take a look at
15 the doctor's files.

16 I don't know when you plan on breaking, but I
17 just need a couple of minutes.

18 THE COURT: Go ahead.

19 CROSS EXAMINATION

20 BY MR. FEMIA:

21 Q Thank you, Doctor.

22 A Sure.

23 Q Good afternoon, Doctor.

24 A Good afternoon.

25 Q Again, I'll ask that you keep your voice up for

1 everybody.

2 A Yes.

3 Q Doctor, have you read Mr. Davis' deposition
4 transcripts or his trial transcripts?

5 A I have not, no.

6 Q If a 20 pound metal and hard rubber object falls 50
7 or 60 feet and hits someone in the head and neck area, is it
8 fair to say that you would anticipate an immediate, severe
9 injury?

10 A I don't think I can answer that question. It depends
11 what angle, how it hit him. I mean, I'm not sure I would
12 anticipate anything. I have seen people get severe injuries
13 from mild car accidents, and I have seen people in horrific
14 car accidents walk out with no injuries, so I'm not sure I can
15 answer that.

16 Q Well, again, I want you to assume that plaintiff
17 testifies that a 20 pound or so hard rubber and metal object
18 fell 50 or 60 flights and hit him in the back of the head,
19 neck and shoulder area, with that description, would you
20 anticipate --

21 MR. MILLS: Objection, Judge.

22 Q -- a severe immediate trauma?

23 A Yes.

24 THE COURT: What was the objection?

25 MR. MILLS: Your Honor, it's okay.

1 I'll withdraw it.

2 THE COURT: Thank you.

3 Q Do you find it significant -- well, let me ask you,
4 did you review the emergency room records from the date of the
5 accident?

6 A No.

7 Q Did you know that he went to the emergency room on
8 the day of the accident?

9 A I think he told me that, yes.

10 Q Did you find it significant that the hospital didn't
11 perform any diagnostic testing on his neck at that hospital,
12 Doctor?

13 A I'm not sure what significant means. I have seen
14 hospitals miss stuff all the time.

15 Q For example, if someone comes in the hospital and
16 they say that a 20 pound metal and hard rubber object fell 50
17 or 60 feet and hits you in the neck, would you find it
18 significant that the hospital wouldn't check?

19 A I don't think I can comment on what the hospital did
20 or didn't do.

21 Q Do you think it would have been appropriate for the
22 hospital --

23 MR. MILLS: Objection, your Honor.

24 Q -- to have taken a diagnostic test of the neck?

25 A Yes.

Dr. Katz - Plaintiff - Direct

1 THE COURT: Overruled.

2 Hold up.

3 So, Dr. Katz, if there is an objection, you have
4 to let me rule on it before you answer.

5 MR. MILLS: I'll withdraw.

6 THE COURT: Thank you.

7 Q Were you aware that a CT was performed on his head
8 that day?

9 A No.

10 Q Okay. Do you find it or would you find it
11 significant that a CT was performed on the day of the accident
12 and the CT came back clean, no trauma?

13 A I would not find it significant.

14 Q So you would not be surprised if a 20 pound object
15 fell 50 or 60 feet and hit someone in the head and the CT
16 comes back clean; that's not surprising?

17 A These are all hypothetical questions. I don't think
18 I can even comment on them.

19 Q Well, the hypothetical question I am asking is
20 because this is what Mr. Davis testified to --

21 MR. MILLS: Objection, Judge. It is not.

22 THE COURT: Excuse me?

23 MR. MILLS: It is not.

24 THE COURT: It's not?

25 MR. MILLS: What Mr. Davis testified to.

Dr. Katz - Plaintiff - Direct

1 He is misstating facts in evidence.

2 Mr. Davis said it struck him on his shoulder,
3 neck and back area. He had a hematoma or lump on his
4 neck.

5 THE COURT: Okay. Sustained.

6 MR. FEMIA: Your Honor, but I could ask the
7 hypothetical. I am not going to concede that is what the
8 testimony said.

9 THE COURT: Okay. Ask the hypothetical.

10 Q If there was testimony that a 20 pound hard object
11 fell 50 or 60 feet and hit someone in the head, would you find
12 it surprising that a CT came back clean, with no traumatic --

13 MR. MILLS: Objection, Judge.

14 Again, assuming facts not in evidence.

15 There was no testimony -- the testimony was it
16 hit the ground.

17 MR. FEMIA: This is an improper objection. I am
18 allowed to ask a hypothetical.

19 THE COURT: Thank you, again, both of you.

20 He asked a hypothetical.

21 Overruled.

22 THE WITNESS: I can answer it?

23 THE COURT: Yes.

24 A The answer is I don't know.

25 Q Are you aware that the emergency room record

1 indicates or -- withdrawn.

2 Would you be surprised that the emergency room record
3 indicates that Mr. Davis never lost consciousness?

4 A Again, I can't comment on what -- I don't have a
5 video of what happened to him. I really can't answer why he
6 did or didn't pass out or why the CAT scan was not positive or
7 negative.

8 Q Were you aware of the fact that no emergency medical
9 treatment was performed at the scene of the accident?

10 A Again, I did not review any hospital records or ER
11 records.

12 Q Did Mr. Davis tell you that no emergency medical
13 treatment was performed at the scene?

14 A No.

15 Q Are you aware that Mr. Davis was asked if he wanted
16 emergency medical treatment, and he said no?

17 A I was not aware.

18 Q Are you aware that Mr. Davis walked home from work
19 that day?

20 A No.

21 Q After the shoulder surgery, you didn't perform any
22 additional shoulder surgeries on him, right?

23 A No.

24 Q His shoulder was stable?

25 A Yes.

1 Q And after his neck surgery, you didn't perform any
2 additional neck surgeries on him, right?

3 A No.

4 Q His neck was stable?

5 A Yes.

6 Q And, Doctor, the surgery you did perform, that's a
7 common surgery, right?

8 A Yes.

9 Q I believe what we heard -- withdrawn.
10 It's the most common surgery for this injury, right?

11 A I guess so.

12 Q Well, I mean, you have shown patients videos on this
13 surgery, right?

14 A Yes.

15 Q In the literature and videos that you have shown
16 patients, is this surgery described as the most common
17 surgery?

18 A For his condition, probably yes.

19 MR. MILLS: He said the most common surgery in
20 general.

21 MR. FEMIA: I am asking for no speaking
22 objections.

23 MR. MILLS: For --

24 THE COURT: What are you asking?

25 MR. MILLS: Clarification of his question.

1 Q Doctor, how many surgeries have you performed?

2 A Probably hundreds.

3 Q If not thousands?

4 A If not, yes.

5 Q Are you aware that plaintiff was in a violent
6 altercation in March of 2014?

7 A No.

8 Q Were you aware that in March of 2014 plaintiff claims
9 to have been pepper sprayed in the face, tackled to the ground
10 and savagely beaten?

11 A No.

12 Q Are you aware that in this beating, he was repeatedly
13 kicked throughout his body and his head?

14 A No.

15 MR. FEMIA: I would like to show the doctor
16 something that is already admitted into evidence.

17 I believe it's --

18 MR. MILLS: Objection, Judge.

19 MR. FEMIA: I can show the witness what is in
20 evidence.

21 MR. MILLS: It's a Bill of Particulars.

22 MR. FEMIA: That's admitted into evidence.

23 MR. GRILLO: He can't testify --

24 MR. MILLS: He just said it.

25 THE COURT: Guys, it's a Bill of Particulars.

1 It's a pleading in evidence. It could be shown.

2 What happens with it thereafter remains to be
3 seen, and you could object at that point.

4 MR. MILLS: Understood.

5 THE COURT: Okay.

6 MR. FEMIA: I'll just leave this here for now.

7 Your Honor, would you mind if I ask some
8 questions over here so I can navigate the computer?

9 If that doesn't offend Dr. Katz.

10 THE COURT: No. That's fine. Again, this is
11 all relative to the BP, correct?

12 MR. FEMIA: Correct. I am not showing anything
13 that is not already in evidence.

14 THE COURT: Okay.

15 Q Doctor, I am showing you what has been admitted into
16 evidence as Defendants' Exhibit F. I would like you to take a
17 look at page 2 of this document.

18 A Okay.

19 Q Do you see the various injuries that are listed or
20 claimed to the cervical region of the spine?

21 MR. MILLS: Objection, Judge.

22 What's -- it's speculation. He has never seen
23 this document, and he is not a lawyer. It's a legal
24 document.

25 MR. FEMIA: I am making a foundation.

1 THE COURT: I am going to see where it goes.

2 Relative to the cervical spine.

3 Q More specifically, I would like to you take a look at
4 little J.

5 Could you read that for the jury?

6 MR. MILLS: Is that a person?

7 Q So I would like you to look at the T.V.

8 There is a lot of injuries that were claimed in this
9 prior lawsuit, so it got up to -- I don't even know -- H. We
10 got all the way past little J. We went all the way to Z.

11 So little J is not a person. It is one of the
12 numerous injuries that the plaintiff claimed in a prior
13 lawsuit.

14 Doctor, again, I would like you to read J for the
15 record.

16 A Bilateral unconvertibral and open facet hypertrophy,
17 greater on the left, causing bilateral neural foraminal
18 narrowing of the cervical neck at disc C6-C7.

19 Q What does this mean, Doctor?

20 MR. MILLS: This is irrelevant to his
21 profession. It's a legal document.

22 MR. FEMIA: I am asking the doctor for a
23 description of something in evidence.

24 MR. MILLS: To the medical record. It is not a
25 medical document.

1 MR. FEMIA: We understand what it is. It's a
2 claim.

3 THE COURT: Overruled.

4 A According to this, every single level was injured
5 from C3 all the way up to C6.

6 Q Right.

7 A He would need a total cervical fusion.

8 Q I'm asking you about what J means.

9 A J means he has a herniated disc at C6 level with
10 hypotrophic facet and neural foraminal narrowing.

11 Q You mean C6-7?

12 A Yes, C6-7.

13 Q And when you treated Mr. Davis a year later, you
14 found he had a herniated disc at C6-C7, right?

15 A Correct.

16 Q Okay. And you never saw this document before, right?

17 A Never did, no.

18 Q You were unaware that this was alleged in a prior
19 lawsuit?

20 A Yes. I mean, I was not aware, no.

21 Q Thank you, Doctor.

22 A Sure.

23 Q Were you aware that in that 2014 lawsuit, Mr. Davis
24 claimed that his injuries importantly to his cervical region
25 were permanent at the time?

1 A I was not aware that there was this lawsuit.

2 Q But were you aware that Mr. Davis at the time that
3 you were treating him regardless of the lawsuit had already
4 made claims that he suffered permanent injuries to his
5 cervical spine?

6 MR. MILLS: Objection, Judge, to Mr. Davis, and
7 this is a legal document prepared by --

8 THE COURT: He is not asking -- he is asking if
9 the doctor was aware.

10 MR. FEMIA: Yes.

11 MR. MILLS: That Mr. Davis made a claim?

12 THE COURT: No. He is asking him if he was
13 aware about the prior injuries.

14 MR. MILLS: But this is not prior injuries.
15 This is a lawsuit.

16 THE COURT: Can we have the last question read
17 back, please?

18 (Whereupon, at this time, the last question was
19 read by the reporter.)

20 THE WITNESS: Can I answer?

21 THE COURT: Counsel, rephrase the question.

22 MR. FEMIA: Yes, your Honor.

23 Q At the time that you treated him, do you know if Mr.
24 Davis already sustained permanent injuries to his cervical
25 spine specifically at the same level you performed the ACD at?

1 A Well, first of all, it's not the same level. There
2 were five levels claimed, and the answer is, no, I was not
3 aware.

4 Q But, Doctor, one of the many levels that is listed is
5 the same level that you performed the surgery, right?

6 A Yes.

7 Q Okay. Is it fair to say that it's a significant
8 piece of medical history that you would have liked to know
9 when you treated Mr. Davis?

10 A I would have liked to know, yes. But it wouldn't
11 have changed my management.

12 Q But nonetheless --

13 MR. FEMIA: If I could just disconnect my
14 computer. The pop-ups will continue to keep coming up.

15 THE COURT: I think actually, Mr. Femia, we
16 should break now.

17 Do you have a lot more questions for him?

18 MR. FEMIA: I do.

19 THE COURT: In this line of questioning?

20 MR. FEMIA: If I could just ask a couple more on
21 this line.

22 THE COURT: Probably two or three.

23 MR. FEMIA: Sure.

24 Did we get an answer to that last question?

25 A I said I was not aware, no.

1 Q Well, I believe -- and I apologize if I already asked
2 this, but would you say that it's a significant piece of
3 medical history that you would have liked to have known at the
4 time that you were treating him?

5 MR. MILLS: Objection, Judge.

6 This is isn't medical history. It's a Bill of
7 Particulars.

8 MR. FEMIA: I am asking about an injury.

9 THE COURT: Thank you. That was exactly what I
10 was going to say.

11 Overruled.

12 A Yes.

13 Q That's a yes, Doctor?

14 A Yes.

15 Q That's significant?

16 A Yes.

17 Q If when you first saw Mr. Davis in March of 2016, you
18 were aware of that history, would it have impacted your
19 opinion that the competent producing cause of plaintiff's
20 injuries was the accident on December 3, 2015?

21 A No.

22 Q Why not?

23 A Because at the time that I saw him, he was working
24 construction, and he told me that he had no pain at the time
25 before this accident.

1 Q And when you say he told you, that's a subjective
2 complaint as you call it in the medical field, right?

3 A Yes.

4 Q We'll get to that in a little bit?

5 MR. FEMIA: Right now might be a good time to
6 break.

7 THE COURT: All right, ladies and gentlemen.

8 We'll break for lunch. Come back between 2:00
9 and 2:15 at the latest, so we can get started.

10 I believe we are going to do this witness, and
11 then we have one more for today lined up.

12 As I said, it's a full day.

13 Stay as warm as possible and enjoy the lunch
14 break.

15 THE COURT OFFICER: All rise. The jury is
16 exiting.

17 (Whereupon, at this time, the jury exits the
18 courtroom.)

19 THE COURT: Dr. Katz, you are just reminded not
20 to discuss your testimony with the attorney.

21 THE WITNESS: Yes, Judge.

22 (Whereupon, at this time, the witness exits the
23 stand.)

24 THE COURT: Thank you very much.

25 All right. Enjoy lunch, everybody.

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MR. FEMIA: 2:00 o'clock?

THE COURT: Yes, please.

(Whereupon, at this time, a lunch recess was taken.)

* * * * *

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

* * * * *

(Whereupon, at this time, Senior Court Reporter Victoria Bifulco was relieved by Senior Court Reporter Monica Jenkins.)

1 (Whereupon, a luncheon recess was taken.)

2 * * * * *

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

4 * * * * *

5 COURT OFFICER: All rise Jury entering.

6 THE COURT: Dr. Katz come back up. I'll just
7 remind you are still under oath. Have a seat. Mr. Femia
8 you can continue.

9 CROSS-EXAMINATION BY MR. FEMIA:

10 Q Good afternoon, Doctor.

11 A Good afternoon.

12 Q Are you aware that in June of 2014 Mr. Davis had a
13 cervical MRI performed on his neck?

14 A No.

15 Q I'd like to show you what has been admitted into
16 evidence as Plaintiff's 18; could you read all this?

17 A No.

18 Q I'd like you to take a look at those 2 pages; what do
19 you understand those to be?

20 A This is an MRI report of the cervical spine.

21 Q What's the date of the MRI report?

22 A August 17, 2016.

23 MR. FEMIA: I might have given you the wrong one,
24 apologize. I'll get back to that in a moment. I gave you
25 the wrong MRI report but keep this here.

1 THE WITNESS: Um, hum.

2 Q I want to draw your attention to December 16th of 2014,
3 a little less than a year before the incident in question; are
4 you aware that a neurosurgeon in Bellevue Hospital recommended
5 that Mr. Davis have an ACDM?

6 A No.

7 Q What's an ACDM?

8 A What I went through before, it's surgery for the neck
9 fusing two levels together.

10 Q Anterior discectomy and fusion?

11 A Yes.

12 Q That's the exact surgery that you performed, right?

13 A Yes.

14 Q I want you to take a look at a note from Plaintiff's 18
15 dated December 16, 2014; could you read that note to the jury,
16 please?

17 A Says 36-year-old male with neck pain, right hand
18 tingling seen for the second followup it says right hand today
19 patient stated he continued to have neck pain eccentric to the
20 left and right upper extremities tingling distal lateral forearm
21 into the thumb and lateral third digit nature no pain in the
22 right -- no pain in the arm hand denies weakness patient
23 completed 15 weeks thus far of physical therapy without
24 significant improvement.

25 Takes Neurontin was increased with some improvement.

1 No eval for ESI which stands for epidural steroid injection thus
2 far. Risk benefit of the potential 1 level ACDF were discussed
3 with the patient.

4 Patient was interested but stated he maybe released
5 from prison in two weeks. Patient would like to proceed with
6 scheduling of surgery in the case he is not released.

7 Q Were you aware that less than a year before this
8 accident even happened an ACDF was recommended by a neurosurgeon
9 for the same exact level that you performed that surgery?

10 A Was it exactly? Let me check if it was the same level.
11 No, I was not aware.

12 Q Again, it's the same exact level, right, C6, C7?

13 A Yes, he does say C6, C7.

14 Q And that's where you performed the surgery?

15 A That's correct.

16 Q That's where this doctor recommended that surgery be
17 performed a year before this accident even happened?

18 A Yes, we agreed on the level.

19 Q You agreed?

20 A Yes.

21 Q Thank you. You have no reason to believe that
22 neurosurgeon's diagnosis and recommendations were inaccurate,
23 right?

24 A No.

25 Q Is it fair to say that's a significant piece of medical

1 history that you would have liked to know when you treated Mr.
2 Davis?

3 A Yes, I would have like to known this, sure.

4 Q If when you first saw Mr. Davis in 2016 you were aware
5 of that history, would it have impacted your opinion that the
6 competent producing cause of his injury was the December 3, 2015
7 accident?

8 A Um, not really. I will explain why. Um, first of all
9 the two MRI's may have been slightly different. The patient
10 obviously didn't go with surgery. That could mean that he
11 improved even though he had initially gotten better with some
12 conservative treatment and did not undergo the surgery at that
13 time.

14 He went back to work. He was working full duty as a
15 construction worker and, um, and then something else happened.
16 To me this almost it's a good analogy like the straw that broke
17 the camel's back.

18 Did he have a preexisting condition, yes. Did he have
19 herniated disc, yes but may not have been symptomatic enough for
20 him to want to do the surgery, may have gotten better with
21 therapy or with an epidural injections.

22 Then he had another injury which put him over the edge.
23 So, I'm not, this doesn't prove that, um, that, the previous
24 accident was the only cause for his pain and symptoms.

25 Q But it does prove that a year before this accident even

1 happened the surgery that you performed was already recommended
2 and the plaintiff was interested in having it based upon his
3 current status of imprisonment?

4 A Yes.

5 Q Thank you. And that surgery was recommended because
6 the plaintiff was experiencing pain a year before this accident
7 even happened as documented in that record?

8 A Yes.

9 Q What's Neurontin?

10 A It's a medication used to treat nerve pain.

11 Q The nerve pain Mr. Davis was experiencing before this
12 accident even happened, right?

13 A Yes.

14 Q Were you aware that in 2011 Mr. Davis was in a car
15 accident?

16 A No.

17 Q Were you aware that in 2011 Mr. Davis was being treated
18 for injuries to his cervical spine, lumbar spine and left
19 shoulder in 2011?

20 A No.

21 Q Is it fair to say that that is a significant piece of
22 medical history you would have liked to know when you treated
23 Mr. Davis in 2016?

24 A I would have like to known but I don't think it's
25 critical in terms of one deciding whether or not to do surgery

1 on him or even deciding because he got better with conservative
2 management at that time and he went on to be functional up until
3 the time when I saw him.

4 Q So, I'm sorry, Doctor, my question I think somewhere in
5 there your response was the answer. I asked you if you would
6 like to have known that when you treated him in 2016, would you
7 have liked to know that?

8 A Yes.

9 Q You would have like to know that because it was
10 significant, right?

11 A I'm not sure because like I said, he obviously got
12 better and he went back to functioning normally after the
13 accident with conservative management after the first accident
14 the car accident you talking about.

15 Q We can agree that you wouldn't want to know irrelevant
16 information, right, you didn't ask him what his favorite color
17 was, would you?

18 A No.

19 Q You wanted to know significant medical history, right?

20 A Yes.

21 Q And that's something you would have liked to know?

22 A Yes.

23 Q If when you first saw Mr. Davis in 2016 you were aware
24 that in 2011 he was in a car accident, he injured his cervical
25 spine, lumbar spine, left shoulder, was treating all of it,

1 would that have impacted your opinion that the competent
2 producing cause of this injury was the accident on December 3,
3 2015?

4 A Again, I would have like to know that but I don't think
5 that would have impacted in my opinion whether or not the last
6 accident was the significant cause of his injury to his neck.

7 Q Thank you, Doctor. Were you aware that in 2003 Mr.
8 Davis was in a car accident?

9 A No.

10 Q Were you aware that in 2003 Mr. Davis was again being
11 treated for injuries to his cervical spine and lumbar spine?

12 A I was not aware, no.

13 Q So, I assume that you were also unaware that on April
14 1st of 2003 an MRI was performed on Mr. Davis' neck and the MRI
15 revealed bulging at C2,3 herniation at C3,4 herniations at C4,
16 C5, bulging at C5, C6 and bulging at C6, C7; you were unaware of
17 that at all?

18 A I was not aware of that.

19 Q Is it fair to say that that is also a significant piece
20 of Mr. Davis' medical history that you would have like to known
21 when you treated him in March of 2016?

22 A Yes.

23 Q Is it fair to say that when you first saw Mr. Davis in
24 March of 2016, if you were aware of that history it would have
25 impacted your opinion that the competent producing cause of his

1 injury was the accident on December 3, 2015?

2 A It may have.

3 Q Now, you have your medical records with you, right?

4 A Yes, I do but they're in my bag. I have to get them,
5 I'm sorry.

6 MR. FEMIA: If you don't mind, Doctor, I'll hand
7 you your bag.

8 THE WITNESS: Thank you so much.

9 Q In your medical records Mr. Davis denied any past
10 medical history regarding left shoulder, his neck and his back;
11 is that correct?

12 A I did not record anything of that sort so, yes.

13 Q And I want you to take a look at your surgical
14 pathology report within your records dated March 28th '16?

15 A Yes.

16 Q Do you see a section called clinical history?

17 A Yes.

18 Q What's that mean?

19 A It means clinical history.

20 Q For us layman people for us non-medical providers, can
21 you explain what clinical history means?

22 A Clinical history is history of his past medical and
23 surgical conditions.

24 MR. MILLS: Judge, I have a sidebar objection I
25 think this is better suited for.

1 (Whereupon a discussion was held off the record.)

2 Q Doctor, I'm not sure we got an answer to that last
3 question. What is clinical history, what does that mean?

4 A It includes past medical history, surgical history of
5 the patient.

6 Q And so you specifically asked about his past medical
7 history and what did he say regarding his past medical history
8 regarding his shoulder, his neck, his back?

9 THE COURT: Only with respect to that doctor.

10 THE WITNESS: Let me check.

11 Q No, in your clinical history, in that line?

12 A You talking about that particular note?

13 Q Yes, that particular note?

14 A This is not a note written by me. This was written by
15 the pathologist.

16 Q Right but it's contained within your records, right?

17 A Like I said this is not my note.

18 MR. MILLS: Objection judge speculation as to what
19 went into creating this note.

20 THE COURT: I'm going to allow him to get there
21 but I want you to ask the question again so the doctor
22 specifically knows what you are asking about.

23 Q Doctor, I'm asking you about the clinical history
24 section of that pathology report and what Plaintiff said
25 regarding any prior neck, back and shoulder injuries that we're

1 here for today?

2 MR. MILLS: My objection is just because we don't
3 know where this history is derived from and he's saying
4 what the plaintiff said.

5 THE COURT: It's part of his medical records.

6 THE WITNESS: Yeah but it's not my note. Its' the
7 pathologist's note.

8 MR. MILLS: He said what the plaintiff said but we
9 don't know if that's where the information is derived from.

10 THE COURT: Understood. We've established this is
11 not his note but it's part of his medical record. He is
12 being asked to read that particular note in a very specific
13 fashion.

14 THE WITNESS: To answer the question I can read
15 you what it says.

16 THE COURT: No. That's the point, Doctor.

17 THE WITNESS: I don't know what he said because I
18 didn't --

19 Q I'm talking about the first part of his response?

20 A Denies medical history.

21 Q And the surgical pathologist, excuse me, he doesn't
22 meet with Mr. Davis, right?

23 A He does not, no.

24 Q The pathology that we're talking about is the specimen
25 from when you performed the shoulder surgery, right?

1 A Correct.

2 Q And the pathologist gets a copy of your records, right?

3 A I don't know where he got this. This could be a typo
4 too. I have no idea.

5 Q I'm glad you asked that question. We'll get there
6 next. I also want you to take a look at your intake notes from
7 March 1st of 2016; those are your notes, right?

8 A Those are the notes that the patient generated.

9 Q Even better Mr. Davis generated those notes. Do you
10 see a section that says have you ever had anything like this
11 happen to you before?

12 A Yes.

13 Q What does it say?

14 A Answer is no.

15 Q The answer is what?

16 A No.

17 Q That's what Mr. Davis wrote?

18 A Yes.

19 Q Got it. Now let's take a look at your initial
20 orthopedic consult?

21 A Yes.

22 Q You there?

23 A Yes.

24 Q That's what you wrote?

25 A Yes.

1 Q So, before we were talking about what Mr. Davis wrote.
2 Before that we were talking about what the pathologist wrote.
3 Now we're talking about what you wrote?

4 A Yes.

5 Q Do you see a section that says past medical history?

6 A Yes.

7 Q What does it say?

8 A He denies any past medical history.

9 Q He denies any past medical history right?

10 A Yes.

11 Q Knowing what you know now, is that answer accurate?

12 A No.

13 Q Staying with your medical records, could you please
14 explain to the jury what a straight leg raise test is?

15 A It's a test provocative test to see if there is any
16 nerve irritation or compression in the lower back in the lumbar
17 spine, nothing to do with the neck.

18 Q So, and Doctor, can you explain to the jury what you
19 asked the patient to do when you performed a straight leg raise
20 test?

21 A Okay. So when examining his lumbar spine you could do
22 two ways. You could have him lying down, ask him to raise the
23 leg up and if it's positive at some point he will feel shooting
24 pain down the leg.

25 Usually that occurs if somebody has a significant

1 herniated disc will occur about 40 degree or he can do this test
2 while sitting down. You do the same test while sitting down,
3 ask him to extend the knee and, um, if he does have nerve root
4 compression or irritation of the nerve, at some point as he
5 raising the knee, he would feel the shooting pain down the leg
6 and he did not have that.

7 Q And when you said radiating, is that part and parcel
8 with radiculopathy?

9 A Yes but when you do straight leg raise we're talking
10 about the leg not the neck.

11 Q You're aware that Mr. Davis is making claims that he
12 also injured his back in this accident for something that hit
13 him up by his head, neck shoulder region, right?

14 A Yes. He was complaining of some back pain but while he
15 was under my care it improved.

16 Q Improved?

17 A Yes.

18 Q And each time you saw Mr. Davis approximately 15 times
19 or so from 2016 through 2018 into '19; is that fair to say?

20 A Yes.

21 Q Each time you saw him you performed the straight leg
22 raise test, right?

23 A That's correct.

24 Q And I could walk you through them but I don't want to
25 belabor the point. Are each of them negative every single time?

1 A Yes. He did not have a positive raise test.

2 Q Meaning that the test was indicative of no lumbar
3 bulges, herniations or radiculopathy?

4 A No, doesn't mean that.

5 Q It means that the test, I'm asking you about the test?

6 A The test means that there is no nerve root irritation.
7 It doesn't mean he doesn't have bulging disc or herniated disc
8 because the only time you would have an positive leg raise is if
9 you have a certain type of disc herniation on the spine not
10 straight in the middle but on the side of the disc.

11 You can have a central disc herniation with a negative
12 straight leg test.

13 Q I understand that but that's not the question I asked
14 you?

15 A I'm sorry.

16 Q I asked you that, the test itself was indicative of a
17 finding that there weren't those things herniations and bulges;
18 does the negative straight leg raise test being negative
19 indicate that there is a herniation?

20 A Okay. So, that's what I'm trying to clarify. It
21 doesn't mean there is no herniation. It means there is no nerve
22 root irritation. That's what it means. There's no nerve root
23 compression of irritation.

24 That's what it means. It doesn't mean that there's no
25 herniation or bulging disc.

1 Q I understand that but my question is the test, the
2 finding of that specific test being negative is indicative of a
3 negative not a positive, right?

4 A Yes, negative nerve root irritation.

5 Q And before I believe you said you performed hundreds if
6 not thousands of spinal fusions in your career, right?

7 A Yes.

8 Q It's one of the most common surgeries at your practice,
9 right?

10 A Yes.

11 Q And after a spinal fusion people can often go back to
12 full life and enjoyment of the their life and activities, right?

13 A Not all the time sometimes yes.

14 Q Is it fair to say after final fusions people go on to
15 play professional sports?

16 A Yes.

17 Q For example you heard Tiger woods had 4 of these
18 things?

19 MR. MILLS: Objection, judge.

20 THE COURT: Sustained.

21 Q Now, you are aware after you stopped treating Mr. Davis
22 he was being treated by Dr. Merola, right?

23 A I'm not aware of that, no.

24 Q Well, you were just told of that before, right?

25 A He asked me who he was. I said I know who he was but

1 I wasn't aware I haven't reviewed any records of Dr. Merola so
2 I'm not familiar with what he did or didn't do.

3 Q Are you aware that Dr. Merola who treated plaintiff
4 after you is involved in 5 different lawsuits for fraudulent
5 medical treatment?

6 MR. MILLS: Objection, Judge.

7 THE COURT: Sustained.

8 Q I want you to assume that just the other day plaintiff
9 testified that his past medical history treatment included
10 fraud; would that impact your opinion of the accuracy of your
11 medical history?

12 MR. FEMIA: I have the minutes, Your Honor. I can
13 show them.

14 MR. MILLS: The question seems off just because --

15 THE COURT: What's the objection?

16 MR. MILLS: Can I have clarification of the
17 question. I don't know what he --

18 MR. FEMIA: I know he wants to change --

19 THE COURT: If you guys try to talk over each
20 other it's going to continue to create issues for your
21 record.

22 MR. MILLS: If I can have a clarification of what
23 his question is.

24 THE COURT: No. There's a question before the
25 witness. If you would like the question read back that's

1 fine.

2 MR. FEMIA: Oh, I can read it again.

3 THE WITNESS: Please because I don't understand
4 the question.

5 Q I want you to assume just the other day plaintiff
6 testified that his past medical treatment included fraud, would
7 that impact your opinion on the accuracy of your medical
8 history?

9 A Can I ask a question. What do you mean by fraud, what
10 was the fraud?

11 Q Fraudulent treatment?

12 MR. MILLS: No. No. You can't make stuff up.

13 THE COURT: Time out. The witness can't ask you
14 questions. So, you have to be clear in your question. As
15 I said, Dr. Katz, if you don't understand or you don't
16 know, that's fine.

17 THE WITNESS: I don't understand the question, I'm
18 sorry.

19 THE COURT: Mr. Femia try to rephrase it.

20 Q If I tell you that the other day the plaintiff
21 testified that his past medical treatment history included
22 fraudulent medical treatment, would that change your opinion on
23 the accuracy of your medical history?

24 MR. MILLS: Objection, Judge.

25 THE COURT: What is the objection.

1 MR. MILLS: The testimony is that --

2 MR. FEMIA: Your Honor, I would object.

3 THE COURT: Guys. Stop. Like I said, you can't
4 speak over each other. I don't want speaking objections.
5 If I ask you for a basis it's a one word answer. What's
6 the basis of your objection?

7 MR. MILLS: It's assuming facts that's not in
8 evidence. There is no evidence of fraudulent treatment at
9 all.

10 THE COURT: Mr. Femia, if you can provide the
11 testimony to which you are discussing since we do get daily
12 transcripts please do so.

13 MR. FEMIA: Your Honor, I take exception to --

14 THE COURT: Guys, you're messing up your record
15 not mine.

16 MR. MILLS: There is no testimony of fraudulent
17 treatment.

18 THE COURT: Mr. Mills.

19 MR. FEMIA: Should I read it for the court?

20 THE COURT: Please and I have it so page and line
21 number, please. Ladies and gentlemen just by way of
22 information, the reason you see two court reporters coming
23 and going because the attorneys, as is their right, have
24 requested daily transcripts.

25 What that means is that whatever one takes down

1 has to then be transcribed. So, that's why there's a
2 switch off. You can't do it without the switch off and
3 then we get the transcripts for the day, the day prior the
4 next day.

5 So, that is specifically where I believe Mr. Femia
6 is reading and if you can give me also the date, Counsel,
7 so we're sure we're all on the same page.

8 MR. FEMIA: The date of the testimony was January
9 17th which I believe was last Friday, Page 317 of the
10 transcript:

11 Question. Line 14: Okay and similarly do you
12 recall being treated by Allstate Social Work and Psychology
13 Services PLC at 2833 Ocean Parkway, Suite C, Brooklyn, New
14 York for evaluation for psychotherapy treatment as a result
15 of your accident in 2003.

16 Answer. That never happened.

17 Question. Okay. And then do you recall actually
18 having certain medical devices prescribed for you as a
19 result of your accident of 2003 and specifically orthopedic
20 pillow and portable whirl pool.

21 Answer. That's fraud that was the fraud thing we
22 and the guy was talking too because I couldn't have a pool
23 inside my apartment so we had a long discussion with my
24 lawyer that that was fraud.

25 MR. MILLS: That's medical billing not treatment.

1 MR. FEMIA: Your Honor, I again would take
2 exception with Mr. Mills testifying.

3 THE COURT: Thank you. I do as well. So, Mr.
4 Femia, one more time with your question, please?

5 Q So, again, having just heard the testimony that Mr.
6 Davis' past medical treatment history included fraud?

7 THE COURT: Hold on a second. It's a
8 mischaracterization. Those were, that was medical
9 equipment being provided to him to the extent that medical
10 equipment is part of his treatment, I think you're over
11 categorizing it.

12 MR. FEMIA: This is part of his medical record,
13 treating record of medical devices that he was provided.

14 THE COURT: Medical devices that he was provided.

15 MR. MILLS: That's he wasn't provided.

16 THE COURT: Well and there was an issue with them
17 being provided. Let's clear up the question and then you
18 can answer.

19 Q The fact that fraud was involved in his past medical
20 history and treatment, would that impact any of your opinions on
21 the accuracy of your records?

22 A The answer is no because I can't comment on what was
23 done or wasn't done seven years prior to when I treated him.
24 When I treated him I can only speak on what I did for him and
25 what reason it was done. It would not impact my opinion.

1 Q Doctor, before we broke for lunch we spoke briefly
2 about having to differentiate between subjective findings and
3 objective findings, right?

4 A Yes.

5 Q When I talk about subjective complaints that's
6 something like a patient says I feel nauseous that's a
7 subjective complaint, right?

8 A Yes.

9 Q And objective finding would be if you saw the patient
10 vomit in front of you?

11 A Yes.

12 Q You're aware keeping that concept in mind in fact you
13 learned this in medical school there's a concept called
14 secondary gain?

15 A Yes.

16 Q Explain to the jury what the concept of secondary gain
17 please, Doctor?

18 A Secondary gain, that's like if a student doesn't want
19 to go to school, he will tell the parents he is not feeling
20 well. The secondary gain is to stay home.

21 Q It's a lie?

22 A Yes.

23 Q And a secondary gain is fair to say when a patient has
24 other reasons besides getting better to complain of certain
25 things?

1 A Yes.

2 Q A lawsuit is one of those things, right?

3 A Yes.

4 Q You weren't aware when you were treating him that Mr.
5 Davis had an active lawsuit, right?

6 A No.

7 Q Active lawsuit for an injury that happened before
8 December 3, 2015, you are unaware of that, right?

9 A I was not aware of that, no.

10 Q This is not your first time being involved in a
11 personal injury trial, right?

12 A No.

13 Q Mr. Davis wasn't referred to you by a doctor, he was
14 referred to by a lawyer; isn't that correct?

15 A I don't know who referred him to me. Honestly, I don't
16 remember. It's not recorded in my notes.

17 Q It's fair to say that you receive patients from
18 plaintiff attorney's, right?

19 A Very rarely. Usually they come from other physicians.

20 Q But you do receive patients from plaintiff attorney's,
21 right?

22 A Again, I don't know where Mr. Davis came from but on
23 rare occasion.

24 Q In fact your grateful for plaintiff attorney's to send
25 you patients, right?

1 MR. MILLS: Objection, Judge.

2 THE COURT: Sustained.

3 THE WITNESS: I treat all patients.

4 THE COURT: Sustained. Dr. Katz, you don't have
5 to answer.

6 Q You were paid for Mr. Davis' shoulder surgery, right?

7 A Yes.

8 Q You were paid for Mr. Davis' neck surgery, right?

9 A Yes.

10 Q You were paid for all the followup treatment that you
11 provided Mr. Davis?

12 A As far as I recall, yes.

13 Q And you were paid to testify here today?

14 A Yes.

15 Q How much are you being paid?

16 A 450 an hour.

17 Q \$450 an hour?

18 A Yes.

19 Q Let's get back to the medical history. It's fair to
20 say that the taking of a medical history is kind of twofold, the
21 patient needs to give the doctor accurate medical history and
22 then the doctor needs to accurately record that history,
23 correct?

24 A Yes.

25 Q Are you aware of any recording inaccuracies that you

1 committed within that record?

2 A Honestly this happened so long ago I don't recall.

3 Q I will ask you to take a look at your record. Any
4 inaccuracies that you aware of that you recorded?

5 A Not to my knowledge.

6 Q Okay. That's fine. So, is it fair to say, Doctor,
7 that if there are any medical history inaccuracies contained
8 within your records it would be because Mr. Davis provided an
9 inaccurate medical history?

10 MR. MILLS: Objection, Judge, speculation.

11 THE COURT: Sustained.

12 MR. FEMIA: Your Honor, I don't believe we're
13 speculating if it addresses prior testimony?

14 THE COURT: Sustained.

15 Q And it's very important for you as a doctor to get
16 accurate information from the patient to formulate an opinion as
17 to whether or not certain events caused the injury; is that fair
18 to say?

19 A Yes.

20 Q And your diagnosis is dependent upon that history being
21 accurate; isn't that correct?

22 A To a degree.

23 Q Doctor, you recall testifying previously on October 31,
24 2013 in the matter of Edward Vodof (ph) against Tahir (ph)
25 Mahood (ph) and Robot Taxicab right over here in Brooklyn, New

1 York?

2 MR. MILLS: Objection, Judge, it's irrelevant.

3 MR. FEMIA: I'm impeaching the witness. I'm
4 allowed to do this.

5 THE WITNESS: Not at moment. If you want to show
6 me what I testified to.

7 MR. FEMIA: I will give you a copy in case we have
8 to do it a few times.

9 Q Doctor, I want to direct your attention to Page 41 Line
10 18. You were asked the following question and gave the
11 following answer:

12 Question. Your diagnosis is dependent on that
13 history being accurate.

14 Answer. Yes.

15 Q Is that what you testified to on October 31, 2013?

16 A Yes.

17 MR. FEMIA: Thank you, Doctor.

18 MR. MILLS: What was the name of that case, I
19 wasn't given a copy.

20 MR. FEMIA: Edward Vodof against Tahir Mahood and
21 Robot Taxicab Index Number 18898 dash 10.

22 Q Doctor, how do you arrive at a diagnosis?

23 A Diagnosis depends on three things, 90 percent from
24 history but 5 to 9 percent is physical exam and the rest is
25 testing.

1 Q I'm sorry you said 90 percent from history?

2 A Yes, roughly.

3 Q What if the entire history you were given was
4 inaccurate, would that affect your diagnosis?

5 A If everything else didn't make sense, yes.

6 Q And as we discussed here today, the entire history that
7 you were given for Mr. Davis not to through your own fault was
8 inaccurate, right?

9 MR. MILLS: Objection, Judge.

10 THE WITNESS: That's not true.

11 THE COURT: Hold on. Overruled.

12 Q Did you know about his accident in 2003 where he
13 injured his neck, back and shoulder?

14 A No.

15 Q Did you know about that medical treatment?

16 A No.

17 Q Did you know about his accident in 2011 where he
18 injured again his neck, back and shoulder?

19 A No.

20 Q Did you know about that medical treatment?

21 A No.

22 Q Did you know about the MRI that confirmed there were
23 bulges and herniations up and down his cervical spine before you
24 saw him?

25 A Yes. I mean I didn't know.

1 Q Did you know that in 2014 he was involved in a savage
2 beating that he started a lawsuit about for neck, back and
3 shoulder injuries?

4 A No.

5 Q But yet you still say that the competent producing
6 cause of his injury was an accident on December 3, 2015?

7 A Yes.

8 MR. FEMIA: Got it. I have nothing further,
9 Judge.

10 THE COURT: Any redirect?

11 MR. MILLS: Yes.

12 RE-DIRECT-EXAMINATION BY MR. MILLS:

13 Q You were just questioned about the history, did know
14 that Mr. Davis was doing physical manual labor before the
15 accident of December 3, 2015?

16 MR. FEMIA: Objection, leading.

17 THE COURT: Overruled.

18 A When he came to me he, I knew that he was working in
19 construction with no restrictions.

20 Q And I also want to clear this up because the questions
21 were asked in a row and I want to make sure we're clear. You
22 talked about, you were just questioned about being paid for your
23 medical services that's unrelated to any lawsuit, anything,
24 correct?

25 A I was paid by the Worker's Comp Insurance Company. The

1 insurance company paid me for my services.

2 Q Has thing to do --

3 A With any lawyers or anything like that.

4 Q For your medical treatment?

5 A Correct.

6 Q But us paying you because you had to leave your
7 practice and couldn't have appointments and things today that's
8 completely different, correct?

9 MR. FEMIA: Objection form. I have to make the
10 objection.

11 THE COURT: You don't have to actually. You know
12 that. Overruled. Not every objection has to be made,
13 Counsel and you know that. That goes for everyone.

14 Q And lastly, Doctor, you were questioned about, made
15 some mention of fraud and I want to make sure we're clear with
16 this; did it impact your treatment at all?

17 A No.

18 Q If a medical provider said that they sent out supplies
19 like a --

20 MR. FEMIA: Objection, Your Honor. This is the
21 same objection. This is leading. He wasn't even able to
22 talk about it but now we're going back.

23 THE COURT: Yeah. Counsel, your question, I can
24 already tell is confusing. So, I mean if you want to try
25 to rephrase you can do so but.

1 Q Sure. Your were questioned about a medical provider
2 that said they sent or was saying they sent spas to people
3 houses so that --

4 THE COURT: No. No. Counsel, we did not go into
5 the entirety of that explanation or testimony.

6 MR. MILLS: I want to clear this up.

7 THE COURT: You're adding portions of possibly
8 testimony that was on the record. I don't know because I
9 don't remember specifically.

10 MR. MILLS: Understood. I will withdraw it,
11 Judge. Nothing further.

12 THE COURT: Thank you, Doctor.

13 THE WITNESS: Thank you so much.

14 (Whereupon, the witness stepped down from the
15 witness stand.)

16 THE COURT: Mr. Mills, your next witness.

17 MR. MILLS: I do. Can I grab him from the
18 hallway.

19 (Whereupon, the witness entered the
20 courtroom.)

21 THE CLERK: Sir, do you swear or affirm the
22 testimony you are about to give is the whole truth and
23 nothing but the truth against all penalties of perjury?

24 THE WITNESS: I do.

25 THE CLERK: You may have a seat and state your

1 first and last name spelling the last for this record,
2 please?

3 THE WITNESS: Edmond Alan Provder E-D-M-O-N-D
4 A-L-A-N P-R-O-V-D-E-R.

5 THE CLERK: Your business address for this record,
6 Sir?

7 THE WITNESS: 575 Madison Avenue, New York, New
8 York 10021.

9 THE COURT: Thank you. So, Mr. Provder, if you
10 can speak slowly and clearly. Listen to the questions that
11 are requested and answer those questions. If you don't
12 know or you don't understand, you could say that and the
13 attorney's will adjust accordingly, okay.

14 THE WITNESS: Yes.

15 THE COURT: Mr. Mills and Counsel, please be
16 mindful. I think we just need to speak a little louder.

17 DIRECT-EXAMINATION BY MR. MILLS:

18 Q Mr. Provder, I'm going to remind you again to reenforce
19 the point to keep your voice up so everyone can hear and you and
20 the court reporter can get everything down; can you tell us what
21 your profession?

22 A I'm a rehabilitation counselor.

23 Q What is that?

24 A A rehabilitation counselor is an individual whose been
25 educated and trained to work with people that have various

1 disabilities or impairments and what we do is we look at how
2 those impairments impact on their ability to work and their
3 ability to earn money.

4 If we believe they're employable we will assist them
5 locating jobs they could do given their capabilities. In
6 addition we look at if it's somebody whose significantly
7 injuries, what their long-term rehabilitation care needs are
8 going to be by conducting what's called a life care plan.

9 Q Tell us why your educational background allows you to
10 be able to do that?

11 A I have a Bachelors Degree in Rehabilitation Counselling
12 from the Pennsylvania State University. A master's degree in
13 Rehabilitation Counseling from the Pennsylvania State
14 University.

15 After receiving my Master's Degree I continued with my
16 education at New York University, completing the 42 credits
17 required towards a doctorate with my dissertation to be
18 completed.

19 Q Tell us a little about your work history?

20 A Okay. I'll try to keep it brief because I'm on my 51st
21 year doing this work. I started out after graduating from
22 Pennsylvania state in 1973. I became employed as a
23 rehabilitation counselor at the Federation of the Handicapped
24 here in New York City.

25 At the federation I was involved in a program called

1 the Higher Horizon for the homebound and at that program we
2 worked with people that had severe physical and emotional
3 impairments. I was involved in performing the four basic
4 services of rehabilitation counselors.

5 These are individual group counseling working with the
6 clients to assist them in adjusting to their disabilities and
7 helping them to determine what type of jobs they're capable and
8 want to do.

9 Secondly I was involved in performing vocational
10 evaluation and testing evaluating the clients to find out what
11 they can and cannot do by giving them various tests.

12 MR. MILLS: One second.

13 THE COURT: Sorry guys.

14 MR. MILLS: We're going to give the judge a
15 minute. She was having a coughing fit.

16 (Whereupon, Senior Court Reporter Victoria Bifulco
17 began recording the following proceedings:)

18

19

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25

E. Provder - Plaintiff - Direct

1 Q Hold on one second.

2 THE COURT: All right. Guys.

3 THE WITNESS: Am I okay?

4 THE COURT: You're okay.

5 We are going to take five minutes.

6 THE COURT OFFICER: All rise. The jury is
7 exiting.

8 (Whereupon, at this time, the jury exits the
9 courtroom.)

10 THE COURT: Okay. You can line them up.

11 THE COURT OFFICER: All rise. The jury is
12 entering.

13 (Whereupon, at this time, the jury enters the
14 courtroom.)

15 THE COURT: You may be seated, guys.

16 Thank you.

17 Thank you so much, ladies and gentlemen. I
18 apologize for that.

19 Mr. Mills, when you are ready, you can continue.

20 MR. MILLS: Thank you.

21 DIRECT EXAMINATION

22 BY MR. MILLS:

23 Q Mr. Provder, you were going through your work
24 history. You can start recently.

25 Defense may ask you questions about the eighties and

E. Provder - Plaintiff - Direct

1 nineties, but I want you to focus on recently back to where
2 you are now.

3 A Say it again.

4 Q Do you want me to start at the beginning or you can
5 come forward?

6 A I'll briefly go through it, okay.

7 At the Federation of Handicapped, I was involved in
8 four basic services. First was individual and group
9 counseling. Second was vocational evaluation and testing.
10 Third was work adjustments which meant I prepared people for
11 employment, and, lastly, was job placement services. I
12 located jobs that clients could do given their capabilities.

13 I did that for about a year and a half, and then
14 became employed at Mt. Sinai Hospital, Department of
15 Rehabilitation Medicine here in New York City.

16 At Mt. Sinai I supervised the vocational facilities
17 which consisted of vocational evaluation add work area and
18 sheltered work shop. I supervised five professional staff
19 members and worked with a population of people that had
20 physical disabilities as well as people that had emotional
21 disabilities.

22 I served as the liaison counsellor between the Mt.
23 Sinai Vocation Program and the State Vocation Rehabilitation
24 Program.

25 After Mt. Sinai I started my own company called

1 Occupational Assessment Services which provided vocational
2 rehabilitation and life-care planning services for individuals
3 that are injured. We work with people that have severe
4 physical disabilities, as well as people that have both
5 emotional disabilities, sensory disabilities as well as people
6 that have very catastrophic injuries, and that brings us up to
7 date.

8 Q And have you done any work for the federal
9 government?

10 A Yes. I started out as a vocational expert for the
11 Office of Hearings and Appeals Social Security Administration
12 which means that I was called by the Federal U.S.
13 Administrative Law Judges to render opinions as to the
14 employability of people seeking Social Security Disability
15 benefits, and in that capacity I was the youngest expert the
16 Federal Government ever had. I was 26 years of age, and I
17 testified in over 2500 cases as an expert for the government.

18 Q Do you have any certifications?

19 A Yes. I am a certified rehabilitation counsellor. I
20 have been certified since the onset of certification in 1974.
21 In order to maintain certification, you have to complete one
22 hundred course credit hours in a five-year period.

23 I am also a diplomate of the American Board of
24 Vocation Experts which there are approximately 400 of us, and
25 these are individuals that have similar backgrounds that I

1 have, meaning they work for the government and they have
2 transferred in doing evaluations such as I did in this case in
3 personal injury cases.

4 I am also a certified life-care planner which means
5 that I have taken a 128 hour course at the University of
6 Florida on catastrophic case management.

7 In addition for four years just recently ended, I was
8 a commissioner for life-care planning and, in fact, I am one
9 of the oldest planners that perform this work still, not by
10 age but I was one of the first people doing life-care plans
11 back in 1981.

12 Q Do you have any professional affiliations?

13 A Well, yes. I am a member of most of the professional
14 organizations in my field. The market Board of Vocational
15 Experts. The International Association of Rehabilitation
16 Professionals in the private sector. And I am also a member
17 of the group called area, A-R-E-A which the American
18 Rehabilitation and Economic Association.

19 MR. MILLS: Judge, at this time I offer Mr.
20 Provder as an expert in the rehabilitation counseling,
21 life care planning and employability and ask that he be
22 allowed to give his opinion to a reasonable degree of
23 rehabilitation counseling certainty or expert certainty
24 in that field.

25 MR. GRILLO: Your Honor, I don't have an

E. Provder - Plaintiff - Direct

1 objection, however, I don't think anything has been
2 elicited about trial testimony and the courts he
3 testified in.

4 MR. MILLS: He said he testified over 500 times.

5 MR. GRILLO: That was simply in the hearings I
6 thought.

7 THE COURT: Any objection other than to state
8 that?

9 MR. GRILLO: Not at this point.

10 THE COURT: He will be admitted as an expert.

11 Q Have you testified in court, Mr. Provder?

12 A Yes. I testified on average of anywhere from in
13 court from 12 to 15 times a year and depositions about the
14 same amount.

15 Q Okay.

16 MR. MILLS: Good enough?

17 MR. GRILLO: Yeah. No. Thank you. I thought
18 you meant to ask him before.

19 Q At my office's request, did you perform a life-care
20 plan for Kareem Brown?

21 A I did.

22 Q You met with Mr. Brown to do so?

23 A I did.

24 MR. GRILLO: Kareem Davis.

25 MR. MILLS: What?

E. Provder - Plaintiff - Direct

1 MR. FEMIA: Kareem Davis.

2 Q I'm sorry. You met with Mr. Davis yourself?

3 A Yes.

4 MR. GRILLO: You want to stipulate on the record
5 the two prior references to Brown are Mr. Davis.

6 THE COURT: Thank you.

7 Q And where did that -- I want to talk about you met
8 Mr. Davis in what year 2000, 2019, 2018?

9 A Yes. He was evaluated on April 3, 2018.

10 Q And where did you meet with him at?

11 A In my office in New York City.

12 Q And can you just describe for me what a life-care
13 plan is?

14 A A life-care plan details the cost of care and the
15 type of care that somebody is going to require over their
16 lifetime due to their impairments.

17 Q And how do you determine what a life-care plan is for
18 a specific individual, specifically for Mr. Davis?

19 A Yes. Well, as I have testified to, I have been doing
20 this since 1981, and I always worked with people that have
21 severe and catastrophic injuries, so I would work with them
22 and develop their long-term care need plans.

23 So based on my experience, I am able to put together
24 a plan that would meet that particular individual's needs.

25 Q For what purpose? What is the purpose of it?

1 A Excuse me?

2 Q What is the purpose of that examination?

3 A Well, the purpose is to layout what the person's
4 medical and home care needs are and the types of services they
5 are going to require to maintain them in their capabilities
6 given their condition.

7 Q And what rehabilitation counseling philosophy do you
8 use in the development of the life-care plan, specifically for
9 Mr. Davis?

10 A What I do is I look at what the person's needs are
11 and their cost of these needs in their geographical area.

12 Many times there is a partner who provides some
13 services to that individual. We do not consider that
14 partner's services because they may not be available over that
15 person's lifetime, so we will build in home care if necessary
16 into the plan.

17 Q And what did the life-care planning assessment
18 consist of?

19 A It consists of five parts. The first part involved
20 the review of various medical records that were forwarded to
21 me. Second, I conducted what is called a standard diagnostic
22 interview to obtain information regarding Mr. Davis' age, his
23 education, his past work experience, his physical complaints,
24 the medical treatment that he has had.

25 Thirdly, I will layout -- I will find out what

1 treatments he has received. Next I will layout a plan and
2 then research each of those items and the cost of those items
3 in his geographical area.

4 Q And those records that you spoke about, did my office
5 forward those records for you to review?

6 A Yes.

7 Q Can you describe for me what you gathered from those
8 records?

9 A Yes. Well.

10 Q Did you bring your file with you today?

11 A It's a little large.

12 Q All right. But you can refer to it if you need to as
13 you testify?

14 A Unfortunately, I don't have a table. That's what I
15 really need.

16 The records that I reviewed -- let me just go back.
17 Hold on. Give me a second. Okay.

18 The records that I reviewed basically talked about
19 his treatment at that time and any hospitalizations or
20 surgeries that he had, the doctors that he was seeing at the
21 time and any therapy he was receiving, any pain management
22 specialties that he was receiving.

23 And I also looked at any medicines that he was
24 receiving. What we also call his activities of daily living.
25 What he could do by himself, whether he needs any assistance,

1 and then I will look at all those items.

2 I will develop a plan that will meet his particular
3 needs. The plan is a I call it a blueprint or road map as to
4 the items that he is going to need.

5 Built into the plan is what we call a rehabilitation
6 plan assessment which is done every five years to see whether
7 he needs these items that are in the original plan, or he may
8 need more or less of the items if his condition changes, so
9 that's part of the plan and how it is developed.

10 Q Okay. And after you reviewed the records and
11 compiled your file there, did you perform a life-care planning
12 assessment?

13 A I did. I created charts that would help the jury
14 understand what the finance were.

15 Q Briefly described what you learned based on your
16 meeting with Mr. Davis and the records that you received.

17 A Repeat the question. I'm sorry.

18 Q Sure. Please describe for us what you learned after
19 your meeting with Mr. Davis.

20 A Yes. After I met with him, I gathered information
21 about him and then reviewed the medical records a second time,
22 and then formulated the plan.

23 Q Did you develop in that plan projections based on
24 your examination with Mr. Davis and your evaluation of the
25 records?

E. Provder - Plaintiff - Direct

1 A Yes.

2 Q Can you walk us through what that plan is?

3 A Do we have charts or blow-ups or anything?

4 Q We do.

5 THE COURT: Counsel, make defense counsel aware
6 of what you are putting up on the screen.

7 MR. MILLS: They have it.

8 Hold on.

9 Q I'm going to talk about and show you --

10 MR. GRILLO: Your Honor, may we move?

11 THE COURT: Yes.

12 Q Did you conduct a vocational test of Mr. Davis?

13 A Yes.

14 Q Let's talk about that first.

15 A Okay.

16 Q What was the results of the vocational test?

17 A Well, as part of my history, he indicated to me that
18 he had ended up with a ninth grade at Franklin K. Lane High
19 School with emphasis in special education. He had a learning
20 disability. He attempted to take his GED or high school
21 equivalency, and he failed that and that was his education.

22 So part of that evaluation that I conducted measured
23 various tests that I administered to him.

24 Do we have a chart that indicated --

25 Q You can discuss it.

E. Provder - Plaintiff - Direct

1 A Hold on.

2 Q The vocation test?

3 A Yeah. Hold on. Okay.

4 In the vocational testing is done on a one-to-one
5 basis with me being the only person in the room, and I
6 observed him while he was doing the testing.

7 The first test I administered to him was the Purdue
8 Peg Board, P-U-R-D-U-E, Peg Board test. It measures his
9 dexterity and coordination. It is done in a seated position.
10 His score on the right hand section was below average, the
11 left hand section was below average. Both hand section was
12 below average, and the fourth part assembly section was below
13 average compared to the male industrial applicant norm group.

14 He reported experiencing neck, left shoulder and arm
15 and hand pain while he performed this test that was done in a
16 seated position.

17 The next test was the vocational aptitude battery
18 manual dexterity test. This is a test of his ability to do a
19 three-part assembly. The items that he assembles are
20 approximately one and a half inch in diameter, and there is
21 three parts. He does this in a standing position.

22 His score was below average compared to the
23 competitively employed norm group. He reported experiencing
24 neck, left shoulder, left arm and low back pain while he stood
25 to perform this test.

1 The next test was the vocational aptitude battery
2 finger dexterity test. This is another test that is done in a
3 standing position, and the items that he assembles there are
4 five of them and they are approximately one half inch in
5 diameter, so they are small, and he has to assemble a certain
6 amount in a the five-minute period of time, and his score was
7 below average compared to the competitively employed norm
8 group.

9 Again, he reported experiencing neck and low back
10 stiffness and pain.

11 The next test was the employee aptitude survey verbal
12 comprehension test which is essentially a definition test. He
13 scored below average compared to the general productive male
14 population norm group.

15 He reported this test was done seated and he reported
16 experiencing left shoulder, left arm pain and fatigue.

17 The next test was the employee aptitude survey visual
18 speed and accuracy test which is another test done in a seated
19 position. It is basically a clerical inspection type of a
20 test. We asked him to look at the two numbers to see whether
21 they are the same or different in a five-minute period.

22 His score on this test was below average compared to
23 the general productive male population norm group.

24 He reported experiencing neck, mid-back, low back,
25 left shoulder, left arm pain and had difficulty concentrating

1 on this test.

2 The next test was the employee aptitude survey manual
3 dexterity. This is a test again performed in a seated
4 position, and it measures his ability to use his hands quickly
5 and accurately.

6 His score on this test was below average compared to
7 general productive male norm group, and he reported
8 experiencing pain in his neck, left shoulder and left arm.

9 The last test I gave him -- I don't know if it's on
10 the screen. That's another chart. It's called the
11 dynamometer, D-Y-N-A-M-O-M-E-T-E-R, hand testing.

12 Q Tell us about it.

13 A Yes. This is a test that measures his grip strength.
14 On the right hand which is his dominant hand he scored 15
15 kilograms. On the left he scored 10 kilograms, and on the
16 right the average would be 48.5 kilograms, so his score was
17 about one-third of normal, and on the left the normal would be
18 44.6 kilograms, so his score was about one quarter of normal
19 on this particular test.

20 That was the test that was administered during my
21 evaluation of him.

22 Q All right. I want to go back to the test that you
23 were just talking about on the chart starting with the Purdue
24 test, the test in that grouping.

25 The chart itself if I zoom out, it has indication at

E. Provder - Plaintiff - Direct

1 the bottom for below average, average and above average.

2 A Yes.

3 Q All of those tests fall into the below average
4 category?

5 A Yes. That would mean his score ranged from one
6 percentile to 33 percentile.

7 MR. GRILLO: Your Honor, I just have an
8 objection or clarification on the document that Mr. Mills
9 and Mr. Provder are referring to with respect to the
10 scoring, the percentage.

11 Perhaps we could maybe just speak at side-bar
12 very quickly.

13 THE COURT: Yes.

14 Come up.

15 (Whereupon, at this time, a discussion was held
16 off the record.)

17 Q Tell us what below average means, Mr. Provder, when
18 you are performing these evaluations, what do you mean my
19 below average?

20 A It means his score ranged from 1 to 33 percentile.
21 That would be one-third of the normal curve.

22 Q All right. Can you just describe for us and tell us
23 what the -- what your opinion is in regards to Mr. Davis'
24 life-care plan and his needs.

25 A Okay. We have charts that deal with that.

E. Provder - Plaintiff - Direct

1 Q You can just tell us.

2 A What is it?

3 Q You can talk.

4 A Just verbally tell you what the items are?

5 Q Yes.

6 A Okay. Hold on.

7 Okay. You want me to go through each chart?

8 Q Yes.

9 A Do you want me to tell you what the numbers are?

10 Q Yes.

11 A First part as I indicated --

12 MR. GRILLO: Hold on, Mr. Provder. We want to
13 take our seats, since the monitor is not up.

14 Sorry to interrupt you.

15 THE WITNESS: No problem.

16 A Okay. The first part is what we call projected
17 evaluations. That means these would be done on a regular
18 basis to see what his status is.

19 First is a rehabilitation plan development which I
20 indicated to you before that we review once every five years.
21 The cost of that would be \$3,000 over the five-year period.

22 The next evaluation would be physical therapy. It
23 would be done once a year, and the cost ranges from \$50 to
24 \$125 per year.

25 Then we actually have the therapies that he would

1 require. The first is a case management or case manager or
2 rehabilitation counsellor who would coordinate his services to
3 make sure he receives everything and work closely with him.
4 It's done four times a year anywhere from two to four hours.
5 The range, it goes from \$1,000 to \$2,880 per year, and the
6 next is physical therapy.

7 My recommendation was evaluation and treatment for
8 two years three times a week for 48 weeks, and I used 48 weeks
9 as a conservative because what happens is that individuals get
10 sick. The therapist is not available. So I use 48 weeks as a
11 conservative measure.

12 The cost would be \$5,760 and \$14,400 at \$40 to a
13 hundred dollars per session, and that would be for two years.

14 The next would be projected medical care. First
15 would be a physiatrist. That's a special doctor of physical
16 medicine and rehabilitation. It would be once a year.

17 The cost would be year one would be \$200 to \$500.
18 Year two would be \$50 to \$100.

19 The next would be internist and family practitioner
20 once a year. Year one would be \$100 to \$150. Year two would
21 be \$75 to a hundred dollars. That would be over his life
22 expectancy.

23 Next would be an orthopedic surgeon for the spine.
24 Six times a year. Year one would be \$700 to \$2,500 and
25 thereafter would be \$600 to \$2,100 per year.

E. Provder - Plaintiff - Direct

1 The next would be pain management four times a year.
2 Cost would be year one \$700 to \$3150 a year, and then \$700 to
3 \$2,600 thereafter each year.

4 We next would have x-rays of his cervical and lumbar
5 spine to monitor his condition on a yearly basis. The cost is
6 \$150 to \$300.

7 The next would be MRI's of the cervical and lumbar
8 spine done once every ten years, again, to monitor his
9 condition. The cost would be \$70 to \$260 broken down on once
10 every ten year basis.

11 And then the last would be EMG studies to measure his
12 nerve conduction done once only. Cost per year over his
13 lifetime would be \$25 to \$51 per year.

14 The next is chart A4 which is pain management
15 epidural injections. The recommendation would be lumbar and
16 cervical spine injections, three every five years, both for
17 the cervical and the lumbar. The cost is \$9,000 to \$24,000
18 every five years at a cost per injection of \$1,500 to \$4,000
19 per injection.

20 The next is A5 chart. His medication at the time was
21 tramadol, 50 milligrams for pain. The yearly cost \$516 to
22 \$576.

23 Then we have aids for independent living. These are
24 safety devices to make sure he doesn't get hurt or reinjure
25 himself. First would be a shower chair once every three

E. Provder - Plaintiff - Direct

1 years. The amount is \$42 to \$73

2 The next is shower hose hand-held. Once every three
3 years. Cost is \$11 to \$33 every three years. Then we have
4 grab bars for safety, once every five years for support during
5 bathing. Cost is \$49 to \$72.

6 And the last for pain management, he used a TENS
7 machine replaced once every three years. Cost would be \$69 to
8 \$104 every three years.

9 And the last chart is home maker to compensate for
10 the services he cannot provide for himself or to the family.
11 The cost my recommendation was two hours a day, three days a
12 week. Cost would be \$6,552 to \$7,488 at a rate of \$23 to \$24
13 per hour.

14 That was the components of the life-care plan.

15 Q All right. Did you take a work history from Mr.
16 Davis?

17 A Excuse me?

18 Q Did you take a work history from Mr. Davis?

19 A Yes, of course.

20 Q Does the U.S. Department of Labor --

21 A Wait, wait. You don't want to go into the work
22 history or just --

23 Q I was just about to ask you about it. You can go
24 ahead.

25 A Okay. His work history was indicated to me he worked

1 as a construction laborer at the time of the accident and
2 roofer helper for APS Contracting in New Jersey, which
3 involved residential roofing. He assisted the roofer with
4 installing and removing roofs, worked on rubber and tar roofs,
5 and he carried supplies and loaded and unloaded trucks.

6 The job the U.S. Department of Labor classifies
7 everyone one of our jobs, and his job requires what we call
8 heavy physical demands as he had to lift rolls of rubber and
9 matters which weighed up to 80 pounds, involved frequent
10 climbing of ladders and the description of his job as a
11 construction laborer is found on page 911 of the Dictionary of
12 Occupational Titles which contains all 13,000 jobs that exist
13 in the labor market and the code number for that job would be
14 869.867-026.

15 And then he stated he worked as a head custodian at
16 Bronx Shepards in the Bronx for three years, and that involved
17 cleaning and maintaining offices, cleaning bathrooms, floors,
18 polishing, cleaning windows, changing light bulbs, doing light
19 repairs, and he supervised two people.

20 And that was the work history that he gave me at the
21 time of my evaluation on him, and that job required medium to
22 heavy physical demands as he had to move further as part of
23 his job.

24 Q Does the U.S. Department of Labor categorize the jobs
25 that you were just describing?

1 A Yes. Every one of our jobs is categorized involving
2 physical requirement of the jobs. The least exertional
3 available is what we call sedentary work which us lay people
4 would say sitting down job. In a sit down job, the person has
5 to be able to sit for at least six hours out of an eight hour
6 workday, and they have to lift such items as small tools and
7 dockets and items weighing up to ten pounds.

8 The second level of work is what we call light work.
9 That's work done in a standing or walking position. The
10 person has to be able to stand and walk for at least six hours
11 out of an eight hour workday, and they have to lift anywhere
12 from 10 to 20 pounds.

13 Next level work is medium work. That is another
14 standing and walking job that involves lifting anywhere from
15 20 to 50 pounds.

16 Next level work is heavy work, another standing and
17 walking job. It involves lifting of anywhere from 50 to 100
18 pounds.

19 The most exertional job is what we call very heavy
20 work and involves frequent lifting over 100 pounds.

21 Q How would you classify Mr. Davis' physical demands of
22 his jobs he held?

23 A His job as construction laborer would classify as
24 heavy work because he had to lift items with weight up to 80
25 pounds. And the job he did as a custodian would be classified

1 as medium to heavy as he had to lift anywhere from 50 to 75
2 pounds.

3 Q What were Mr. Davis' earnings in his past
4 occupations?

5 A Yes. He reported that as a construction laborer he
6 earned \$52 an hour working a 40 hour work week with some
7 overtime on Saturdays, and he earned \$23,000 per year as a
8 custodian.

9 Q Based on your evaluation, you then formulated an
10 opinion to reasonable degree of certainty as a rehabilitation
11 counsellor and life care planner and employability expert
12 regarding Mr. Davis' employability and earning capacity,
13 correct?

14 A I did.

15 Q And what are those opinions?

16 A Yes. Based on my evaluation, given his age, his
17 education, his past work experience of unskilled and semi
18 skilled work, his ninth grade special education, it was my
19 opinion that, number one, he is unable to perform his past
20 relevant work as a construction laborer, roofer helper or
21 custodian.

22 Number two, his past earnings as a construction
23 laborer, roofer helper best represents his preinjury earning
24 capacity or what he could have earned if he had not been hurt.

25 Third, his past employment was unskilled, meaning he

E. Provder - Plaintiff - Direct

1 had no particular special skills to apply for jobs that
2 required less physical demands.

3 Four, it was my opinion that he could not perform any
4 of those level of jobs that we discussed. He cannot do
5 sedentary, light, medium, heavy, or very heavy work in a
6 sustained, regular full-time competitive basis.

7 I felt that, five, he was unemployable for any job
8 existing in the competitive labor market and, lastly, he had
9 sustained a total loss of earning capacity over his work life
10 due to his injuries.

11 And at that time I did not believe that he was a
12 candidate for what we call vocational rehabilitation services.

13 Q And what is that?

14 A Okay. Well, the state, each of the states here in
15 New York we have what is called Access VR. That's the state
16 agency that assists people that are injured to have them go
17 back to work, to help them go back to work. And in order to
18 do that and be involved in that program, you have to be -- you
19 have to have the physical capability to do at least sedentary
20 type work, which in my opinion he doesn't have.

21 Q Would he qualify for that back to work program?

22 A I don't believe at the time I saw him that he would
23 qualify because I don't believe he had the capability of doing
24 the least it essential work. Work in sedentary in nature.

25 Q Is that a combination of education, prior training

E. Provder - Plaintiff - Cross

1 and physical abilities?

2 A Yes.

3 Q So what do you recommend?

4 A Excuse me?

5 Q What do you recommend?

6 A I recommend he received the items that I noted in the
7 life-care plan, so he could become more comfortable given his
8 impairment.

9 MR. MILLS: Nothing further.

10 THE COURT: Thank you.

11 Counsellor.

12 MR. GRILLO: Judge, could I see Mr. Provder's
13 file before we start.

14 THE COURT: Sure. Quickly.

15 MR. GRILLO: I will look at it quickly.

16 THE COURT: As quickly as you can.

17 THE COURT OFFICER: (Handing.)

18 THE WITNESS: Thank you.

19 THE COURT OFFICER: You are welcome.

20 MR. GRILLO: May I, your Honor?

21 THE COURT: Yes.

22 MR. GRILLO: Thank you.

23 CROSS EXAMINATION

24 BY Mr. GRILLO:

25 Q Mr. Provder, good afternoon.

E. Provder - Plaintiff - Cross

1 A Good afternoon.

2 If you could speak loud, I'll appreciate it.

3 Q I'll do the best I can. If you can't hear me, let me
4 know.

5 A No problem.

6 Q You and I never met before?

7 A I don't know if we have or not.

8 Q I can tell you I have never seen you in the
9 courtroom, never cross examined you, so it's any first time
10 with you, okay?

11 A Okay.

12 Q You said you testify about twelve to 15 times a year,
13 correct?

14 A Yes.

15 Q And how long have you been doing that for?

16 A I would say at least the last ten years.

17 Q All right. So the last ten years you testified at
18 least 120 to 150 times?

19 A For sure.

20 Q Fair statement?

21 A That would be good.

22 Q And we can also agree, can we not, sir, that every
23 time you testify in court, you receive a fee for testifying,
24 don't you?

25 A Yes.

E. Provider - Plaintiff - Cross

1 Q As a matter of fact, in addition to a fee, you
2 receive compensation for your travel, your expenses and such,
3 right?

4 A Correct.

5 Q And that's just for the courtroom part, but when you
6 are retained on a case, you are retained by the firm of
7 Zaremba and Brown in 2018?

8 A Yes.

9 Q To perform a vocational assessment of Mr. Davis,
10 correct?

11 A And life-care plan.

12 Q So you met with Mr. Davis in 2018. You interviewed
13 him for three hours?

14 A Yes.

15 Q And then you formulated this extensive 70 page report
16 that you made?

17 A Yes.

18 Q How much were you compensated for the meeting and the
19 report?

20 A That was a long time ago. I would say maybe \$5,000.

21 Q But at least \$5,000, fair enough?

22 A That would be a guess, yes.

23 Q And how about for your appearance here in the court
24 today, are you being compensated for that?

25 A Yes.

E. Provder - Plaintiff - Cross

1 Q How much?

2 A \$9,500.

3 Q \$9,500?

4 A Correct.

5 Q In addition to that, are you being compensated for
6 travel?

7 A A thousand dollars, I believe.

8 Q You believe. So that's a thousand dollars just back
9 and forth -- so I want to get all the money out of the way
10 first okay?

11 A Yes.

12 Q So \$5,000 for the report. \$9,500 for being here
13 today, and another \$1,000 to travel, correct?

14 A Yes.

15 Q So I'm not great at math. Fifteen-five?

16 A Sounds about right.

17 Q Okay. Now prior to this case -- well, let me get
18 this out of the way.

19 Mr. Davis didn't come to you seeking vocational help,
20 right?

21 A He did not.

22 Q As a matter of fact, his lawyers, the Zarembo and
23 Brown Law Firm, contacted you in the middle of this litigation
24 asking you to perform an vocational assessment; is that
25 correct?

E. Provder - Plaintiff - Cross

1 A Yes.

2 Q Have you worked for the Zaremba and Brown firm
3 before?

4 A Yes.

5 Q You testified in court for them before, correct?

6 A I believe one occasion.

7 Q But you have, correct?

8 A Yes. I believe one occasion.

9 Q Brian Brown?

10 A Excuse me?

11 Q Brian brown of Zaremba and Brown?

12 A I don't remember.

13 Q How about Williams Schweitzer?

14 He is another one of Mr. Davis' attorneys on this
15 case.

16 You worked for him as well in his firm?

17 A The name doesn't mean anything for me, but I may
18 have.

19 Q Okay. Now, speaking of -- well, speaking of people
20 as well. You understand that you have been made aware that
21 Miss Kristen Kucsma is an economist that has been retained by
22 the plaintiffs in this case?

23 A Yes.

24 Q And you have worked with Miss Kucsma for years,
25 haven't you?

E. Provder - Plaintiff - Cross

1 A Yes. With Frank Tinari and then Miss Kucsma.

2 Q You have actually done presentations, joint
3 presentations with Miss Kucsma?

4 A Many times.

5 Q Many times. And you have actually similar to what we
6 are doing here, you are the life-care planner and Miss Kucsma
7 is the economist, correct?

8 A Correct.

9 Q And do you remember doing a presentation with Miss
10 Kucsma, one in particular entitled, Building the House of
11 Damages?

12 A Absolutely.

13 Q Using a vocational expert life-care planner and
14 economist in documenting damages in personal injuries case,
15 correct?

16 A Yes. It's the secret sauce.

17 Q Okay. That's what you call it.

18 You have been questioned about this before, haven't
19 you?

20 A Of course.

21 Q Well, this jury hasn't heard it before, fair enough?

22 A Yes. Well, that's my --

23 MR. GRILLO: You won't mind if I mark it as
24 Defendants' Exhibit H or I?

25 MR. MILLS: Objection, Judge.

E. Provder - Plaintiff - Cross

1 THE COURT: For identification purposes.

2 MR. GRILLO: Yes.

3 THE COURT: For ID. Sure.

4 Mr. Mills, do you know what that is?

5 MR. MILLS: It doesn't matter.

6 MR. GRILLO: If we could dispense with the
7 colloquy, Judge.

8 THE COURT: It is unnecessary.

9 MR. GRILLO: Judge, if it doesn't matter, can I
10 put it in evidence?

11 MR. FEMIA: That's what I believe counsel said.

12 MR. MILLS: I'll ask a question on redirect that
13 shows it doesn't matter.

14 THE COURT: Guys. Enough with it doesn't
15 matter. Enough with the colloquy. Enough with the help.
16 I don't need it.

17 I'll say it again.

18 MR. FEMIA: My apologies, your Honor.

19 THE COURT: Thank you.

20 Mr. Mills.

21 MR. MILLS: I was accepting his apology.

22 THE COURT: I am asking you a question.

23 Do you have now have an objection, or can this
24 come in evidence?

25 MR. MILLS: No. I have an objection.

E. Provder - Plaintiff - Cross

1 THE COURT: So it is marked for ID purposes only
2 for now as Defendants' I.

3 (Whereupon, at this time, Defendants' Exhibit I
4 was marked for identification.)

5 THE COURT OFFICER: Defendants' Exhibit I marked
6 for identification.

7 THE COURT: Show it to the witness, please.

8 THE COURT OFFICER: Defendants' Exhibit I shown
9 to the witness.

10 Q Mr. Provder, I show you a document that's been marked
11 as Defendants' Exhibit I for identification purposes and ask
12 you to identify it.

13 A Yes. This is a seminar that I did with Miss Kucsma
14 just before the pandemic.

15 Q Where was that seminar?

16 A West Palm Beach.

17 Q Okay. And who attended that seminar, if you know?

18 A Plaintiffs' and defendants' attorneys.

19 Q And the purpose of that was to build a damages case
20 in personal injury, was it not?

21 A Well, to educate attorneys as to how to document
22 their case damages.

23 Q Right.

24 A Many attorneys come to me and they say they never
25 taught us this in law school, so they will come to us and

1 we'll explain how we document damages in all types of cases,
2 but particular in personal injury cases.

3 Q And building damages, you used the term secret sauce,
4 correct?

5 A Yes.

6 Q What is secret sauce?

7 A Well, most attorneys don't understand how the house
8 of damages have to be built, and some attorneys call that the
9 secret sauce.

10 Q Some attorneys call it. You call it the secret sauce
11 too, correct?

12 A It's a term that's been used. I rather use the term
13 house of damages.

14 Q You have used it in power point presentations that
15 you have given, haven't you?

16 A Well, I may have. I don't know if I have a slide
17 regarding that, but maybe I do.

18 Q Well, I do.

19 MR. GRILLO: I'm going to mark this document
20 with the Court's permission as Exhibit J.

21 Q I ask you to take a look at. Seminar of the New York
22 Academy of Trial Lawyers.

23 THE COURT: All right. Marked for ID as
24 Defendants' J.

25 (Whereupon, at this time, Defendants' Exhibit J

E. Provder - Plaintiff - Cross

1 was marked for identification.)

2 THE COURT OFFICER: Defendants' Exhibit J marked
3 for identification.

4 MR. GRILLO: May I see that, officer?

5 (Whereupon, at this time, Defendants' Exhibit J
6 was marked for identification.)

7 (Whereupon, at this time, Senior Court Reporter
8 Victoria Bifulco was relieved by Senior Court Reporter
9 Monica Jenkins.)

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1 COURT OFFICER: Defendant J marked for
2 identification and shown to the witness.

3 (Whereupon, the document was marked for
4 identification as Defendant's Exhibit J.)

5 MR. GRILLO: Can I see that, Officer.

6 Q I want to show you what's been marked as Defendant's
7 Exhibit J and ask you if you recognize that document?

8 COURT OFFICER: Defendant's Exhibit J shown to the
9 witness.

10 A This is a totally different seminar.

11 Q Correct. It's a totally different seminar but --

12 A I don't know if this is the same seminar. Contents
13 change on a regular basis.

14 Q I would like to talk about the term, secret sauce.
15 Let's look at the first seminar in West Palm Beach, can I have
16 that quickly?

17 THE COURT: Be mindful of time.

18 MR. GRILLO: I'm trying judge.

19 Q This is the seminar that you did on April 2nd of 2019,
20 correct?

21 A Yes.

22 Q You and Ms.Kucsma?

23 A Yes.

24 Q Does that flyer fairly and accurately depict and show
25 the seminar that you did in West, in Palm Beach on April 2nd of

1 2019?

2 A I can't hear you.

3 Q Does that flyer fairly and accurate depict or show the
4 seminar that you conducted with Ms. Kucsma in April of 2019?

5 A Yes.

6 MR. GRILLO: Okay. And I seek its introduction in
7 evidence, Your Honor.

8 MR. MILLS: There is no probative value to this.

9 THE COURT: Sustained.

10 MR. MILLS: There's no basis for this evidence to
11 be admitted into evidence. He testified he had the
12 seminar. There is nothing probative in that document being
13 admitted into evidence.

14 THE COURT: May I see that. Other than to
15 indicate there was this seminar what is this being offered
16 for?

17 MR. GRILLO: With respect to his reference on this
18 secret sauce, with respect to his linking with Ms. Kucsma
19 that they testified it tandem as they is here and to the
20 extent I can show an inherent bias in the testimony that
21 would be the foundation I would like to lay.

22 THE COURT: You don't need this particular
23 document. We'll discuss the other one so that's not going
24 to moved into evidence.

25 MR. GRILLO: Okay. Your Honor.

1 Q And then Mr. Provder, looking at Defendant's Exhibit J,
2 that's a different seminar that you did for the New York City
3 Trial Lawyers, correct?

4 A Correct.

5 Q And there's a gentleman listed there, You and Ms.
6 Kucsma and a gentleman named Chris Holbrook; he's a plaintiff
7 attorney, correct?

8 A Yes.

9 Q So, you gave a seminar in that and I would ask you to
10 flip to the 10th page. I dog-eared it. That includes, take a
11 look, that includes a PowerPoint presentation that you did?

12 A Yes.

13 Q And in there is a reference of the secret sauce; you
14 see that, Sir?

15 A Yes.

16 Q So, the secret sauce basically is you and Ms. Ms.
17 Kucsma connected with a plaintiff's attorney to drive up the
18 value of a case; isn't that the secret sauce, Sir?

19 A No. It is not at all.

20 Q Okay.

21 A The secret sauce is a term that was used by certain
22 attorneys to describe the building of house of damages. Now
23 that I'm looking at this thing from West Palm I'm wondering if
24 this is where your law firm got my name and used me 12 times in
25 the past couple years.

1 THE COURT: All that is stricken from the record.

2 Q Seems like you are a little upset. Did I hit a nerve?
3 You've never worked with me. I don't work in Florida. You live
4 there and you handle stuff in Florida. It's not me. So let's
5 be straight, okay.

6 MR. MILLS: Objection, Judge. There is no
7 question.

8 Q Basically this term of secret sauce you got that term
9 from a plaintiff's lawyer?

10 A Correct.

11 Q And they said, wow, if we get Mr. Provder and Ms.
12 Kucsma now we've got the secret sauce?

13 A It has nothing to do with Ms. Kucsma or myself. It has
14 to do with --

15 Q You happen to have it in your PowerPoint?

16 A Yeah sure.

17 Q Yeah sure. Yeah sure. Okay. So now --

18 A You're questioning veracity, is that what you are
19 saying?

20 THE COURT: Mr. Provder, answer the questions. No
21 comments.

22 THE WITNESS: Okay.

23 MR. GRILLO: And then Mr. Provder, similarly I'm
24 going to show you another document. I would like to have
25 this one marked as Defendant's Exhibit K for identification

1 purposes.

2 THE COURT: Mr. Mills do you know what this is?
3 Let's mark it K for identification.

4 (Whereupon, the document was marked for
5 identification as Defendant's Exhibit K.)

6 COURT OFFICER: Defendant's Exhibit K marked for
7 identification and shown to the witness.

8 Q Mr. Provder, I'm going to show you a document that'S
9 been marked for identification as Defendant's Exhibit K; do you
10 recognize that document?

11 A Yes. It another CLA that I gave in California. I'm
12 one of only 8, I'm approved in 8 states in order to do CLE's.

13 Q This one, am I correct, this one was done on life care
14 plans for people who sustained traumatic brain injuries,
15 correct?

16 A Yes.

17 Q And you gave testimony about rehabilitating people who
18 have traumatic brain injury you gave a presentation about
19 rehabilitating people with traumatic brain injuries, correct?

20 A Yes and evaluating their employability and long-term
21 care needs.

22 Q People with traumatic brain injuries, getting them back
23 into the work force, correct?

24 A Yes, I have done that in the past, yes.

25 Q Who else participated in that presentation?

1 A Say again.

2 Q Who else participated in that presentation with you?

3 A I have somebody from nursing officer from neuro rehab.
4 I have board certified medical illustrator. I have a marketing
5 person.

6 Q Whose the marketing person?

7 A Dean Chase.

8 Q Who is he with?

9 A He is with HMR Funding.

10 Q What is HMR Funding?

11 A Funding source I don't know.

12 Q Are you familiar with funding companies?

13 A Excuse me?

14 Q Are you familiar with funding companies?

15 A No, it's not my area.

16 Q Are you familiar with litigation funding companies, yes
17 or no?

18 MR. MILLS: Judge, relevance.

19 THE COURT: Overruled.

20 Q Are you familiar with litigation funding companies, yes
21 or no?

22 A I know what they are, yes.

23 Q So what are they?

24 A They're companies that fund various legal services.

25 Q By legal services what do you mean?

1 A Cases.

2 Q What do you mean?

3 A They fund cases if the firm does not have enough money
4 to fund the case they'll fund it.

5 Q Do they also provide money to people so they don't have
6 to go back to work while a case is going on?

7 MR. MILLS: Objection, Judge.

8 THE COURT: What's the objection?

9 MR. MILLS: Speculation. He said it's not his
10 field he's not addressing anyone specifically. There's no
11 probative value to it. It's speculation.

12 THE COURT: Overruled.

13 Q Can funding companies provide money to people involved
14 in litigation so they can stay out of work, yes or no?

15 A That I don't know.

16 Q Do you know if Mr. Davis has legal funding in this
17 case?

18 MR. MILLS: Objection, Judge.

19 THE COURT: Sustained.

20 Q Now, you created a report for Mr. Davis in 2018,
21 correct?

22 A Yes.

23 Q And I want you to assume, I don't know if you know but
24 the trial of this case started on December 17th of 2024; can we
25 agree, Sir, that you didn't see or speak to Mr. Davis between

1 the time of your report in 2018 until the time this trial
2 started in December 17th of 2024, fair statement?

3 A True.

4 Q And we can also say based on your resume you're based
5 in Sunny Aisle Florida, correct?

6 A That's where I reside.

7 Q But you also see patients down there or clients?

8 A I do.

9 Q And you know where Mr. Davis lives in Florida?

10 A Kissimmee.

11 Q How far is that from you?

12 A About three hours.

13 Q So, if you wanted to or if you wanted to, you could
14 have seen him before this trial started, fair enough?

15 A If it was referred to me, sure.

16 Q But it wasn't, correct?

17 A I did not get the referral, no.

18 Q So, all of your findings, everything you've testified,
19 just so we're clear, is based on your evaluation of Mr. Davis in
20 2018, true?

21 A Based on my testimony, yes.

22 Q Can we agree that an interval part of life care
23 planning, the life care planning methodology is coming up with a
24 rehabilitation plan for a patient; is that true?

25 A Yes. Well the life care plan is a rehabilitation plan.

1 Q That's your goal, right, as rehabilitation counselor is
2 when somebody comes to you, you want to do everything in your
3 power to find them alternative means by which to get back to the
4 work force, yes or no?

5 A From a vocational standpoint, yes.

6 Q You didn't try do that with Mr. Davis, right?

7 A I didn't believe he had that capability.

8 Q You gave us the reasons why. You talked about his work
9 history as a laborer. What information did you have in 2018
10 that told you about Mr. Davis' work history as a laborer?

11 A Self report.

12 Q Self report, what does that mean?

13 A Means what he told me.

14 Q So, Mr. Davis told you about his work history. He
15 didn't tell you as far as what he was actually doing on the job,
16 he didn't tell you how long he worked on the job or you didn't
17 have any proof of it, it's just what Mr. Davis told you,
18 correct?

19 A True.

20 Q Typically when you get a self report you usually look
21 at other documents, right, to try to determine if a person's
22 being accurate, if they're giving you an accurate work history,
23 correct?

24 A Well, rarely do I get work history documents but I do
25 at times get wage information that would verified the person's

1 employment.

2 Q You also get tax returns, don't you?

3 A I do.

4 Q You get any tax returns from Mr. Davis reflecting he
5 worked or how much he worked in 2015?

6 A No, sir.

7 Q Have you seen a tax return with Mr. Davis' name on it
8 from any year?

9 A No, sir.

10 Q So, if you had a tax return you would be able to fully
11 determine what he earned for a particular year, correct?

12 A Yes. That's why we request tax returns and work
13 records.

14 Q Did you ask for tax returns of Mr. Davis?

15 A Of course.

16 Q Did he give them to you?

17 A I did not get anything.

18 Q Do you know if he filed taxed since 2015?

19 A I have no idea.

20 Q Now, I want to go back to this idea that you don't
21 think he's capable of anything. You have actually worked as,
22 you've actually worked in the past with people -- well,
23 withdrawn. Do you think Mr. Davis has a traumatic brain injury
24 from this incident?

25 A No.

1 Q You actually worked and placed people with traumatic
2 brain injuries, have you not?

3 A Yes.

4 Q You've actually worked with people as rehabilitation
5 counselor who are paraplegics and you've placed them, haven't
6 you?

7 A Yes.

8 Q You've actually worked with people who are
9 quadriplegics --

10 MR. MILLS: Objection, Judge.

11 Q -- and placed them?

12 THE COURT: What's the objection?

13 MR. MILLS: Relevance.

14 THE COURT: Overruled.

15 MR. MILLS: Their situation is --

16 MR. GRILLO: Speaking objections, Judge, please.

17 THE COURT: Overruled.

18 Q Correct?

19 A The answer is yes.

20 Q You've gotten jobs for people with traumatic brain
21 injuries, paraplegics, quadriplegics but you can't get him a
22 job; is that your statement?

23 A True. They all had education. They were college
24 graduates. They had particular skills that could be
25 transferred. He never graduated high school. He was in special

1 Ed. He did not have that educational background.

2 Q What proof did you have, did you see school records of
3 him being a special Ed student?

4 A No.

5 Q Did you see anything, a letter from somebody, a medical
6 records advising that he's special Ed?

7 A No.

8 MR. GRILLO: Okay. I know you got a lot you want
9 to get out but I would like to stay focused on what we're
10 talking about, okay.

11 THE WITNESS: I'm trying to answer your question.

12 MR. GRILLO: I think you're doing a good job of it
13 so we'll keep moving.

14 THE COURT: Counsel, how much longer?

15 MR. GRILLO: Judge, I 've got a few.

16 THE COURT: We can't keep moving. So, this is a
17 good break point. It is 4:30. I have no choice. I have
18 explained that a hundred times. That it is absolutely not
19 a choice I have.

20 The longest I can go is potentially 4:45. This is
21 not getting done within 15 minutes. So, we're going to
22 break for tonight. I think we had a very productive day.
23 I know you're not happy about that.

24 There's nothing I can do. So, ladies and
25 gentlemen, thank you again so much. I'm going to ask that

1 you be back here tomorrow, back here at 10 and we'll get
2 started because I think tomorrow we're going to try to be
3 even more productive hopefully.

4 Same instructions as always. Again, thank you so
5 much for today. I think it was a good day. I really
6 appreciate it. I will see you guys tomorrow.

7 COURT OFFICER: All rise. Jury exiting.

8 (Whereupon, the trial was adjourned to Wednesday,
9 January 22, 2025 at 10:00 a.m.)

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