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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-

6 JURY TRIAL

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

8 Defendant.

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9 Supreme Courthouse
88-11 Sutphin Boulevard
Jamaica, New York 11435
January 24, 2025

10 B E F O R E:

11 THE HONORABLE CLAUDIA LANZETTA,

12 SUPREME COURT JUSTICE

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

14 For the Plaintiff:
MILLS & EDWARDS, LLP
15 14 Penn Plaza, 21st Floor
New York, New York 10122
16 BY: DONTE MILLS, ESQ.

17 For the Defendants:
18 GOLDBERG & SEGALLA
711 3rd Avenue, Ste 1900
19 New York, New York 10017
BY: EMILIO F. GRILLO, ESQ.
20 BY: RICHARD J. FEMIA, ESQ.

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MONICA JENKINS
VALERIE MCNALLY
SENIOR COURT REPORTERS

1 COURT OFFICER: All rise. Jury entering.

2 (Whereupon, the jury entered the courtroom and
3 upon taking their respective seats, the following
4 occurred:)

5 THE COURT: Good morning. You could be seated.
6 All right. You may call your next witness.

7 MR. FEMIA: Defendant's call Dr. Feuer to the
8 stand.

9 THE CLERK: Good morning, Sir. Raise your right
10 hand, please. Do you swear or affirm the testimony you are
11 about to give will be the truth against all penalties of
12 perjury?

13 THE WITNESS: I affirm.

14 THE CLERK: You maybe seated. And state your
15 first and last name spelling the last for this record?

16 THE WITNESS: My name is Dr. Daniel Feuer F as in
17 Frank E-U-E-R.

18 THE CLERK: And your business address?

19 THE WITNESS: 3055 21st Street, Astoria, New York
20 11102.

21 THE CLERK: The witness is sworn.

22 THE COURT: Dr. Feuer, perfect, continue speaking
23 as you are and we'll be great, okay. Thank you very much.
24 You may inquire.

25 DIRECT-EXAMINATION BY MR. FEMIA:

1 Q Good morning, Dr. Feuer?

2 A Good morning.

3 Q Can you tell the jury what your occupation is?

4 A I'm a neurologist.

5 Q And can you explain for the jury what a neurologist
6 does?

7 A So, a neurologist is um, neurology is a subspecialty in
8 the field of medicine that deals with the nervous system,
9 includes the brain, the spinal cord that comes off the brain and
10 the nerves that travel from the spinal cord into the arms and
11 legs.

12 So, as a neurologist I'm trained to diagnosis and treat
13 and disorder localized to those areas. So, in the brain it
14 could be Parkinson, stroke, dementia, headaches, dizziness. In
15 the neck and lower back common syndrome referred to as
16 radiculopathy or pinched nerves and even pinched nerves in the
17 arms and legs something that's called carpal tunnel syndrome.

18 So, that's what I see in my office, you know, five to
19 six days a week.

20 Q That's sounds like pretty complicated stuff. So, can
21 you walk us through your educational background to start with
22 college?

23 A Yeah. I attended college at Yeshiva University in
24 Manhattan. I went to Albany Medical College in Albany, New York
25 where I graduated in 1983 with an MD of Medical Doctor Degree.

1 I spent one year of training in the field of internal medicine
2 at Brookdale Hospital that's referred to a medical internship.

3 And then I went on to Mount Sinai Hospital in Manhattan
4 where I enrolled in a three year training program in the
5 specialty of neurology which is referred to as a residency
6 training program.

7 After that I went into private practice in the New York
8 area while maintaining an affiliation with Mount Sinai Hospital
9 and I became a board certified neurologist.

10 Q And Doctor, you mentioned you're a board certified
11 neurologist; what does that mean to be board certified in
12 neurology?

13 A There is an organization of board that supervises my
14 specialty and before you go out and train in the real world they
15 want to the make sure you know what you are doing and you can
16 practice with a standard of excellence.

17 So, in my case I had to take a written examine and an
18 oral exam at Massachusetts General Hospital where I spent a day
19 there. That's a Harvard training hospital and after completing
20 both of those exams on the first try, I passed and I was deemed
21 to be a board certified neurologist or diplomat in the field of
22 neurology.

23 Q And how long have you been board certified and a
24 diplomat?

25 A Since 1989.

1 Q And have you testified in court before?

2 A Yes.

3 Q Approximately how many times?

4 A I don't know exactly. Maybe since 1990 like 150 times
5 or so maybe more.

6 Q So, a few times a year, does that sound about right?

7 A Yeah.

8 Q And has your testimony been mostly on behalf of the
9 defense?

10 A Yes.

11 Q But on occasion you've also testified on behalf of
12 plaintiff?

13 A Yes.

14 Q Have you been qualified as an expert in the field of
15 neurology before?

16 A Yes.

17 Q How many times were you qualified?

18 A I'm always qualified in court.

19 Q Every time?

20 A Yes.

21 MR. FEMIA: Your Honor, I offer Dr. Feuer as
22 expert in the field of neurology and ask he be qualified as
23 such before this court?

24 MR. GRILLO: No objection.

25 THE COURT: Thank you. Without objection he is so

1 qualified.

2 Q Doctor, do you recall being contacted about a matter
3 involving Kareem Davis?

4 A Yes.

5 Q Were you provided with medical records with Mr. Davis'
6 long history of medical treatment?

7 A Yes.

8 Q And did you review these records?

9 A Yes.

10 Q In addition to reviewing Mr. Davis long history of
11 medical treatment, did Mr. Davis come to your office for
12 purposes of conducting an neurological examination?

13 A Yes.

14 Q Without going into specific details of the exam, can
15 you explain to the jury what a neurological examination is?

16 A So, what I'm trained to do is to troubleshoot the
17 nervous system. In other words, I do different maneuvers to see
18 how the brain is functioning, how the spine, the nerves that
19 come off the spine.

20 The point of my examination is to correlate or localize
21 what part of the nervous system is not working properly.

22 MR. FEMIA: Doctor, one second. The judge stepped
23 down.

24 Q Dr. Feuer, I think you were generally describing for
25 the jury what a neurological examination is?

1 A Yes. As I was saying, if a patient comes in with a
2 complaint I think might be related to the nervous system, I do
3 certain maneuvers with the patient. I do certain clinical
4 testing to see if I can find out where the problems comes from.

5 Is it a pinched nerve in the wrist, in the neck, is
6 something going on, maybe a stroke and I can localize
7 specifically where there might be an issue and that's what my
8 examination, that's what I'm trained to do through my
9 examination.

10 Q And did you reduce your findings to a report?

11 A Yes.

12 Q And you have that report with you?

13 A Yes.

14 Q Doctor, you're being compensated for your time in court
15 here today?

16 A Yes.

17 Q How much is that?

18 A \$7,000.

19 Q Doctor, I would like you to take a look at your report
20 from October 9, 2018; what was your history take of Mr. Davis?

21 A Well, he had told me that to December 3, 2015 while at
22 work he was struck by a falling wheel barrel and sustained
23 injured to the head, neck and left shoulder. He travelled by
24 car to the Presbyterian Hospital Emergency Room where he
25 underwent examination as well as Cat Scan of the head.

1 There was no issues with the Cat Scan. It was reported
2 to be normal. Then he was released to outpatient care. As an
3 outpatient he said he was referred to the office of Dr. Katz.

4 Dr. Katz performed a cervical fusion surgery and left
5 shoulder surgery. In addition he underwent therapy treatments.

6 Q Was there any significance of the fact that he
7 travelled to the hospital by car?

8 A Yes.

9 Q What's that?

10 A Well, usually in significant traumatic construction
11 injuries, other injuries --

12 MR. MILLS: Objection, Judge.

13 THE COURT: One moment. The objection should have
14 been to the question.

15 MR. MILLS: I tried but he answered quickly.

16 THE COURT: What's the objection.

17 MR. MILLS: Um, it's irrelevant what usually
18 happens or what happens to other people.

19 THE COURT: Sustained.

20 Q Do you find it neurologically significant that Mr.
21 Davis wasn't taken to the hospital via ambulance?

22 A Yes.

23 Q Why is that?

24 A It suggests a much more mild injury. Severe injures
25 get transported by ambulance.

1 MR. MILLS: Objection, Judge.

2 THE COURT: Sorry Mr. Mills.

3 MR. MILLS: Say again.

4 THE COURT: I'm sorry.

5 MR. MILLS: Objection. Same objection. It's
6 speculation as to I guess what generally happens or what
7 should have happened and also irrelevant to generally what
8 happens to other people.

9 MR. FEMIA: He's talking about this person, Mr.
10 Davis.

11 THE COURT: The portions of the testimony that
12 were non-responsive are stricken.

13 Q Do you find it neurologically significant this Mr.
14 Davis wasn't taken to the hospital via ambulance?

15 A Yes.

16 Q When you saw Mr. Davis on October 9, 2018 what were his
17 complaints?

18 A He had complaints referable to the neck and lower back
19 including stiffness and pain. He told me that sometimes he
20 experienced tingling in the arms and legs. He told me at the
21 time that I saw him that he was not treating with Dr. Katz. He
22 was not undergoing therapy treatments and not taking pain
23 medications.

24 Q And did he give you his medical history?

25 A Yes.

1 Q What did he say?

2 A He had told me that he underwent abdominal surgery for
3 a gunshot wound.

4 MR. MILLS: Objection, Judge.

5 THE COURT: Sustained and portions unresponsive
6 stricken.

7 Q Were you asked you're aware that Mr. Davis claims that
8 he injured his neck and his back and shoulder in this case,
9 right?

10 A Right.

11 Q What kind of complaints or prior complaints did Mr.
12 Davis make about those areas to his head, neck, back, shoulder?

13 A He denied he ever injured his neck and lower spine.

14 Q Prior to December 3, 2015?

15 A Correct.

16 Q I would like to show you what's in evidence as
17 Plaintiff's 18. Doctor, these records in front of you are dated
18 from December of 2014; is that correct?

19 A December 16, 2017.

20 Q Is that consistent with what Mr. Davis told you that he
21 had never injured his neck or back previously?

22 A It's inconsistent with what he told me.

23 Q If you can click on the mouse I think -- and are these
24 records consistent with what your opinions were from your
25 examination and your review of the records?

1 A Well, um --

2 Q Meaning are these records taken prior to December 3,
3 2015 consistent with your opinion?

4 A Well, I didn't, you know, this shows that he had a
5 significant cervical syndrome you know as of December of 2014.

6 Q So, do you have an opinion as to a reasonable degree of
7 medical certainty that Mr. Davis was suffering from spinal
8 conditions as of December 16, 2014?

9 A Yes. It was advised that he have interior cervical
10 spinal fusion surgery in December of 2014.

11 Q Is that the same exact surgery that's being claimed in
12 this case?

13 A Yes.

14 Q Now, I'm showing you what's been marked as Defendant's
15 Exhibit F in evidence. This is plaintiff's Bill of Particulars
16 from a prior lawsuit containing alleged injuries he sustained in
17 a March 2014 altercation; the injuries that are alleged here,
18 are these serious permanent injuries?

19 MR. MILLS: Objection, Judge.

20 THE COURT: In terms of the definition is that
21 what you are objecting to, Mr. Mills.

22 MR. MILLS: Yes, I guess I didn't have clarity, if
23 he's asking about Mr. Davis or the definition in general?

24 MR. FEMIA: I'm asking if these injuries are
25 serious permanent injuries, the injuries themselves

1 regardless if Mr. Davis actually had them.

2 THE COURT: I would rephrase. That's a legal
3 definition.

4 MR. FEMIA: I'm asking for a medical, if these
5 injuries that are --

6 THE COURT: How would he classify those injuries?

7 MR. FEMIA: I'm sorry.

8 THE COURT: You could ask him in a different way
9 without using that term which has a legal definition.

10 Q How would you describe the injuries that are alleged in
11 here?

12 A Significant injuries to the entire cervical spine.

13 Q But if the plaintiff claimed the injuries in 2014,
14 these injuries, would he be able to do heavy labor?

15 A Um, every individual is different. There are
16 individuals that do have significant degenerative spine disease.
17 This problems is bone problems in their neck and they continue
18 to work.

19 They continue to play professional basketball and
20 football. This in and of itself is not a life-threatening
21 situation because it shows that the structure of the spine is
22 severely damaged.

23 Q Doctor, I want you so assume that when plaintiff
24 testified he acknowledged he was in multiple motor vehicle
25 accidents prior to December 3, 2015 and I want you to assume he

1 was shown treatment records for his neck and back injuries for
2 accidents in 2003, 2009 and 2011; is that consistent with your
3 opinion?

4 A Well, yes.

5 Q Could you is explain that?

6 A No. There's a significant, very significant
7 pre-existing history of multiple traumatic events to the
8 cervical spine and lumbar spine as a result of accidents and
9 other issues.

10 So, you know, it's reflected in what I saw in an
11 examination as well as the diagnostic testing through the
12 imaging studies of the spine.

13 Q Doctor, were you shown surveillance of Mr. Davis in the
14 years following his surgery?

15 A Yes.

16 Q Did you formulate any opinions as to what you observed?

17 A Yes.

18 Q Could you please explain those opinions to the jury?

19 A I observed him appearing comfortable, not in distress,
20 not grimacing or moaning or making any non-verbal movements that
21 would suggest he is in pain. I saw him bending, turning,
22 twisting, driving a car, backing up a car, loading a trunk.

23 It looked, it's not a neurological exam actually but
24 it's a neurological observation. A neurologist is trained to
25 observe people to see if there is some neurological disability

1 and he looked perfectly comfortable in those video surveillance
2 tapes and I didn't see any deficits, any weakness.

3 He moved his extremities equally. He did the
4 activities of daily living with what appeared to be normal power
5 and range of motion.

6 Q Doctor, did you also happen to review the emergency
7 room records from the day of the accident?

8 A Yes.

9 Q What diagnostic testing was performed?

10 A A Cat Scan of the head.

11 Q What was the result of that test?

12 A It was a normal study.

13 Q And what does that mean it's normal?

14 A Well, it means there is no traumatic injury to the
15 brain itself or to the scalp; in other words, the Cat Scan is
16 very sensitive. It can tell you if you have a bump on your
17 head, if the brain is fine.

18 It shows the scalp, shows the bone, the skull and shows
19 you the brain within the skull. So, all that checked out fine.

20 Q What other diagnostic tests was performed?

21 A I'm not familiar with any other diagnostic tests.

22 Q What's the medical significance of that?

23 MR. MILLS: Objection, Judge.

24 THE COURT: What's the objection.

25 MR. MILLS: Speculation as to --

1 THE COURT: Overruled.

2 A The doctors didn't find any, didn't have any concern
3 there was any significant injury to any other part of the body
4 so they didn't do any additional testing.

5 Q Doctor, I want to bring you back to your neurological
6 examination on October 9, 2018; could you walk us through your,
7 what you did, your neurological examination?

8 A Um, so, first thing I do is I observe someone because I
9 can tell a lot by looking at someone. He was comfortable. He
10 was not in acute distress. I had asked him to change into an
11 examining shorts, like disposable shorts and when we did that,
12 he did it standing up.

13 He stood on one foot at a time to take off his pants
14 and put on the shorts. That's part of my examination because it
15 takes strength and balance and good range of motion to put on
16 your shorts or pants while you're standing.

17 People who typically have spinal members --

18 MR. MILLS: Objection, Judge.

19 THE COURT: You have your answer. Next question.

20 Objection is sustained.

21 Q What else did you observe?

22 A He removed a lumbar brace an elastic brace, back brace
23 and I noticed that he was muscular. He was, he looked like he
24 was strong and then as a neurologist, again, I'm troubleshooting
25 the nerves, if I can localize or see what problems there are

1 that correlate with his complaints. So I examine the head.

2 Q What were your findings?

3 A And the reason why I examined the head is because the
4 brain is tucked inside the head and sometimes if you see
5 scarring, that might suggest a brain injury. I noticed that he
6 had a right facial scar on his head.

7 MR. MILLS: Objection, Judge.

8 THE COURT: Overruled.

9 MR. MILLS: It's unrelated to the injuries claimed
10 in this incident.

11 THE COURT: I understand. I'm not going to let
12 him go much further. So, Doctor, without going into that
13 injury just noting your observations.

14 THE WITNESS: Um, well, he told me why he had the
15 scar on his face.

16 THE COURT: You don't have to mention that.

17 THE WITNESS: It related but if you don't want me
18 to discuss it I won't.

19 A I examined his neck --

20 MR. FEMIA: Your Honor, can we sidebar on that
21 issue, it needs to be heard?

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

23 THE COURT: The objection is sustained to the
24 extent that Dr. Feuer can discuss the injuries that he
25 observed and not the cause of those injuries because that

1 is irrelevant to this case.

2 Q Dr. Feuer, did you also examine Mr. Davis' cervical
3 spine?

4 A Yes. The cervical spine is the neck and what I do is
5 first thing I do is palpate it. I touch it and I apply a little
6 pressure and I ask this patient if it hurts when I push in and
7 he told me it did bother him and hurt him when I pushed in and I
8 know there was mild tenderness.

9 Tenderness I don't feel. Tenderness is what a patient
10 complains to me about or report and I apply stimulus or pressure
11 and he said it was painful when I pushed in. And then I asked
12 him to do certain maneuvers, turn his head in a horizontal and
13 vertical plain.

14 He said he couldn't do it because it was difficulty for
15 him secondary to neck pain to move his neck.

16 Q But he told you that he was able to drive his car?

17 A Correct.

18 Q Is that consistent?

19 A No.

20 Q Why not?

21 A Because patients who drive their cars typically have
22 a very healthy range of motion.

23 MR. MILLS: Objection, Judge.

24 MR. FEMIA: Do you turn your neck or head.

25 THE COURT: I have an objection. Overruled.

1 A Driving a car requires relatively healthy range of
2 motion of the neck.

3 MR. MILLS: Objection, Judge.

4 THE COURT: Overruled.

5 A If my patients can't move their neck, I tell them not
6 to drive. It's dangerous for them and it's dangerous for me.

7 Q Did you examine his lumbar spine?

8 A Yes.

9 Q What were your findings?

10 A Again when I pushed in with my fingers he told me that
11 was painful to him. I was able to lift his leg straight up in
12 the air, a test we call a straight leg raising test. That test
13 was negative.

14 When I pull a leg straight up in the air, it pulls on
15 the nerves of the lower back and it causes a shooting pain into
16 the leg. When I lifted his leg up he didn't have any shooting
17 pain in the leg.

18 So, we call that a negative straight leg raising test
19 and then I had to do certain maneuvers, bend over, touch your
20 toes and twist and that was relatively normal although it was
21 somewhat restrictive because he's a big guy.

22 So, certain people don't have the same body habits
23 where they don't have the exact same range of motion as a
24 skinnier person.

25 Q Going back to the straight leg raise test, we acquired

1 testimony from other doctors plaintiff's surgeon regarding this,
2 is the test being negative consistent with the findings of his
3 own doctor?

4 A If he found a negative straight leg raise then it's
5 consistent.

6 Q And as it pertains to radiculopathy, how does those two
7 interplay?

8 A Well, radiculopathy is a pinched nerve coming off of
9 the neck or back and people have radiculopathy of their lower
10 back and lower spine. There's something pressing along the
11 nerves like a branch that comes off a tree.

12 That branch travels down your leg. Um, if I pick up
13 the leg and raise it, puts more tension on the nerve and the
14 patient has more of a sciatic complaint in the leg if there's a
15 pinched nerve.

16 If I can lift the leg up straight parallel to the
17 ground and the patient doesn't complaint, the patient does not
18 have a pinched nerve.

19 Q That was negative of lower back radiculopathy?

20 A Correct.

21 Q And how did you test the cervical area and
22 radiculopathy as it pertains to the cervical region of the
23 spine?

24 A You don't.

25 Q And the motor testing, how did you test that?

1 A Well, when you deal with the symptom of radiculopathy
2 there are three things that make a difference. All these nerves
3 coming out of the neck and back they're like circuit breakers.
4 If you walk into the kitchen and the toaster and refrigerator
5 and the dishwasher, nothing's works but next door in the living
6 room the television, radio, lights are on, you know there's
7 something wrong with the circuit breaker to the kitchen.

8 Every nerve that comes off of the spine whether it's
9 cervical or lumbar spine, it supplies a different area of your
10 arm and leg like a different room, okay. Now, I'm putting the
11 patient through certain maneuvers testing strength, sensation
12 and reflexes.

13 The nerves come off and supply electrical impulses to
14 the muscles. So, they allow you to contract your muscle. They
15 supply skin so I take a pin or some other things and I move it
16 up and down to see if there is any sensory loss and I tap
17 reflexes.

18 If there is weakness, sensory loss and reflex
19 abnormalities in a certain area, a certain room of the house
20 then that would suggest that there is a pinched nerve or
21 radiculopathy.

22 So, the first thing I did in this case is I tested what
23 we call motor function which is muscular function. Does the
24 patient have good strength or is there weakness in any part of
25 the muscles of the arms and legs.

1 I do that by having the patient squeeze my fingers,
2 pull in strong, not let me pull out, hold the elbow up and not
3 let me push it down. Now, if I can push it down on one side and
4 can't push it on the other side, that might suggest there's a
5 deltoid muscle over here and the deltoid is supplied by the 5th
6 cervical nerve route C5.

7 So, I was able to test muscles of the arms and legs and
8 he had good strength on the right and left side and the upper
9 lower extremities. There was no evidence of weakness. Not only
10 that but people who have ongoing pinched nerve or radiculopathy
11 syndrome over time the muscles that are affected, they become
12 atrophy.

13 They loose some of the bulk. I measured out the
14 muscles of his arms and legs and there was no evidence of
15 atrophy. So, so far the muscular exam was normal.

16 Q So they were symmetrical?

17 A Yes.

18 Q Again, what' the significance of the muscular being
19 symmetrical?

20 A Well, if there's an impaired electrical input into a
21 muscle, all right, so if my bicep muscle which is supplied by
22 C7, doesn't get it's full electrical input from a C7, it's going
23 to wither away. It going to atrophy over time. I didn't see
24 any sign of that.

25 Q Not only did you not see, you measured it, right?

1 A I measured.

2 Q What were the finding?

3 A He had symmetrical circumference in both the arms and
4 the legs.

5 Q And what a DTR?

6 A DTR deep tendon reflexes. I take out a reflex hammer.
7 I tap the knee and it jumps. So, that has to do with the
8 nervous coming off of the spine and going to tendons and muscles
9 in the arms and legs.

10 So, I tap tendons in the arms and legs and I expect to
11 see a jerking response. If you don't get a jerking response,
12 that would be suggestive of a pinched nerve. The electrical
13 input from to nerve is not functioning properly.

14 So, if I tap my knee right now and it doesn't jump,
15 this supply by L3 the third lumbar segment. If I don't get a
16 response on the right side and I get a response on the left
17 side, that would suggest there's something going on at L3 on the
18 right.

19 I tapped his reflexes and they are perfectly fine.
20 They were symmetrical, one side looked like the other side.

21 Q Okay. And you mentioned sensory before?

22 A Right. So, the next component to assess for spinal
23 radiculopathy just like I tested motor strength reflexes it's
24 the sensory exam. All of us have electrical nerve input to our
25 arms and legs, our entire body.

1 If a nerve is punched be it in the neck or lower back,
2 you might loose sensation in that particular distribution. So,
3 if I poke an individual with a pin, I move a pin up and down the
4 arms and legs and I poke them in their right thumb, the right
5 thumb gets its sensory electrical supply from C6 the 6th
6 cervical nervous root.

7 That's what I'm trained to do. I know that stuff. So,
8 I combine my motor exam, the reflex exam, sensory exam, as a
9 patient says, you know, if there's weakness in the triceps and
10 if there's absent triceps reflex, if there's sensory loss and in
11 the thumb and forearm, I know that might be consistent with a C6
12 or C7 radiculopathy.

13 In this case he had perfectly normal sensation in the
14 arms and legs. There was no evidence of sensory losses.

15 Q Did you discuss any treatments at the time or
16 medications that the plaintiff was taking?

17 A I asked him. He told me at the time he said he was not
18 undergoing treatment or taking medications.

19 Q What's the significance of that?

20 A He's not having significant complaints localized of the
21 spine.

22 Q Doctor, how many patients have you treated that have
23 had cervical fusions?

24 A Over the 30 years probably a couple hundred.

25 Q And in your expert opinion are that able to go back to

1 work?

2 MR. MILLS: Objection, Judge.

3 THE COURT: Sustained.

4 Q What's the condition of someone who has a cervical
5 fusion after?

6 MR. MILLS: Objection, Judge.

7 THE COURT: Make it relevant to the plaintiff.
8 Sustained.

9 Q Mr. Davis had a cervical fusion, what will would be his
10 condition after having this cervical fusion?

11 MR. MILLS: Objection, Judge.

12 THE COURT: Overruled.

13 A Um, he should return to baseline after having the
14 cervical fusion. Some people don't return 100% but most people
15 are able to resume their lifestyle.

16 MR. MILLS: Objection, Judge.

17 THE COURT: What's the objection.

18 MR. MILLS: As to what most people do, speculation
19 and irrelevant.

20 THE COURT: Mr. Mills, I have allowed a little bit
21 of latitude on this but he is an expert so he can opine on
22 what he has encountered but we'll move on.

23 MR. FEMIA: I'm sorry, did we get an answer, if
24 not I will move on.

25 THE COURT: Move on. That's the answer Counsel.

1 Q I want you to assume that the other day Dr. Katz, Mr.
2 Davis' surgeon testified here in court. I want you to assume
3 that he testified that Mr. Davis' shoulder is stable. I want
4 you to assume that he testified that Mr. Davis' neck is stable.

5 Further I want you to further assume that he did not
6 testify to any restrictions being placed on Mr. Davis. Is that
7 consistent with your findings from your examination in 2018?

8 A 100% consistent.

9 Q Why is that?

10 A I found a normal neurological examination and based on
11 the examination there is no, I didn't find any neurological
12 disability to preclude him or prevent him from working or
13 engaging in activities of daily living.

14 Q And Doctor, I want you to also assume that it's being
15 claimed that the accident on December 3, 2015 activated an
16 underlying condition in the plaintiff's neck; would you agree
17 with that?

18 A No.

19 Q Why not?

20 A Because he had a very significant pre-existing history
21 of a cervical syndrome to the point where it was advised he even
22 have surgery in December of 20, 2019 was it or '14, 2014 and he
23 didn't sustain a serious neck injury as a result of this
24 accident of December 3rd of 2015.

25 He didn't undergo a cat scan of the cervical spine in

1 the emergency room. So, I think everything pertaining to the
2 neck represents a preexisting condition.

3 Q If a hard metal and rubber object falls 50 to 70 feet
4 that weighs approximately 20 pounds or so and hits someone in
5 the head, the neck, the shoulder, do you have an opinion to a
6 reasonable degree of medical and neurological certainty as to
7 what neurological injuries you would anticipate?

8 MR. MILLS: Objection, Judge.

9 THE COURT: Overruled.

10 A That's significant trauma and patients that I have seen
11 that had similar types of serious trauma to the head usually
12 results in loss of consciousness and a brain injury whether it's
13 a hemorrhage or fractured skull. So, that's typically what you
14 see in that type of trauma.

15 MR. MILLS: Objection, Judge.

16 THE COURT: Overruled.

17 MR. FEMIA: I just ask the objection be limited
18 to the question and the doctor be allowed to finish his
19 answers?

20 THE COURT: Mr. Mills, that is correct.

21 MR. MILLS: If the doctor testifies about
22 something I think is objectionable I can --

23 THE COURT: You can ask that the unresponsive
24 testimony be stricken from the record. That's what you can
25 ask for.

1 MR. MILLS: Well, I ask that the unresponsive
2 portion but it's also objectionable, Judge, it's
3 speculation. Unless he's going to say how many patients
4 this exact accident happened to --

5 MR. FEMIA: We were given strict instructions and
6 I'm trying to abide by them.

7 THE COURT: Thank you. Next question.

8 Q Did you have an opportunity to take a look at the
9 plaintiff's medical records from Florida?

10 A Yes.

11 Q Can you discuss any mentions of a doctor correlating
12 his lumbar treatment to an accident on December 3, 2015?

13 A No.

14 Q Why not?

15 A There no correlation to any specific accident in those
16 records.

17 Q Are the complaints in those records subjective or
18 objective?

19 A Subjective.

20 Q What does that mean?

21 A That means what a patient is telling you and a doctor
22 has to listen all the time to what a patient is telling you but
23 usually you want to go on to find something objective to support
24 the subjective complaints.

25 So, a patient can walk into my office and say, Doctor,

1 my hair burns. Now, I happen to know that hair -- I don't have
2 hair but hair doesn't burn. Okay. So, I'm not going to find
3 anything to correlate with that complaint on an exam and I'll
4 sit and discuss with the patient, you know, why they're
5 complaining about it.

6 Subjective complaints are, I have neck pain. I have
7 back pain. Now, I have to see if I can correlate why the
8 patient has that neck pain and back pain.

9 Q Can you discuss any mentions of these Florida PT
10 records saying that Mr. Davis is disabled?

11 A No.

12 Q Why can't you do that?

13 A He doesn't mention that he was disabled in those
14 records?

15 Q His own doctor doesn't mention that?

16 MR. MILLS: Objection, Judge, stating facts not in
17 evidence.

18 THE COURT: Sustained.

19 MR. FEMIA: Your Honor, they're moved into
20 evidence by plaintiff. In fact it's Plaintiff's Exhibit.

21 THE COURT: We established this doctor reviewed
22 those records?

23 MR. FEMIA: We have?

24 THE COURT: By virtue of?

25 MR. FEMIA: By looking at them. It's an exhibit

1 in court.

2 Q Doctor, I'm sorry, I thought I asked this before, did
3 you review these records?

4 A Yes.

5 Q And was there any mention that by these physicians or
6 treaters that Mr. Davis is disabled?

7 A No.

8 Q Did there come a time when you examined Mr. Davis for a
9 second time?

10 A Yes.

11 Q When was that?

12 A September 20th of 2023.

13 Q Were your findings different at this examination than
14 they were at the 2018 examination?

15 A Yes, very different.

16 Q Can you explain to the jury how these findings were
17 very different?

18 A Well, firstly, he told me that he was not going to
19 answer any questions. Usually.

20 MR. MILLS: Objection, Judge.

21 THE COURT: What's the objection.

22 MR. MILLS: Whatever usually is. It's irrelevant.

23 MR. FEMIA: Your Honor, he is an expert.

24 THE COURT: How about we limit the answers to what
25 occurred with this plaintiff in regard to this question.

1 Q Did you attempt to elicit a history from Mr. Davis?

2 A Yes, I did.

3 Q What did he tell you?

4 A He told me his lawyer instructed him not to answer any
5 questions that were posed to him by myself.

6 Q And is that different from the prior examination?

7 A Yes. It's different than almost all my examinations.

8 MR. MILLS: Objection.

9 THE COURT: Objection noted. Continue.

10 Q How else was this examination different?

11 A He told me that, um, that he couldn't get up on an
12 examination table to be examined. It was too painful for him.
13 I perform my examinations on an examination table but if a
14 patient can't get up on the table and in this case he told me it
15 was too painful, then I did perform the examination in the
16 visitor's chair.

17 It's no different than any of the chairs in this room.
18 I still was able to perform a complete neurological examination
19 but I took note of the fact that he couldn't get on the table
20 and he told me his own treating doctors don't put him up on the
21 table.

22 Q Sticking with that point before we move on, Doctor, you
23 mentioned that you reviewed his records from a chiropractor in
24 Florida?

25 A Yes.

1 Q Where did the chiropractor treat patients?

2 A On a table.

3 Q Was there any mention that Mr. Davis couldn't get on a
4 table to be treated by a chiropractor?

5 A No.

6 Q How else was this examination in 2023 --

7 A On this occasion when I touched his neck and back I
8 noted that he had disproportionate tenderness. When I saw him
9 the first time he had mild tenderness. I pushed in. I provide
10 a stimulus and the patients says they experience pain.

11 We rate tenderness as mild, moderate or severe. If I
12 have a broken bone sticking out of my leg and someone comes over
13 and grabs it, I'm going to scream. That's severe tenderness.
14 Disproportionate tenderness is what we call nonphysiological.

15 I provide a very light stimulus and the patient reacts
16 like they have a bone sticking out of their body. It doesn't,
17 it's not commensurate, doesn't correlate. His complaint of pain
18 does not correlate with the stimulus that I'm providing.

19 So, both in the neck and lower back he had
20 disproportionate tenderness and difficulty performing any range
21 of motion test because of that.

22 Q Doctor, before you move on, you mentioned
23 nonphysiological, commensurate, I mean can you break it down for
24 us. I'm just a lawyer. Could you tell us what that means?

25 A You are just a lawyer. It embarrassing. Um, it will

1 come up repeatedly but nonphysiologic means that whatever the
2 patient is demonstrating can't be explained on a physiological
3 medical basis.

4 I said before, if someone comes over and says their
5 hair burns or their teeth itch, there is nothing in the body
6 that's going to make you hair burn or teeth itch. So, there's
7 no medical syndrome.

8 If the complaint and findings on the examination can't
9 be supported by a medical syndrome, then I was trained to refer
10 to that as being nonphysiologic.

11 Q And Doctor, were you also trained and you studied this
12 in medical school, right, there's a concept in your community
13 called secondary gain; is that correct?

14 A Correct.

15 Q Could you explain what that means to the jury?

16 A Secondary gain is when an individual is demonstrating
17 symptoms that are not for the purpose of pure medical treatment
18 but usually for another gain of some type, usually it's a
19 monetary gain.

20 Sometimes a child might complain, mommy I have a
21 stomachache because they have a test that day and the mom says
22 okay, stay home, you don't have to go to school and take the
23 test. That's a case of secondary gain.

24 (Whereupon, Senior Court Reporter Valerie McNally
25 began recording the following proceedings:)

1 DIRECT EXAMINATION

2 BY MR. FEMIA:

3 Q Would lawsuit be considered a secondary gain?

4 A It may be.

5 Q How else was this test in 2023 different than your
6 first examination in 2018?

7 A Well, most notable was, I mentioned before three
8 components; reflex, motor reflexes and sensation.

9 He had good strength in his arms and legs. There's no
10 weakness. He had good reflexes, normal reflexes. Wherever I
11 tapped him, his limb jumped.

12 What was very different was his sensory exam, meaning,
13 I take out a pin, a tuning fork, and I move it up and down the
14 arms and legs and I say, do you feel it and does the right side
15 feel like the left side.

16 When I initially saw him, he felt everything on the
17 right side and it felt like the left side. On this occasion, he
18 had diminished sensation over the entire left side of the body
19 as compared to the right and he even had problems detecting
20 position sensation, what we call proprioception, in the lower
21 extremities in the feet.

22 So proprioception is, I move your toe up and I ask you
23 to close your eyes. I moved it up and down. I ask, is it
24 pointing up or is it pointing down, and that involves a lot of
25 integration from your brain, spinal cord and nerves.

1 When I moved his toe up or down on the right side, he
2 knew the position. On the left side, he didn't know whether it
3 was pointing up or down. The medical term is proprioception.
4 It means position sense. He had absent position sense in his
5 left foot and he did something else --

6 Q Doctor, before you move on, is that consistent with
7 your other findings?

8 A Well, not consistent when I first saw him, and it
9 certainly wasn't documented in the medical record by his
10 treating doctors, but it's very indicative of a nonphysiological
11 syndrome.

12 He also did something, what the textbooks refer to as
13 splitting of midline; meaning, I take out a tuning fork, which
14 vibrates. Now, tuning forks, the vibration is felt by the
15 bones, by the solid structures, and the thing about a tuning
16 fork vibrating is, no matter where you put the tuning fork in
17 the same solid structure, it vibrates the same way throughout.

18 So if I vibrate the tuning fork and I put it over here
19 on the right, it's not only vibrating on the right but also
20 vibrating on the left the same way because the whole structure
21 vibrates uniformly. It's a solid structure.

22 What happened in this particular situation was, I
23 tested the tuning fork with bones that crossed the midline.

24 Q What is the midline, Doctor?

25 A The midline is approximately the 50-yard line, half of

1 your body.

2 Q Why would you test specifically on this, bones that
3 crossed the midline? Why is that significant?

4 A Because I was suspect that the left side sensory loss
5 was not real and the reason why we test bones across the midline
6 is, because you only have one bone -- forehead bone; it's called
7 a frontal bone. You don't have a right forehead bone or left
8 forehead bone.

9 If I make it vibrate, I put it on the right side, then
10 I put it on the left side, the patient can't say well, I felt it
11 on the right but not on the left, because no matter where I put
12 this thing, the same bone is vibrating with the same frequency.

13 The same thing with the nasal bone where my glasses are
14 sitting. It's a saddle bone sitting on top of your nose. I put
15 it on the right side or left side, if the patient says, well, I
16 felt it on the right not the left, that's impossible. The whole
17 solid structure should be vibrating uniformly.

18 The last bone I check is the chest bone or sternum.
19 You don't have a right sternum or left sternum; it's one bone.

20 In this case, when I pressed the vibrating tuning fork
21 on the right side, he felt it. On the left side, he didn't feel
22 it. That is nonphysiologic.

23 Q What is nonphysiologic?

24 A In other words, it can't be explained on the basis of
25 any neurological syndrome or disorder localized to the brain or

1 spinal cord or the nerves coming out of the spine.

2 THE COURT: Mr. Femia, be mindful of the time so
3 Mr. Mills has enough time to cross.

4 Q Doctor, was all your findings and opinions made within
5 a reasonable degree of medical and neurological certainty?

6 A Yes, sir.

7 Q In your opinion, based on the review of the medical
8 records and examinations of Mr. Davis, is there any evidence
9 that the competent producing cause of Mr. Davis' injuries was
10 the accident on December 3, 2015?

11 A No.

12 Q Why not?

13 A Because he had the exact same syndrome which predated
14 the accident and he didn't sustain serious neck injuries as was
15 on the day of the accident.

16 MR. FEMIA: Nothing further, Your Honor.

17 THE COURT: Mr. Mills.

18 MR. MILLS: Could I see the doctor's file, Judge?

19 THE COURT: Sure.

20 MR. MILLS: Just briefly.

21 CROSS-EXAMINATION

22 BY MR. MILLS:

23 Q Doctor, I am going to ask you some questions here today
24 about your review.

25 You didn't treat Mr. Davis, correct?

1 A I did not.

2 Q You did not?

3 A I did not.

4 Q And you had two examinations of Mr. Davis and you
5 reviewed medical records?

6 A Yes.

7 Q Give me one second.

8 There's boxes of medical records, Doctor. Did you
9 review them all, do you know?

10 A I reviewed records that were given to me today.

11 Q Today?

12 A Yes. Additional records.

13 Q That you reviewed today?

14 A Yes.

15 Q So which records did you review today?

16 A The chiropractic records.

17 Q From Florida?

18 A Yes.

19 Q What time?

20 A Nine o'clock.

21 Q You were sitting in here before 10, right?

22 A I reviewed them in the courthouse.

23 Q In this courtroom?

24 A Yeah.

25 Q Like when you were sitting right here?

1 A Correct.

2 MR. FEMIA: Objection.

3 Q And you gave your opinions to this jury to a -- these
4 are the records you are talking about, the physical therapy
5 records from Florida?

6 A Yes.

7 Q And you reviewed all of these records from 9 o'clock
8 sitting here in this room?

9 MR. FEMIA: Objection. It's been four times now.

10 THE COURT: Asked and answered.

11 A I reviewed the records.

12 Q Your opinion to a reasonable degree of medical
13 certainty about his treatment in Florida that consists of all of
14 these records is from looking at these records --

15 MR. FEMIA: Objection.

16 Q -- starting at 9 o'clock this morning?

17 MR. FEMIA: Objection. Asked and answered,
18 misstating testimony.

19 MR. MILLS: It's a question.

20 THE COURT: Rephrase the question, because it is
21 misstating facts.

22 MR. MILLS: Judge, this is cross-examination,
23 meaning if he disagrees, he can tell me.

24 MR. FEMIA: We can stipulate that the doctor
25 testify he reviewed the records.

1 MR. MILLS: That's not what I am asking.

2 THE COURT: Rephrase the question, please.

3 MR. MILLS: Sure.

4 Q The opinion that you gave this jury to a reasonable
5 degree of certainty in regards to his treatment in Florida,
6 which includes -- what facility in Florida did you review
7 records for?

8 A Chiropractic physical therapy.

9 Q What is the name of it?

10 A I don't know.

11 Q What is the name of doctors he treated with in Florida?

12 A I don't know.

13 Q What is the name of -- how many times -- how many
14 visits did he have in Florida?

15 A Many.

16 Q Not many. How many?

17 A You tell me how many.

18 Q I am asking you.

19 A I don't know.

20 MR. FEMIA: Does he want the doctor to look
21 through it now?

22 MR. MILLS: Judge, this is cross-examination.

23 THE COURT: That's not an objection, Mr. Femia.

24 MR. FEMIA: I object.

25 THE COURT: What's the objection?

1 MR. FEMIA: If he wants the doctor to count them,
2 he can count them.

3 THE COURT: That is not what he is asking him.

4 MR. FEMIA: He asked him to count them.

5 THE COURT: That is not what he is asking him.

6 Move on, Mr. Mills.

7 BY MR. MILLS:

8 Q Doctor, you talked about secondary gain, right?

9 A Yes.

10 Q Would secondary gain include bringing a doctor in here
11 to try and minimize Kareem Davis' damages so that the defendants
12 won't have to --

13 MR. FEMIA: Objection.

14 Q -- be responsible for compensating for the loss?

15 THE COURT: I hear you. I am letting him finish
16 the question.

17 Your objection is overruled.

18 A No.

19 Q So it doesn't benefit the defendants for you to come in
20 here and say Mr. Davis doesn't have a serious injury?

21 MR. FEMIA: Objection.

22 THE COURT: Sustained.

23 Q Were you informed by the lawyers for the defendant that
24 their goal was to have you make it seem as if Mr. Davis doesn't
25 have an injury?

1 MR. FEMIA: Objection.

2 THE COURT: Sustained.

3 Q Were you given paper records or like electronic
4 records?

5 A This morning?

6 Q Yes.

7 A Paper records.

8 Q These?

9 A I believe they were them.

10 THE COURT: Mr. Mills, I believe we covered that.

11 MR. MILLS: I have a different follow-up question.

12 MR. FEMIA: We can stipulate it was those records.

13 Q When you were handed this stack of records an hour
14 before you were scheduled to testify, were you told what they
15 wanted you to say about these records?

16 MR. FEMIA: Objection.

17 THE COURT: Sustained.

18 MR. MILLS: Why, Judge? That doesn't follow a
19 question.

20 THE COURT: Sustained.

21 MR. MILLS: How it that sustained?

22 Q Did the lawyers tell you --

23 MR. FEMIA: Objection.

24 THE COURT: Sustained.

25 MR. MILLS: He is not their lawyer. There's no

1 attorney/client privilege.

2 MR. GRILLO: It's not a criminal case.

3 THE COURT: Counsel, I am telling you that's an
4 improper question.

5 MR. MILLS: Why?

6 THE COURT: Because I am telling you it's an
7 improper question.

8 MR. MILLS: Were you directed by those lawyers how
9 to testify, that's not improper.

10 THE COURT: Move on. He is an expert qualified in
11 his field. Ask him about his expertise and that which is
12 relative to this case.

13 MR. MILLS: Judge --

14 Q Doctor, were you instructed --

15 MR. GRILLO: Objection.

16 Q -- how to testify about these records an hour before
17 you came in to testify?

18 THE COURT: I am pretty sure I have just said that
19 is an improper question. Whether you agree with that
20 ruling or not is inconsequential.

21 Q Did you look at every single page of these records?

22 Yes or no.

23 A I don't know if I looked at every single page, but --

24 Q Yes or no.

25 A Stop. If you look --

1 THE COURT: No, no, no. Don't.

2 MR. GRILLO: Judge, you can't blame the doctor.

3 THE COURT: Excuse me.

4 MR. MILLS: You can.

5 MR. GRILLO: No, you can't.

6 THE COURT: Excuse me, guys. Seriously --

7 MR. GRILLO: I didn't say anything. This is
8 nonsense.

9 THE COURT: I am not doing it. If I tell you to
10 stop, you stop.

11 MR. GRILLO: I apologize. I'll sit down.

12 THE COURT: Thank you. Again, and just as with
13 your client, Doctor, I know this is frustrating and not a
14 comfortable situation, but we need to stay in control and
15 act accordingly.

16 THE WITNESS: Okay. I am sorry.

17 Q Doctor, would you agree with me that you looked at this
18 jury and gave them an opinion based on records that you did not
19 completely review?

20 Yes or no.

21 MR. FEMIA: Objection.

22 THE COURT: Overruled.

23 A It's not a yes or no answer.

24 Q You just said you did not --

25 A If you let me explain, I will explain.

1 Q You just said, correct, you did not review every page
2 of these records?

3 MR. FEMIA: The doctor is trying to answer the
4 question.

5 MR. GRILLO: He is being browbeaten.

6 THE COURT: Guys.

7 MR. GRILLO: Your Honor, it's not guys,
8 respectfully.

9 THE COURT: I am saying "guys" in respect to those
10 of you who are talking.

11 MR. GRILLO: Okay. That would be the doctor
12 and --

13 THE COURT: And Mr. Femia. And I treat you guys
14 as one "guys."

15 MR. GRILLO: Understood.

16 THE COURT: There's no reason for me to explain
17 this.

18 Again, Doctor, you have to ask answer the question
19 that's asked. If he is not asking for an explanation, you
20 don't give an explanation.

21 If there's anything your attorney needs to address
22 on redirect, they are more than welcome so do so.

23 Mr. Mills, continue.

24 BY MR. MILLS:

25 Q You stated that -- let me ask you this: Mr. Davis,

1 when was the last treatment for Mr. Davis, do you know?

2 A I don't recall. I think it was 2024 but I am not sure.

3 Q You don't know when his last treatment was, correct?

4 A Correct. When I saw him initially, he was not
5 undergoing any treatments.

6 Q When did you see him initially?

7 A In 2018.

8 Q There's not a record that has him treating at the time
9 you saw him? Are you sure about that?

10 A He told me he was not undergoing physical therapy or
11 taking medications at that time.

12 Q If there's record from 2018, would you agree then he
13 was treating when you saw him?

14 MR. FEMIA: Objection. He was asked about what he
15 was told.

16 THE COURT: Overruled.

17 A I am just repeating what he told me in 2018.

18 Q Understood.

19 You talked about neurological observation, correct?

20 A Okay, yes.

21 Q You said, because of your expertise, you can do an
22 evaluation based on observation.

23 You remember saying that about surveillance footage?

24 A I qualified it. In other words, I said it's not a
25 complete neurological exam, but it is somewhat of a neurological

1 exam.

2 Q Then you talked about Mr. Davis having some conditions
3 in his spinal column, the neck and back, that was observed
4 before the accident of December 3, 2015, correct?

5 A It was diagnosed.

6 Q It was diagnosed, yes.

7 Would you agree that conditions can be asymptomatic?

8 Yes or no.

9 A In general, yes.

10 Q Meaning you can have a condition diagnosed or not, but
11 it does not impact your daily activities, correct?

12 A Yes.

13 Q You would agree with me that the condition Mr. Davis
14 suffered before December 3rd of 2015 was not impacting his daily
15 activities, correct?

16 A I am not sure.

17 Q Let's show --

18 MR. MILLS: Judge, if I may.

19 Q Did you review his treating record from Bellevue
20 Hospital?

21 A Yes.

22 Q All of them or no?

23 A I don't remember what I reviewed.

24 Q But you don't know if you reviewed all of them or not?

25 A I don't know if I reviewed all of them.

1 Q What? Shouldn't that answer be yes?

2 MR. FEMIA: Objection.

3 A I also did a review.

4 THE COURT: Doctor, the objection is sustained.
5 It's argumentative.

6 MR. MILLS: Sure.

7 Q You are aware that you were paid by the defendants to
8 come in here and talk to this jury, right? Correct?

9 A I was scheduled to come in here and testify.

10 Q You were paid for it; you are not the treating doctor,
11 right? You are paid to be a part of this case as a doctor for
12 the defendant, right?

13 A I am being paid from the defendant.

14 Q Generally, the defendants pay you to come in and say
15 somebody is not hurt, right?

16 MR. FEMIA: Objection. Objection.

17 THE COURT: Rephrase that question.

18 Q You are generally paid -- generally, you're a
19 defendant's doctor, correct?

20 A I do more for defense, yes.

21 Q Meaning you are paid to come in and --

22 MR. GRILLO: Asked and answered.

23 THE COURT: And Mr. Mills, he is paid to come in
24 and give his opinion.

25 MR. MILLS: Understood.

1 Q And giving your opinion, wouldn't you want to read all
2 of the medical records to make sure whatever you are telling the
3 jury is true?

4 A I oftentimes diagnose as truthful. Just like you won't
5 let me talk about the scar on his face, I didn't assume the
6 treatment for that.

7 THE COURT: Doctor.

8 THE WITNESS: Yes.

9 THE COURT: Thank you.

10 Portions unresponsive are stricken.

11 Q When you reviewed the Bellevue medical records, did you
12 see that Mr. Davis, after those examinations, he said he did not
13 have difficult walking, urination or completing his daily
14 activities?

15 Were you aware of that? Is that one of the records you
16 reviewed?

17 A I don't recall.

18 MR. FEMIA: Could we identify what is being shown
19 so the doctor --

20 MR. MILLS: It's the medical record from Bellevue.

21 THE COURT: The doctor can't see it because it's
22 on the television.

23 If you would like to move to see the television --

24 MR. FEMIA: You are examining the witness about
25 something that he can't see.

1 THE COURT: Thank you.

2 THE WITNESS: Nice pad.

3 MR. MILLS: Thank you.

4 THE WITNESS: You are a lefty.

5 MR. MILLS: I am.

6 THE WITNESS: I know. I was able to observe that
7 on you as part of my neurological exam.

8 MR. MILLS: I hope if I am treating with you, you
9 looked at all my records though.

10 Q Do you see where it says --

11 THE COURT: That was unnecessary.

12 MR. MILLS: He started it.

13 Q -- where it says completed --

14 THE COURT: Excuse me. Excuse me. This is not a
15 joke.

16 MR. MILLS: Certainly not.

17 THE COURT: This is a Court of Law. You are to
18 conduct yourself accordingly, including those people on the
19 benches observing.

20 Move on.

21 Q You would agree with me there is a record from before
22 the accident of January 3, 2015 where it indicates that Mr.
23 Davis had no difficulty completing his daily activities, correct?

24 A His activities of daily living, yes.

25 Q All right.

1 You would also agree that before the accident of
2 December 3, 2015, in an examination conducted, Mr. Davis' range
3 of motion without pain in his -- you can see it there -- in his
4 back and his shoulder, full range of motion without pain,
5 correct?

6 F-R-O-M is full range of motion, Doctor?

7 Do you want me to show you where I am referring to?

8 A In the back, correct. They don't examine his neck
9 here.

10 Q And his shoulder?

11 A Yeah. You didn't show me the neck exam.

12 Q Okay. But there's no indication of any deficiencies or
13 limitations in his neck in that Bellevue record?

14 A Read to me the previous things.

15 MR. FEMIA: Objection.

16 THE COURT: What is the objection?

17 MR. FEMIA: He didn't show him this.

18 MR. MILLS: I just showed him it.

19 MR. FEMIA: He showed him the back, not the neck.

20 The doctor specifically asked for it.

21 THE COURT: Overruled.

22 Q Doctor, I want you to take a look -- so before the
23 accident of December 3, 2015, we would agree --

24 MR. FEMIA: Your Honor, could we approach on this?

25 THE COURT: Yes.

1 (Whereupon, at this time, an off-the-record
2 conference was held between all counsel and the Court at
3 the side-bar.)

4 THE COURT: Put on the record what you are reading
5 from.

6 MR. MILLS: Bellevue Hospital record from
7 July 29th of 2014.

8 BY MR. MILLS:

9 Q We established, Doctor, that Kareem Davis indicated he
10 had no issues with performing his daily activities prior to the
11 accident of December 3, 2015, correct?

12 A Yeah. It don't say work. It says activities. That's
13 like brushing your teeth, washing, taking a shower. That's
14 activities of daily.

15 Q It doesn't say work?

16 A It doesn't say anything about work.

17 Q So maybe he had difficulties doing work?

18 A Yes.

19 Q Look at this.

20 THE COURT: This is the same -- what are we
21 showing?

22 Q Doctor, I am showing you a video from July 30th of 2015
23 of Mr. Davis doing work.

24 THE COURT: That is in evidence, correct?

25 MR. MILLS: This is in evidence.

1 THE COURT: Thank you.

2 A What is the date?

3 Q July 30, 2015. All right --

4 A I know he went to work.

5 Q Say it again?

6 A He got hurt at work. That's the case.

7 Q So I want you to -- you see Mr. Davis performing work
8 activity in this video, correct?

9 A Correct.

10 Q So we can agree, based on your neurological observation
11 that you talked about, the skills that you have, that Mr. Davis
12 was fine before the incident of December 3rd of 2015, correct?

13 A No. Incorrect. Why did the doctor recommend cervical
14 fusion surgery in 2014 if he is doing great? You know, I am not
15 familiar with doctors recommending cervical fusion surgery if
16 someone is doing fantastic.

17 Q So what did we just observe? In that video you just
18 observed -- and I can put it back up -- did you observe any
19 neurological deficiencies? Yes or no.

20 A I mean, I didn't study that, but people with neck
21 problems do go on to do work, play professional ball. It
22 doesn't mean they don't have a neck problem.

23 Q Doctor, you gave us a full evaluation when you saw a
24 video of Mr. Davis, when the defendants hadn't filed for six
25 years, and it showed him seeding his lawn. You gave us a full

1 evaluation about that. But you are saying you can't look at the
2 video I just showed you -- and I can play it again -- and
3 evaluate whether or not there were neurological deficiencies?

4 A I don't disagree with him returning to work. I know he
5 worked. I treated professional athletes who have terrible neck
6 problems and they continue to play ball.

7 Q So we can agree -- let's establish a baseline -- that
8 before the accident of December 3, 2015, Mr. Davis had the full
9 ability to work, correct?

10 A They are two different issues. He had a very bad neck
11 but he also was able to work.

12 Q Now, we saw that video of Mr. Davis performing all of
13 his work duties and I want you to assume there was testimony
14 that Mr. Davis had the responsibility of heavy lifting of things
15 at work and he performed those activities.

16 You don't dispute that you can have the conditions that
17 were shown in that prior film before, that were taken before
18 December 3, 2015, but still be able to perform all of the
19 activities that Mr. Davis was doing at the time of the
20 accident --

21 MR. FEMIA: Objection.

22 Q -- correct?

23 THE COURT: What is the objection?

24 MR. FEMIA: It's compound and confusing.

25 THE COURT: A little confusing. Mr. Mills, could

1 you rephrase.

2 MR. MILLS: Sure.

3 Q You don't dispute that despite whatever condition
4 existed with Mr. Davis, he was fully capable and, in fact,
5 performing heavy labor work requirements at the time the
6 December 3, 2015 accident happened --

7 MR. FEMIA: Objection.

8 Q -- correct?

9 MR. FEMIA: Objection, whatever condition.

10 THE COURT: No, no. Overruled.

11 A What I've repeated several times is, people with
12 serious cervical spine issues can go on to do manual labor,
13 professional sports. It's not a condition that you are going to
14 die from, but it's still there, no matter what.

15 Q Okay. So Mr. Davis was performing and able to perform
16 work, work related activities and then he was injured on
17 December 3, 2015 in an accident for which the defendant is
18 responsible, correct?

19 A That what? Could you repeat?

20 Q In an accident for which the defendant is responsible,
21 correct?

22 A I don't know who's responsible, but he had an accident.

23 Q In that accident -- I am a little confused about your
24 testimony because on the one hand you say if that --

25 MR. FEMIA: Objection. It's argumentative and

1 it's confusing. That's the issue.

2 THE COURT: Continue, Mr. Mills.

3 MR. MILLS: Sure.

4 Q Did you state that you had a number of patients who
5 suffered the same type of accident as Mr. Davis?

6 A I've treated many patients.

7 Q That had --

8 A That had head trauma.

9 THE COURT: You can't talk at the same time.

10 Q I am talking about the mechanism of injury.

11 A Yes, people struck by falling objects, absolutely.

12 Q Is everybody that's struck by a falling object, does
13 everybody get the same exact injury? Yes or no.

14 A No.

15 Q So you would agree that when you said you expect a
16 certain injury, that would make no sense, correct?

17 MR. FEMIA: Objection.

18 THE COURT: Overruled.

19 MR. FEMIA: It's misleading and also misstating
20 the question. He was given a scenario.

21 THE COURT: I appreciate the basis. Overruled.

22 A The way the question was posed to me, I would expect to
23 see a serious brain injury based on what -- unless you tell me
24 another mechanism of injury, like a feather hit him in the head,
25 I would say no, you're not going to have any serious brain

1 injury.

2 But based on what was asked of me previously, I would
3 say you would have severe brain injury.

4 Q How did the accident happen?

5 A He told me a wheelbarrow fell from above and hit him in
6 the head.

7 Q A wheelbarrow?

8 A That's what he told me.

9 Q What if that didn't happen?

10 A I was hoping he would be truthful with me and tell me
11 what actually happened.

12 Q What about a wheel from the wheelbarrow?

13 A Um, what about it?

14 Q Is that what he told you or no?

15 A No. He told me a wheelbarrow.

16 Q Let's operate, Doctor, from a wheel from the
17 wheelbarrow striking Mr. Davis.

18 Does that change your response?

19 MR. FEMIA: Objection. You have to give a
20 scenario. You can't just say -- the question was asked
21 before.

22 MR. MILLS: I will strike that.

23 Q Is your testimony here today all based on a wheelbarrow
24 hitting Mr. Davis in the head? Yes or no.

25 A No.

1 MR. FEMIA: Objection.

2 Q But that --

3 MR. FEMIA: Objection.

4 THE COURT: Overruled. He answered the question.

5 Continue.

6 Q Did that factor into your evaluation that you gave this
7 jury?

8 A No. It's part of the history, but then you have to
9 look at how he got to the hospital, the emergency room report,
10 what I found on examination.

11 In other words, you can't just take a history and then
12 walk away and know what is going on with the patient. You have
13 to do a complete history and examination and then you can figure
14 out what the mechanism of the injury was and how it impacted the
15 patient.

16 Q Did you figure out what the mechanism of the injury was
17 and how it impacted the patient? Yes or no.

18 A Yes.

19 Q What was the mechanism of injury?

20 A He was struck in the head by a falling object. A
21 wheel, a wheelbarrow, a car, a feather; it doesn't make a
22 difference. He ended up being driven to the hospital where he
23 underwent a CAT scan of the head because he told them he
24 sustained a head injury, but he didn't undergo a CAT scan of the
25 neck.

1 Q When you go to the emergency room, what is the purpose
2 of emergency room treatment, Doctor?

3 MR. FEMIA: Objection. It's the same objection he
4 made.

5 THE COURT: Sustained.

6 Q What is the purpose of emergency room treatment?

7 THE COURT: If I sustain it, you can't ask it
8 again in the same exact way.

9 Q Doctor, the emergency room treatment is to stabilize
10 the patient, correct?

11 MR. FEMIA: Objection. Move to strike.

12 MR. MILLS: How is that objectionable?

13 THE COURT: Mr. Mills, move on from this
14 questioning.

15 Q Doctor, they don't treat people in an emergency room,
16 correct?

17 MR. FEMIA: Objection.

18 A Incorrect.

19 Q Isn't the purpose of the emergency room to stabilize a
20 patient? Yes or no.

21 MR. FEMIA: Objection.

22 THE COURT: Again, I said sustained.

23 MR. MILLS: Judge --

24 THE COURT: Do you want to approach?

25 MR. MILLS: Yes, please.

1 (Whereupon, at this time, an off-the-record
2 conference was held between all counsel and the Court at
3 the side-bar.)

4 Q Let me ask you this -- I withdraw the question.

5 Generally in emergency room, they refer a patient to
6 another doctor for follow-up treatment, correct? We can agree
7 with that?

8 A No.

9 Q The emergency room doesn't refer people to doctors for
10 follow-up treatment?

11 A They can. It depends on what the nature of the injury
12 is, but it's not generally.

13 Q Thank you, Doctor.

14 Doctor, are you aware whether or not Mr. Davis has any
15 hardware in his neck?

16 A Yes, I am aware.

17 Q What is that? Does he?

18 A He had a fusion, yes.

19 Q What does he have?

20 A He has metal and screws.

21 Q Showing the Doctor a CAT scan that's in evidence from
22 his treating doctor, Dr. Katz, this is the plate and screws
23 that's in Mr. Davis' neck?

24 MR. FEMIA: What exhibit is that?

25 MR. MILLS: It's Dr. Katz.

1 MR. FEMIA: Which exhibit?

2 MR. MILLS: I don't have it in front of me.

3 MR. GRILLO: Plaintiff's 4 of Dr. Katz.

4 A It's an x-ray, not a CAT scan.

5 Q It shows --

6 A Yes, it shows the hardware.

7 Q In regard to Mr. Davis' condition, you agree that this
8 hardware will remain, correct?

9 A Yeah. In almost all cases it remains.

10 Q The examination that you performed, specifically if you
11 look at your report from 2018, page 4, there were limitations
12 that you observed in your evaluation of Mr. Davis?

13 Yes or no.

14 A There were subjective limitations of range of motion.

15 Q In regard to the timeline, Doctor, I just want to nail
16 that down.

17 Before the accident of December 3, 2015, Mr. Davis was
18 performing manual labor, correct?

19 A Yes.

20 Q Mr. Davis was injured on December 3rd of 2015, correct?

21 A Correct.

22 Q Mr. Davis had a surgical procedure to his left shoulder
23 and his neck? I'll break it up.

24 Mr. Davis had a surgical procedure to his left shoulder
25 approximately a year after, in March of 2016, so approximately a

1 half-year after the injury, correct?

2 A I'll take your word for it. I don't know the exact
3 dates.

4 Q Then the following year, 2017, Mr. Davis had the fusion
5 done with his neck following the accident, correct?

6 A Yes.

7 Q If you are -- we talked about being asymptomatic. If
8 you are asymptomatic, if you have a condition and you are
9 asymptomatic, you can go your entire life without that condition
10 giving you symptoms, correct?

11 A That's the definition of asymptomatic.

12 Q Well, I don't know if it's the definition of
13 asymptomatic. I am taking it a step further.

14 I am asking if you are asymptomatic, you can go your
15 entire life having a condition without it becoming symptomatic,
16 correct?

17 A Yes.

18 Q So outside of this accident, there's no indication at
19 all that the condition Mr. Davis had prior to the accident won't
20 become symptomatic absent this accident, correct?

21 A Incorrect.

22 Q If Mr. Davis was doing manual labor on the morning of
23 December 3, 2015, is there any indication that had this accident
24 not happened, he would not have been able to do manual labor
25 December 4th of 2015?

1 A That's a hypothetical question. I can't answer.

2 Q Well, is there anything to indicate that he would not
3 be able to had this accident not happened?

4 MR. FEMIA: Objection.

5 A Yeah, he could have sneezed and it would have activated
6 his preexisting neck condition.

7 Q Or he could have got hit by a wheel from a wheelbarrow,
8 right?

9 A Well, not in the head.

10 Q Where in the head did it hit Mr. Davis?

11 A It hit him in the back of the head.

12 Q Directly in the head or no?

13 MR. FEMIA: Objection.

14 A He told me that --

15 THE COURT: Sustained. He already said what he
16 told him.

17 Q Did Mr. Davis have any head gear on?

18 A Yes.

19 Q What kind?

20 A He had a hardhat.

21 Q Did it impact -- did that have any impact on the effect
22 of that wheel striking Mr. Davis?

23 A Based on what you are telling me, such a height and
24 weight, it would have a little bit of an impact, but not much.

25 Q So what you are saying --

1 A Well, you would still be knocked unconscious with a
2 hardhat.

3 Q Tell me exactly what that's based on, that you can tell
4 this jury that Mr. Davis should have been knocked unconscious?

5 MR. FEMIA: Objection.

6 THE COURT: Overruled.

7 A It's what you told me. You said -- you described the
8 nature of the accident, Counsel, the height of -- that the
9 object fell.

10 Q What was the height?

11 A I forgot the height that he mentioned. It was a
12 significant height and --

13 Q What is significant?

14 A I don't know whether it was 50 feet or 20 feet. I
15 forgot how many feet it was.

16 Q Well, if it was 50 feet or 20 feet, do they both knock
17 you unconscious or just one?

18 A Chances are a heavy object, a very heavy object would
19 knock you unconscious.

20 Q How much did it weigh?

21 (Whereupon, the following was recorded and
22 transcribed by Official Court Reporter Monica Jenkins.)

23 (Continued on next page.)

24 * * * * *

25

1 A I don't know. A wheel barrel weighs a lot. I mean
2 that's a wheel barrel has to weigh a hundred pounds at least.

3 Q What is heavy enough to knock someone unconscious,
4 what's the weight?

5 A There's no specific weight. You get punched, you can
6 get stabbed in the face and be knocked unconscious. In other
7 words there's no but there are, you know, what you accept to
8 understand that a very heavy weight dropping from a high height
9 and hit you in the head, hard hat or not would impair your
10 consciousness.

11 Q But you don't know how heavy or the height, correct?

12 A Um, I know that it was, he told me it was a wheel
13 barrel and I know or a wheel if you want to say that's heavy and
14 I was told that and you can read back the question to me, that
15 it was claimed to fall from a significant height.

16 Q Doctor, what I'm trying to figure out and I'm almost
17 done here. I just need to figure out, what the opinions that
18 you are giving this jury is based on?

19 MR. FEMIA: Objection.

20 MR. MILLS: You're saying --

21 THE COURT: Guys. Overruled.

22 Q You're telling this jury an opinion they're looking to
23 rely on you for, is saying that something with a specific, a
24 certain weight falling from a specific height would have a
25 specific impact but you don't the weight or the height but are

1 guaranteeing or saying their should be a specific impact; how is
2 that possible? Should the jury rely on what you are saying, yes
3 or no?

4 MR. FEMIA: Objection.

5 THE COURT: Overruled.

6 A I have 40 years of experience dealing head trauma. I
7 don't have to know the exact inch to which it fell and I was
8 told it fell from a high height. I was also told a heavy object
9 fell from this height and struck him in the head.

10 Based on 40 years of experience I have never seen
11 anyone get up and walk around after such an impact and not go to
12 the hospital by ambulance.

13 MR. MILLS: Give me one second.

14 Q Doctor, would you -- would you concede that if a part
15 of your opinion that you're giving has no basis and is
16 unreliable, that the jury should disregard everything that
17 you're saying?

18 MR. FEMIA: Objection.

19 THE COURT: Sustained.

20 MR. MILLS: Nothing further, Judge.

21 RE-DIRECT-EXAMINATION BY MR. FEMIA:

22 Q Doctor, did it offend you that he told you, he said to
23 you that I told you what to say?

24 MR. MILLS: Objection.

25 MR. FEMIA: He said that I told you what to say?

1 THE COURT: Sustained.

2 Q Did I tell you what to say?

3 A No.

4 MR. FEMIA: I can't ask if I told him what to say?

5 THE COURT: He can't ask. You can't ask.

6 MR. FEMIA: I'm going to show you the other
7 portion of that record that was hidden from you by
8 plaintiff counsel.

9 MR. MILLS: Objection, Judge.

10 The COURT: By the way, gentlemen, we're not
11 objecting to every single question. That's not how this is
12 going to go. What is your objection?

13 MR. MILLS: To his characterization he's not
14 asking a question.

15 THE COURT: He is in the middle of his question.

16 MR. MILLS: He started off saying something was
17 hidden.

18 THE COURT: Let him finish the question.

19 Q Did you see this before? When plaintiff counsel showed
20 you a piece off record, did he show you this? You were asking
21 about the neck, right, you wanted to see the neck?

22 A Right. I didn't.

23 Q He didn't show you this, right?

24 A No.

25 Q Why did Mr. Davis go to the doctor on July 29th of

1 2014, why did he even go their?

2 THE COURT: Doctor, one moment. What is this
3 referring to? Put that on the record as well.

4 MR. FEMIA: July 29, 2014, the Bellevue record
5 that plaintiff counsel just showed the witness where the
6 plaintiff went to the hospital for neck pain.

7 THE COURT: Thank you, Doctor continue.

8 A This is a neurosurgical consultation where the patient
9 presented with neck pain, numbness and tingling in the
10 extremities.

11 Q So that was a whole charade before where you were
12 getting frustrated where you were asking about the neck, is this
13 consistent with your opinions?

14 A Well, it's consistent with the preexisting syndrome.

15 THE COURT: Referral to the charade will be
16 stricken and disregarded.

17 Q You were also shown and presented with a stack of
18 documents from Florida; did plaintiff counsel show you any
19 documents correlating his lumbar treatment to accident on
20 12/3/15?

21 A No.

22 Q He didn't. Okay. Did he show you any complaints that
23 were objective or symptoms that were objective?

24 A No, there was subjective complaint.

25 Q He didn't show you any?

1 A No.

2 Q Can you discuss any mention of those PT records that
3 were saying that Mr. Davis was disabled?

4 A It's not mentioned.

5 Q Did Mr. Mills show you records saying that?

6 A No.

7 Q They don't exist, right?

8 A I didn't --

9 MR. MILLS: Objection.

10 Q Do professional athletes have these injuries?

11 A All the time.

12 THE COURT: Counsel, no. Just no.

13 Q When you saw Mr. Davis, his neck, his back, his
14 shoulder, were healed, were stable and he wasn't treating,
15 right?

16 A Correct.

17 MR. FEMIA: Nothing further.

18 MR. MILLS: Nothing Judge.

19 THE COURT: Thank you, Doctor, you may step down.

20 (Whereupon, the witness stepped down from the
21 witness stand.)

22 THE COURT: All right. Anything further for the
23 record this afternoon?

24 MR. GRILLO: No, Your Honor.

25 MR. MILLS: No, Judge.

1 THE COURT: So, jurors, as we discussed we are
2 going to break half a day today and again that was
3 indifference to one of your own and we're going to be back
4 here Monday.

5 I'm going to ask you to be a little bit early on
6 Monday and that's for the purposes of expediency and in
7 what we discussed in getting the case to you the jury as
8 quickly as possible.

9 So let's try for 9:30, please and we'll take it
10 from there. Same instructions as always. Same gratitude
11 as always. Thank you very much. Thank you for putting up
12 with my antics as well. Have a good weekend.

13 COURT OFFICER: All rise jury exiting.

14 (Whereupon, the trial was adjourned to Monday,
15 January 27, 2025 at 9:30)

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