

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NEW YORK : CIVIL TERM : PART 12

3 -----x

4 BRIAN YOUNG and SHERRI YOUNG, : Index:
161524/2018

5 Plaintiff(s). :

6 - against - :

7 MEZUYON, LLC and BLONDIE'S TREEHOUSE : TRIAL
INCORPORATED

8 Defendant(s). :

9 -----x

80 Centre Street
10 New York, New York 10013
October 30, 2025

12 B E F O R E:

13 HONORABLE LESLIE A. STROTH,
J U S T I C E
14 (And a jury of Six plus Two alternates)

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

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24 Senior Court Reporter

25

1 THE COURT: So we have a little bit of an issue. I
2 know I told the jurors to be here -- I know I -- the doctor
3 is here. I do want to get started. The clerk has called,
4 it is juror number three, a woman, third person in.
5 Shaneequa -- I'm sorry. Miss Yumor called and she got no
6 answer. So my question to you is it's now 2:15, a half an
7 hour past the time that I asked them to be here. 15 minutes
8 past the time I said that we would start.

9 Do you want to go ahead and seat an alternate or do
10 you want to give it another 5, 10 minutes. Mr. Ford, you
11 know -- I mean, both of you know these jurors. I don't.
12 You voir dired them. So I don't know. You tell me.

13 MR. FORD: I don't have an answer right now. If I
14 could just take a look at a few things.

15 THE COURT: Sure. And only you know how long your
16 questioning is going to be. And so if your witness can't
17 come back, that's definitely something to consider.

18 MR. FORD: Yeah.

19 MR. FABIANI: Yeah, I don't -- I mean, I would say
20 maybe let's give it 10 minutes, 15 minutes. I -- I
21 definitely do not have anywhere near as long a cross for
22 Dr. Touliopoulos as I did for Dr. Gross. Nothing
23 approaching that.

24 THE COURT: Okay. As far as you know.

25 MR. FABIANI: Yeah, if something crazy happens.

1 So, I can't imagine we don't finish by today if we give it
2 15 minutes.

3 THE COURT: So what would you like to do? Wait
4 until 2:30 or wait to start at 2:30? Because we're --
5 that's a process to seat a new -- well, not really. We can
6 just seat the new juror. We get one of the alternates.

7 MR. FORD: It will be juror A1 who slides in?

8 THE COURT: Yes. Who is that?

9 MR. FORD: Mr. Gilbert.

10 THE COURT: Is he in the back or over here?

11 MR. FABIANI: He is the first one in the back.

12 MR. FORD: He's the one right here.

13 THE COURT: Okay.

14 MR. FORD: Alternate four is back there. There is
15 one other issue maybe we can discuss now while we are
16 waiting.

17 THE COURT: Okay. So you're fine with waiting
18 until 2:30 then?

19 MR. FORD: Yes.

20 THE COURT: Okay. As soon as she gets here
21 assuming she is --

22 MR. FORD: This is with regards to
23 Dr. Touliopoulos' testimony. As I discussed a little bit
24 yesterday, Dr. Gross and Dr. Touliopoulos' testimony are
25 very, very distinct from each other, two very different

1 issues. Dr. Touliopoulos is going to testify to the
2 post-traumatic arthritis as well as the knee, the prognosis
3 and the need for future surgeries. There was one X-ray
4 from -- from 2018 that I do intend on showing Dr.
5 Touliopoulos because to some extent, Dr. Touliopoulos'
6 diagnosis of post-traumatic arthritis has to be related back
7 to the trauma which happened in 2018. And I do intend on
8 showing him the October 2018 X-ray just so that he can
9 compare that and give somewhat of a timeline as to the
10 traumatic degeneration of the knee.

11 The next X-ray I would show is from March 10, 2020,
12 is when Dr. Touliopoulos took his office. And then the last
13 X-ray is from 2025, three weeks ago, and Dr. Touliopoulos
14 did that X-ray. I brought up the fact that Mr. Fabiani and
15 I intend on showing the October 10, 2018, with
16 Dr. Touliopoulos and he seemed like he had an objection to
17 it so that's why I wanted to bring it up with the Court.

18 THE COURT: Okay. Do you?

19 MR. FABIANI: Yeah. I mean, I'm okay with him
20 discussing the X-ray, but I'd rather not put it on the
21 screen so the jury can see it. It's already been on the
22 screen with Dr. Gross. Dr. Gross took the X-ray in his
23 office. That's my only objection. He could discuss the
24 findings, his findings. I just don't see the need to put it
25 on the screen.

1 THE COURT: I don't see the prejudice. I don't --
2 you know, for making a comparison as to how someone's knee
3 progressed. It seems like the best way is here it was and
4 here it is now. Is there some prejudice that I'm missing?

5 MR. FABIANI: It is not necessarily prejudice.
6 It's his testimony about the X-ray from 2018 would be
7 cumulative of Dr. Gross's testimony about that X-ray.

8 THE COURT: So how about it comes up and you could
9 say have you seen -- has he seen this X-ray before?

10 MR. FORD: Yes.

11 THE COURT: Have you seen this X-ray before and is
12 this the X-ray from October 10.10.2018. You were not
13 involved in his treatment at that point, correct? And
14 you -- your office did not take this X-ray; is that right?
15 And then leave it. And so he's seen it, they see it, and
16 then you question. Is that a -- at all an issue?

17 MR. FORD: So I -- I will prefer just one
18 additional question, you know, just to cover my basis
19 that -- I'm not sure -- I want to ask him did you review
20 this X-ray and did you compare this X-ray to the X-ray from
21 March 10, 2020. I just want to put that on the record
22 because now he is saying is it post-traumatic so he has to
23 compare it to when the trauma happened. So I don't want to
24 be limited to not asking him if he saw the X-ray from the
25 time of the accident and as it progressed throughout his

1 treatment.

2 THE COURT: What I don't want to have -- and that's
3 fine. That's probably -- that's fine, I think. I don't
4 want you to take him through some questioning and have him
5 say, well, as you can see on this X-ray, there is no blah,
6 blah, blah because that would be cumulative. That would be
7 whatever expert opinion he gives on the knee then. But if
8 he -- if you guide him in the way you're saying you will, I
9 don't see a problem with that.

10 MR. FORD: Yeah, my intention is to guide him as to
11 how the March 10, 2020, X-ray is different from the
12 October 10, 2018, X-ray.

13 THE COURT: So you just show the 18 and then you'll
14 show -- and he'll look and he'll comment but -- and you'll
15 show the 2025 pretty shortly thereafter and say how is
16 this -- now, how does this X-ray differ. Just not back and
17 forth, right?

18 MR. FORD: Yeah. I guess what I would like
19 clarification from the Court on is when you say I'll show
20 him the 2018 X-ray and he can comment. What's my
21 limitations in terms of what he can comment on on the 2018
22 X-ray?

23 THE COURT: Tell me your objection again to like
24 what --

25 MR. FABIANI: I was anticipating, as Your Honor
SH - CSR, RMR, CCRNJ, CLR - Senior Court Reporter

1 just described, that he would point to every part of the
2 knee and say the cartilage and the meniscus and say this
3 shows deterioration, etc., etc. And he would go in detail
4 into the 2018 X-ray just as Dr. Gross did when he was
5 standing up in front of the screen. That's what I don't
6 want to happen.

7 THE COURT: Yeah, I don't think that should happen.

8 MR. FORD: So, now my intention was to show
9 Dr. Touliopoulos his March 10, 2020, X-ray and then question
10 him along the lines of, you know, was what you see in this
11 X-ray was there in the October 10, 2018, X-ray.

12 THE COURT: Sure. Have him take a look and you can
13 cover that that's the 2018, that was pre-accident. And
14 then, okay. Got it. Go to 2025 and say, okay, now you're
15 seeing -- does this X-ray differ from what you just saw.
16 Something like that.

17 MR. FORD: Okay. That's fine.

18 THE COURT: I think that's fine. So, you know, I'm
19 sure you'll both let me know if you think that what I'm
20 saying isn't being followed. All right. Can we give some
21 light to our visitors in the back?

22 MR. FABIANI: I have a question about exhibits. My
23 numbers are a little off. Can I see whatever log the court
24 reporter is keeping?

25 THE COURT: Okay. You need to do that right now?

1 MR. FABIANI: It doesn't have to be right now, at
2 some point. I think I may have duplicated Dr. Pumill's
3 records so I am trying to make sure.

4 THE COURT: If that can wait, we'll have that wait.
5 And I know that -- that the jurors did say leaving early
6 tomorrow is okay. I don't know if we have a time. What
7 time were you looking for?

8 MR. FABIANI: Whenever, Your Honor. I think -- I
9 would say the goal should be to finish Mr. Young and then I
10 guess see what time it is. If it's before lunch.

11 THE COURT: Then we wouldn't come back at all.

12 MR. FABIANI: I don't know. If, you know, if
13 it's -- I'm anticipating he will go through lunch and then
14 when he finishes I guess it would be my request not to put
15 on Mrs. Young so if it's, you know, 2 o'clock.

16 THE COURT: Okay. So we'll have -- did you discuss
17 a specific time for tomorrow that they would be leaving, the
18 jurors might be leaving early? They were not opposed to
19 leaving a little early for Halloween? I will talk to them.
20 I will tell them we are going to try to get you out a little
21 early tomorrow for those of you who have children but it
22 really depends on where the trial is and it's just kind of
23 the way it is. But if we can we will certainly let -- try
24 and let people out.

25 MR. FABIANI: I appreciate it.

1 THE COURT: Okay, with you, Mr. Ford?

2 MR. FORD: Yes.

3 THE COURT: All right. So I guess we're ready.

4 Thank you.

5 COURT OFFICER: All rise, jury entering.

6 (Whereupon, the sworn jurors enter the courtroom
7 and take their respective seats.)

8 THE COURT: Okay. You may all take a seat. Thank
9 you, jurors for getting here when you did. I know everyone
10 has made their best effort on this terribly icky day but now
11 we're ready to go. I know the officer, Officer Young, spoke
12 to you about possibly ending early tomorrow for those of you
13 who have children who might want to celebrate Halloween.

14 Obviously, we are going to have to play it by ear,
15 but we just want to make sure that that would be okay with
16 you if that happens. And we'll see where we are with the
17 witnesses and we want to be productive to and efficient and
18 not waste your time. So we'll do another check tomorrow of
19 how things look, okay. All right.

20 So, who is the next witness?

21 MR. FORD: Your Honor, I'd like to call Dr. Steven
22 Touliopoulos to the stand, please.

23 THE COURT: Okay. Come on up, Doctor. Good
24 morning. You can come right up here. I'm sorry. Good
25 afternoon. Where am I?

S. Touliopoulos - by Plaintiff - Direct

1 S T E V E N T O U L I O P O U L O S, a witness called by
2 and on behalf of the Plaintiff, upon being duly sworn, was
3 examined and testified as follows:

4 THE WITNESS: I do.

5 COURT OFFICER: You may have a seat. For the court
6 reporter, please say your name with the spelling?

7 THE WITNESS: Yes, Steven with a "V", John,
8 J-O-H-N, and last name is Touliopoulos,
9 T-O-U-L-I-O-P-O-U-L-O-S.

10 COURT OFFICER: Your business address.

11 THE WITNESS: 23-25 31st Street, Suite 800,
12 Astoria, New York 11105.

13 COURT OFFICER: Thank you. The witness has been
14 sworn in.

15 THE COURT: Thank you. Good afternoon, Doctor.
16 You are already doing a great job, just keep speaking into
17 the mic. And if there is an objection, do not answer until
18 I rule on the objection.

19 THE WITNESS: Will do.

20 THE COURT: Okay. Thank you. You may inquire,
21 Counsel.

22 DIRECT EXAMINATION

23 BY MR. FORD:

24 Q Good afternoon, Dr. Touliopoulos.

25 A Good afternoon.

1 Q Are you a medical doctor duly licensed to practice
2 medicine in the State of New York?

3 A Yes, I am.

4 Q Can you please tell the jury your educational
5 background from undergrad through medical school, residencies,
6 any fellowships and briefly explain what those things are?

7 A Yes. I -- I attended college at Columbia University
8 here in Manhattan. I majored in chemical engineering. Upon
9 graduation, I stayed on at Columbia University and obtained a
10 master's degree in bioengineering. Before entering medical
11 school at SUNY Down State in Brooklyn, after completing my
12 medical school training for education, I did an orthopedic
13 residency also at SUNY Down State. And upon completing that, I
14 did a fellowship in sports medicine at Lenox Hill Hospital here
15 in Manhattan.

16 After completing my fellowship, I started private
17 practice in 1997. I have been in private practice since, and
18 I'm board certified both in orthopedic surgery as well as
19 orthopedic sports medicine.

20 Q Are you a professor anywhere?

21 A Yes. I am an assistant professor of orthopedics at
22 Presbyterian Cornell.

23 Q Are you board certified?

24 A Yes.

25 Q And what is the significance of being board certified?

1 A To become board certified, you have to finish an
2 accredited orthopedic residency program here in the United
3 States and then you take a two part examination. The first part
4 is a written examination based on your fund of knowledge. The
5 second part is an oral examination before three examiners where
6 you present your -- your -- some of the patients that you've
7 operated on.

8 Q Can you please tell the jury when you became board
9 certified?

10 A Yes. I became board certified in orthopedic surgery, I
11 believe, in -- I think in 1999 and board certified in sports
12 medicine, I believe, in 2007.

13 Q And do you have hospital privileges?

14 A Yes, I do.

15 Q Where?

16 A At New York Presbyterian lower Manhattan hospital,
17 Lenox Hill Hospital and Mt. Sinai Hospital in Queens.

18 Q Can you please explain what hospital privileges are?

19 A It's -- to get privileges at a hospital, you have to
20 submit an application which is reviewed. They review your
21 credentials. And if granted, it allows you to come to the
22 hospital, admit patients to the hospital, and actually perform
23 surgery on the hospital property.

24 Q Have you testified in court before?

25 A Yes, I have.

1 Q Approximately, how many times have you testified in
2 court in a year or in a --

3 A You know I, over my 28-year career, I think on averages
4 4 or 5 times. Over the past year, it has been more. It, it --
5 maybe around ten times in the past year.

6 Q Do you currently see patients?

7 A Yes, I do.

8 Q Does your office accept work accident cases?

9 A Yes, we do.

10 Q Motor vehicle accident cases?

11 A Yes, we do.

12 Q And health plans?

13 A Yes, we accept various health plans.

14 Q Have you ever performed surgery on the knee before?

15 A Yes, I have.

16 Q Approximately, how many surgeries in your career have
17 you performed on the knee?

18 A It would be a number in the thousands.

19 Q If you weren't here today testifying in court, what
20 would you be doing?

21 A I would be doing surgery.

22 Q And on the occasions that you do testify in court, does
23 your office charge a fee?

24 A Yes.

25 Q And what is the fee your office charged for being here

1 today?

2 A I'm not certain of the exact fee. It usually is in the
3 vicinity of \$10,000. It maybe -- or more or less depending on
4 what needs to be rescheduled.

5 Q Did you and I meet prior to this trial?

6 A Yes, we have.

7 Q How many times did we meet?

8 A We met once, I believe, about two weeks ago.

9 Q What did we discuss?

10 A We went over the medical records and the X-rays on this
11 patient.

12 Q Have you ever testified for me or my law firm in court
13 before?

14 A No, I have not.

15 Q Was a man by the name of Brian Young ever been a
16 patient of yours?

17 A Yes, he was.

18 Q By the way, did you bring Mr. Young's file with you
19 here today?

20 A Yes, I did.

21 Q Did you review your file knowing that you would be
22 coming here talking to the jury about Mr. Young?

23 A Yes, I did.

24 Q Now, Doctor, your treatment records had been stipulated
25 into evidence as Plaintiff's Exhibit Number 14 and I am going to

1 pull them up on the screen so feel free to refer to either your
2 file or the screen with regards to his treatment records. I
3 guess I'll ask you can you see the screen okay?

4 A Yes, I can. I think I prefer my paper.

5 Q Okay, perfect. Let me know when you have his treatment
6 records in front of you.

7 A Yes, I have.

8 Q Can you please tell the jury the date you first saw
9 Mr. Young?

10 A I first saw this patient on January 29th of 2020.

11 Q And do I have on the screen a note from that first time
12 that you saw Mr. Young?

13 A Yes.

14 Q And there's a section here initial evaluation. What --
15 generally, what information is put under initial evaluation?

16 A Under initial evaluation, eventually it's the first
17 visit and you obtain a history basically why they are coming to
18 you. What happened? What hurts? How long? What caused it?
19 You obtain a history and you do a physical examination. You may
20 review any studies that were -- that had been performed. You
21 have an impression and also a plan.

22 Q Can you please tell the jury the history that was given
23 to you about why Mr. Young came to see you on January 29, 2020?

24 A Yes. He came to me for a -- basically a second opinion
25 for injuries sustained to his left knee in a work accident. The

1 day of the accident was September 25th of 2018. He was walking
2 down a staircase full of debris. He -- when he slipped on an
3 object causing him to twist his left knee. I asked if he ever
4 had a problem with the knee before or any injuries to the knee
5 before. He denied. He told me that he was initially under the
6 care of Dr. Gross who diagnosed him with a meniscus tear and
7 performed surgery in October of 2018.

8 The report from the surgery was reviewed and Dr. Gross
9 performed a medial meniscectomy. However, despite this
10 procedure, he continued to have pain in his knee and
11 dysfunction. He underwent such gel injections to his knee which
12 did not help him to any significant degree. He would put -- in
13 additional to knee pain, he had difficulty standing and walking
14 for any prolonged period of time. He had difficulty going up
15 and down steps and inclines. He also reported episodes of his
16 knee giving out and buckling.

17 His pain level was reported to me as being eight out of
18 ten in intensity and increased with activity. At this point in
19 time, he was working full-time on full duty as a director of
20 construction. And he did report to me an orthopedic history of
21 a three and a half story fall or -- in or around 1990 with
22 fractures of both his -- both of his legs.

23 Q And toward the bottom of this page there's a section
24 called physical examination; do you see that?

25 A Yes.

1 Q And can you explain to the jury generally what
2 information is put under physical examination?

3 A Well, it's the -- in this -- in this patient basically
4 it's an examination of his left knee which is why he was coming
5 for a visit. We examined his knee. We examined the way he
6 walked. We assessed his knee motion, and we assessed his knee
7 stability.

8 Q So the second sentence there says antalgic gait is
9 noted when he first starts to ambulate. What does that mean?

10 A That basically means he was limping.

11 Q And were you the one who performed this examination?

12 A Yes.

13 Q I'm just going to go to the bottom and it says
14 electronically signed and that's your name, correct?

15 A That is me, yes.

16 Q I am going to back up to physical examination. The
17 fourth sentence says left knee examination reveals healed
18 arthroscopic incisions. What does that mean?

19 A So, basically, he had a surgery to his knee by
20 Dr. Gross. He performed arthroscopy and the incisions that he
21 made healed without any signs of infection.

22 Q And then not the next sentence but the one after it
23 says there's crepitus with knee motion. What does that mean?

24 A Basically, when the -- when the knee was moved, it was
25 making noises such as popping and crackling noises. And the

1 medical term for that is crepitus.

2 Q And then the next sentence says active motion and
3 passive motion. Can you please explain to the jurors what
4 active motion and passive motion is?

5 A So active motion is when you ask the patient to move,
6 for instance, your elbow. You ask them to extend the elbow and
7 flex the elbow. That's active. A passive is when a doctor or a
8 physician's assistant takes the arm and moves it. And sometimes
9 there's a difference between active and passive motion for
10 various reasons.

11 Q And is there any significance here that there is a
12 difference between the active and passive motion?

13 A There is a five-degree difference. I would not call
14 that a significant difference. The knee -- the patient did have
15 full extension which was zero degrees so he's able to fully
16 extend his knee. But he was limited as far as being able to
17 bend his knee. So normal bending flexion is about 135 to
18 140 degrees and in this patient he was able to bend to 115
19 actively and a 120 when I -- when I bent it.

20 Q And the next sentence says, "a knee effusion is
21 appreciated." What does that mean?

22 A Basically, meaning there's fluid in the knee.

23 Q And after that there's three tests that were performed
24 that were all positive. Can you go through each one of those
25 tests and explain to the jury what they are and what a positive

1 finding means?

2 A The tests are the Lachman test which is, L-A-C-H-M-A-N,
3 the Anterior Drawer Test, and the Pivot Shift Test. These are
4 all tests for -- to assess the function of the anterior cruciate
5 ligament. These are objective tests that are performed by the
6 examiner where you kind of pull on the knee and you assess how
7 loose the knee is. And -- and then that was done by comparing
8 it to the other knee because some -- sometimes people are loose
9 jointed and we found out the other knee was stable. So, these
10 three tests had positive findings consistent with a degree of
11 dysfunction of the anterior cruciate ligament. Now, it may --
12 it may be, based on his examination, it may -- the ligament may
13 be torn completely. It may be partially torn or it may be just
14 stretched but to some degree the ligament was not working
15 properly.

16 Q The next test is the Anterior Drawer Test. Can you
17 please explain what that is?

18 A Basically, all of those three tests are for the ACL and
19 basically it's just -- basically, the Lachman Test is pulling on
20 the knee or holding the thighbone with one hand and the shinbone
21 with the other and pulling forward. The Anterior Drawer Test is
22 similar but with a more flexion in the knee. And the Pivot
23 Shift Test is done by extending the knee and rotating it. And
24 in patients that have a loose ACL, the knee kind of pops back
25 into place.

1 Q The next sentence says, "a positive side-to-side
2 difference is noted." What does that mean?

3 A Again, we compared these findings to the other side and
4 the other side -- these three tests were negative so this was --
5 these were abnormal findings.

6 Q A couple of sentences after it says, "there is a medial
7 greater than lateral joint upon tenderness." What does that
8 mean?

9 A So basically there's a -- medial is the inside of the
10 knee and lateral is the outside of the knee. And basically we
11 feel the joint where the two bones meet and there was tenderness
12 in that area. It was greater on the inside where he had the
13 meniscus tear versus the outside but it was present in both
14 sides.

15 Q And the next sentence says, The meniscal signs produced
16 discomfort." What does that mean?

17 A The meniscal signs are tests performed by rotating the
18 knee and seeing that reproduces as pain. And if it does, it's
19 suspicious for injury to the meniscus.

20 Q And the last question about this paragraph, there's
21 tenderness along the patella, facets, and femoral condyles. Can
22 you please explain that to the jurors, please?

23 A So the patella is basically the kneecap. So and the --
24 and the condyles is where the kneecap sits on the lower part of
25 your thigh and that area was tender when it was palpated.

1 Q And the next paragraph says "MRI scanning." Can you
2 tell the jurors if you had reviewed Mr. Young's MRI scan that he
3 had previously seeing him?

4 A Yes.

5 Q And was that MRI scan consistent with the history that
6 Mr. Brian Young gave you?

7 A Yes.

8 Q Below that there is the word impression. Can you
9 please tell the jurors what impression means with regards your
10 reports?

11 A Yes. So the impression is once you -- you've
12 questioned a patient. You obtained a history. You examined the
13 patient and reviewed any studies that have been performed, you
14 come up with an impression of what you think is actually wrong
15 with the patient's knee.

16 Q And what was your impression on January 10th -- January
17 29, 2020?

18 A That he was a 59-year-old male that was in a work
19 accident in September of 2018 that resulted in a left knee
20 medial meniscus tear, an anterior cruciate ligament injury, and
21 progressive chondral pathology. I also put in rule out further
22 internal derangement because there may be more going on than
23 what we may know about.

24 Q When you say "rule out," what does that mean?

25 A It is something that may need to be looked into

1 further.

2 Q And then we go down to the second page of your report
3 there's a plan there. Can you explain to the jurors what the
4 plan is generally in your reports were?

5 A So the plan is is like once you have all of this
6 information and a presumptive diagnosis of what you are --
7 you're going to do next. And in this -- in this case, he had
8 ongoing pain despite everything he received, surgery, the
9 therapy, the injections. And I did order X-rays and an MRI scan
10 of the knee to look into it further.

11 Q All right. So this was the first visit. I am not
12 going to go through every single visit with you with the jurors.
13 So I am going to fast forward a couple of visits to the
14 March 10, 2020, visit. I'd like -- let me know when you have
15 the March 10, 2020, visit in front of you.

16 A Yes.

17 Q I want to go down to the physical examination and
18 briefly can you just tell us what your physical examination
19 found for Mr. Young on March 10, 2020?

20 A So, again, he ambulated with an antalgic gait.
21 Basically, he was limping and that was most noticeable when he
22 -- when he first started to walk. He was able to walk without a
23 brace and without a cane. The knee exam was, I would say,
24 fairly similar to the last one. There were healed incisions.
25 His range of motion was essentially the same. He still had an

1 effusion. The Lachman Test, the Anterior Drawer Test, and the
2 Pivot Shift Test remained positive with a positive side-to-side
3 difference noted. There was no varus valgus or posterior
4 instability with -- so there is four ligaments in the knee. The
5 anterior cruciate ligament, the posterior cruciate ligament, and
6 the medial collateral ligaments.

7 So when the other ligaments were tested, they were
8 found -- they were found to be pretty normal on examination but
9 the anterior cruciate ligament was not. And, again, there was
10 joint line tenderness. The meniscus signs produced discomfort
11 and, again, there was tenderness along the patella and femoral
12 condyles.

13 Q Did you perform any imaging in your office that day?

14 A Yes.

15 Q What imaging did you perform in your office that day?

16 A We performed X-rays of the left knee.

17 Q And did you review those X-rays that day?

18 A Yes.

19 Q And from your notes, can you tell us what you found in
20 that X-ray?

21 A I found a moderate degenerative joint disease with
22 medial joint space narrowing and calcifications in the lateral
23 joint department.

24 Q Now, Doctor, did you ever review the X-ray that was
25 taken to Mr. Young's knee on October 10, 2018?

1 A Yes.

2 Q And that's admitted into evidence as Plaintiff's
3 Exhibit 17. And, Doctor, you've reviewed this X-ray before,
4 correct?

5 A Yes.

6 Q And in reviewing this X-ray, did you compare it to the
7 X-ray that you took on March 10, 2020?

8 A Yes.

9 Q And I'm going to pull up a photograph of the X-ray that
10 you took on March 10, 2020, which has been stipulated into
11 evidence as Plaintiff's Exhibit 21. And, Doctor, is this the
12 photo of the X-ray that you took on March 20th -- I'm sorry, on
13 March 10, 2020?

14 A Yes.

15 Q And can you please explain to the jurors what it is
16 that you see in this X-ray?

17 A Do you have a pointer I can use?

18 MR. FORD: Your Honor, could Dr. Touliopoulos step
19 down?

20 THE COURT: This is his X-ray or the earlier one?

21 MR. FORD: This is his X-ray.

22 THE COURT: Okay. Yes, you can step down. Do you
23 have a pointer, something for him?

24 MR. FORD: I don't.

25 A I just want to draw your attention to the inside of the
SH - CSR, RMR, CCRNJ, CLR - Senior Court Reporter

1 knee, the medial side. And this space has become more narrowed
2 when compared to the previous X-ray. And we go back and forth
3 and kind of look at that. Not only is it more narrowed, but
4 it's becoming squared. So this -- this bone should be rounded
5 and on the outside, the lateral side, you could see it's rounded
6 here but the inside has become more square.

7 So we call that squaring of the medial femoral condyle
8 which is what that bone is. So, basically, these are arthritic
9 changes spurring of the bone narrowing of the joint space are
10 some of the X-ray findings noted with arthritis. And so at this
11 point in time, I quantify this as being moderate, a moderate
12 amount of arthritis especially involving the inside of the knee.

13 Q And when you say moderate arthritis, can you just
14 explain a little more that term moderate arthritis?

15 A Yes. So there's no arthritis. There is mild. There
16 is moderate and there is severe. And depending on the degree of
17 narrowing in this particular situation, I will call this a
18 moderate degree of medial compartment arthritis.

19 Q Can you please tell the jury where Mr. Young had the
20 arthroscopic meniscectomy?

21 A The meniscectomy was in the same a compartment. So the
22 meniscus tear was involved in this area. And the meniscus is a
23 cushion and the -- when it tears, you lose the cushion, in fact,
24 of the meniscus. With or without surgery, whether it's torn and
25 remove the torn and left behind, you still lose the effect of

1 the cushion.

2 Q And when you say the cushion, what are you referring
3 to?

4 A The -- what the meniscus does in the knee. So in other
5 words, the meniscus is a disk of a cartilage and it wraps around
6 the knee. And if you notice, this bone is fairly flat and this
7 bone is rounded. So, you know, if this bone didn't have the
8 meniscus, this center of this bone would contact the center of
9 that bone and would wear out faster. The meniscus is a disk
10 that's here that makes it cup that bone so it fits more natural.

11 Q I think we are done with that X-ray for now. I am
12 going to ask you to step back and a couple of questions. I
13 guess you could have a seat for now, Doctor. Thank you. Now,
14 I'd like to go back to your notes from the day that you took the
15 X-ray on March 10, 2020. And can you please let the jurors know
16 what your plan was on that day?

17 A So, we -- we discussed the options. Obviously, he was
18 not doing well despite everything that was done for his knee and
19 we even discussed surgery for his knee including a knee
20 replacement at this point in time. This was something he was
21 considering. But at this point in time, he wanted to continue
22 non -- with nonsurgical options. We discussed more therapy as
23 well as injections and he remained with an overall partial
24 disability.

25 Q In that plan, it says further surgical including

1 arthroplasty. Can you please tell the jurors what that is?

2 A Yeah, so, basically, this refers -- an arthroplasty
3 refers to a replacement. So this would be -- this is referring
4 to a knee replacement surgery for this knee.

5 Q And then you saw him again two months later on May 19,
6 2020, correct?

7 A Yes.

8 Q And did you perform a physical examination of Mr. Young
9 on that date?

10 A Yes, I did.

11 Q And briefly was the physical examination similar to the
12 last one you discussed were there any differences there?

13 A There was, you know, a slightly less flexion. So he
14 still was able to fully extend his knee but bending it actively
15 was now 110. It used to be 115. And passively it was only a
16 115. It used to be 120. But other than that, the findings were
17 fairly similar to previous findings.

18 Q And your impression, I want to go to the end of that
19 impression and it says progressive post-traumatic degenerative
20 joint disease; do you see that?

21 A Yes.

22 Q Was it your impression that Mr. Young had progressive
23 post-traumatic degenerative joint disease?

24 A Yes.

25 Q Can you please explain to the jurors what progressive

1 post-traumatic degenerative joint disease is?

2 A Degenerative joint disease, something we will call
3 arthritis or osteoarthritis is basically when you get arthritis
4 following an accident following an injury to the knee. You can
5 get knee arthritis for various reasons. You know, your mother
6 had and you inherited it, you know, bad genetics. You can have
7 rheumatoid arthritis where the body attacks its own cells and
8 cartilage. And you can have normal wear and tear with age.

9 But in this particular case, this is arthritis that
10 developed in just two years following the accident. And I
11 categorize this as post-traumatic in nature.

12 Q When you say post-traumatic, what exactly does that
13 mean?

14 A It's a result of a trauma or an accident.

15 Q And to your understanding, were you able to connect
16 this progressive post-traumatic degenerative joint disease to an
17 accident that Mr. Young had?

18 A Yes.

19 Q What accident?

20 A The accident of September 25, 2018.

21 Q Now, I'd like to fast forward a couple of visits to
22 June 20, 2023. So this is about three years after the last
23 visit that we just discussed. So in 2023, what were Mr. Young's
24 complaints?

25 A So, he continued to complain of knee pain. Again, his

1 level of pain was out of ten. It increased with activity.
2 Again, this is despite taking anti-inflammatory medications,
3 injection treatment and physical therapy that he had following
4 his accident. He was working, I believe, on light duty at this
5 point as a director of construction. He reported difficulty
6 climbing two flights of steps because of his knee injury and
7 descending a single flight of steps, again, because of his knee
8 injury and walking more than two blocks before experiencing
9 stiffing pain. Again, he was taking Advil at this point in
10 time. He was able to walk still without a brace and without a
11 cane but frequently limped.

12 And he had difficulty sleeping at night because of pain
13 so he was awoken from sleep with knee pain. He had difficulty
14 with simple activities just like sitting on a toilet because it
15 hurt to bend his knee and those were his chief complaints.

16 Q And did you perform a physical examination on that
17 date?

18 A Yes.

19 Q Now, in reviewing the physical examination that you
20 performed on June 20, 2023, are there any differences from the
21 last physical examination that you testified to from his
22 previous visit?

23 A He had -- he was starting to lose his ability to
24 straighten his knee. So as arthritis progresses, you can lose
25 more and more of your motion. So instead of going all the way

1 straight, he was limited by one or two degrees. At this point,
2 it wasn't a lot but it was starting to progress. His flexion,
3 again, remained limited to about the same degree. He still had
4 signs that his anterior cruciate ligament was not working. And
5 I did note a -- a various deformity of his -- in the leg where
6 he had the previous fracture to his leg in or around 1998, I
7 think.

8 Q And that various deformity, can you please explain to
9 the jurors what the various deformity was from that prior
10 accident?

11 A So, basically, in the prior accident, he -- he
12 fractured or broke or cracked, you can call it whatever you'd
13 like, his shinbone which is, you know, between his knee and his
14 ankle. And it healed but it healed crooked so the bone was bent
15 but it was something that he was living with and it didn't
16 really bother him but because it would -- plays a role in how we
17 would plan a surgery I did note it in this visit.

18 Q And if we go down to your impression, again, at the end
19 of it it says "Progressive post-traumatic degenerative joint
20 disease." That was your impression of Mr. Young's knee during
21 that visit, correct?

22 A That's correct.

23 Q And now if we go down to your plan, can you please
24 explain to the jurors what the plan was as of June 20, 2023?

25 A So, again we discussed a knee replacement. More

1 specifically, a robot assisted knee replacement which is
2 becoming more popular nowadays. But because of the curvature of
3 the leg bone, I recommended that -- that be addressed first.
4 With a knee replacement, you want the access between the hip and
5 the ankle to be a straight line. And because of the curvature
6 of the tibia, I thought it best for that to be corrected for the
7 knee replacement to work better and that would involve basically
8 re-breaking that bone and setting it with a rod inside the bone
9 let -- letting that heal which could take a period of six to
10 nine months and then doing a knee replacement later.

11 To do a knee replacement, you would have to remove the
12 rod that's in the bone and do the knee replacement and that
13 would -- you know, if it heals on schedule, the rod really can't
14 be removed for a year and a half. If you remove it too early,
15 you risk the bone breaking again. So, basically, it would be an
16 initial surgery, waiting a year and a half, and having the rod
17 removed and doing the knee replacement. So it's quite -- it's
18 quite entailed. It's not a -- it -- it's not just a simple knee
19 replacement.

20 Q And you can't just do a knee replacement and skip the
21 breaking of the tibia and putting the nail through the center;
22 is that correct?

23 A You could. I don't recommend it because you would have
24 to, like I said, you'd have to, if you drop a string from your
25 hip, it has to go into the middle of your ankle. So to do that

1 with the way his leg is, you would have to put the knee
2 replacement in crooked. So I -- I wouldn't recommend that.

3 Q And did you discuss this with Mr. Young?

4 A Yes.

5 Q And did you -- did you prescribe any medication for
6 Mr. Young?

7 A Yes. I prescribed him a Tramadol and I did recommend
8 over-the-counter anti-inflammatory medications.

9 Q Now, when was last time you saw Mr. Young? Let me
10 strike that question, Doctor, because I realize I have one more
11 question about that last note so my apologies, if you can just
12 go back to the plan or you can just look on the screen.

13 Now, you described these two surgical procedures to
14 Mr. Young, correct?

15 A Yes.

16 Q And did Mr. Young tell you if he wanted to move forward
17 with them or not move forward or something else?

18 A Yes, so there is some typographical mistakes in this.
19 So it's -- on the third line, it's not a nonunion. It is a mild
20 union. So a nonunion is when the bone doesn't heal. And a mild
21 union is when it heals but it heals crooked. And the other
22 correction is on the fifth line where it says patient states
23 that due to fracture restraints. That should be financial
24 restraints. He is not able to remain out of work for such an
25 extended period of time.

1 Q Now, going to that question I asked you earlier, when
2 was the last time you saw Mr. Young?

3 A The last time was on July 2nd of 2025.

4 Q And when did you see Mr. Young after that? You can
5 look at the evidence that's up on screen which is Plaintiff's
6 Exhibit 14.

7 A Okay. I am going to have because I don't have it here.
8 That's fine. Thank you. So, I saw him last October 9th of
9 2025.

10 Q So three weeks ago today?

11 A Yes.

12 Q And what were his complaints as of three weeks ago?

13 A Again, he reported that he limped frequently. He had
14 difficulty walking one to two blocks before he had a lot of knee
15 pain. At this point in time, he was working as a supervisor for
16 a construction company but had a bit difficulty carrying out his
17 work duties. His pain level, at this point, it was nine out of
18 ten. The last time it was eight out of ten. He had difficulty
19 with simple everyday activities like bending, kneeling and
20 squatting. He's able to kneel with the use of a shin guard. He
21 also reported episodes of his left knee buckling and giving out.
22 It happened about a week prior while on a staircase causing him
23 to injure his left extremity. And, I believe, those were his
24 chief complaints.

25 Q And did you perform a physical examination on Mr. Young

1 three weeks ago?

2 A Yes.

3 Q And what were the results of the physical examination
4 that you performed on Mr. Young three weeks ago?

5 A Again, he had a persistent effusion meaning he still
6 had water in the knee. His extension now was limited to five
7 degrees actively and three degrees passively. His flexion now
8 was reduced all the way to 95 degrees actively and a 100 degrees
9 passively. The Lachman Test, the Anterior Drawer Test, and the
10 Pivot Shift Test were all positive signifying that his ACL was
11 not working. And he had atrophy noted of about
12 three-centimeters which is a little bit more than an inch of the
13 left thigh compared to the right thigh. And, again, I noted the
14 mild union of his tibial shaft fracture.

15 Q And the atrophy that you just mentioned, was that
16 significant at all?

17 A Yes. So what atrophy is is when the muscle tone
18 shrinks, and it can shrink if you -- you know, if you mobilize
19 it and you put someone in a cast, you're going to get -- the
20 muscle will get smaller but also if you're not using your
21 muscles properly, if it is for pain and you -- and you can't
22 fire your muscles entirely, they will get smaller. And as his
23 arthritis was progressing and he was having more and more pain
24 and limitation of motion, he had developed the atrophy.

25 Q Did you perform X-rays in your office of Mr. Young's

1 knee three weeks ago?

2 A Yes.

3 Q Are the results of the X-rays written under
4 radiographs?

5 A Yes.

6 Q And if you go to his left knee, what were the results
7 of the X-ray for his left knee?

8 A I have moderate to advanced joint space narrowing.

9 Q And the last X-ray we looked at on March 10, 2020, five
10 years earlier, that was moderate, correct?

11 A That's correct.

12 Q And now it's moderate to advanced, correct?

13 A That's correct.

14 Q So I'd like to show you what has been stipulated into
15 evidence which is plaintiff's Exhibit 23 which is the X-ray that
16 you took on October 9, 2025. Doctor, do you recognize this
17 photo?

18 A Yes.

19 Q Doctor, if you wouldn't mind, with the Judge's
20 permission, can you please go to the screen and explain to the
21 jurors what you see in that photograph?

22 A So the inside of the knee, again, which is here, that
23 space has gotten even more narrowed now. And it is not quite
24 bone on bone but it's approaching. And he is also now
25 developing more and more arthritis on the lateral side which is

1 the outside of the knee which is getting more narrow too. So --
2 and you even see some bone spurs developing elsewhere in the
3 knee. So this is just a progression of the arthritis in his
4 knee and that's what arthritis does. Once you have arthritis,
5 it never gets better. So it can only get worse. And in some
6 people, it gets worse very slowly. And some people may have
7 arthritis and never need a knee replacement. Other people it
8 can progress rapidly and they need it at an earlier age.

9 Q That's it. Thank you for -- that's it with this
10 photograph. Thank you. Now, with regards to Mr. Young's left
11 knee, can you please tell the jurors what your impression was on
12 October 9, 2025?

13 A Again, as a result of this work accident, he had a
14 medial meniscus tear, ACL injury and progressive post-traumatic
15 degenerative joint disease. He had undergone the arthroscopy
16 with another physician, and he was diagnosed with advancing
17 degenerative joint disease or advancing arthritis.

18 Q And can you please explain to the jurors what advancing
19 or -- I'm sorry.

20 Can you please explain to the jurors what symptomatic
21 advancing left knee degenerative joint is?

22 A Symptomatic means that it bothers you. Like, so --
23 some people can have a problem. They can have a degree of
24 arthritis and they would not have pain. They may not even know
25 it's there. But symptomatic means you know it's there and it

1 hurts. And advancing means that it is progressing. It's
2 progressing over time.

3 Q And this symptomatic advancing left knee degenerative
4 joint disease, was that post-traumatic?

5 A Yes.

6 Q And I'd like to go down to the last paragraph which it
7 says plan. Can you please tell the jurors what your plan was as
8 of three weeks ago when you last saw Mr. Young?

9 A Again, the plan was for a corrective osteotomy
10 basically to make the leg bone straight first and then to come
11 back and do the total knee replacement and remove the hardware
12 from the first surgery. Again, because of the lengthy recovery
13 and that he still needed to work for financial reasons, he was
14 postponing the procedure. And, again, I did recommend it
15 because he had he had significant pain. He had difficulty
16 sleeping. He had difficulty walking two blocks. He had
17 difficulty negotiating a single flight of steps. So he meets
18 all the criteria to have a knee replacement done even today but,
19 again, for those reasons he was not able to.

20 Q Thank you, Doctor. I am going to take the exhibit off
21 the screen. So, Doctor, I am going to give you hypothetical
22 question but only once, and it will apply to all of the
23 questions afterwards, okay?

24 A Yes.

25 Q And I ask whenever you give an opinion, based on the

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1 questions, that your opinion must be within a reasonable degree
2 of medical certainty. If for whatever reason you can't give it
3 within a reasonable degree of medical certainty, you need to
4 state so on the record, okay?

5 A Yes.

6 Q So, I would like you to assume the following as your
7 hypothetical question. And I'm going to ask you some questions
8 regarding your opinions, okay.

9 MR. FABIANI: Before that begins, obviously, we had
10 this issue come up with Dr. Gross. So, I hope the
11 assumptions will be relatively limited, Your Honor.

12 THE COURT: We discussed this. I think there is an
13 understanding.

14 MR. FORD: Of course, Your Honor.

15 THE COURT: You'll let me know.

16 MR. FABIANI: Thank you.

17 Q All right, Doctor, I'd like you to assume that on
18 September 25, 2018, while walking down steps Mr. Young tripped
19 over a piece of rock debris and slipped down some steps causing
20 his left knee to twist. I would like you to assume he
21 immediately felt pain to his left knee. Dr. Gross testified
22 that Mr. Young sustained --

23 THE COURT: Is that an objection?

24 MR. FABIANI: Yes, Your Honor.

25 THE COURT: Okay. You know, since this is

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1 something you are going to do for a little while, I think
2 that I am going to give the jury a break and we'll talk in
3 the back. If you need a break. This -- would people like a
4 break? Okay. I'm getting some yeses and some maybes and
5 some nos. So, we are just going to have you take a
6 ten-minute break. Please be back by as close to 25 after if
7 you can. And we will have -- we will stay on the record.
8 We'll go back on the record after they leave. Okay.

9 COURT OFFICER: All rise, jury exiting.

10 (Whereupon, the sworn jurors exit the courtroom.)

11 THE COURT: Okay, Doctor, you can step down.

12 (Whereupon, the witness was excused from the
13 stand.)

14 THE COURT: We could stay in here on the record.
15 So what is the objection?

16 MR. FABIANI: Sorry. Yes, Judge, it is the same as
17 before. I'm not sure why the doctor needs to have all of
18 these assumptions presented to him. Again, as I said before
19 with Dr. Gross, it is essentially closing argument to
20 have -- summarizing the accident than the immediate
21 complaints of pain then the visit with Dr. Gross.

22 THE COURT: I don't think Dr. Gross's testimony
23 should be referenced. And you are referencing that --
24 assume that Dr. Gross testified blah. I don't think that
25 should be in it. How much of this --

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1 MR. FORD: I could show you. I cut it down by
2 two-thirds from the last time.

3 THE COURT: What do you need just to get your --
4 his opinion because I don't want this to be your own
5 narrative or your own summation of the evidence, but I don't
6 want to cut you off from getting out what you need to do to
7 get out to have his expert opinion.

8 MR. FORD: Yeah. I do need to -- and, again,
9 because plaintiff hasn't testified yet. I do have to ask
10 him to assume certain things which the jury is free to
11 disregard if those things that I asked him to assume don't
12 come up during Mr. Young's testimony, but even the PJI tells
13 the jury that they can disregard any assumptions that I say.

14 With regard to what I need Dr. Touliopoulos to
15 assume is the accident, how it happened, the left knee
16 twist, he had pain immediately after, then the tear, the
17 arthroscopic surgery, and 30 percent of the meniscus was
18 removed. I can do that in two sentences. After that, just
19 that prior to his accident on September 25, 2018, he had no
20 previous restrictions in his left knee for work or daily
21 activities and no recent knee pain prior to September 25,
22 2018. That's my hypothetical. Then I would just go into my
23 opinion questions.

24 THE COURT: Okay. That doesn't sound terrible.

25 MR. FABIANI: Mr. Young hasn't testified but

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1 Dr. Touliopoulos examined Mr. Young and spoke to Mr. Young
2 and Mr. Young described how the accident happened and all of
3 that. I am a little confused why the question can't just be
4 have you come to any opinions based on your review of the
5 records, examination of Mr. Young and what are those
6 opinions. And he is going to say everything Mr. Ford wants
7 him to say.

8 THE COURT: This hasn't come up in -- I've had this
9 in medical malpractices cases, but I haven't really had
10 these long narratives in these kind of cases. But I think
11 when you asked him to assume something that he already
12 knows. I don't need for you to do that. What do you
13 suggest of what he just told us, which is not that long,
14 that you have an objection to specifically?

15 MR. FABIANI: The kind of the summation of all the
16 pertinent evidence in the case coming from Mr. Ford.

17 THE COURT: Would it be better if the form -- if
18 it's more like giving your review of your multiple meetings
19 with the plaintiff, your examination of the MRI's, the
20 X-rays and, you know, just take him through what he's
21 testified to, what is your opinion.

22 MR. FORD: I think that would be longer than what I
23 did and I don't think -- my only concern is if this has to
24 go up to appellate review for any reason. I want it to be
25 very clear what his opinion is based on. So if I leave it

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1 general based on your conversations with Mr. Young.

2 THE COURT: It is not general. It is about his
3 specific examination. It's actually more specific, I think.
4 You don't have the, you know, the hypothetical. You can be
5 actual right?

6 MR. FORD: I would disagree. And, you know, I am
7 allowed to ask questions for him to assume. Mr. Fabiani,
8 are you saying that I should not be allowed to ask him to
9 assume certain things because that's perfectly allowable in
10 these situations. I'm not sure --

11 THE COURT: That's why I was asking for the
12 specific objection. Like -- because I didn't think this was
13 too long what he just went through and, you know, the PJI
14 allows it. So what specifically, I don't want you to refer
15 to another doctor's testimony. I don't think --

16 MR. FORD: I'll just refer to the tear and the
17 operation, but I won't say Dr. Gross testified. That's
18 fine.

19 THE COURT: Right. And of what he just went
20 through. Can you show Mr. Fabiani your notes in case you
21 forgot what he just said or do you want him to repeat it so
22 you can tell me what you think is objectionable?

23 MR. FORD: Do you want me to read it?

24 MR. FABIANI: Okay.

25 MR. FORD: I would like you to assume that on

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1 September 25, 2018, while walking down steps Mr. Young
2 tripped over a piece of rock debris and slipped down some
3 steps causing his left knee to twist. I would like you to
4 assume he immediately felt pain to his left knee. That's
5 paragraph 1 of 3. So do you want me to go through the whole
6 thing?

7 THE COURT: Um, hum.

8 MR. FORD: I would like you to assume that
9 doctor -- I'm sorry. I would like you to assume that
10 Mr. Young sustained a left knee meniscal tear that was
11 caused by the accident. I would like you to assume that an
12 arthroscopic meniscectomy was performed 31 days after the
13 accident occurred and 30 percent of Mr. Young's left knee
14 medial meniscus was removed.

15 THE COURT: You moved your hand. What was this?

16 MR. FABIANI: I mean, to state in the question I
17 want you to assume that he tore his meniscus in this
18 accident.

19 THE COURT: I don't think you can say it's caused
20 by the accident because that's not his purview, right. That
21 was Dr. Gross. You could say that he tore his meniscus.

22 MR. FORD: And an operation was performed.

23 THE COURT: Led to an operation being performed and
24 an operation was performed or and then --

25 MR. FORD: That's fine.

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1 MR. FABIANI: I don't understand why he needs to
2 assume anything. It's right in his notes. He says in his
3 initial evaluation all of this. It is all there.

4 MR. FORD: But I am allowed to make assumptions
5 question. Are you saying that I shouldn't be allowed to do
6 what the law allows me to?

7 MR. FABIANI: It is not an assumption. It is in
8 his notes and he's already testified to it.

9 THE COURT: Is what you're saying duplicative of
10 what he's testified to here or -- I don't see the prejudice.
11 I don't see the problem.

12 MR. FABIANI: Okay.

13 THE COURT: But if you're telling me I am missing
14 something, tell me that. I don't even see that there is a
15 problem with this. I agree with the causation. I think
16 that should be not his thing to say. That was said by
17 Dr. Gross. But then let's go on to the other questions just
18 in case there's anything else specific.

19 MR. FORD: I have one more paragraph of my
20 hypothetical. It is just -- I would like you to assume
21 prior to his accident he had no previous restrictions to his
22 left knee or his work or daily activities and that he had no
23 recent knee pain prior to September 25, 2018.

24 THE COURT: Okay. This is the part where you are
25 asking him to assume something that he wouldn't -- he

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1 probably did know at the time or probably has been told but
2 your client hasn't testified so if your client doesn't
3 testify to that then --

4 MR. FORD: Then the jury is free to disregard his
5 opinion based on my hypothetical.

6 THE COURT: And that would be in my instructions.

7 MR. FORD: Yes. Yeah, I requested it. We both
8 requested that as a charge.

9 THE COURT: Okay.

10 MR. FORD: Then after that it is just opinion
11 questions about -- about what his opinions are.

12 MR. FABIANI: And what's -- and then you are going
13 to ask do you have an opinion as to whether his
14 post-traumatic arthritis is caused by this accident.

15 MR. FORD: I'm not going to tell him what I am
16 going to say.

17 THE COURT: I mean, that's the basic assumption for
18 this witness, but I don't think you -- he doesn't need to
19 preview that unless -- you can make an objection if he says
20 something that you think is improper because you can't do
21 what we already discussed. He is not talking about
22 causation of the meniscal tear.

23 MR. FORD: Correct.

24 THE COURT: He is just talking about something
25 else.

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1 MR. FABIANI: I think that would be -- I'm thinking
2 out loud if that is a leading question. I know he is going
3 to testify to it regardless so it's fine. It's all right.

4 THE COURT: It's already out there. It's just
5 going to be put in the form that it needs to be for the
6 verdict sheet for appellate review as you say, Mr. Ford. So
7 I'm going --

8 MR. FORD: Hopefully not.

9 THE COURT: Yeah, well. I'm going to allow it.

10 MR. FABIANI: Okay.

11 THE COURT: Do either of you need a quick visit to
12 the restroom, stretch your legs, anything like that?

13 (Whereupon, a recess was taken.)

14 COURT OFFICER: All rise, jury entering.

15 (Whereupon, the sworn jurors enter the courtroom
16 and take their respective seats.)

17 THE COURT: You may be seated. Everyone may be
18 seated.

19 (Whereupon, the witness resumes the witness stand.)

20 THE COURT: I note that the doctor is taking the
21 stand again and you are still under oath.

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: And you may inquire.

24 CONT'D DIRECT EXAMINATION

25 BY MR. FORD:

1 Q Hello again, Doctor.

2 A I'm sorry?

3 Q I just said hello again.

4 A Hi.

5 Q Okay. So I am going to go back to the hypothetical
6 that I read to you earlier. I would like you to assume that on
7 September 25, 2018, while walking down the steps Mr. Young
8 tripped over a piece of rock debris and slipped down some steps
9 causing his left knee to twist. I would like you to assume he
10 immediately felt pain to his left knee. I would like you to
11 assume Mr. Young sustained a meniscal tear, a medial meniscal
12 tear, and an operation was performed 31 days later which was an
13 arthroscopic meniscectomy where 30 percent of Mr. Young's left
14 medial meniscus was removed.

15 And lastly I would like you to assume that prior to his
16 accident on September 25, 2018, Mr. Young had no previous
17 restrictions to his left knee for his work or daily activities
18 and that he had no recent knee pain prior to September 25, 2018,
19 okay?

20 A Yes.

21 Q Do you have an opinion, within a reasonable degree of
22 medical certainty, as to the cause of the left knee symptoms
23 that Mr. Young was experiencing from when he first saw you on
24 January 29, 2020, up until today?

25 A Yes.

1 Q And what is that opinion?

2 A It is a result of the work accident on September 25,
3 2018.

4 Q And what is the basis of your opinion?

5 A The basis is this was a gentleman that was working
6 full-time, full duty with no knee symptoms. They all developed
7 at the time of the accident and worsened after the accident.
8 And it is my opinion that the meniscal tear was the result of
9 this based on my 28-years of experience and my knowledge of
10 orthopedics.

11 Q Do you have an opinion, within a reasonable degree of
12 medical certainty, as to the cause of the need for your
13 treatment of Mr. Brian Young's left knee?

14 A Yes.

15 Q What is that opinion?

16 A The same that it's the result of the work accident of
17 September 2018.

18 Q And what is the basis of your opinion?

19 A The basis, again, is the onset of the symptoms
20 following the accident, their absence prior to the accident, my
21 review of the medical records and my knowledge of orthopedics
22 over the years.

23 Q Do you have an opinion, within a reasonable degree of
24 medical certainty, as to the cause of your diagnosis of
25 progressive post-traumatic degenerative joint disease that you

1 gave to Mr. Young?

2 A Yes.

3 Q What is your opinion?

4 A It's the result of the work accident of September 2018.

5 Q And what is the basis of your opinion?

6 A The basis is there was, again, no evidence of arthritis
7 in the medial compartment of the knee. There was no evidence of
8 arthritis during the arthroscopy and it all developed following
9 the accident, again, based on my knowledge of orthopedics
10 throughout the years and my review of the records.

11 Q Do you have an opinion, within a reasonable degree of
12 medical certainty, as to whether Mr. Young will experience pain
13 in his left knee beyond the date of this trial?

14 A Yes.

15 Q What is that opinion?

16 A That he will.

17 Q Okay. And for how long?

18 A He will have pain in his knee until the time that he
19 has a knee replacement.

20 Q And what is the basis of your opinion?

21 A The basis of my opinion, again, is based on my years of
22 orthopedic experience, my review of the records, and the fact
23 that his knee pain has only worsened since his accident despite
24 the care that he had received.

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

1 medical certainty, as to the need for any future surgeries for
2 Mr. Brian Young?

3 A Yes.

4 Q And what is your opinion?

5 A That he will need future surgery.

6 Q What are those surgery or surgeries?

7 A It would be the surgeries that I mentioned earlier
8 including the osteotomy to straighten out the tibia bone and the
9 subsequent removal of the hardware and the knee replacement.

10 Q And what is the basis for your opinion?

11 A The basis of my opinion, again, is the radiographic
12 X-ray evidence of the progressive arthritis that we have seen
13 over the years, the progressive narrowing of his joint space,
14 and the resistance of his knee symptoms to the treatment that he
15 has received including medications, physical therapy, and
16 injection treatments.

17 Q Do you have an opinion, within a reasonable degree of
18 medical certainty, as to the cause of the need for the osteotomy
19 and total knee replacement?

20 A Yes.

21 Q What is that opinion?

22 A The need for the osteotomy and the knee replacement is
23 a result of his work accident.

24 Q And what's the date of that work accident?

25 A September 25, 2018.

1 Q And what is the basis for your opinion?

2 A The basis for my opinion, again, is the arthritis has
3 developed since the day of the accident and was not present to
4 any certain degree prior to the accident and it's progressed
5 over the years to a point where he has significant narrowing of
6 his joint space and pain that is not responding to anything
7 other than surgery.

8 Q Do you have an opinion, within a reasonable degree of
9 medical certainty, as to when you would recommend Mr. Young to
10 have the osteotomy and the total knee replacement to his left
11 knee?

12 A Yes.

13 Q When?

14 A I have already recommended it.

15 Q And for what -- for when?

16 A I think he should have it done as soon as he can.

17 Q And what is the basis for your opinion?

18 A The basis, again, is he has ongoing significant knee
19 pain so he has trouble sleeping at night. He has trouble
20 walking two blocks. He has trouble negotiating a single flight
21 of steps. It is affecting his daily activities such as going to
22 the bathroom. It's affecting his ability to work and it has
23 really not responded to anything else that was afforded to him.

24 Q Do you have an opinion, within a reasonable degree of
25 medical certainty, as to whether or not Mr. Young will still

1 experience pain to his left knee after he undergoes a total left
2 knee replacement?

3 A I have an opinion, yes.

4 Q And what is that opinion?

5 A It's really unknown. I will say that 90 percent of
6 people with knee replacement they have a good result. So, I'm
7 not saying they have no pain but their pain is much improved
8 and/or it may be intermittent and they are overall happy. They
9 can have residual stiffness. You rarely get back all your
10 motion after a knee replacement, but 90 percent of people are
11 happy they did it. Then there is a ten percent of patients that
12 have problems with a knee replacement, 5 to 10 percent and that
13 may include scar tissue that can cause pain, limited knee
14 motion. They may have premature losing of the knee. They may
15 end up with a knee infection or blood clots after surgery. So
16 we don't really know but, hopefully, he would have a good
17 result.

18 Q Do you have an opinion, within a reasonable degree of
19 medical certainty, as to how long into the future Mr. Young will
20 need to get any type of treatment for his left knee?

21 A Yes.

22 Q What is that opinion?

23 A The opinion is that following the knee replacement is
24 something that needs to be followed with a yearly visit once he
25 has recovered from the acute surgery and yearly X-rays.

1 Q And do you have an opinion, within a reasonable degree
2 of medical certainty, as to what that medical treatment is? All
3 of it. I know you just mentioned some of it but all of the
4 medical treatment that Mr. Young will need for the rest of his
5 life besides the two surgeries that you already mentioned?

6 A So, following each surgery, there is a period of
7 recovery, recuperation. So, following his osteotomy, he may
8 need to stay one night in the hospital. Similarly, with a total
9 knee replacement, he probably would stay at least one night in
10 the hospital. And then he would be discharged and start
11 outpatient physical therapy.

12 So he would receive physical therapy to help regain his
13 motion and strength and that would be about three times per week
14 for the first six months for the knee replacement and maybe
15 three times per week for the first three months following his
16 osteotomy.

17 Q Do you have an opinion, within a reasonable degree of
18 medical certainty, as to the cause for all of the future medical
19 treatment that you described today with regards to Mr. Brian
20 young?

21 A I'm sorry, the cause for the need for future medical
22 treatment?

23 Q The cost. Maybe, I'll just say it again so we have a
24 clearer question in the record. Do you have an opinion, within
25 a reasonable degree of medical certainty, as to the costs for

1 future medical treatment for Mr. Young?

2 A Yes.

3 Q And what is that opinion?

4 A For the -- for the osteotomy, the cost would be \$20,000
5 for the surgery, \$25,000 for the hospital and the
6 anesthesiologist. For his knee replacement, it would be \$25,000
7 for the surgery and \$53,000 for the hospital anesthesia
8 department. The cost per doctor visit following the surgery
9 would be \$200 a visit. The cost for the X-rays would be about
10 \$200. The cost for therapy sessions would be \$120.

11 Q And I apologize but I'd just like to break up exactly
12 what he will need after the osteotomy as opposed to what he
13 would need after the knee replacement with regard to office
14 visit X-rays.

15 Doctor, do you have an opinion, within a reasonable
16 degree of medical certainty, as to how often or how many times
17 Mr. Young will need office visits after his osteotomy?

18 A So in the first month, it could be twice. And then
19 subsequently until the time of his knee replacement it would be
20 once a month.

21 Q And, again, Doctor, do you have an opinion, within a
22 reasonable degree of medical certainty, as to how many X-rays
23 Mr. Young will need after his osteotomy but before his knee
24 replacement?

25 A He would need monthly X-rays until there's evidence

Dr. Touliopoulos - by Plaintiff - Direct

1 that the fracture is healed and that would be for the first, I
2 would, say 6 to 9 months.

3 Q And do you have an opinion, within a reasonable degree
4 of medical certainty, as to how many therapy appointments
5 Mr. Young will need after his osteotomy but before his knee
6 replacement?

7 A Yes, he would need three times a week for the first
8 three months following the surgery.

9 Q Now, moving on to the total knee replacement, do you
10 have an opinion, within a reasonable degree of medical
11 certainty, as to how many office visits Mr. Young will need
12 after the total knee replacement?

13 MR. FABIANI: Yes, Your Honor, I have an opinion.

14 THE COURT: I'm looking down so make sure you tell
15 me. It might make sense to discuss this in the back.

16 (Whereupon, the following discussion takes place in
17 the robing room among the Court and Counsel, outside the
18 hearing of the sworn jury.)

19 THE COURT: When you want attention, please just
20 say objection because I am looking down. I'm hearing
21 something and I am like what.

22 MR. FABIANI: You saw me like literally a second
23 after I stood up so...

24 THE COURT: Okay.

25 MR. FABIANI: I'm not sure where these numbers are

Dr. Touliopoulos - by Plaintiff - Direct

1 coming from. They are not in any record, are they, any
2 report. I mean --

3 MR. FORD: It is coming from him.

4 MR. FABIANI: Can you just pull numbers out of
5 nowhere without putting it --

6 THE COURT: It is not in the 3101(d) that he is
7 going to testify as to followup care?

8 MR. FORD: He is a treating physician. I don't
9 need a 3101(d). This is his opinion within a reasonable
10 degree of medical certainty. He is going to be performing
11 all of these, opinions and X-rays. He has a duty under New
12 York State law as a medial doctor to know the law and
13 practices.

14 MR. FABIANI: I just think I'm entitled to see it.
15 This is literally the first time I've heard any of these
16 numbers.

17 THE COURT: Okay. I don't know that he -- can he
18 actually testify as to -- he could testify that he
19 recommends a certain amount of physical therapy but as we
20 know people don't always follow it and the therapists
21 themselves may not think it's necessary. So, he could say
22 what I typically recommend on this surgery, but I -- and he
23 would recommend on the surgery, but I don't know that he
24 could. And he knows what he does with office visits and
25 what he would do here. What was the other thing?

Dr. Touliopoulos - by Plaintiff - Direct

1 MR. FABIANI: Well, I mean, like he just put up a
2 number for the surgery. I would have liked to know that
3 number in advance.

4 THE COURT: Those numbers. That I haven't had a
5 doctor really testified to before. How -- where is that
6 coming from? Like, is that -- is that in a schedule of
7 costs at the hospital?

8 MR. FORD: That's what he charges. He's the owner
9 of his practice.

10 THE COURT: But he's talking about the anesthesia
11 costs too.

12 MR. FORD: He has hospital privileges so he can
13 testify as to the numbers. He knows what they are. If
14 they're not correct, he could cross-examine him and he could
15 bring in his own doctors to say these numbers are way out of
16 proportion. But I pled future surgeries and the cost
17 associated with it in the Bill of Particulars.

18 THE COURT: In your Bill of Particulars, did you
19 put these numbers?

20 MR. FORD: No, not these numbers. I'm not under
21 any obligation to put the specific numbers in my Bill of
22 Particulars.

23 THE COURT: Okay. So is it specifically the
24 numbers?

25 MR. FABIANI: Yes.

Dr. Touliopoulos - by Plaintiff - Direct

1 THE COURT: So, I think the basis of his knowledge
2 is important to explore, that you can explore it. You can
3 explore it. I -- I don't know where it comes from.

4 MR. FABIANI: Yeah, I mean, the fact that there has
5 never been any disclosure about these numbers is extremely
6 prejudicial. Essentially, I have to cross the -- on
7 something I just heard two minutes ago for the first time.
8 I mean, I -- if I heard these numbers in a disclosure
9 30 days ago, I would have researched them. Are these his,
10 you know, numbers that -- that insurance will pay for. Are
11 these numbers that -- out of pocket costs. I don't know
12 anything.

13 MR. FORD: I don't see any prejudice because in the
14 verdict sheet that Mr. Fabiani submitted, correct me if I'm
15 wrong, I believe you put future medical treatment in there
16 and the costs, how much it will costs. So how is this
17 prejudicial if you're the one who wants in your verdict
18 sheet the price for future and medical treatment?

19 MR. FABIANI: That's just a standard term.

20 MR. FORD: It is not standard.

21 MR. FABIANI: It is right out of the PJI or the
22 CPLR.

23 MR. FORD: You didn't have to put it in there but
24 you did. So how is this prejudicial when you are the one
25 who is going to be asking the jurors what the future costs

1 are?

2 THE COURT: You're not?

3 MR. FORD: I am too, but he can't claim prejudice
4 when he puts on his verdict sheet that he proposed that
5 future medical costs is on there. I don't see any prejudice
6 here.

7 MR. FABIANI: I am talking right now about the
8 specific numbers that Dr. Touliopoulos is discussing that I
9 just found out about five minutes ago.

10 MR. FORD: When did you expect to find out about
11 them when you put future medical cost on your verdict sheet?

12 MR. FABIANI: It's got to be a supplemental BP.
13 It's got to be in a 3101(d). It's got to be a life care
14 plan, something.

15 THE COURT: That's true. It is typically somewhere
16 that's disclosed.

17 MR. FORD: Future knee replacement was disclosed in
18 the Bill of Particulars. It is not free. And then I have
19 his -- the treating doctor coming in who is going to be
20 doing the knee replacement to testify as to how much the
21 knee replacement will cost.

22 THE COURT: Okay. Well, if he is going to testify
23 to that, there should have been a -- there should have been
24 initially an objection. There should have been more of a
25 foundation. Are you yourself going to do this surgery and

Dr. Touliopoulos - by Plaintiff - Direct

1 what do you typically charge and is it your expectation that
2 that would be the charge here.

3 But, I mean, are there -- I think there are
4 variables. He may get in there and might not take as long.
5 It might take longer, depending on how you can handle the
6 price. It is not like going into a store and, hey, here's
7 the \$39. I think there should have been more of a
8 foundation. I guess we are going to have to backtrack and
9 do that but, you know, we don't have a lot of time.

10 MR. FORD: I'll backtrack and lay a -- I don't
11 think it would be too many questions about foundation
12 for he's the one doing the surgeries, how much does the
13 surgery cost, how does he know the pricing of the surgery.

14 THE COURT: And the anesthesia he can't -- he can't
15 know what that is unless it's -- typically when he does knee
16 replacement surgery that's how much the anesthesia is but I
17 don't know if he knows that.

18 MR. FORD: Well, he's -- he's done hundreds of
19 surgeries on knees, thousands in his life. So, based on
20 that, he has hospital privileges. I think he would, but I
21 can explore that.

22 MR. FABIANI: I think that is very generous and I
23 -- if that's Your Honor's decision, I have to note my
24 exception. None of these numbers should come in. I mean,
25 they should be out.

Dr. Touliopoulos - by Plaintiff - Direct

1 THE COURT: Well, why does everybody object after
2 the fact? That's my issue with you guys. I would have
3 stopped it and we could have come back here. Now, it's out.
4 I'm trying to figure out a way to fix it, but I don't know
5 that -- let me grab my court attorney to see if she has any
6 ideas.

7 MR. FABIANI: Slightly, go ahead. I apologize but
8 they were still talking cost.

9 (Whereupon, there was a pause in the proceedings.)

10 THE COURT: Okay. So the Bill of Particulars did
11 have the costs of the knee replacement?

12 MR. FORD: No, not the specific cost but the
13 alleged future surgeries.

14 THE COURT: I don't -- I mean, who is to say he's
15 going to really use your guy, like this guy. He could go to
16 anyone and get a knee replacement. He may not want to go to
17 this doctor, but I think if you lay a foundation what is
18 your typical cost for a knee replacement. You have to lay
19 more of a foundation. The cat is already out what these
20 costs are, but I think you have to go back and ask the
21 question in that way and then the anesthesia, I don't know
22 how he would know that other than his -- in your experience
23 with surgery, what are the average costs of anesthesia and
24 then what else did he talk about that you objected to?

25 MR. FABIANI: There is future office visits.

Dr. Touliopoulos - by Plaintiff - Direct

1 There's physical therapy.

2 THE COURT: So you have to say in your -- just
3 talking about your -- your practice with this surgery what
4 are those specific requirements of patients. And then on
5 cross you can say, well, he may not use you or people don't
6 often don't always go to the physical therapist for the
7 number of times you say. They may skip office appointments.
8 These are your estimates. These are simply estimates.

9 MR. FABIANI: Yeah. I mean, you know, we've had
10 six years of discovery. And I was never given these costs,
11 and it's extremely prejudicial to have to deal with them now
12 at the time of trial immediately after his testimony and
13 they could have been, in his last doctor's note, very
14 easily. I've seen that done in that way all the time. And
15 I think the appropriate result would be an instruction that
16 the jury disregard the costs, and I don't think they should
17 consider future medical cost at all because there's no
18 foundation for it and that's my position.

19 THE COURT: Okay. I -- you can both brief this as
20 far as my telling them to disregard. I -- you can -- I --
21 we can leave it now but we won't have this witness again.
22 So I'm going to let you go into foundation and then go
23 through it. And then if you want to make a motion to --
24 to -- for me to instruct them to disregard, you're going to
25 have to both brief that.

Dr. Touliopoulos - by Plaintiff - Direct

1 MR. FABIANI: Okay. Moving on. While we're back
2 here, should we discuss the note that Mr. Ford brought up so
3 it is not to have to come back? We don't have to.

4 THE COURT: What's the -- repeat what your
5 preliminary objection is?

6 MR. FORD: My objection to Mr. Fabiani using
7 Dr. Gross's October -- September/October report is that it's
8 not in evidence. It's only marked for ID. There is no
9 foundation ever laid. It is not in evidence, period. So, I
10 don't see how Mr. Fabiani can now use this document that's
11 not in evidence, that's not authenticated, to either impeach
12 or refresh the recollection of Dr. Touliopoulos when there's
13 absolutely nothing in this record that Dr. Touliopoulos had
14 anything to do with.

15 THE COURT: Well, the only reason it's not in the
16 medical records I will say it's because it wasn't turned
17 over but are you doubting the authenticity of this note? It
18 didn't sound like you were.

19 MR. FORD: I purposely didn't put it into evidence
20 because I didn't want to -- my point of not getting it into
21 evidence was to keep the cumulative testimonies very, very
22 distinct, to keep Dr. Gross's records for that ten-month
23 period, Dr. Touliopoulos' records from January 2020 on. I
24 didn't want any crossover because I didn't want to give
25 Mr. Fabiani any more reason to say or argue that their

Dr. Touliopoulos - by Plaintiff - Direct

1 testimony is cumulative because that was already not an
2 issue for me but something I really strategized coming into
3 this trial so that was purposeful. So I'm not going to
4 stipulate that it's authenticated. And for that reason,
5 Mr. Fabiani can't use it because it's not in evidence. And
6 he could have authenticated it with Dr. Gross but he didn't.

7 THE COURT: How were you planning to use it?

8 MR. FABIANI: Well, first of all, authenticity,
9 okay. It was in Dr. Gross's file. It's obviously
10 authenticated. I am -- I think I marked it in evidence.

11 MR. FORD: No, he didn't.

12 THE COURT: He is saying he will.

13 MR. FABIANI: I am marking it in evidence.

14 Doctor -- first of all, respectfully, Mr. Ford, if you
15 wanted to keep them separate, you probably should have sent
16 Mr. Young to see Dr. Gross a month ago and bill him and
17 charge him and -- I'm sorry, have him charge you a thousand
18 dollars for it. I don't know how that meets the goal of
19 keeping them distinct.

20 Number two, if you look through the physical
21 findings, which were -- these reports were, I think, a week
22 apart, Dr. Touliopoulos most recent note, I believe, was
23 October 9th, Dr. Gross' was October 2nd. There are
24 significant discrepancies.

25 THE COURT: Okay. If you want to move it into

Dr. Touliopoulos - by Plaintiff - Direct

1 evidence, I guess do it at the beginning of your -- this
2 would be on our cross, right?

3 MR. FABIANI: Yes.

4 THE COURT: Are you going to object to that?

5 MR. FORD: Yeah, definitely, because it's not
6 authenticated. There's evidentiary rules for a reason. You
7 can't just say, you know, oh, Mr. Ford you're doubting that
8 it's authenticated. No, there is rules of evidence for a
9 reason. We all have to follow the rules of evidence and
10 right now this is not authenticated.

11 THE COURT: Dr. Gross did say this -- it came from
12 his file.

13 MR. FORD: Was it kept in the ordinary course of
14 business? No one knows that.

15 THE COURT: Those questions weren't asked of the
16 rest of the file.

17 MR. FORD: We stipulated the rest of the file into
18 evidence. So I didn't -- no one needed to ask any of those
19 foundational questions.

20 THE COURT: What's your response?

21 MR. FABIANI: To try to take advantage of me not
22 authenticating a document because it came as a complete
23 shock immediately as I started my cross-examination I think
24 is a little backhanded. It was in Dr. Gross's file. It is
25 obviously kept in the ordinary course of business. He

Dr. Touliopoulos - by Plaintiff - Direct

1 brought it. I didn't create it. I didn't bring it. He
2 brought it in his file. How could there be any question on
3 authenticity? It is in his file.

4 THE COURT: Okay. Well, Dr. Gross is gone. As far
5 as the -- whether it is kept in the ordinary course of
6 business it seems obviously it is, but you're not able to
7 ask him those questions. I think you can ask about the
8 report by saying to this doctor would it surprise you, when
9 he is testifying, would it surprise you to learn that
10 Dr. Gross, who just testified a few days ago, said this,
11 this from the report or this from the report or this from
12 the report. Can you do something like that to get out the
13 differences?

14 MR. FABIANI: No.

15 THE COURT: Is it something you want to show him,
16 you need to show him?

17 MR. FABIANI: I mean, I suppose I can read from it.

18 THE COURT: You can't read from it because it is
19 not in evidence. But I do think, you know, the fact that he
20 testified that it was his report, that he examined him and
21 he did the report right after, I don't think there's any
22 question as to its authenticity. I just -- I just don't see
23 how that -- how there could be.

24 MR. FORD: I mean, it wasn't kept in the ordinary
25 course -- we don't know if it was kept in the ordinary

Dr. Touliopoulos - by Plaintiff - Direct

1 course of business. We don't know who wrote it.

2 THE COURT: When he went through his file, that was
3 included in the file, right?

4 MR. FABIANI: Yes.

5 THE COURT: And he brought the file here. We're
6 all assuming the entire file is kept -- it is his file.

7 MR. FORD: There's also an IME report so not
8 everything in his report is authenticated.

9 THE COURT: Okay. I am going to, you know, what --
10 we are going -- you said this witness won't be available
11 after today?

12 MR. FORD: Correct, yeah.

13 THE COURT: I am going to let you ask about it and
14 he can't read from it. I think you should, to be safe, you
15 don't want a reversal based on something like this if, you
16 know, wherever this goes. I -- I think it's okay to ask in
17 a way that they all heard Dr. Gross testified. And if you
18 asked it in a way that it would surprise you to learn that
19 Dr. Gross, who testified a couple of days ago, says the
20 complete opposite of what you're saying here, it says this,
21 it says that.

22 MR. FABIANI: Your Honor, my disappointment is that
23 the plaintiff attended two visits and comprehensive reports
24 were prepared following each visit and he essentially got
25 two bites at the apple at which report he wanted to use.

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1 And if the defendants did that, one of them with 100 percent
2 be precluded. It would be a significant penalty sanction if
3 that were the case especially this close to trial and --

4 THE COURT: Sanctions for what, tell me what?

5 MR. FABIANI: Preclusion. If, you know, if there
6 were two orthopedists who were -- who a defendant wanted to
7 call. Obviously, they would have to have one of them
8 precluded. And I just think given the circumstances of me
9 finding out about this report, the defendant should be
10 extended wide latitude to use it and instead I think I'm
11 being limited so that's my issue.

12 THE COURT: Okay. All right. I'm going to let you
13 ask about it and move it into evidence. If you think I'm
14 wrong, then you can submit a brief and I'll ask them to
15 disregard it just like I am going to ask them to disregard
16 the numbers if you convince me otherwise.

17 MR. FABIANI: Okay. Thank you, Judge.

18 MR. FORD: And I just want my exception noted for
19 the record regarding the use of Dr. Gross's last report to
20 be admitted into evidence. Your Honor, should I still
21 object out there on the record when he moves to admit it?

22 THE COURT: You can do that. But I do think that
23 late disclosure, it wasn't even your disclosure. It just
24 happen to be Mr. Fabiani questioning it. I don't think
25 that's fair play. I really don't. And I do think that he

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1 should be able to use it for that reason as well.

2 MR. FORD: Well, I would just say that it's a
3 treating doctor. It is not an expert so there is no
4 disclosure requirements on my end.

5 THE COURT: Okay.

6 (Whereupon, the following discussion take place on
7 the record, in open court, in the hearing and presence of
8 the jury.)

9 THE COURT: There was an objection and the
10 objection was sustained such that the questions would be
11 asked in a different way and with your supplemental
12 foundational questions.

13 MR. FORD: Yes, Your Honor.

14 CONT'D DIRECT EXAMINATION

15 BY MR. FORD:

16 Q Dr. Touliopoulos, have you ever performed a total knee
17 replacement before?

18 A Yes.

19 Q Approximately, how many total knee replacements have
20 you performed in your career?

21 A It'd be a number in the hundreds.

22 Q Have you performed any total knee replacements this
23 year 2025?

24 A Last week.

25 Q And you mentioned you had hospital privileges earlier.

1 Do you perform these total knee replacements at the hospitals
2 where you have hospital privileges?

3 A Yes.

4 Q Are you familiar with the costs at those hospitals for
5 what is needed for a total knee replacement?

6 A Yes.

7 Q So you gave a number \$25,000 for a total knee
8 replacement. Where did you get that number from?

9 A Well, the \$25,000 would be the surgical fee, but the
10 hospital cost is 53,000 and that's a number that we've looked
11 into by getting those numbers from -- directly from the
12 hospital.

13 Q So that's my next question. How do you know the
14 hospital fees are \$53,000?

15 A That's the numbers that we obtained directly from the
16 hospital. Those are of the costs that they provided us.

17 Q And if Mr. Young were to get a total knee replacement,
18 you would be performing the total knee replacement?

19 A Yes.

20 Q And your surgical fee would be \$25,000 for that knee
21 replacement?

22 A Yes.

23 Q And the hospital fee would be \$53,000?

24 MR. FABIANI: Your Honor, just note my standing
25 objection.

1 THE COURT: That's sustained as to -- for --
2 sustained absent further foundation on the hospital.

3 Q What are the different hospitals where you performed
4 total knee replacements?

5 A New York Presbyterian lower Manhattan hospital, Lenox
6 Hill Hospital, and Mount Sinai Hospital. That fee is actually
7 the cheapest fee of the -- I believe that may have been from
8 Mount Sinai. The other hospitals are actually more expensive.

9 Q So when you gave your opinion on the hospital fees for
10 a total knee replacement, that was based on the fees from the
11 hospitals where you have hospital privileges and you gave the
12 jurors the lowest fee of those numerous hospitals; is that
13 correct?

14 A That's correct.

15 Q And how exactly do you know that the lowest fee for
16 hospital -- for the hospital fees is \$53,000?

17 A Because those are the fees that we have actually -- we
18 have actually charged recent patients.

19 Q And how do you know that?

20 A Because I'm the surgeon and we manage the care of the
21 patient.

22 Q So in managing the care of the patient, do you, as the
23 surgeon, obtain the amounts for the hospital fees?

24 A It -- depending on how the surgery is to be paid, yes.

25 Q And if the surgery is going to be paid -- well, strike

1 that.

2 Mr. Young's surgery, will you manage the fees including
3 the hospital fees?

4 A Yes. And to clarify that, obviously, if there's a
5 private insurance, that's something we don't get involved with.
6 But if it isn't, then that's something we do get involved with.

7 Q And when you do get involved with it, the cheapest of
8 those hospital fees is \$53,000 for a total knee replacement; is
9 that correct?

10 A Yes.

11 Q Now, going to the osteotomy, you mentioned that your
12 surgical fee will be \$20,000; is that correct?

13 A Yes.

14 Q And you would be performing the osteotomy on Mr. Young?

15 A Yes.

16 Q You mentioned that the hospital fee for an osteotomy is
17 \$25,000; is that correct?

18 A Yeah, that's rough -- that's roughly because it's not a
19 very common procedure and the cost is harder to pinpoint because
20 it may be more expensive depending upon the extent of the
21 surgery, the time in the operating room, the type of implants
22 that need to be used. But I -- that would be like, I believe, a
23 lower amount for the procedure.

24 Q And the office visits you gave a number for \$200 per
25 visit. Is that a visit to your office?

1 A Yes.

2 Q You're the owner of that office?

3 A Yes.

4 Q And are you familiar with the billing practices of your
5 office?

6 A Yes.

7 Q And the X-rays, would those X-rays be performed at your
8 office?

9 A If he comes to my Queens office they would be, yes.

10 Q And if he comes to your Queens office, what would the
11 price of the X-rays be?

12 A It would be \$200.

13 Q And the therapy, you give it an amount for \$120 for the
14 therapy. How did you come up with that amount?

15 A Well, in our Queens office, we also provide physical
16 therapy so that number may vary elsewhere. It may even be
17 higher in some places.

18 Q But the therapy that your office provides is \$120 per
19 visit; is that correct?

20 A That's correct.

21 MR. FORD: Your Honor, if I may, I am going to get
22 into the opinion questions now.

23 THE COURT: You're not -- those are not complete?
24 You have more opinion questions?

25 MR. FORD: Well, the opinion question now defense

Dr. Touliopoulos - by Plaintiff - Direct

1 counsel objected to that was sustained. I would like to
2 reask it at this point.

3 THE COURT: Okay. It was sustained as to form, and
4 I think you laid the foundation. I don't know that you have
5 to reask the question. But if you -- if you want to, just
6 go ahead. Just that one question, right?

7 MR. FORD: Well, I -- I just have a couple more
8 opinion questions after that, but the one related to cost, I
9 believe, Mr. Fabiani objected to in the middle of -- I
10 believe it was in the middle of Dr. Touliopoulos testifying
11 but I -- I don't remember exactly.

12 A So just --

13 THE COURT: To be safe.

14 Q Do you have an opinion, within a reasonable degree of
15 medical certainty, as to the costs for future medical treatment
16 for Mr. Brain young?

17 A Yes.

18 Q What is that opinion?

19 A That, as I stated earlier, he will need the surgical
20 procedures. He will need the doctor visits of the X-rays and
21 physical therapy sessions and the frequency amounts that I --
22 that I already testified to.

23 Q And with regards to the costs, what are those? What
24 are the costs?

25 A Again, it's the costs that I testified to regarding the
SH - CSR, RMR, CCRNJ, CLR - Senior Court Reporter

1 surgeries. The \$200 a visit for the doctor's equipment. The
2 \$200 per X-ray, and the \$120 per physical therapy visit.

3 Q Doctor, can an accident or trauma aggravate or
4 exacerbate previously asymptomatic degenerative conditions and
5 cause them to become symptomatic?

6 A Yes.

7 Q Under the hypothetical I gave you earlier, I'd like you
8 to also assume the following. If Mr. Young did have any
9 preexisting asymptomatic degenerative conditions in his knee but
10 they weren't causing any symptoms and now the accident occurs
11 and caused symptoms in Mr. Young's left knee, do you have an
12 opinion, within a reasonable degree of medical certainty, as to
13 whether or not the accident aggravated or acerbated any
14 preexisting degenerative conditions in Mr. Young's left knee?

15 A Yes, I do have an opinion.

16 Q What is that opinion?

17 A That a traumatic injury to a joint can aggravate an
18 underlying arthritic condition and cause it to progress
19 prematurely.

20 Q Did Mr. Young tell you what he does for work?

21 A Yes.

22 Q And within a reasonable degree of medical certainty,
23 will Mr. Young be able to perform his work duties while he is
24 undergoing and recovering from the two surgeries that you
25 described?

1 A In my opinion, he would not be able to. Following his
2 osteotomy, he would be on crutches for a period of time.
3 Depending upon how quickly it heals and depending upon when he
4 actually does the knee replacement, there may be a period of
5 time he may be able to do some light duty once the fracture
6 heals. But if he progresses from the osteotomy right to the
7 surgery, I don't believe he'd be able to do his employment.

8 Q And what is the basis for that opinion?

9 A The basis is based on the type of surgery he's having,
10 and my knowledge of the recovery with those procedures.

11 MR. FORD: Thank you, Doctor. I have nothing
12 further.

13 THE WITNESS: Thank you.

14 CROSS-EXAMINATION

15 BY MR. FABIANI:

16 Q Good afternoon, Doctor. I know we are running out of
17 time here. Do you know what Mr. Young does day-to-day?

18 A I'm sorry?

19 Q Do you know what Mr. Young does day-to-day at work?

20 A He visits construction sites as a project manager and
21 it does involve him inspecting the sites.

22 Q Do you know if he ever does his work just from his
23 office?

24 A I believe there is some office work entailed in his
25 employment, yes.

1 Q If you're on crutches, can you go to an office?

2 A If you have transportation. Usually, it is hard to --
3 to work with crutches. You could possibly work from home but to
4 transport yourself may be difficult.

5 Q What about desk work? You could do desk work on
6 crutches, right?

7 A It depends, again, on his pain level and the need for a
8 narcotic medications. But there would be period of time, after
9 his osteotomy, that he would be completely disable from all
10 work.

11 Q Sure. I get that. How long would that be? Would that
12 be a few months?

13 A From his employment, that would be a period of 6 to
14 9 months.

15 Q Sir, by the way, my name is Mike Fabiani. We have not
16 met before, right?

17 A I don't believe so.

18 Q I represent the defendants in this case, okay, sir?

19 A Yes.

20 Q Now, when did you first see Mr. Young?

21 A January 29, 2020.

22 Q And am I correct, sir, that was well over a year after
23 his accident, right?

24 A Yes.

25 Q Now, in your first note, and you can refer to it in

1 front of you, you mentioned conservative treatment; is that
2 correct?

3 A Yes.

4 Q Now, you said that Dr. Gross performed a left knee
5 arthroscopic surgery and he underwent a subsequent course of
6 injections which did not help him to any significant degree; do
7 you see that?

8 A Yes.

9 Q At that point in time, did you discuss whether
10 Mr. Young had undergone physical therapy?

11 A I don't see it in my report, but that is something
12 that, I believe, he had undergone. Yes.

13 Q Well, do you know why it is not in your report?

14 A It is just part of a sort of treatment that's normally
15 performed after surgery.

16 Q And as you sit here today, do you know how much
17 physical therapy he underwent?

18 A I do not know how much or how long, no.

19 Q Is that something that should be noted in these
20 records?

21 A Therapy, from my impression, was not working. He was
22 not responding to certain treatment. And in fact, I believe, at
23 times it just aggravated his symptoms. So the duration really
24 didn't matter because it wasn't really helping him.

25 Q So you recall him telling you that the physical therapy

1 did not help, but you don't recall how much physical therapy he
2 said he did; is that correct?

3 A I don't recall how much physical therapy he did.

4 Q And if I represent to you, sir, that he was recommended
5 to undergo 12 sessions of physical therapy three times for four
6 weeks, does that sound like a reasonable prescription?

7 MR. FORD: Objection, Your Honor.

8 THE COURT: Overruled.

9 A You said three times a week for four weeks?

10 Q Yes.

11 A I believe that would be a reasonable prescription, yes.

12 Q And that's after his arthroscopic surgery, right?

13 A That would be reasonable after the surgery, yes.

14 Q And am I correct that would be 12 total sessions, yes?

15 A Yes.

16 Q And if I represent to you he only attended five of
17 those sessions, would that surprise you?

18 A It's not what was prescribed. Would it surprise me?
19 Not necessarily. Again, physical therapy is not for everyone
20 and sometimes therapy could aggravate a knee condition in which
21 case it should be discontinued.

22 Q And did you have that discussion with Mr. Young that he
23 skip seven of his physical therapy sessions after the
24 arthroscopic surgery?

25 MR. FORD: Objection, Your Honor.

1 THE COURT: Overruled.

2 A I don't have any notation in my notes that that was
3 discussed.

4 Q Now, in the -- on the next page under plan you wrote in
5 the second sentence, "Due to his ongoing and significant
6 symptomatology despite conservative treatment." Do you see
7 that?

8 A Yes.

9 Q And again conservative treatment refers to both
10 physical therapy and injections; is that right?

11 A Those are types of conservative treatment.

12 Q Is there anything else?

13 A You could try bracing, canes and crutches and -- but
14 those are basically the main modalities for knee arthritis.

15 Q When you wrote "despite conservative treatment," what
16 were you referring to?

17 A It included the medications that he was taking. The
18 fact that he had -- while, the surgery would not be conservative
19 but he had surgery and physical therapy. He had medications.
20 He was still very symptomatic and he also had injections.

21 Q So am I correct you were referring to the physical
22 therapy and the injections when you wrote despite conservative
23 treatment, right?

24 A Yes.

25 Q Do you know when Mr. Young stopped going to physical

1 therapy?

2 A I do not know.

3 Q If I represent to you it was in November of 2018, does
4 that sound accurate to you?

5 A I don't know, but I do believe that it was just
6 aggravating his knee.

7 Q I'll show you a document that has already been marked
8 into evidence as Exhibit 3. Sir, this is the Kessler physical
9 therapy records. I believe it is the correct version at this
10 time. Now, I am going to fast forward to the most recent note
11 from November 21, 2018. Do you see that, sir, at the top of the
12 page?

13 A Yes.

14 Q And under problems, goals, in italics it says, "goal
15 abandoned November 21, 2018, discharged as the patient will
16 return to work." Do you see that, sir?

17 A Yes.

18 Q Does that look like his last physical therapy session
19 was on November 21, 2018, before you saw him in January of 2020?

20 A I don't have those notes, but I'd take your word for it
21 that that was his last visit.

22 Q Now, do you know did he undergo any additional physical
23 therapy from November 2018 until you saw him in January of 2020?

24 A I'm not aware.

25 Q And, presumably, you would have noted that in the

1 records if he had, yes?

2 A Again, it falls under conservative treatment but I
3 don't quantify how much therapy he received.

4 Q And, sir, you did not prescribe him any physical
5 therapy when you first saw him in January of 2020, correct?

6 A That's correct.

7 Q And had you reviewed the Kessler records when you first
8 saw him in January of 2020?

9 A No, I did not.

10 Q So you just took his word for it that physical therapy
11 wasn't working, correct?

12 A That he had received it and that he had finished it and
13 at times it aggravated his knee.

14 Q Do you remember him telling that to you or is that just
15 an assumption?

16 A I do remember we had discusses and, I believe, I had
17 reviewed that somewhere in my notes.

18 Q In January of 2020, do you remember him telling that to
19 you?

20 A I don't know the date.

21 Q Would you have noted in this record if Mr. Young had
22 told you he tried physical therapy but it was hurting his knee?

23 MR. FORD: Objection. Just with regard to this
24 record.

25 MR. FABIANI: My apologies.

1 Q The January 20 -- the January 29, 2020, initial consult
2 records. Would you have noted in your initial consult note with
3 Mr. Young if he had told you he had tried physical therapy but
4 it was hurting his knee?

5 A That's not recorded in my note, only that he had
6 received conservative treatment which would include an attempt
7 of physical therapy.

8 Q Going back to your records, sir. Now, in the physical
9 examination section, you wrote that there is crepitus with knee
10 motion, right?

11 A Yes.

12 Q And you discussed that in your direct; do you recall
13 that?

14 A Yes.

15 Q And, sir, just remind me what is crepitus?

16 A It is crackling of the knee when the knee is in motion.

17 Q And is that indicative of anything to you?

18 A It could be indicative of several things.

19 Q Like what?

20 A It could be indicative of osteoarthritis. It could be
21 indicative of scar tissue in the knee. Those are really the two
22 main causes of crepitus.

23 Q And is that a problem to you, sir, if you see crepitus
24 on your examination does that set off alarm bells?

25 MR. FORD: Objection, Your Honor.

Dr. Touliopoulos - by Plaintiff - Cross

1 THE COURT: Sustained as to form.

2 Q Sir, if you note crepitus, is that a concern for you?

3 A Well, it depends on the clinical situation. Some
4 people's joints just make noises and they don't cause pain. In
5 general, crepitus without pain is something that I would just
6 observe and not do anything for. When there is pain associated
7 with it, there is something that is more concerning.

8 Q Did you ask Mr. Young if he ever had crepitus prior to
9 this incident?

10 A I don't directly recall asking him that particular
11 question.

12 Q And I assume it is the same answer but did Mr. Young
13 tell you that he had crepitus in his knee prior to this
14 accident?

15 A Again, he told me he never had problem with the knee
16 before the accident. I didn't specifically ask him if he had
17 noises in this knee.

18 Q When he told you he never had a problem with his knee,
19 did you understand that to mean recently as in a few years
20 before the accident or ever at anytime in his life?

21 MR. FORD: Objection, Your Honor.

22 THE COURT: One word.

23 MR. FORD: Form.

24 THE COURT: Just be specific as to what you are
25 referring to when he told him.

1 Q Sir, when Mr. Young told you he had no prior knee
2 complaints, did you understand that to mean he had never ever in
3 his life had left knee complaints?

4 THE COURT: When he told him during this visit?

5 MR. FABIANI: Yeah.

6 A I'll read my sentence I have. I have he denied any
7 prior history of left knee trauma or symptoms prior to this
8 accident.

9 Q So my question for you is did you understand that to
10 mean ever at any point in his life?

11 A Well, at least -- it may not include like high school
12 or whatever but at least in the recent past.

13 Q Well, did you have that specific conversation where he
14 said I never had knee pain and you said is that recently or
15 ever?

16 A It was just a general question if he had it in the past
17 and he said no.

18 Q And you are aware that he had the 1988 accident,
19 correct?

20 A Yes.

21 Q Did you ask him if he had any knee pain as a result of
22 that accident?

23 A That question would entail like prior knee pain and
24 again he denied that.

25 Q So if he did have prior knee pain after that accident,

1 that's something you would have noted in your records, yes?

2 A Yes. If he had told me that, I would have likely noted
3 that, yes.

4 Q Sir, you discussed an MRI in this note from October 6,
5 2018, do you see that?

6 A Yes.

7 Q And you wrote "ACL spring, partial tear." Do you see
8 that?

9 A Yes.

10 Q And was that also something you noted on later imaging?

11 A It's also noted on later imaging, yes.

12 Q And that's also something you noted based on your
13 physical exam later on; is that accurate?

14 A Yes.

15 Q Sir, do you know who Dr. Michael Gross is?

16 A I don't believe I ever met him. Obviously, he is an
17 orthopedic surgeon.

18 Q And you understand, obviously, he is the one who
19 performed the arthroscopic surgery in October 2018?

20 A That's correct.

21 Q And did you, other than his operative note, did you
22 review his records at any point?

23 A I have not reviewed any of his records other than the
24 operative report.

25 Q Have you discussed his records with anybody?

1 A What I met with the patient's attorney two weeks ago, I
2 don't recall if that was brought up or not.

3 Q You just don't recall a few weeks ago?

4 A I don't recall any specific conversations about that
5 doctor's notes.

6 Q And what about with Mr. Young? Did you ever discuss
7 Dr. Gross's records?

8 A I don't believe so, no.

9 Q And -- I apologize. Did you ever see the records? Did
10 you take note of that?

11 A The only records that I have in my possession is the
12 operative report from the surgery.

13 Q And when you reviewed the MRI, did you review the --
14 Dr. Gross's MRI findings?

15 A I don't believe I had Dr. Gross's records to review. I
16 do believe -- I did review the X-ray that was done, but I don't
17 believe I reviewed any of his records.

18 Q Okay. So, sir, I'll represent to you that Dr. Gross
19 testified -- Dr. Gross testified in this case on Monday,
20 Wednesday of this week, okay. Now, Dr. Gross was specifically
21 asked about the MRI and he was asked about what damage Mr. Young
22 sustained in his accident based on his review of the MRI, X-ray
23 and his physical exam, okay?

24 A Yes.

25 Q You understand that?

1 A Yes.

2 Q Dr. Gross testified that the ACL is not germane to this
3 case. Does that surprise you?

4 MR. FORD: Objection, Your Honor.

5 THE COURT: Overruled.

6 A Well, what I examined the patient the ACL was problem.
7 I can't comment on what Dr. Gross found or commented on
8 regarding the ACL.

9 Q Well, you not only thought the ACL was damaged as a
10 result of your physical exam but also your review of the
11 October 2018 MRI, right?

12 A My impression regarding the dysfunction of the ACL was
13 primarily based on physical examination which is actually more
14 sensitive than the MRI scan as far as telling how functional the
15 ACL is.

16 Q But you did discuss the MRI and you noted your findings
17 in your initial consult?

18 A Yes.

19 Q And you wrote, sir, anterior cruciate ligament injury,
20 right?

21 A Yes.

22 Q I apologize. That was the impression. You wrote the
23 findings are consistent with the ACL spring/partial tear, right?

24 A Correct.

25 Q I am going to show you what's been marked as Exhibit K.

Dr. Touliopoulos - by Plaintiff - Cross

1 THE COURT: Just a time check, Mr. Fabiani.

2 MR. FABIANI: All right. You know what, I'll move
3 on from that.

4 THE COURT: I'm just telling you.

5 MR. FABIANI: It is going to be tight, but I am
6 working. I am trying to work fast. How much time do I
7 have?

8 THE COURT: It's 4:35 and -- I have to warn the
9 jury of this. I am -- I understand the doctor may not be
10 able to come back which is why we are rushing to get his
11 testimony in today. Does anybody have something that you
12 have to be at? Okay, all right. Thank you.

13 MR. FABIANI: Thank you.

14 CONT'D CROSS-EXAMINATION

15 BY MR. FABIANI:

16 Q All right. So let me go to Exhibit K. It is a note
17 from October 18th of 2018. And I'll show you it says "MRI of
18 the left knee is reviewed with the patient. There is a
19 significant tear in the posterior horn and body of the medial
20 meniscus."

21 A Yes, I see that.

22 Q Do you see any discussion of the ACL in this note?

23 A No, I do not.

24 Q Sir, you mentioned the X-ray -- well, sorry. Let me
25 start over. On your direct, you looked at the 2018 X-ray and

1 compared it to later X-rays; is that correct?

2 A That's correct.

3 Q Am I correct, sir, that you developed the diagnosis of
4 post-traumatic arthritis, and you can tell me exactly how that's
5 phrase, by comparing the images?

6 A That was one of the factors I used, yes.

7 Q Was there anything else that you used?

8 A Also the difference in symptoms as well as the
9 difference in MRI findings.

10 Q Difference in symptoms, is that based on what Mr. Young
11 told you?

12 A Yes.

13 Q Back in 2018?

14 A No.

15 MR. FORD: Objection.

16 THE COURT: Sustained as to form but you are going
17 to fix that, right?

18 MR. FABIANI: Yes.

19 Q My question is you said difference of symptoms. You
20 didn't review Dr. Gross' 2018 records so where do you get the
21 initial symptoms to compare the later symptoms? Is that from
22 Mr. Young?

23 A That's from what the patient reported to me.

24 Q I'm sorry. I think I cut you off.

25 A That's what I was going to say.

1 Q And by reviewing that October 2018 X-ray and comparing
2 it, that's an important part of how we developed that diagnosis,
3 correct?

4 A It is one of the factors, yes.

5 Q And, sir, when did you first look at the 2018 X-ray?

6 A I did look at it in preparation for today's testimony.
7 I don't recall when the first time was, but I did see it
8 recently, about two weeks ago.

9 Q Am I correct it would be noted in your records if you
10 reviewed that X-ray, correct?

11 A It -- more than likely but it may not have.

12 Q Well, sir, if you do me the honor to go through them.
13 January 29, 2020, you only discussed the MRI? You can look
14 through --

15 A That's correct.

16 Q And then -- I am not going to scroll through it. It
17 will take too long. You can flip through with me, sir.

18 A I wrote this. It's not documented here. I just don't
19 recall that, seeing it earlier. I have not documented that I
20 did.

21 Q You document your review of MRI's; is that correct?

22 A That's correct.

23 Q So, for example, February 29, 2020, you discussed the
24 MRI scan of October 6, 2018, correct?

25 A That is correct.

1 Q Do you remember when you first developed the diagnosis
2 of progressive post-traumatic degenerative joint disease?

3 A I would just have to review my records.

4 Q Please.

5 A On my initial visit on January 29, 2020, I used the
6 terminology of progressive chondral pathology and basically the
7 chondral is cartilage and progressive means that the cartilage
8 is worsening. So I'm not using the word progressive arthritis
9 here, but it is something that I'm alluding to in this initial
10 report.

11 Q So, is it your testimony at that point in time you had
12 a sense that Mr. Young had progressive post-traumatic
13 degenerative joint disease?

14 A He had progressive cartilage problems and that would
15 fall under progressive degenerative joint disease.

16 Q Sir, my question is very specific. This is your
17 diagnosis in the case. When did you first develop the diagnosis
18 that Mr. Young had progressive post-traumatic degenerative joint
19 disease?

20 A So the first time he used the word it would be later,
21 but the first time that it's mentioned it's in this initial
22 report.

23 Q My question is when was the first time you used those
24 words?

25 A That would be, I believe, May 19th of 2020.

1 Q And going back to January 2020 when you first used
2 progressive chondral pathology, at that point in time, you had
3 not seen that October 2018 X-ray, correct?

4 A I don't believe I had. I just don't recall.

5 Q So when you testified on direct that you had to look at
6 that October 2018 X-ray to compare it to future X-rays in order
7 to develop that diagnosis, that was incorrect, right?

8 A I didn't see I needed to see that X-ray. I said I did
9 utilize that in my opinion.

10 Q And in May 19, 2020, at that point in time, had you
11 seen the October 2018 X-ray?

12 A Again, I just don't recall when I had seen that X-ray.

13 Q But it is not specifically noted in your records?

14 A That is correct.

15 Q So, again, when you first actually used those words,
16 progressive post-traumatic degenerative joint disease, you
17 hadn't seen the October 2018 X-ray, correct?

18 A That is correct.

19 Q Now, let me ask you briefly about the osteotomy. Can
20 you tell me again why you want to do the osteotomy?

21 A Because the -- with a knee replacement, you want the
22 tibia, which is a shinbone, and the femur, which is a thighbone,
23 to be fairly straight, to be in fairly good alignment so that
24 you could put in the knee replacement in a more natural
25 position.

1 Q And is part of the reason you need to do that because
2 without straightening the bone and the patient is bowlegged it
3 might put undue stress on the knee; is that part of it?

4 A So, if we don't straighten out the tibia, then the knee
5 replacement would be put in in a different position than it
6 should be put in.

7 Q Well, if you could just my answer. You could say yes
8 or no. Is part of the reason because if a patient is bowlegged
9 it would put undue stress on the knee?

10 MR. FORD: Objection, Your Honor.

11 THE COURT: Overruled.

12 A Bowlegged refers to the problem with the knee, but he
13 has a problem more in the shaft of the tibia so that I -- I
14 would not necessarily use the word bowlegged.

15 Q Bowed, right?

16 A There is a curvature to the tibia, the leg bone.

17 Q So as Mr. Young's tibia is right now, does that put a
18 different force on his knee than someone with an unbowed,
19 uncurved tibia?

20 A It can.

21 Q You said in direct that Mr. Young -- Mr. Young's knee
22 did not have arthritis at the time of this incident; is that
23 correct?

24 A I don't remember my exact terminology. I think I said
25 something to the effect that to no significant degree.

1 Q Okay, so he could have had arthritis?

2 A He could have had what we call age appropriate
3 arthritis.

4 Q And would the 2018 X-ray have shown that, the
5 October 2018 X-ray?

6 A Yeah. When I reviewed that X-ray, I did not see any
7 significant degenerative joint disease. There may have been
8 some mild productive changes but nothing that would consider
9 significant.

10 Q Now, sir, you first saw Mr. Young January 2020, right?

11 A Correct.

12 Q And then you saw him several times over the first half
13 of 2020, correct?

14 A That's correct.

15 Q When was the first time you suggested to him that he
16 needs to undergo a total knee replacement?

17 A It was mentioned, I believe, for the first time in
18 March, March 10, 2020.

19 Q And that is, am I correct, sir, over five and a half
20 years ago?

21 A Yes.

22 Q So Mr. Young was suggested to undergo an important
23 surgery that could help improve his leg five and a half years
24 ago and he has not undergo it yet, correct?

25 A Yeah. Just to clarify, that was something that was

1 discussed as an option at this point. But, yes, he did consider
2 it but he did not move forward with the knee replacement.

3 Q And that was five and a half years ago, right?

4 A Yes.

5 Q And in -- in May of 2020, did you see him again?

6 A Yes.

7 Q And during that visit, did you again discuss the
8 potential need for surgery?

9 A Yes.

10 Q And did you see him again, sir -- my apologies. When
11 was the next time you saw him after this?

12 A June of 2023.

13 Q Now, sir, is there a reason that you went over three
14 years without seeing Mr. Young?

15 A Going by my notes, I did assess that at this point in
16 time as of May of 2020 that the knee kind of reached maximum
17 improvement without surgery. So, I didn't believe -- as a
18 surgeon, I didn't believe that there is anything more I could
19 offer him. He does have options of following up with a rehab
20 doctor and getting more injections. But as a surgeon, I do
21 recommend the surgery. He was holding off and I basically told
22 him to come back as necessary.

23 Q And as necessary was over three years later?

24 MR. FORD: Objection, Your Honor.

25 THE COURT: Overruled. Actually, that's sustained.

1 Q Sir, when you saw him in June 2023, did he tell you
2 that he was doing this in anticipation of this case going to
3 trial?

4 A No, he did not.

5 Q You said during the May 19, 2020, visit that perhaps he
6 could use some more conservative treatment; is that right?

7 A Again, at that point in time, I thought that the knee
8 was as good as you could get without surgery. He did have the
9 option of taking medication and exploring other options, but I
10 didn't think that anything else would really help him.

11 Q Did he undergo anything else, as far as you are aware,
12 in that three-year period?

13 A Other than medications, I don't believe so.

14 Q And what medication?

15 A Anti-inflammatory medications, I believe, mostly over
16 the counter.

17 Q And then you started seeing him a little bit more
18 frequently at the start of 2024; is that correct?

19 A Yes. So I saw him one time in 2023. Then I saw him
20 again in January of 2024.

21 Q And, again, at any point starting January 2024, did
22 Mr. Young tell you that the reason he was coming back to you was
23 because this trial might be approaching?

24 MR. FORD: Objection, Your Honor.

25 THE COURT: Sustained.

1 A No, he did not.

2 Q Sir, you saw Mr. Young July 2025, correct?

3 A Yes.

4 Q And if you could just briefly, I obviously want to get
5 out of here, what sort of complaints specifically to the left
6 knee did he have at that time?

7 A So, he had complaints of standing for short periods of
8 time, walking one or two blocks. He even stated that he was
9 using an electric cart while in department stores to get around.
10 He would be in the park at his job site and needed to stop
11 before he can even reach where he worked. But he was still
12 working as a supervisor for a construction company.

13 Q Okay, sir -- and, again, this -- sir, and this is
14 July 2nd of 2025, right?

15 A Yes.

16 Q And to say it again, what his pain intensive level in
17 the left knee was at that time?

18 A A nine out of ten.

19 Q Now, sir, are you aware that Mr. Young has a primary
20 care doctor?

21 A It doesn't surprise me, but I don't know who that
22 person is.

23 Q Have you ever heard the name Dr. Rick Pumil, P-U-M-I-L.

24 A No.

25 Q And Mr. Young never mentioned anything to you?

1 A I don't have it recorded that we discussed that, so I
2 don't believe we did.

3 Q Now, I am going to show you what's on the screen a
4 document that has been marked in evidence as Exhibit H which is
5 Dr. Pumill's records. Sir, do you see the document on the
6 screen?

7 A Yes.

8 Q Now, I am going to just jump right to symptoms. Well,
9 I'll start with in the HPI which is History of Present Illness,
10 right?

11 THE COURT: What's the date?

12 MR. FABIANI: This is July 16, 2025, Your Honor.

13 MR. FORD: Your Honor, I am just going to object to
14 any use of Dr. Pumill's records.

15 THE COURT: It's in evidence already.

16 Q And, sir, you see it presents today for management of
17 the above?

18 A Yes.

19 Q And I am just going to scroll to the top where the
20 above, do you see, sir, reviewed problems? Do you see that
21 section?

22 A Yes.

23 Q And what is the last bullet on that -- in that section?

24 A Pain of joint of ankle.

25 Q And, sir, do you see --

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1 MR. FORD: Objection.

2 THE COURT: Overruled.

3 MR. FORD: If I just may, I only have for ID only,
4 these records.

5 MR. FABIANI: Your Honor ruled on this.

6 THE COURT: This already came in. It was -- you
7 told me it was on consent that these were marked in
8 evidence.

9 MR. FABIANI: It was not on consent.

10 MR. FORD: I didn't consent.

11 MR. FABIANI: But Your Honor ruled.

12 THE COURT: I did rule that these could come in
13 because it is a primary care physician.

14 Q Sir, a quick scan, do you see any note of pain to the
15 left knee?

16 A No.

17 Q Does that surprise you, sir? This is two weeks after
18 he just told you he had a nine out of ten intensity pain in the
19 left knee. He sees his primary care doctor and does not mention
20 left knee pain. Does that surprise you?

21 A Well, you know, he's had left knee pain throughout my
22 treatment of the patient. This could be an oversight on the
23 part of the physician but that is something, I believe, should
24 have been mentioned.

25 Q Sir, I am just going to direct your attention to

1 activity of daily living. It says do you have difficulty
2 walking or climbing stairs; do you see that?

3 A Yes.

4 Q What's the answer?

5 A No.

6 Q Do you have difficulty doing errands or lawns; do you
7 see that?

8 A Yes.

9 Q And what's the answer?

10 A No.

11 Q Are you able to walk? What's the answer to that?

12 A Yes.

13 Q And then?

14 A Walks without restrictions.

15 Q Thank you. Last question, at the very bottom of this
16 page, do you see a section for muscular skeletal?

17 A Yes.

18 Q Would a left knee pain be included in that section?

19 A It should be.

20 Q And am I correct, sir, it says no muscle aches or
21 weakness, no arthralgia such as joint pain, back pain, or
22 swelling in the extremities?

23 A Well, he's just contradicting himself. He just wrote
24 that he has ankle pain above and now he says he doesn't have any
25 pain. So, I think the entire note is just erroneous.

1 Q And then further down, sir, in assessment of plan; do
2 you see that?

3 A Yes.

4 Q And do you see number four?

5 A Yes.

6 Q And what does that say?

7 A Arthralgia of ankle unspecified laterality.

8 Q The arthralgia/pain is noted elsewhere in this record,
9 correct?

10 A That's correct.

11 Q And do you see any discussion of left knee pain?

12 A No, I don't.

13 Q Now, I'll represent to you that Dr. Gross prepared a
14 note, which I would like to have marked into evidence as
15 Defendant's L --

16 MR. FORD: Objection, Your Honor.

17 THE COURT: This was discussed in the back and it's
18 going to be admitted into evidence over objection. So
19 objection is overruled. We can deem it right now so you can
20 get right to it. We will deem this in evidence as "L".

21 MR. FORD: Your Honor, if I could just look at the
22 record.

23 THE COURT: You've seen it. It came from your
24 doctor, right?

25 MR. FORD: Yeah, but there are some markings on

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1 here that aren't the doctor's.

2 MR. FABIANI: It is the same exact exhibit that
3 Dr. Gross discussed.

4 MR. FORD: No. Mr. Fabiani made notes and then
5 whited it out and there is highlights on here. We don't
6 know if this is from the doctor or Mr. Fabiani.

7 THE COURT: Okay. That's not what he is asking
8 about. You saw it before it was marked for ID. It came
9 from your doctor so...

10 MR. FORD: Not the highlights. Mr. Fabiani took
11 this home. There are highlights on here. We don't know if
12 it's Mr. Fabiani or the doctor.

13 THE COURT: That's been here since it was marked
14 for ID.

15 MR. FORD: No. No.

16 THE COURT: At this point, you are going to have to
17 direct the witness to disregard any highlights or notes. If
18 you want to get something out, you have five minutes to do
19 it. That says two minutes. My watch says five.

20 CONT'D CROSS-EXAMINATION

21 BY MR. FABIANI:

22 Q I am going to quickly refer you to page three, the
23 physical examination section. There is a highlight in the first
24 paragraph. Disregard that. I am not going to ask you about the
25 first paragraph. I am only going to ask you about the second

1 paragraph, okay.

2 A Yes.

3 Q And I am going to put up on the screen your note from
4 October 9, 2025, okay, sir. Do you see that on the screen?

5 A Yes.

6 Q And do you see the date of this note is October 1,
7 2025?

8 A Yes.

9 Q And your note, the physical exam, is October 9, 2025,
10 right?

11 A Yes.

12 Q So that's eight days later, yes?

13 A I'm sorry?

14 Q That's eight days later?

15 A Yes.

16 Q And I am going to refer you to Dr. Gross' note. He
17 wrote, "normal muscle bulk and tone." Is that correct?

18 A Yes.

19 Q O you agree with that finding?

20 A No, I found atrophy.

21 Q And the end of the second line it states, "There is no
22 effusion." Do you see that?

23 A Yes.

24 Q And again effusion is fluid in the knee?

25 A Yes.

1 Q And do you agree with that finding?

2 A No, but effusion is something that come and go. But it
3 is not what I found when I examined the patient.

4 Q And Dr. Gross found, toward the bottom, Anterior Drawer
5 Lachman Test and Pivot Shift are negative; do you see that?

6 A Yes.

7 Q And do you agree with that finding?

8 A I disagree with that finding.

9 Q And why is that?

10 A They have been positive since I started seeing the
11 patient and he has MRI findings of injury to the ACL.

12 Q Am I correct, sir, you wrote Lachman Test, Anterior
13 Drawer Test and Pivot Shift Test are positive, right?

14 A Yes, I did.

15 Q Sir, you can set that document aside. Now, sir, now,
16 do you know who Mr. Young's attorney was when you first saw
17 Mr. Young?

18 A I do not know. It may be in the office records, but I
19 don't know.

20 Q Have you ever heard of the firm Sacks and Sacks, sir?

21 A Yes, I have.

22 Q And do you work with them a lot, sir?

23 A I've treated patients that were represented by that law
24 firm, sir.

25 Q Can you estimate within the past ten years how many

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1 patients Sacks and Sacks sends you in a given year?

2 MR. FORD: Objection, Your Honor.

3 THE COURT: Sustained.

4 MR. FABIANI: Okay. You know what, sir. I have
5 nothing further. I came in just under the gun. Thank you.

6 MR. FORD: I don't have anything else.

7 THE COURT: Oh, that's good. Thank you, jurors.
8 Thank you for your attention. Thank you for staying. I am
9 going to now excuse you. Tomorrow we will start up at ten,
10 and we'll see how it goes as far as leaving early. I'm
11 hoping we can, but I'll talk to the lawyers about schedule
12 and advise you, okay.

13 COURT OFFICER: All rise, jury exiting.

14 (Whereupon, the sworn jurors exit the courtroom.)

15 (Whereupon, the witness was excused from the
16 stand.)

17 THE COURT: Be here at 9:30 tomorrow in case there
18 is anything you need to put on the record. We could that in
19 the morning at 9:30. Have a good night.

20 * * * *

21 Certified to be a true and accurate transcript of
22 the stenographic minutes taken within.

23

24

25

Shameeka Harris

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