In The Matter Of:

ROBERT MCCULLOUGH v.

ONE BRYANT PARK, DURST DEVELOPMENT, LLC et al

DR. STEVEN TOULIOPOULOS

October 11, 2017

Cheryl-Lee Lorient

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 33

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ROBERT MCCULLOUGH,

Plaintiff, Index No. 113802/09

-against-

ONE BRYANT PARK, DURST DEVELOPMENT, LLC TISHMAN CONSTRUCTION CORP. and COMPONENT ASSEMBLY SYSTEMS, INC.,

Defendants.

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TRIAL

71 Thomas Street
New York, New York
October 11, 2017

B E F O R E:

HONORABLE MARGARET A. CHAN,

SUPREME COURT JUSTICE

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

SACKS & SACKS, LLP
Attorneys For the Plaintiff
150 Broadway, 4th Floor
New York, New York 10038
BY: JAMES J. McCRORIE, ESQ.

PILLINGER MILLER TARALLO
Attorneys For the Defendants
One Bryant Park, Durst Development, LLC,
Tishman Construction Corp.
555 Taxter Road, 5th Floor
New York, New York 10523
BY: STEPHEN B. KAHN, ESQ.

(Whereupon, continued on following page.)

(Continued appearances.)

LEWIS BRISBOIS BISGAARD & SMITH LLP
Attorneys For the Defendant
One Bryant Park
77 Water Street, 21st Floor
New York, New York 10005
BY: ALAN KAMINSKY, ESQ.

BRODY & BRANCH LLP
Attorneys For the Defendant
Component Assembly
205 Lexington Avenue, 4th Floor
New York, New York 10016
BY: NEIL BRODY, ESQ.

CHERYL-LEE LORIENT, SCR
LORI SACCO, SCR

Proceedings

MR. LEITER: Eric Leiter. Good morning, your Honor.

THE COURT: Good afternoon.

MR. LEITER: Eric Leiter, of Mauro Lilling Naparty, appellate counsel to the defendants, One Bryant Park, Durst Development LLC and Tishman Construction Corp.

And, we made this motion in limine this morning regarding Dr. Touliopoulos to the intent that he intends to give testimony today as to the cost of certain medical procedures that are outside of his field of practice or are, otherwise, not founded on any evidence that would be admissible.

The defendants received a plaintiff's medical record update in which they included what was identified as a life-care plan.

That plan included costs that are not in, any way, related to the cost that have already been paid in this case for the same items that the items are projected to be for, such as a visit to a pain management specialist.

Dr. Touliopoulos does not indicate to have any sort of expertise in economics, in health-care cost or identifying any basis for the cost that are contained in that life-care plan.

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And in the absence of any foundation, we move that he should be precluded from seeking to give testimony as to what those costs should be.

THE COURT: Thank you.

MR. McCRORIE: Dr. Touliopoulos did an actual life-care plan in June of 2016 that was exchanged with the defendants.

However, that life care plan although it would be in the seven figures range, cannot be followed because of the nerve condition that -- the pain condition that Mr. McCullough suffers from.

So, Dr. Touliopoulos, we told them, is going to only testify about future orthopedic care at twice a year, the x-rays that are associated. That's his specialty.

Mr. McCullough has seen a pain management specialist since the RSD was diagnosed.
Dr. Touliopoulos, after administering pain medication himself, for a while, said, "You really got to get back into a pain management." And, they did that with him. That's Dr. Padjen. His records are going in.

So, his opinions, as told to them, bring it down to 150,000 rather than a million plus. And, it's all -- everything within his range. It's x-rays and it is orthopedic monitoring, the pain management

monitoring and the same exact medications that the doctor has been administering at $1.50 a day. So, you know.

THE COURT: Sorry. $1.50 a day?

MR. McCRORIE: It's the cheapest amount. He's saying, "Get him the generic. Go to GOODRX." It's a dollar a day for one pill 50 cents for the other. It's so small on the plan. But, it is going forward. And, they had notice of it from both the BP, the life-care plan previously issued. And, this is the first we're hearing of preclusion.

THE COURT: All right. So you would rather have that several million dollar one in, rather than the $1.50 one in?

MR. LEITER: No, we're in agreement that there are items --

MR. MCCRORIE: 150, your Honor.

MR. LEITER: We're in agreement that there are items that, based on the testimony from the plaintiff, just don't belong in this case.

So, the only issue that is left then, is for a item such as a doctor visit. If Dr. Touliopoulos intends to claim that it's $120 per visit, he needs a foundation for that number.

Given that the records show that the amount

that was paid is $49.26, consistently, he would need some reason that a different number is going to be offered as what the cost of those visits are.

THE COURT: Suddenly, I feel I'm brought back to the No-Fault part where we're dealing with $45 and a $1.50.

MR. LEITER: No. This is just in terms of that compared to 120 per doctors visit.

THE COURT: Okay.

MR. LEITER: The medications we're not quibbling over.

THE COURT: All right. As to what doctor -- I'm just going to call him Dr. T for now -- can attest to, certainly, anything within his range of knowledge will come in. And, as to those that are not, I don't know what they are yet.

And, so, rather than have me precluding him, if a foundation needs to be done, then we'll do that. If you need to voir dire, then we'll do that. But, I'm not going to preclude him from testifying about A, B, C D and E if I'm not really sure of that lot within his purview of knowledge. Also, don't we have the bills in there already?

MR. MCCRORIE: Yes, there's going to be a stipulation, which will be put on the record. But, as

to the past medicals, it includes everything. It was 33,000 and change for the past medicals paid out by comp.

However, comp is billed out for the doctor at say $98. If there is no comp and if it is private pay, it goes in at 120. That's what it is. The reason -- and, there is a jury charge at the end, where the jury is told, that, plaintiff has to pay comp back.

After this case, he cannot use SSD, because of Medicare set aside and comp ends. It's private pay. There's no -- we would make the motion in limine that they cannot cross on the comp rates that were paid. Those comp rates end at this case. And, he's mandated by law to not charge above comp rates. So, he charges the exact $98.

THE COURT: Okay. And, as far as the medical cost, we are not saying that they are going to go up beyond the 120 correct? Because, as far as I can see, medical rates and bills will not get re-lowered. If anything, I think they'll be raised, correct?

MR. MCCRORIE: The economist will give growth rates, your Honor. That's what the economist will do.

THE COURT: All right.

MR. MCCRORIE: The total of everything, if

accepted, is under $150,000. I think it's 135 or eight or something like that. But, it's been disclosed that, that's the maximum.

And, I think upon my opening, I said, "We're going to ask you for, approximately, $150,000. It's not going to be millions. It's not going to be anything else that he would need."

THE COURT: Okay. So, that's my ruling. I'm not going to preclude it. But, if we cross that threshold where there's an objection, because it's beyond the doctor's can of knowledge, then we'll address it then. Okay?

MR. LEITER: All right, your Honor. Thank you. I just note briefly, in response to what he said about the insurance and Worker's Comp ending, that, to the extent plaintiff is claiming and we expect that this is what he's seeking to do, a claim that he's entitled to be reimbursed the cost of insurance, if he has a different insurance, there's still the same issue under "Castic" which is that he's not entitled to the amount, that's the difference, between a charge rate and the amount paid by the insurer.

THE COURT: Okay. Well, this is not something to be dealt with between the two of you or the three of you?

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MR. LEITER: We'll just trying to work it out.

MR. MCCRORIE: Yes, sure. That's the simulation. We're not asking for what was charged, just what was paid by comp, the 33,000.

THE COURT: Okay.

MR. MCCRORIE: And, we are stipping that, that's the amount, just not the need for it. Right? You guys could still -- isn't that the stip?

MR. KAMINSKY: Yes.

MR. KAHN: Yes.

MR. BRODY: I'm still in the case here, Jim.

MR. MCCRORIE: That's why I looked over at you.

MR. BRODY: You're looking here at these guys.

MR. MCCRORIE: I looked at you.

MR. BRODY: I feel left out, Jim.

MR. MCCRORIE: Well, you're in that corner.

THE COURT: All right. There is a juror who is a little late.

MR. MCCRORIE: Can we put in some --

THE COURT: You can just mark some exhibits while the jurors on their way.

(A recess was taken.)

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

(After the recess the following occurred:)

(Whereupon, at the request of counsel and with the consent of the Court, Plaintiff's Exhibits 28-32 were marked in evidence.)

COURT OFFICER: Jury is entering. All rise. Be seated everyone. Thank you.

(The jury entered the courtroom and the following occurred:)

THE COURT: Good afternoon. I know you are all excited to continue on this. So, let's get started. Your witness, right? Plaintiff's witness?

MR. McCRORIE: Yes, your Honor. The plaintiff calls Dr. Steven Touliopoulos of University orthopedics.

COURT OFFICER: Step up. Raise your right hand. Face the clerk.

COURT CLERK: Do you swear or affirm that the testimony you shall give in this case will be the truth the whole truth and nothing but the truth?

THE WITNESS: I do.

S T E V E N T O U P I O P O U L I S, called as a witness by the Plaintiff, having been first duly sworn, testified as follows:

COURT CLERK: Please state your name and spell it and give us your business address.

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

THE WITNESS: My name is Steven, spelled S-T-E-V-E-N. Last name is Touliopoulos, T-O-U-L-I-O-P-O-U-L-O-S.

My address is 23-25, 31st Street, Astoria, New York 11105.

COURT CLERK: Thank you. You may be seated.

MR. McCRORIE: May I proceed, your Honor?

THE COURT: Yes, you may inquire.

DIRECT EXAMINATION

BY MR. McCRORIE

Q. Good afternoon, Dr. Touliopoulos.

A. Good afternoon.

Q. Dr. Touliopoulos, to save time, if we can, unless asked or unless it is part of an explanation, the jury has already been given the anatomy of the ankle, both right and left. Okay? So, just to save that time.

A. Sure.

MR. McCRORIE: And, for the record, stipulated into evidence, is your file. Your x-rays were stipulated in yesterday, as well as the files of Dr. Brown from Downtown Physical Medicine and Rehab as 30. And, Dr. Padjen from NYU Langone Seaport in as 31.

Q. Okay?

A. Yes.

Q. Would you please tell the jury, are you licensed

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

to practice medicine in the state of New York?

A. Yes, I am.

Q. For how long? When did you get the license?

A. I became licensed in 1993.

Q. In what? Again, you don't have to define board certification or any medical terms unless asked. Can you please give the jury first your educational background starting in undergraduate and just take them through residency and fellowship. Then, we'll get to your career. Okay?

A. Sure. I went to college at Columbia University here in New York. I graduated in 1986. With a Bachelor's Degree in Chemical Engineering. I stayed on to get a Master's in bioengineering from Columbia University in 1987 before completing medical school at SUNY Downstate, in Brooklyn, where I graduated in 1991.

I stayed on at that institution to do my internship in general surgery as well as my residency in orthopedics, which I finished in 1996.

I then went on to do a orthopedics sports medicine fellowship at Lenox Hill Hospital which I finished in 1997.

Q. Can you then give the jury -- are you Board Certified?

A. Yes, I am Board Certified both in orthopedic surgery as well as orthopedics sports medicine.

Q. Please tell the jury what orthopedic surgery is and what, when you throw in sports medicine, what that means in your field?

A. Well, orthopedics is a branch of medicine that studies disorders of the muscular skeletal system which includes bones, joints, muscles, ligaments, tendons and so forth. Sports medicine is a subbranch that studies disorders related to sports injuries, not necessarily sports injuries such as ligaments, tears of the knee, labral tears of the shoulder and so forth.

Q. Can you tell the jury, where is your current practice? What is its name?

A. The current practice is named Universal Orthopedics of New York.

Q. Where are the location is?

A. We have two office locations, one in Astoria Queens, which I had mentioned earlier, one, the other in Manhattan.

Q. And, being a board certified sports orthopedic doctor, what were the parts of the body you typically treat?

A. I specialize in disorders of the extremities. So, the upper and lower extremities, which would include the shoulder, elbow, wrist, hip, knee and ankle.

Q. Do you perform surgery on a yearly basis?

A. Yes, I do.

Q. What is the approximate number of surgeries you perform on a yearly basis?

A. It varies from year to year. I believe, last year, it was between seven and 800.

Q. And, what, if you know -- if there's a percentage, how many of those are to the foot or ankle?

A. I couldn't tell you a percentage. But, there is a good number of surgeries that I perform to both the foot and ankle.

Q. Have you held academic positions and if so, what were they?

A. Yes. I'm an assistant professor of orthopedics at Cornell Medical Center. I also hold a position of director of sports medicine at Mount Sinai Hospital in Queens.

Q. And for the Court reporter, if you can and for us back here -- the acoustics are different in each courtroom -- if you could speak louder, just a little, and a slower that will be appreciated. Okay?

A. Sure.

Q. Dr. Touliopoulos, have you testified in court before?

A. Yes, I have.

Q. Does -- University Orthopedics, your practice, are you an owner of that practice?

A. Yes, I am.

Q. Does that practice accept work accidents and all of the rules and special procedures that go along with work accidents?

A. Yes, it does.

Q. Did you, back in 2013, from January on?

A. Yes.

Q. Do you have partners or employees that also see patients in an orthopedic capacity?

A. Yes, I do.

Q. Who are they?

A. Dr. Charles DeMarco, as well as Dr. Daniel Kelleger.

Q. Both orthopedic doctors?

A. Yes.

Q. So, I asked you if you testified in court before. Have you testified in court before on a construction worker patient that was also a client of Sacks & Sacks?

A. Yes, I have.

Q. And, how long have you been practicing orthopedic medicine in the New York area?

A. I began my practice in 1997. So, about 20 years.

Q. And, in those 20 years, have you seen many, what's known as, union iron workers?

A. Yes, I have.

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

Q. Are you familiar with 580, 361, the names of the unions?

A. Somewhat, yes.

Q. Have you seen many 580 Union Iron Workers over your career?

A. Yes, I have.

Q. Has it been a lot?

A. It's a good number, yes.

Q. As well as all of the other trades?

A. That's correct.

Q. Hospital privileges, where do you have them currently?

A. Yes, I operate at New York Presbyterian a lower Manhattan Hospital, Lenox Hill Hospital, as well as Mount Sinai Hospital Queens.

Q. In the past, have you been at other hospitals?

A. Yes, I have.

Q. Such as?

A. Long Island College Hospital, St. Vincent's Hospital, Brookdale Hospital, St. Claire's Hospital.

Q. When St. Vincent's was around, were you on staff there? Did you have an office there?

A. Yes, I did.

Q. Are you being paid for your time away from your practice and the post surgical visits and even moving

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

surgeries?

A. Yes.

Q. What is the rate per hour, per day? What rate are you being compensated at to be away from your practice, to testify about your involvement in Mr. McCullough's case?

A. It's a situation where my office manager arranges between six and $10,000. And, it's determined on how long is the trial; depending on the time spent.

Q. Sure. If it's a full day or half-day?

A. Sure.

Q. Where were you this morning, for instance, up until about an hour ago?

A. In the office.

Q. Seeing patients?

A. Yes.

Q. Did you and I meet in connection with the your anticipated testimony, approximately, a month or so ago to discuss Mr. McCullough' case?

A. Yes, we did.

Q. During that meeting, did you go over, with me, x-rays and certain views of what to enlarge, to show what you were going to discuss of Mr. McCullough's injuries?

A. Yes.

Q. Did we speak on the phone last night?

A. Yes, we did.

Q. And, today, before testifying?
A. Yes, we did.
Q. You can go to your file. This is your first note?
A. Yes.
Q. When did Mr. McCullough first become a patient of yours?
A. It was on July 12, 2013.
Q. All right. I just want to jump to something on radiology, on the bottom, where it says, "Radiology." What did you indicate for "Radiology" on that first visit?
A. The previous medical records were reviewed including the operative notes and MRIs.
Q. And, in those previous medical records, did you have the previous treating podiatrist that referred him to a orthopedic doctor?
A. Yes.
Q. Do you have those? Are those notes part of your file?
A. Yes, they are.
Q. And, did you, subsequently, review not just the MRI reports, did you, actually, have the films and any films up until the point when he saw you; Mr. McCullough?
A. Yes.
Q. Just an initial evaluation. We are not going to comment on each visit, but what was the history as given to

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

you?

A. That he was "Involved in an accident on April 14, 2009, when he fell in an unprotected" -- it should be hole -- "while working."

Q. Okay. I was just going to point that out. It is supposed to be unprotected hole. Where does it say he fell? In an unprotected --

A. Hall.

Q. Is that a mistake?

A. Yes.

Q. "Unprotected" -- since it is a mistake, if you don't mind, just take a pen and write the word "hole," instead of hall. In any event, did you have what's known as the Medcor file indicating -- and all the other records indicating -- how the accident happened?

A. Yes, I did.

Q. Okay. So, continue, after changing "Hall" to "Hole."

A. And, he was working inside a building when this happened. He, initially, went to an outside medical facility where he was treated. He sustained injuries to both his ankles in this accident. He complained that his right side was worse than his left side. He reported having subsequent surgery to his right ankle on two occasions. The first December 2009, which included a ligament repair --

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Q. Just a little louder please, Doctor.

A. -- and, the second in November 2011, which included an arthroscopic surgery. He reported he was diagnosed with RSD to his right ankle. And, that, he had multiple injections to address this. With respect to his right ankle, he had significant pain and discomfort. He had difficulty walking for any period of time.

He also reported swelling and symptoms such as pain between the toes and difficulty putting on his sock.

With respect to the left ankle, he had episodes of rolling and giving out, again, difficulty ambulating and going up and down steps.

He reported that he had difficulty with daily activities, because of these injuries. And, he also denied any prior history of injury or trauma to the ankles before this accident.

Q. Okay. On the past medical and past surgery history, it says, "See attached." Can you go to the health questionnaire that the patient fills out?

A. Sure.

Q. In his handwriting, what was Mr. McCullough's chief complaint?

A. Right ankle pain, nerve damage, left ankle ligament damage.

Q. The nerve damage, had you known there to be any

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

nerve damage or that's what he wrote "Nerve damage"?

A. That's what he wrote, yes.

Q. Okay. And, the rest of that would be the medications he was on and the surgeries, height, weight, all of that, right?

A. That's correct.

Q. Physical examination, if you could, just tell the jury the first visit, the physical examination, the positive finding or if negative findings if they were significant?

A. Examination of the right ankle revealed healed incisions from the prior surgeries, with no signs of infection.

His motion was limited. His dorsiflexion which is the ability to lift your ankle up, was 10 degrees. And, normal is 20 degrees. And, his plantar flexion which is pointing it towards downward, was 15 degrees and normal is 40 degrees.

There was tenderness even to light touch along the lateral, which is the outside aspect, of the ankle. And, the anterior draw test and the tilar tilt test produced significant discomfort and were considered positive.

So, these tests are objective tests that were performed by me. And, it involved a pulling on the ankle to measure how much translation there is. And this is a test for the ligaments of the ankle, the lateral ligaments.

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

And, again, this is a finding consistent with recurrent disfunction of the ligaments of the ankle. The examination of the left -- would you like me to go on to the left ankle or --

Q. Sure.

A. The examination of the left ankle revealed similar restriction of motion with dorsiflexion of ten degrees and plantar flexion of 15 degrees.

Also positive are antrigar test and tilar tilt tests. And, otherwise, the exam was normal.

Q. Doctor, the next category, after radiology, sometimes there's assessments, sometimes says impression as the category. Are they the same thing, assessment and impression?

A. Yes.

Q. Is that a diagnosis or a working diagnosis?

A. Yes.

Q. Okay. What was your assessment on the first day?

A. That he was a 49 year old male iron worker. He was involved in an accident on April 14, 2009, resulting in bilateral ankle ligamentous injuries as well as chondral injuries. And, that, he also had the diagnosis of a right ankle RSD.

Q. What -- the jury heard a little bit about it yesterday, but what as an orthopedic surgeon, what are

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

chondral injuries?

A. The joint is covered by this shinny white thing called articular cartilage. So, if you're not a vegetarian, if you ever ate a chicken bone, at the end of chicken, there is a shiny white structure that's, actually, what you walk on. That's called articular cartilage.

Q. Okay. What was your plan, as that category, as in each of your notes? What was the plan on that date?

A. We did recommend x-rays as well as a home exercise program, antiinflammatory medications. And, I have, that, at this point, he was disabled from his regular employment as a iron worker.

Q. And, it says here, you recommend a home exercise program. Did the plaintiff -- did the patient make any complaints to you about what physical therapy would do to him?

A. Yes. At therapy, it would tend to be none effective or sometimes aggravate the symptoms; therefore, at this point, I did instruct the patient on, what I considered to be, an appropriate home exercise program.

Q. For what part of the body?

A. For the ankle.

Q. Okay. And, you were recommending it -- it says, "X-ray the bilateral ankles for evaluation" -- it's four words -- "post traumatic degenerative joint disease." What

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does that mean, those words together?

A. Yes. Degenerative joint disease is, basically, osteoarthritis, arthritis. And, obviously, there's different causes of arthritis.

Post traumatic osteoarthritis is the result of an accident. So, once you have a significant injury to a joint, over a period of time, there is always the probability of developing arthritis to that joint.

Q. Is a complete rupture of the ATFL a significant injury orthopedically?

A. Yes, it is.

Q. Is a chondral surface breaking free and free floating requiring surgery to take it out of the cartilage; is that a significant injury?

A. Yes, it is.

Q. Can cartilage in ankle area, once broken away and removed, regenerate it testify?

A. Is doesn't regenerate as articulate cartilage. Hopefully, it does regenerate. But, it regenerates as a fibrous cartridge, which is not as smooth and not at slippery as what was there before.

Q. At that point, having had multiple MRIs, I believe there were three up until that point, why did you order x-rays at that point?

A. Well, again, our diagnosis was that of the

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

development of osteoarthritis. And, I thought, a baseline x-ray would be a good idea to judge that and to see its progression over a period of time.

Q. As an orthopedic surgeon, when you see someone on a regular basis, monitoring or treating, what is the purpose of what's known has serial x-rays. In other words, once a year, twice a year, what is the purpose of doing that over the course of a few years or over the course of treatment?

A. Yes, well, at this particular case, when you are dealing with a diagnosis of osteoarthritis, it's a progressive problem. So, over a period of time, it's a condition that worsens. And, it's nice to see to gage through serial x-rays, to see its progression.

Q. Just going to the next visit, October 8, 2013.

A. Yes.

Q. On your physical examination --

A. Yes.

Q. We'll just start with that there. Often the follow-up visit, the first part, will repeat itself; is that fair to say?

A. Yes.

Q. So, the physical examination, just, what was noted then, positive findings?

A. He walked with a limp. We call that a antalgic gait. Examination of the ankle again revealed healed

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

incisions. There was discoloration of the skin of the right ankle compared to the left ankle. I also noted that there was a size site difference in the density of the hair around his ankle. There was also moderate swelling other ankle and a change in the skin temperature. So, when I would feel the temperature of one ankle versus the other, there was a site to site difference.

Again, these are all findings that are consistent with the diagnosis of RSD or complex regional pain syndrome which it has more recently been called.

Q. The discoloration that you noted, did that stay the same each time does it change?

A. His findings can change. They have changed over time. Again, it depends on various factors. How much time he's on his feet. Whether or not he took his examinations prior to medication. And, other factors.

Q. For instance, in certain records, such as the physical therapy, it'll says, it's bluish then another time it will say, it looks bruised. Things like that. Does it say the same discoloration? Is it different?

A. No, it had varied.

Q. Okay. With swelling or edema, the jury heard that yesterday. Edema means swelling?

A. Yes.

Q. But, they didn't hear it from you, but ...

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

Sometimes you say, "Significant," sometimes "Moderate," sometimes "Mild," sometimes "No mention." What are the differences in those four, you know, mild, mentioning nothing, significant --

A. Yes, I categorize swollen as mild or moderate and marked. And, then there is also severe.

And, obviously, with a condition, such as a neurological pain syndrome, a recurrent ligament, instability of the ankle and development of arthritis, symptoms can vary from day-to-day, again, depending on various factors.

Q. And, on October 8, 2013, it indicates the radiographs -- which are x-rays, correct?

A. Yes.

Q. They had already been done and they were discussed and reviewed with the patient?

A. Yes.

Q. We'll go over these in a moment when you step down.

A. Sure.

Q. Can you first define these words for the jury, osteophytes and spurring, radiologically and orthopedically. What's spurring and osteophyte mean.

A. They were different manifestations of arthritis. You could have solstice. You could have narrowing of the

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

joint space. And, you could have osteophytes, which are spurs. So, a spur is a layperson's term for an osteophyte.

Q. You already discussed the other things that would be noted. But, in the impression, in addition to ruling out degenerative joint disease post traumatic, you wanted to rule out neuroma. What is that?

A. Neuroma is, basically, a pinch nerve. And, not in the back, but it's in the extremities. And, he had pain in the area of this nerve. And, it's not infrequent that the nerve can get caught up in the scar tissue. And, when that occurs, it can get entrapped. And, we call that a neuroma.

Q. Looking in the plan, did you discuss with the patient regarding, at least, iron work, whether or not it was your suggestion he would be able to go back to work as iron worker or construction worker?

A. No, it was my opinion he was not able to go back to work as an iron worker.

Q. Did you discuss with him, on that occasion, potentially, doing surgery to the left ankle?

A. Yes, we did.

Q. What was the decision on that?

A. He was deferring surgery, which I thought was understandable, since he had two radical surgeries and still had recurrent instability of the ankle, had developed a neurological pain syndrome and did not have a good result.

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

He was holding off doing left ankle surgery.

Obviously, I explained to him it was an option to address his ligament injuries, but it's quite possible that he may have developed this same, similar, problem on the other side. And, for that reason, he was holding off on surgery.

(Continued on the following page.)

Q. Okay. And is RSD or CRPS, is -- is that one of those conditions it's not really known what causes it?

A. That's correct.

Q. Or why one person will get it and one will not?

A. That's correct.

Q. Can you -- When was the next time you saw him?

A. It was on May 7th of 2014.

Q. Okay. Just for speed of it, in the follow-up visit you noted he walks without a cane. Just for the record, not once did he ever say he utilized a cane or walked with a cane, right? He never came to you and said that?

A. I -- I don't believe I ever saw him with a cane. I believe he did use crutches after his surgeries, but not while he was under my care.

Q. Okay. Other than understandably using crutches after a surgery, while he was in a boot, he's never used a cane or in the records or told anyone he uses a cane?

A. That's correct. That's correct.

Q. And regarding a brace, he didn't walk in with a brace or utilize a brace?

A. He was not utilizing a brace when I saw him.

He did have one that he would use on an as needed basis.

Q. Okay. Just for the record, at that time, at least in the times before, what is he's to follow up with us on a P.R.N. basis mean?

A. That's as -- as necessary.

Q. And I want to read this. "He was given a prescription for Tramadol 50 mgs one tablet P.O.B.I.D. number 30 tablets." What does that mean?

A. That means one tablet by mouth twice a day.

Q. Okay. And at that point and previous you were administering the prescriptions for Tramadol, Ibuprofen, things like that?

A. At this point, yes.

Q. Okay. So, if you go to February 15th -- February 18th, 2015.

A. Yes.

Q. In the follow-up visit in the history talks about his right ankle episodes of popping. What is "with intermittent intense pain over the lateral aspect of the right ankle, with prolong weight bearing activities and when ambulating for distances greater than two or three city blocks", what does intermittent intense pain mean?

A. That he would have significant pain that would come and go. So, it may not be with every step, but there were times when he would have severe pain.

Q. In the physical examination, "Hypersensitivity to light touch over the superficial peroneal nerve of the right ankle", what is hypersensitivity and what is that nerve you were discussing?

A. Hypersensitivity is when your skin is -- is more sensitive than it should be. So, you know, light touch may -- may be uncomfortable, painful. This was an area of the superficial perineal nerve, which is a sensory nerve on the outside of the ankle, where he was having pain, and it's a nerve that I suspect may have neuroma.

Q. In May of 2015, just going to your impression, we're going to go through, for skipping over them, once you step down, the X-rays that were done on other occasions. But you indicate you want to rule out superficial peroneal nerve entrapment. Before that you say he developed subsequent RSD like symptoms. What does that mean?

A. The diagnosis of RSD reflex dissipate, it's a clinical diagnosis made by a patient complaints in physical findings. There isn't necessarily one diagnostic test that is diagnostic of RSD. So, the symptoms that he was having were consistent with -- with RSD, hypersensitivity, swelling, the skin discoloration and so forth.

Q. So, on the very next visit you say the same thing. In addition to other -- in the assessment, on that occasion you attempted to request authorization for electrodiagnostic studies of the lower extremities to rule out the above symptoms. What is the type of diagnostic study you were attempting to get authorization to do?

A. There --

Q. There is a prescription for it. What were you trying to get?

A. Right. Right. It's called EMGs or nerve connection studies. And this wasn't really to determine whether or not the patient had RSD. It was more to determine the presence of the -- of the neuroma, of the superficial peroneal nerve.

Q. And were you ever given authorization to test his nerve?

A. No, we were not.

Q. And in a matter such as this, did you come to learn that the case had been accepted for RSD and right ankle, left ankle only?

A. Yes.

Q. And when you -- So, in terms of looking into any nerve damage, did you have permission or were you allowed to do the testing?

MR. KAMINSKY: Object to this line of

questioning, judge.

MR. MC CRORIE: Withdrawn.

Q. You sought authorization but weren't given it, correct?

A. Yes.

Q. Therefore, were you allowed to do it or you couldn't do it?

MR. KAMINSKY: Objection.

THE COURT: Okay. That ends it. It was already previously answered.

Q. Would you still today, if given authorization, like to --

MR. KAMINSKY: Same objection, judge.

Q. -- perform the electrodiagnostic testing?

MR. KAMINSKY: Objection.

MR. MC CRORIE: I'll withdraw it.

THE COURT: Thank you.

Q. In August of 2015, again in the assessment, we're going to go through X-rays. The jury saw them quickly yesterday. But did you order more X-rays other than in August of 2013 to Mr. McCullough's ankles?

A. Yes. Additional X-rays were ordered.

Q. Okay. For instance, did you order them in 2015 as noted?

A. Yes.

Q. And again in 2017?

A. Yes.

Q. In 2015 under the assessment, progressive -- as an assessment, progressive degenerative disease of the right ankle, what does that mean?

A. That -- that there is osteoarthritis, which is a degeneratory disease of the ankle. Again, this is progressive condition, meaning it gets worse over time.

Q. And within the plan you state that you're going to refer him out for pain management for ongoing pain management. Why do you do that? Why did you do that in this case?

A. Well, I -- I tend to limit my practice to the treatment of orthopedic injuries. I do prescribe medication initially or in the acute phases, but for -- for chronic pain control, I prefer the patient to be treated by a pain specialist.

Q. Okay. In November of 2015 the assessment and plan -- what does the progressive part mean in front of degenerative?

A. That again progressive means it's going to get worse over time.

Q. And in the type of arthritis that you've told the jury, posttraumatic arthritis, is -- is it expected to get worse over time?

A. Yes.

Q. Why is that medically?

A. Once you -- once the arthritic process starts, it's not reversible. The smooth articular cartilage as it wears away causes an acceleration of the wearing away process. So, it never -- arthritis never really gets better. It only gets worse. The speed at which it gets worse can vary on different factors.

MR. MC CRORIE: Your Honor, with the Court's permission, I would ask that the doctor step down with an easel placed here.

THE COURT: How about back there?

MR. MC CRORIE: I figured maybe placed here. It could be placed here.

THE COURT: Do you want to move the chair there so you can sit there? We'll get you another chair.

MR. BRODY: Thank you, your Honor. I don't need the chair.

Q. Doctor, I'm going to hand you a red Sharpie pen. First, did you review the MRIs yourself?

A. Yes, I did.

Q. Okay. I'm just going to put up 15A, it's in evidence, and it is the right ankle on August 17th, 2009. I would like you to just look at the third image to the

right on the top. There is a red arrow there. I would like you to assume that Dr. Zboinski indicated that, which was read by the original radiologist as a partial tear, he believed to be some disruption in the tear as well. What do you have to say about that?

A. I agree. This is an arrow pointing at the lateral ankle ligament. And on the MRI scan, the signal should be a deep, dark black. What you see here and you can see here (pointing). But in this area, there is a lot of white signal, which in my opinion I agree with the -- with the diagnosis of a partial tear.

Q. I would like you to assume that it was testified yesterday by defense radiologist that an effusion is something that is normal. Do you see the white on the far left on 15B with the arrow to it?

A. Yes.

Q. Is that something that's a normal finding in a ankle with that much effusion?

A. No. This is not normal. So, an effusion, we all have a little bit of fluid in our joints. It helps to coat our joints. But this is an abnormal amount of fluid in the ankle. We call this an effusion, which is excess fluid in the ankle joint.

Q. Okay. I want to just get to the -- Did you also find a partial tear on the left?

A. Yes.

Q. I want to put up the films from 2013. Of note, the first two films were ordered elsewhere. One at Madison Avenue, one at Lenox Hill, which I think bought Madison Avenue, is that right?

A. I believe so.

Q. Okay. So, 20A and B is behind it. Are these the films that you, yourself, placed a requisition for?

A. Yes.

Q. Okay. What part of the body is that?

MR. BRODY: What date is that?

MR. MC CRORIE: August 28th, 2013.

A. It's an X-ray of the right ankle.

Q. Okay. And can you please discuss the X-ray and what, if any, findings, what we call positive findings or any significant findings there are?

A. Yes. So, the ankle is made of three bones, the tibia, the fibula and the talus. The bones are aligned properly. There is preservation of the joint space on this -- on this sphere of the ankle (indicating). And on the inside of the fibula you see a little bit of a bump there, which I would call a small osteophyte.

Q. Okay. And that's in 2013?

A. Yes.

Q. Just going to put up, take it down in a

little bit, 20B. Actually before we do that, with the red marker could you put the arrow towards where the -- what you're calling a small osteophyte?

(Whereupon the witness complied with the above request of counsel.)

Q. Okay. On that side right there only?

A. Yes.

Q. Okay. 20B, do you have anything to say, any findings on this one?

A. (Examining). Again, this is a segway view of the ankle. And overall the space is preserved. There is, in the front of the ankle here (pointing), there is a little irregularity of the joint.

Q. Put an arrow towards that irregularity. What is that?

A. (Indicating). I would call this a narrowing of the joint space.

Q. Okay. I'm going to come back to these a little later. Now I'm going to put up the 2015. First I'm going to start with the left. We can compare it to the right. Is that the left with the L?

A. Yes, that's the left.

Q. That is, for the record, 21B. Do you see anything on that?

A. (Examining). X-rays look fairly normal to

me.

Q. Okay. I'm going to put up now 20A, which is the right, am I correct?

A. Yes.

Q. Okay. Please tell the jury what, if anything, you see here and what, if any, difference there is from the 2013 view, 20A?

A. So, you are now seeing that this spur of the osteophyte here (pointing) is -- is more prominent. The space between the fibula and the talus is quite narrowed, the space there.

Q. Indicating with two red arrows on the bottom left of the photo. Sorry, doctor. Continue.

A. Similarly now we see on the inside we call the medial side an osteophyte or spur forming along the medial malleolus and the space here, the medial space, getting narrow. You can see the narrowing of the space. It should actually be this wide. Now it's only this wide (pointing) because of the spurring.

Q. And, okay. You put a red arrow in the dark area?

A. Correct.

Q. Next to these two. What -- what is that called, those two growths?

A. I call them osteophytes. They could also be

called bone spurs.

Q. Okay. This is the left. Let's look at the -- I think there is another 2015. What do we see on this 2015, 20C?

A. (Examining). Yes. So, this is the side view, what we call the lateral view of the right ankle. And again here (pointing) there is, you circled it already, of the surface of the ankle joint and narrowing of the joint.

Q. Indicating with the red arrow, pointing from the bottom. Now I just want to come to the 2017 films. There are four of them. So, first let's look at 20A. Both sides?

A. Yes.

Q. Okay. And if you could note on the right, the right is on the left side?

A. That's correct.

Q. Okay. So, to the right of the right could you note any of the findings that you could see from behind?

A. Sure. This imagine is --

Q. Note there is a juror behind you.

A. I'm sorry. This image is a little grainy, but again you see these bone spurs here (indicating).

Q. Circle them, please, instead of the arrow

this time.

(Whereupon the witness complied with the above request of counsel.)

Q. Okay.

A. And because of the way the ankle is rotated, it's a little harder to see on the outside of the ankle.

Q. So, I want to just take the left view, 21C, before we did left and right. What is this and this that I'm pointing to? What are they called again, those two sections?

A. Well, this is the medial malleolus. And this is the talus. This is a good example of what a normal space is. You can see how wide, the two lines there, how wide the space is because there is no arthritis there. There is no narrowing of the joint space.

Q. And what is this space called here (indicating)?

A. This is the fibula. And this again is the talus. And this is the lateral clear space.

Q. Now, I want to put up the right taken on the same date, 28D. I would like you to go to the same two spaces and note if anything is significant.

A. Yes. So, again I'll circle the inside of the ankle, the needle space. You can see again the spurs and the narrowed space. And this is what the space should be.

This wide (pointing). But it's actually only this wide (indicating). And on the lateral side, on the outside of the ankle, I don't even see a space any longer because of the of the spurring that has almost bridged across to the other side of the ankle.

MR. MC CRORIE: With the Court's permission, your Honor, would I be able to publish it side by side since the jury is that way?

MR. BRODY: Your Honor, I have not seen this. Can the doctor just step to the side a little. I didn't see where he was pointing to.

COURT OFFICER: I can get another easel.

THE COURT: Yes, you may publish it closer. And while you're publishing that, maybe we can push everybody back a little, our court reporters included, a little bit so the lawyers don't have to be on top of each other. Maybe move that little table out of the way. Move it up a little bit. Okay. Good.

MR. MC CRORIE: I'll do the final two films.

THE COURT: Mr. Brody, would you like to come on up here?

MR. BRODY: I would love to, if I could see.

MR. MC CRORIE: Your Honor, I'm going to put up --

Q. Doctor, I'm going to put up 28B, also taken on July 6th, 2017. I'll state it, but that is the left?

A. That is correct.

Q. Would you just tell the jury what this space is and whether or not it is a joint space, an articulating joint space?

A. Yes. Again this is a side view of the ankle. And you can see the joint space here (pointing), which is the black area between the tibia and talus.

Q. Any significant findings in the left joint space?

A. No. You can see that there is no irregularities like there is on the right ankle.

Q. I'll put the right ankle up, 28E. Can you note any irregularities or significant findings in the right ankle?

A. Yes. Again I'll circle this area here (indicating) where there is irregularity of the joint and narrowing of the joint.

Q. What is that irregularity called?

A. Again, it's called spurring. Again these are signs of osteoarthritis of the ankle.

MR. MC CRORIE: With the Court's permission, I just wanted to publish this side by side.

THE COURT: Yes. Go ahead.

Direct-Touliopoulos-McCrorie

MR. BRODY: Are you going to show any more, counsel?

MR. MC CRORIE: Not of the X-rays, no.

(Whereupon the exhibits were published to the jury panel.)

MR. MC CRORIE: Your Honor, with the Court's permission, I would like to display Mr. McCullough's right ankle for purposes of any discoloration that may or may not be there.

THE COURT: Not the photo, just --

MR. MC CRORIE: Have him come up with the doctor showing us.

MR. KAMINSKY: Judge, could we approach?

THE COURT: Approach. Watch for the easel. Do you need the easel anymore?

MR. MC CRORIE: No, your Honor.

THE COURT: Approach.

(Whereupon a side bar conference was held.)

THE COURT: If you don't mind, just excuse us for a minute.

(Whereupon a discussion off the record was held.)

THE COURT: Okay. Let's continue.

MR. MC CRORIE: Yes, your Honor.

MR. KAMINSKY: Objection sustained, your

Direct-Touliopoulos-McCrorie

Honor?

THE COURT: Objection is sustained.

Q. When did you last see Mr. McCullough?

A. That was --

Q. I know you saw him July, because we went over the X-rays. When did you last see him prior to coming here to court?

A. I saw him September 6th of 2017.

Q. Okay. On September --

MR. BRODY: May I hear that date again?

THE COURT: Can you read back the last --

MR. BRODY: 9/6/17.

THE COURT: Okay. Thank you. Doctor, can you speak up a little bit more.

THE WITNESS: I'll try.

Q. We did it for the other ones. We glossed over it. This one we'll spend a little time with. The follow-up visit, what was going on? What is in the thing called --

MR. KAMINSKY: Your Honor, may we approach again? Sorry.

THE COURT: Yes.

(Whereupon a side bar conference was held.)

THE COURT: How about a five minute break.

COURT OFFICER: All rise. The jury is

exiting.

(Whereupon the jury panel departed the courtroom.)

THE COURT: Can we just agree it's in the pleadings?

MR. BRODY: In the BP, I have not seen it in the supplemental BP.

THE COURT: Mr. Kaminsky, do you recall?

MR. KAMINSKY: I'm checking, your Honor.

THE COURT: Okay. Do you want to look.

MR. KAMINSKY: Judge, the Bill of Particulars does allege there might be a need for a right ankle effusion.

MR. MC CRORIE: I can get another copy of it I'm sure.

THE COURT: Okay. So --

MR. BRODY: I still haven't received this doctor's record.

THE COURT: Would you like to check your e-mail?

MR. BRODY: I check my e-mail all the time.

MR. MC CRORIE: I know that Jason got it. When Mr. Kaminsky came in the case, I sent all the records. I'm just looking. Here it is right here. It was sent on 9/27 and it goes to Jason Abraham, Mr.

Kahn, Mr. Brody, Mr. Kaminsky.

THE COURT: Do you want to show Mr. Kaminsky, I mean, Mr. Brody.

MR. KAMINSKY: I'm fine.

MR. BRODY: What date was it sent?

MR. MC CRORIE: 9/27.

MR. BRODY: Of this year?

MR. MC CRORIE: Yes.

MR. BRODY: That was after we started picking a jury in the case, 9/25.

MR. MC CRORIE: I don't know, but I sent a complete -- I only got the note that week, because it just happened and I sent everything.

MR. BRODY: Judge, we spent a lot of time looking through all the records. We brought in records that weren't here on Dr. Padjen that we put in. I never saw that record.

MR. MC CRORIE: It's called Touliopoulos' note, the subject, even though it gave everything else. It gave a complete scan from beginning to end.

THE COURT: All right.

MR. BRODY: Whatever your ruling is, it's going to be you're ruling. I'm telling you what my objections are.

THE COURT: I understand. Mr. Kaminsky does

not have the objection. You've got the e-mail even though --

MR. BRODY: No. I got him saying he sent it. Not necessarily I received it.

MR. MC CRORIE: It's in the BP, your Honor.

THE COURT: And it's in the BP. So, the objection is overruled.

Let's bring in the jury.

COURT OFFICER: All rise. The jury is entering.

(Whereupon the jury panel entered the courtroom.)

COURT OFFICER: The case on trial is continued. Be seated.

THE COURT: Okay.

MR. MC CRORIE: May I continue, your Honor?

THE COURT: Yes. Please.

Q. So, doctor, not every little line of the note, but just going into the follow-up portion, what was going on September 6th, 2017 with Mr. McCullough when he came to your office?

A. Yes. He reported ongoing radical pain. He reported a level of pain between nine and ten out of ten. He reported getting Tramadol prescribed by Dr. Padjen. He had difficulty walking more than one to two blocks before

experiencing significant pain. Had difficulty standing for prolonged periods of time. He reported that his right ankle would roll and give out. Also reported swelling of both ankles, greater in the right side. With the left ankle, he also had pain, but not to the same degree as his right ankle. He also reported that his left ankle would roll and give out. It also -- When asked how he spends most of his day, he would say he would he would -- usually lying on a couch, keep his feet elevated, to help control his pain.

Q. Let me talk to you about this, doctor. With someone who has persistent swelling with activity and been diagnosed with some sort of pain condition, RSD or otherwise, what is the purpose of elevation, ice and rest?

A. Well, the elevation helps reduce swelling. If you can elevate your ankles above your heart, gravity helps to reduce the swelling in the ankles. The ice also helps reduce pain by reducing inflammation. So, that's how that works.

Q. You mentioned Dr. Padjen, he's been seeing Dr. Padjen. You have the notes from 2015. Dr. Padjen has a different assessment called arthralgia and neuropathic pain, words we haven't heard yet. What do those two words mean, arthralgia of the right ankle and neuropathic pain of the right ankle?

A. Arthralgia is a -- is a painful joint. So in this case it would be a painful ankle. Neuropathic pain is a pain caused by a disorder of the nervous system. Obviously it's kind of a broad spectrum. You know, RSD falls under that as well as other conditions.

Q. What about a neuralgia of fibromyalgia?

A. Neuralgia is pain caused by a disorder of a nerve.

Q. Okay. The physical examination, just please discuss the physical examination.

A. There are healed incisions on the right ankle. There was swelling of both ankles, greater on the right than the left. There was also hypersensitivity to touch. So, touching the ankle would produce discomfort and pain. There is also discoloration of the right foot and ankle compared to the other side. The -- the anterior drug test and the Taylor toe test, again it's a test to assess how well the ligaments in the ankle were functioning, were both positive. Both ankles or ligaments were not working properly.

Again he had restricted ankle motion. The right side there was ten degrees to 20 degrees. And on the left 10/12 to 25 degrees.

Q. And the radiographs is increased osteophyte formation, increase than the previous study, what does

that mean.

A. It means the bone spurs got bigger since the last X-rays that were taken.

Q. Okay. What was the impression, the last time you saw him, what was the impression?

A. That as a result of this accident in 2009, he injured both ankles. Required ankle surgery on two occasions. However, was -- has been diagnosed with recurrent right ankle lateral human deficiency and ankle instability as well as progressive posttraumatic degenerative drug disease as well as a pain syndrome of his right ankle. I also diagnosed him with symptomatic left ankle, lateral ligament deficiency and ankle instability.

Q. And understanding that time you call it a pain syndrome. I want you to take the pain syndrome out of the scenario if it wasn't there. Did you discuss -- Assuming it wasn't there, did you discuss what options he could do if he wasn't there?

A. Yes.

Q. What were they?

A. He had both ankles roll up. We discussed surgery of both the ankles in the form of left ankle ostrum surgery, which is similar to what he had done the first time with the other surgeon to repair the loose

ligaments. On the right ankle it would be a revision of the first surgery, since the first one didn't work. We discussed that as well as the likelihood of developing progressive arthritis in the right ankle and eventually needing an effusion for the right ankle, right ankle arthritis.

Q. When you say progressive arthritis, it had already been progressive since 2013, in your notes, correct?

A. Yes.

Q. What would make it progress further?

A. Well again it's -- it's a progressive condition. So, whenever he's -- bears weight or walks, he is stressing the ankle joint and the arthritic condition can progress.

Q. Doctor, I want to ask you some opinion questions. I want to just give you a hypothetical first, okay?

A. Sure.

Q. I would like you to assume that prior to August 14th, 2009 Mr. McCullough had no disability. No arthritis. No dysfunction of either right or left ankle. And was able to work as an iron worker and both in the remote past and the recent past and had no issues whatsoever and no prior injuries, okay.

A. Mm-hmm.

Q. I would like you to assume -- You've seen the pictures in this case --

A. Yes.

Q. -- of the condition on the ground that he tripped over?

A. Yes.

Q. I would like you to assume on April 14th, 2009 he stepped on the -- with his left foot. His ankle twisted. He fell forward. Again fell backwards. Twisting his right ankle. Landing on top of it. And had pain immediately in both ankles thereafter. Okay?

A. Yes.

Q. I would like you to assume immediately, within one hour, he appeared at the on-site medical facility complaining of twisting both ankles, having both ankles pain, treated with over-the-counter Ibuprofen by the EMT, Ace bandages and an ice pack, okay?

A. Yes.

Q. I would like you to then further assume that everything that you know to be from your notes, everything contained in the notes of Dr. Zboinski, both surgeries, all the MRI findings that you reviewed -- And, by the way, you did review all of them?

A. Yes.

Q. -- both the films and the -- both the films and the reports?

A. Images, yes, and the reports, yes.

Q. From 2009, 2011, 2012 of the right ankle?

A. Yes.

Q. And the 2009 of the left ankle?

A. Yes.

Q. I would like you to assume all of that occurred, all of the physical therapy, all of the medications that are contained within the notes, all of the neuropathic injections to the lumbar sympathetic as well as the Cortisone injections prior to his seeing you, okay?

A. Yes.

Q. Assume that he was referred to an orthopedic physician in July of 2013. He saw you and all of the treatment and testing that you went over with the jury and contained in your notes occurred, okay?

A. Yes.

Q. Do you have an opinion with a reasonable degree of medical certainty as to the cause of the complete right tear that you discussed with the jury, read as a partial tear, initially seen as a complete tear while in the operation? Do you have an opinion as to the cause of that to the right ankle?

A. Yes, I do.

Q. What is your opinion?

A. It's a result of his initial work accident.

Q. Can you please give the jury your basis of that opinion.

A. Again, there is no prior history of ankle trauma or symptoms. He was working full time, full duty, without restrictions on his ankles and reported immediate issues with his ankles from the accident. There is nothing on the initial diagnostic studies that refer to any previous conditions to either ankle.

Q. Do you base it on your training and experience as well?

A. Yes.

Q. And do you base it on your treatment of the patient and what you physically saw?

A. Yes.

Q. Do you have an opinion with a reasonable degree of medical certainty as to the cause of the diagnosed partial tears and symptoms to the left ankle?

A. Yes, I do.

Q. What is your opinion?

A. Same reasons. Again, that's the result of the work accident in 2009.

MR. MC CRORIE: Okay. For lack of time, will

the same reasons be accepted? He said for the same reasons as the right.

MR. KAMINSKY: Accepted.

MR. MC CRORIE: Okay. Mr. Brody?

MR. BRODY: What was the question?

MR. MC CRORIE: For the lack of time sake.

MR. BRODY: I thought I heard.

MR. MC CRORIE: The same reasons. He said the same reasons --

MR. BRODY: Yes. Yes. Of course.

(Continue on the next page.)

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

Q. Do you have an opinion as to the cause of all the symptoms the right ankle?

A. Yes.

Q. What is the opinion? And, if it is the same, you have can say that.

A. Again, it is the result of the 2009 work accident for the reasons I noted earlier.

Q. Do you have an opinion, with a reasonable degree of medical certainty, as to the cause of the progressive arthritis that you showed the jury in both the 2013, 2015 and, in addition, the 2017 right ankle?

A. Yes, I do have an opinion.

Q. And, what is your opinion?

A. Again, it is the result of this accident 2009.

Q. What do you base that opinion on?

A. Again --

MR. KAMINSKY: Say, the same things.

A. For the same reasons.

THE COURT: I wish all my trials were like that.

Q. Doctor, do you have an opinion, with a reasonable degree of medical certainty, as to whether or not Mr. McCullough can return to work, as a union iron worker, in his current state?

A. I have an opinion.

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

Q. And, whether or not he could ever return, at least, from the time he started seeing you until now.

A. I have an opinion that he has not been able to return to work as an iron worker, because of these conditions in his ankles.

Q. What is the basis of your opinion?

A. Again, based on his continuous symptoms; despite all the treatment he received, including injections, surgery, physical therapy, medications and his difficulty standing and walking, negotiating steps.

Q. Taking the -- we'll do a last call. There is just a pain syndrome, whether it's neuralgia whether it's neuropathic or RSD, take that out of the picture, if that were not in the picture, would Mr. McCullough, in your opinion, not as a vocational, as a doctor, would he be able to go to work in a sedentary, you know, like, position?

A. Yes. Without -- you're asking without the neurological condition?

Q. Yes.

A. I do believe. He would be capable to do some sort of sedentary work, yes.

Q. Just before I do the medical cost, that I've just done, I would like you to assume, yesterday, Dr. Zboinski said the gold standard for a surgery is to see inside the body rather than view on an image.

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

Can you tell the jury, have you, in your practice, ever experienced false negatives and false positives from your MRI's to your surgeries.

MY NOTES: Objection.

THE COURT: Overruled.

A. Yes. I have experienced false negatives and false positives. In other words, a false negative is when a study, such as MRI, says something isn't torn. And, it, actually, is torn and vice versa. And, you know, an MRI is a good test, but it has its limitations. And, I do agree that the gold standard is to, actually, visualize the problem during surgery.

Q. Do you have an opinion, with a reasonable degree of medical certainty, as to whether or not Mr. McCullough will experience pain to both the right and left ankle into the future?

A. Yes, I do.

Q. What is your opinion?

A. That, he will.

Q. And, for what period of time in your opinion?

A. For the rest of his life.

Q. Do you have an opinion, with a reasonable degree of medical certainty, regardless of whether or not the neuropathic pain condition continues or is still present, whether or not, it would be advisable for Mr. McCullough to

Dr.Touliopoulos - Plaintiff - Direct/Mr. McCrorie

continue to see an orthopedist, such as yourself or another orthopedist, into the future for monitoring purposes?

A. Yes, I do believe that's advisable.

Q. For what period of time and with what frequency?

A. Again, because his arthritic condition is progressive, it would be, again, for the rest of his life. I would say, anywhere between two and four times per year, dependent on his level of symptoms.

Q. What is the current cost, you can go as conservative, for out-of-pocket private pay orthopedist, Board Certified New York City.

MR. BRODY: Note my objection.

Q. Doctor, such as yourself.

THE COURT: Can we narrow it to yourself, yes.

A. Yes, we charge $120 a visit.

Q. Okay. Do you have an opinion with a, reasonable degree of medical certainty, as to whether or not it would be advisable for Mr. McCullough to get future x-rays?

A. Yes, I do.

Q. And, what is that opinion?

A. That he should.

Q. To what part of his body and with what frequency?

A. Both ankles. And, once a year.

Q. What is the cost of a series, you know, when

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there's multiple views of a ankle or foot?

A. For the bilateral, which is both ankles, it would be $250.

Q. How many times a year?

A. Once a year.

Q. Two hundred fifty each foot?

A. No combined.

Q. Okay. Do you have an opinion, with a reasonable degree of medical certainty, as to whether or not it would be advisable for Mr. McCullough to continue on some form of antiinflammatory and pain medication?

A. Yes, I do.

Q. Okay. I would like you to assume, in the last note, Dr. Padgen, he said something called Voltaren gel, tramadol, acetaminophen 500 milligrams and ibuprofen 800 milligrams. Tell the jury what Voltaren gel and ibuprofen are meant to do.

A. Voltaren is a -- generic is diclofenac. It's an antiinflammatory. And, in this case, it's in gel form. Where you apply it to the area that hurts. Right -- by putting it on your skin, you're not eating it, you tend to have less gastric side effects. The ibuprofen is basically Motrin it's an antiinflammatory. Which others?

Q. Well, with those two. The Voltaren gel, you said it's an antiinflammatory. Is that meant to reduce swelling?

A. Yes, it is.

Q. The ibuprofen meant to reduce swelling?

A. Yes, it is.

Q. What are the other two that were mentioned tramadol and acetaminophen I think is Tylenol, but 500 million?

A. Tramadol is a narcotic. It's for use of pain. And, acetaminophen is Tylenol. It's also used for pain.

Q. I'm just going to take the cheapest of two. Do you have an opinion as to whether or not he should be on one form of antiinflammatory repair going forward?

A. Yes, I do.

Q. Just take the ibuprofen. Do you have an opinion that he should be on ibuprofen, prescription strength?

A. Yes, I do.

Q. What is your opinion -- withdrawn.

For what period of time? And give us the lowest dosage.

A. Again, it is -- his condition is progressive. And, it is lifelong. So, he would be on these medications for the rest of his life.

The ibuprofen would be 800 milligrams approximately twice a day. And, that cost would be, approximately, $15 a month.

Q. Okay. And, that's the lowest available --

A. Yes.
Q. -- average price?
A. Yes.
Q. For what period of time for prescription strength ibuprofen?
A. Again, that would be for the rest of his life. As long as he can tolerate the medication.
Q. Do you know, the Voltaren gel, it would be more or less money?
A. I'm not sure of the cost of the Voltaren gel, but it is more expensive.
Q. Okay. Do you have an opinion -- what about with the pain medication, which one would you --
A. I do recommend tramadol for periods where he has more significant pain. And, that would be, approximately, once a day.
Q. The lowest cost on arrange and --
A. It is about a dollar a pill.
Q. Dollar per pill?
A. Yes.
Q. So, he's to have it how many times?
A. Once a day. So, that would be $360 a year.
Q. What period of time?
A. Again, for the rest of his life.
Q. Do you have an opinion, with a reasonable degree

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of medical certainty, as to whether or not he should continue -- understanding, you as an orthopedic, don't handle long-term prescription care or medical care, do you have an opinion as to whether or not he should continue to see any type of pain management physician to give the prescriptions or check on them?

A. Yes, I do believe he should.

Q. With what -- for what period of time and with what frequency?

A. Every six weeks. And, again, that would be for the rest of his life.

Q. During the time that he's on medication?

A. Yes.

Q. Are you aware -- you referred him and you refer people to pain management?

A. Yes, I do.

Q. And, you've had them working within your practice?

A. That's true.

Q. What is the -- compared to the orthopedic, is it the same price, different?

A. In my practice, it was the same price as orthopedic surgeon.

Q. Just for the record state it.

A. Which is $120 a visit.

Q. Okay. When you talked about an ankle fusion

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before, understanding we're not going to give it -- we're not going to talk about it, because of the RSD, but what is involved. Why would an ankle fusion need to be done for a progressive arthritis such as you discussed with Mr. McCullough?

A. Unlike the knee and hip, where a replacement is a good option -- a knee replacement and hip replacement -- in the ankle, ankle replacements don't work that well, because they tend to loosen very prematurely.

So, usually, patients with arthritic ankles, that require surgery, undergo a fusion; meaning that, you make the ankle one bone so that it no longer moves.

The down side is that, you no longer have an ankle joint, because it doesn't move. The up side, it, usually, helps a lot with the arthritic pain, because there's no longer any motion in the ankle joint.

Q. Looking at 28-A, where you showed the jury that, would that be a painful condition within the joint to walk upon?

A. Yes.

Q. I'd like you to assume that Mr. McCullough describes it as a feeling of sand stuck in his ankle.

Would that cause that type of feeling?

A. Yes.

MR. McCRORIE: Nothing further.

THE COURT: Thank you.

Mr. Kaminsky?

CROSS EXAMINATION

BY MR. KAMINSKY

Q. How are you, Doctor?

A. I'm well. How are you?

Q. I'm doing okay. Thank you. Nice to see you again.

A. Nice to see you.

Q. I had an opportunity to cross examine you before, correct?

A. That's correct.

Q. Could you the jury, approximately -- how many times have you testified in court on behalf of patients represented by the law firm of Sacks & Sacks?

A. I don't know that number.

Q. Approximately?

A. Approximately, in general, I testify on behalf of my patients three or four times per year, but I don't have the division of attorneys. They will be able to answer that question.

Q. That's fine. But, in addition to testifying in court, how many times have you treated or consulted or been involved, in some fashion or another, with someone being represented by the firm of Sacks & Sacks? Would it be over

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a hundred?

A. I --

Q. Just "yes" or "no" or you don't know?

A. I don't know.

Q. Would it be over 150, "yes" or "no" or you don't know?

A. I don't know the answer.

Q. Would it be over 200, "yes" or "no" or you don't know?

A. (No response.)

Q. Three hundred?

MR. McCRORIE: If it's not over a hundred, he can't go up.

THE WITNESS: I don't know the answer.

Q. So, you don't know, if in one form or another, you've worked with the law firm of Sacks & Sacks in regards to their clients on upwards of several hundred cases; is that what you're saying?

A. I don't know --

Q. If you can't, you can't.

A. I don't know the number. So, I don't want to guess.

Q. That's fine. Okay. Now, let's start with the end. The numbers you gave us, the cost. That's what called the life care?

A. Correct.

Q. Now, I had told the jury -- and, it was commented upon at jury selection -- one of the things the plaintiff is entitled to compensation for is his past medical expenses and reasonable future medical expenses.

So, you were just testifying about what, you believe, are the reasonable medical expenses, correct?

A. That's correct.

Q. In consultation with Mr. McCullough, did you go over that life-care plan before testifying today?

A. Well --

Q. Just "yes" or "no"?

A. I formulate the life-care plan on my own.

Q. Right.

A. When I met with him, we did review the medical records. I believe we touched upon it.

Q. Okay. And, do you know how much that adds up to?

A. Um...

Q. The numbers you gave us, the $120 a visit for the ortho care, two to four times a year, the x-rays, the medicines, the pain management. Do you know how much it all add up to?

A. For his lifetime?

Q. Yes.

A. I didn't --

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Q. So, all of it --

MR. KAMINSKY: Can I get a stipulation on that?

MR. McCRORIE: Yes.

Q. By stipulation, all of the items you told us come up to $90,000. This way, you could save all the math. It comes up to $90,000. Okay?

Now, are you aware that the past medical expenses -- in other words, everything that the plaintiff has had from the day this incident happened, up until today, literally, the surgeries, the anesthesia, the hospitalization, the physical therapy, all the medicines, all that comes up to $33,000? You're aware of that, correct? Just "yes" or "no."

A. I'm not aware traffic no.

MR. McCRORIE: What?

MR. KAMINSKY: Approximately, $33,000.

MR. McCRORIE: Yes.

Q. In your plan -- these are minor points. But, in your plan, you said that he will need to see pain management doctor once every six weeks for $120 a visit.

So, that comes to, roughly, eight or nine times a year, correct?

A. Yes.

Q. How many times has the plaintiff seen Dr. Padjen

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in 2016?

A. I have his notes. I can look. I don't recall the exact --

Q. What if I tell you it was four?

A. That --

Q. If I tell you it is four, would you believe me? We've known each other a long enough time.

A. I do believe you, yes.

Q. Okay. Thank you. So, if it's four, instead of eight or nine, we can start cutting that number, that 90,000 number, down, correct?

MR. McCRORIE: Objection.

THE COURT: Overruled.

Q. Just "yes" or "no."

A. Well --

Q. Just, if it's four, if he, actually, goes four times and not eight or nine, can we start chipping away at that $90,000? Just "yes, no" or you can't answer it "yes" or "no"?

A. I can answer it. But, I can't answer it yes or no.

Q. Okay. Fine. I'll accept that. I think in your plan that adds up -- withdrawn.

Now, you said he should see an orthopedic doctor, such as yourself, two to four times a year at $120 a visit.

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Can you tell us, how many times did you see the plaintiff in 2016?

A. I have to --

Q. I'll save you the time.

A. Okay.

Q. Once. Okay? So, again, if it's once, instead of two to four, we can chip away further at that $90,000, right?

MR. McCRORIE: Objection, your Honor.

Q. "Yes" or "No"?

THE COURT: Overruled you can answer.

Q. If he only goes once, to seen an orthopedic surgeon and not two to four times --

MR. KAMINSKY: Okay. I stand corrected.

You saw him in January, so it's twice, twice in 2016.

Q. If it's twice instead of four, nonetheless, we could chip away at the number, correct?

A. That's correct.

Q. And, and the x-rays -- you're saying, x-rays once a year, correct?

A. Yes.

Q. He had x-rays in 2013, correct?

A. Yes.

Q. Did he have them in 2014.

A. (No response.)

Q. He didn't. He had them in 2015, correct?
A. Correct.
Q. Did he have them in 2016? He didn't. He had them in 2017, correct?
A. Correct.
Q. So, if he has them, over the last five six years, he's been averaging them every other year and not every year, we can reduce the $250 by half, correct?
MR. McCRORIE: Objection.
THE COURT: Overruled. You may answer.
Q. "Yes" or "No"?
A. Again, this is a --
Q. If you can't answer it, say, you can't answer it.
A. I can't answer that question.
Q. Same thing with the medications. You're saying one tramadol everyday. That would cost him $365?
A. Yes.
Q. How often does he, currently, take it?
A. He --
Q. Tell us or just say, "I don't know."
A. I don't know, presently, what exactly is the frequency.
Q. Okay. If you don't know, you don't know.
MR. McCRORIE: He's answering. Objection.
THE COURT: Wait one second. Let him finish

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answering.

MR. KAMINSKY: I'm not asking for an explanation. Do you know or do you not know?

MR. McCRORIE: Judge, he was in the middle of answering the question.

THE COURT: Let him just finish answering.

Q. Okay. Finish.

A. So, that would be what I would consider an average daily dose. There may be times where he may not take it for the day. There may be other days where he may take it, two, three or four times a day. But, that's my estimate of what on average he would need a year.

Q. Let's go back to my question now that you've answered it the way that you would like to answer it.

MR. McCRORIE: Objection.

Q. My question is do you know --

THE COURT: Overruled.

Q. -- how often he takes that medication? "Yes, No" one or the other.

A. Well, if I can just review my records.

Q. So, in other words, you testified without knowing, correct?

MR. McCRORIE: Objection.

THE COURT: Sustained. You don't need to answer.

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Q. I'll ask the question differently. If he takes it less than once a day, we can also reduce that number, correct?

A. If that's a hypothetical question. If, hypothetically, he takes it less than once a day, then the answer is, yes.

Q. Okay. I accept that. Now, similarly, you said he needs certain things for the rest of his life. Okay?

A. That's correct.

Q. Not to be morbid, but at what age did you project he's going to live to?

MR. McCRORIE: Objection.

THE COURT: Overruled.

A. It was his age. Although, I don't recall the exact age, but we used a life expectancy to figure it out.

Q. What life expectancy did you use?

A. I have to go back to the math. I don't have that in front of me.

Q. Do you use the average life expectancy of a white male?

A. We used it for a white male with whatever medical conditions that he has.

Q. Such as?

A. He's a, fairly, healthy male.

Q. Okay. Are you aware that you are referring to the

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life expectancy tables that the United States Government puts out?

A. (No response.)

Q. Correct?

A. Again, I would have to go back and look at my math.

Q. Okay. So -- and, again, not to be morbid, but if the life expectancy of Mr. McCullough would be less than the average white male, you would have to reduce these costs further, correct?

MR. McCRORIE: Objection, he didn't project out the cost, the economist does.

Q. I'm asking you, if --

THE COURT: Hypothetically.

Q. Hypothetically.

A. Hypothetically, if he was to get run over leaving the courtroom, today, that would be true, yes.

Q. That's not what I'm talking about. I'm not trying to be facetious. I'm trying to make a point. Because, aren't there different life table expectancies and life expectancies for people who smoke half a pack of cigarettes a day?

A. That is true, yes.

Q. Okay. And, according to the Center for Disease Controls the average life expectancy of someone who smokes

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half a pack of cigarettes a day --

MR. McCRORIE: Objection, your Honor. We are use being the PJI.

THE COURT: Objection is sustained. I will be giving that information in my charge.

MR. KAMINSKY: Okay.

Q. So, you would agree with me, then, if his life expectancy is lower, for whatever reason, than the projections you gave, we would have to take that $90,000 and chip it away even more?

MR. McCRORIE: Objection he's not doing growth rate.

THE COURT: Sustained.

MR. KAMINSKY: Okay.

Q. Now, you ordered these x-rays, correct?

A. Yes.

Q. And, they came to you in the form of disk like this, correct?

A. There are disks and there also on-line access too.

Q. Okay. And, did you receive an interpretation from the radiologist with them?

A. Yes, I did.

Q. Can I see the interpretations that came with them?

(Handing)

Q. Thank you. The x-ray from 2013, okay. The

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impression minimal spurring at the medial malleolar tip with posterior calcaneal -- you are going to have to help me with that last word.

MR. McCRORIE: No, you got it -- it's not "With" they are separate. It's one and one.

MR. KAMINSKY: No, I'm reading this.

MR. McCRORIE: They are separate. One is one, and one is a separate part of the body. "Spurring of the malleolar tip." The next one is "Posterior calcaneal enthesophyte."

MR. KAMINSKY: That's fine.

Q. The impression is, except for what I just said and what Jim just helped me say, is an otherwise unremarkable right ankle radiograph?

A. Except for the spurring, yes.

Q. Does it say anything about arthritic conditions in this interpretation. "Yes" or "No"?

A. It doesn't use the word arthritis. If that's what you are asking me.

Q. Okay. And, in the radiological report, from 2015, again, says "Soft tissue structures appear unremarkable, bone mineral density is normal, alignment appears anatomically correct." Does it make any reference to arthritis, "yes" or "no"?

A. I don't believe they used the word.

Q. Does it say anything about arthritic changes? "Yes" or "No."

A. Well --

Q. Just "yes" or "no"?

MR. McCRORIE: Can you hand him the report?

THE COURT: Can he take a look at the paper.

(Handing.)

Q. Just tell me if it says anything about arthritic changes. "Yes" or "No"?

A. The word osteophyte is arthritic changes. But, they don't use the word arthritis, because it's taken that if it is osteophytic, it's arthritic.

Q. The osteophyte -- now, were you told about the testimony of Dr. Fisher?

A. (No response.)

Q. Was that discussed with you by counsel?

A. No.

Q. Okay. I'm sorry. The radiologist who testified yesterday, his name was Dr. Fisher. Was that discussed with you at all?

A. No.

Q. Are you, by any chance -- what is your area of speciality?

A. Orthopedic surgery.

Q. Okay. Board Certified?

A. Yes.

Q. That's a significant accomplishment to become Board Certified, correct?

A. I'd like to think so. Yes.

Q. And I agree with you. It is. Okay? Tell the jury when you got your Board Certification in radiography?

A. I'm not Board Certified in radiology.

Q. Okay. You're not?

A. No.

Q. Okay. So, is it fair of me to say, that, you -- I want you to assume that a Board Certified radiologist has told this jury that he does not see arthritic changes from 2013 to 2015 to 2017. Okay? I want you to assume that.

Are you telling this jury that you, not a Board Certified radiologist, with experience and an expertise in orthopedics, you disagree with the radiologist. True?

A. Yes, I do.

Q. Okay. Now, I understand that you know how to read medical films. No question. Okay? To tell the jury, do you in your experience, in your history, in your career, have you ever sent out films to a radiologist to have a radiologist determine them "yes" or "no."

A. (No response.)

Q. Just "yes" or "no"?

A. If the --

Q. Just "yes" or "no." It's not complicated.

A. I can't answer that. If the x-rays are done in my office, I don't send them out, I read them myself.

Q. Okay.

A. If the x-rays are done at a outside facility, they're read by at radiologist and I get the report and films back. So, it depends on where the x-rays were taken.

Q. Okay. That's fine. Now, you were asked a hypothetical question about all the materials that -- I want to you assume all the medical reports you looked at, I want you to assume all the films you looked at and you were asked to give opinions, correct?

A. Yes.

Q. You weren't asked, though, if you looked at the results of a bone scan. Okay. Are you aware if a bone scan was done --

A. Yes.

Q. -- on Mr. McCullough? Okay. Now, what is the difference between a clinical assessment and a diagnostic assessment?

A. Well, a clinical assessment is an assessment made by the physician after he examines the patient; whereas, diagnostic assessment is an assessment made by reviewing of films whether they were bone scan, x-rays or CAT scan.

Q. Okay. So, the diagnosis of -- let's call it RSD,

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so I don't get the letters mixed up again. Okay? That was done clinically, correct?

A. That's correct.

Q. And, that was done by Seaport Orthopedics, correct?

A. That's correct.

Q. So, that was back in -- six years ago, correct?

A. Yes.

Q. Okay. Since then, okay, are you aware that a bone scan was done?

A. Yes.

Q. March 30, 2011?

A. Yes.

Q. Now, this is the diagnostic part, correct?

A. Yes.

Q. Would you agree we have already heard testimony from other doctors? Would you agree that one way to diagnostically, not clinically, one way to test for RSD is a bone scan?

A. I --

Q. Just, are you aware?

A. Yes, I'm aware of that, yes.

Q. Okay. And, are you aware that the bone scan that was performed on Mr. McCullough, diagnostically, ruled out --

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MR. McCRORIE: Objection. It does not. I could put the report in. It doesn't rule it out.

Q. Does the bone scan say he has RSD "yes" or "no"?

THE COURT: I'm sorry? Are you referring to any reports or --

MR. KAMINSKY: You know what, Judge, it is 17-A, Plaintiffs, in Evidence.

A. You can't rule-out RSD with the bone scan.

Q. All right.

A. But, the bone scan does not mention, in the impression, the presence of RSD.

Q. Okay. You just answered my question, thank you. Doctor, you mentioned the possibility of the right ankle fusion?

A. Yes.

Q. You've testified in other cases where I've asked you this question. Would you agree with me that if you perform the right ankle fusion, on Mr. McCullough, according to your own testimony in other cases, that, there is over a 90 percent chance that you could take away, virtually, all of the pain in his right ankle?

A. I --

Q. Yes or no?

A. No, again, you're talking about.

Q. Just "Yes, no" or "I can't answer."

A. Patient in general or this patient? Because this patient --

Q. Then say "I can't answer it."

A. I can't answer the question.

Q. Have you testified in other cases where plaintiffs represented by the law firm of Sacks & Sacks, complaining of pain to their right ankle, complaining of pain to their ankle, have you ever testified in such cases, that, if you performed the fusion -- and the fusion is what? It's fusing the two bones together, correct?

A. It's fusing the top bone and bottom bone together.

Q. So, it's not inserting hardware or anything like that?

A. It is. It's -- they're different ways. You could use screws. You could use a nail and plates. But, you would have to remove the remaining cartilage and, actually, fix it somehow.

Q. Okay. So, let me ask you the question I intended to ask you.

Did you testify in other cases on behalf of clients, represented by the law firm of Sacks & Sacks, who had injuries to their ankle and complaining of pain, severe pain to the ankle, that, if you performed an ankle fusion there is a greater than 90 percent chance you could alleviate, virtually, all of their pain? "Yes, no" or you

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don't remember?

A. I don't remember. But, if you have reviewed the transcript, I believe what you're saying.

Q. I appreciate that. Thank you.

THE COURT: Let's save some time for Mr. Brody.

MR. KAMINSKY: I'm trying, Judge.

THE COURT: Okay.

Q. Doctor, if you have to come back next week, is it going to cost Mr. McCrorie another six to $10,000?

MR. McCRORIE: And, really the client pays.

MR. KAMINSKY: Stop Jim. Come on. Stop.

MR. McCRORIE: They incur the expenses.

THE COURT: All right. Let's go.

Q. Let's talks about the records from the pain management just for -- and just for the record, do you have them in front of you?

A. I have various pain management doctors. Which one?

(Continued on the next page.)

Q. Just to expedite it, he's asked if he smokes. He says yes. Every day he smokes half a pack a day. Okay. Now, I'm going to read from the physical examination of 8/20/2015, okay. "Extremities, no edema. No joint swelling." Okay. What is the significance these records show no joint swelling to his ankles?

A. Well, he reports no swelling. Edema is swelling.

Q. So, if it says no joint swelling, that would be good, correct?

A. That would be a good sign, yes.

Q. Okay. And if -- if it says, when they examine the ankle, left ankle unremarkable; right ankle, no swelling. No edema. No warmth, okay. No skin changes. No hair growth changes or nail changes. Those are all good findings, correct?

A. That's correct.

Q. Okay. So, according to the pain management records, August 20th, 2015, no swelling. No discoloration, okay. Now, they also do what's called neurological strength testing, correct?

A. Yes.

Q. They do it to the upper extremities and lower extremities?

A. Yes, they can.

Q. Why do they do that?

A. Strength testing is -- is one of the tests performed during the examination.

Q. Okay. And ideally the score you want to see is five over five, correct?

A. That's correct.

Q. What -- Just tell the jury briefly is there -- I'm going to show the jury the charts, okay.

(Whereupon the exhibits were published to the jury panel.)

MR. KAMINSKY: These charts here are throughout all of the pain management records, okay where it says five over five, neurological testing.

Q. What is the -- Tell us what is a five over five?

A. Five over five is normal strength. The scale is from zero to five. So, if he has five over five strength, the strength is normal.

Q. Okay. For instance, if it says ankle, five over five, that's the best you can hope for, correct?

A. That's the -- that's normal. That's normal, yes.

Q. Okay. Let's go to 10/15/2015, "Patient presents with continued but well controlled right ankle foot pain. Patient presents with no change in pain

symptoms which remain well controlled on current long-term medication regiment."

So, again they do a full battery of tests on him. No weight gain. No weight loss. No weakness. No fatigue. No fever. Okay. Those are all good things, correct?

A. Yes.

Q. So, no weakness, no fatigue, no fever, those would be indications that he's not having any difficulties with his medications, correct?

A. I don't know the --

Q. Or if you can't answer it, that's fine. I accept that.

A. I don't believe he reported any side effects with medication that visit.

Q. He did not report side effects with medication, correct?

A. He -- he has, during his course of treatment, reported side effects. I'm not certain if it was reported on that visit.

Q. Then let's look at some other visits, okay. Again, we're still on 10/15/15, about two years ago. I'm going to jump to the ankle, okay. The examination of the ankle and the foot. "Left, unremarkable. Right, no swelling. No erythema. No erythema. No warmth." Okay.

What's erythema?

A. Erythema is redness.

Q. I'm sorry?

A. It's a redness.

Q. Okay. So, when he's at the pain management, again no swelling. No discoloration. No warmth. Those are all good. That's what you would want to see, correct?

A. That's correct.

THE COURT: Mr. Kaminsky, I'm going to interrupt you for a second. Side bar.

(Whereupon a side bar conference was held.)

THE COURT: I have a question for the jury. We will not be done with this witness by 4:30. And I said -- the promise I made to you was we would end at 4:00, but -- I'm sorry, 4:30. But if -- if you permit, we will go until -- we can possibly finish with this -- with the doctor at -- by 5:00. So, do you wish to? Yes. Yes. Yes. Continue. Let's go.

MR. KAMINSKY: Okay.

THE COURT: Thank you.

MR. KAMINSKY: Thank you all.

MR. MC CRORIE: Thank you.

Q. Thank you, doctor. Okay. Doctor, we were talking about the pain management examination of 10/15/15. Again, we have those charts that I was talking about with

measurements, calculations five over five, right. Checked upper extremities, the hip, the knees, the ankles. Checked the upper extremities, I'm sorry, the upper extremities they check everything from the deltoids to the biceps to the triceps. Then the lower extremities they checked everything from the hips to the knees, to the ankles, correct?

A. Correct.

Q. Am I correct in saying everything, including the left and the right ankles, all tested five over five?

A. That's correct.

Q. Okay. Which is normal?

A. That's correct.

Q. Which is what you want, correct?

A. Yes.

Q. No swelling. It also says "No asymmetric between left and right foot or ankle", okay. In other words, they are the same size, correct?

A. They're symmetrical. I'm not sure if he's referring to color or size, but it's a general time, meaning they are similar, the left and right sides are similar.

Q. Okay. So, there is no indication of any atrophy, correct? If they are the same size, by definition can we conclude there is no atrophy?

A. No, because you have atrophy in both legs and you have nothing to compare it to.

Q. So, you're saying his left leg and right leg both were atrophied?

MR. MC CRORIE: He's not saying that.

A. I'm not saying that.

Q. Okay. They are either both atrophied or they are not atrophied the exact same amount?

A. That's correct.

Q. Which is more likely? Would you agree with me it's more likely in this case that neither were atrophied? Just yes, no, you can't answer it.

A. I didn't do the exam. I can't answer.

Q. You can't answer, that's fine. Let's go to the next visit, which is December 8th of 2015. Again, "General overview, no weight loss. No weight gain. No weakness. No fatigue. No fever. No rashes. No sores. No itching. No dryness. No color change. No depression. No anxiety." That's the general review of the symptoms. Then let's go to what is called the general appearance. AOX3, that means alert and oriented by three, correct?

A. That's correct.

Q. He's cooperative and he's in no acute distress, correct?

A. That's correct.

Cross-Touliopoulos-Kaminsky

Q. Again, I just want to jump to the neurologic. And, I'm sorry, I should have asked you this before. What is neurologic? When they do a neurologic exam to measure strength, just in one sentence what are they doing?

A. A neurological examination is an examination of the neurological system, which can include the strength sensation and reflexes.

Q. Okay. And when you do that, you want to make sure everything is hopefully what it should be, correct?

A. Correct.

Q. Meaning five over five?

A. For strength, yes.

Q. Okay. And so here again all upper extremities, five over five. And all lower extremities including the ankle, the knee, the hip, they are all five over five, correct?

A. Correct.

Q. Okay. Let's go to January 12th of 2016. "Patient states he's more active and has been doing yoga. He denies any paresthesias. He denies numbness. He denies weakness. He denies coordination difficulties or balance problems." Those are all good things you would want to see, correct?

A. That's correct.

Q. And again they ask him, are you still

smoking. Yes. Half a pack a day. While we're on that topic, would you agree with me that it would probably be helpful to him and his condition to stop smoking? Just yes or no.

A. In general it's -- it's good not to smoke just for general health.

Q. We know it's not good to smoke because of your lungs and it shortens your life and all of that stuff. We can agree on that. That's easy, yes?

A. That's true, yes.

Q. Can we also agree that smoking effects blood flow?

A. Smoking can effect blood flow by clogging arteries, yes.

Q. Can it effect the blood flow from a person's heart throughout their body to their ankle?

A. It can, yes.

Q. And can it effect a healing process? Just yes or no or you don't know.

A. Depends on which kind of healing process you're talking about, but potentially yes.

Q. Okay. So, does the potential exist if Mr. McCullough, as something as simple as stop smoking, he could improve the condition to his ankle? Yes, no or you can't answer it yes or no?

A. I don't think smoking has anything to do with his condition.

Q. Not the condition or the injury. I'm not talking about that.

A. Or to improve it.

Q. Okay. Joint exam, this is January 12th, 2016. They examine the ankles again. Left ankle is unremarkable. Right ankle, again no swelling. No discoloration. No warmth. No color changes. No skin changes. And those are all things you would want to see, correct? Those are good things, correct?

A. That's true.

Q. Okay. And again we don't have to go over it because the jury knows what it means. They also do those charts where they put five, five for the ankle strength, correct?

A. That's correct.

Q. What is the term allodynia mean?

A. Allodynia is basically when you elicit pain. So, like touching something can cause pain or it can cause sensation. It's called allodynia.

Q. So, when it says right ankle, no allodynia, what does that mean?

A. That he doesn't have that symptom.

Q. Okay. All right. Again, the next visit,

March 15th, 2016. "Patient presents with continued right ankle pain. Symptoms are well controlled without side effects on current medication regiment. Patient to follow up in three months."

Next visit. "Patient presents with continued right ankle pain. Patient denies change in pain symptoms, which remain well controlled under current long-term (minimal) medication regiment." So, if you're considering the medication regiment, just by it's -- I don't think we need a board certified orthopedic surgeon to tell us, but what is a minimal medication regiment?

A. Minimal is needing less than -- than --

Q. Okay.

A. So, there is minimal. There is moderate. There is marked.

Q. So, ideally I guess you would prefer he be on the minimal?

A. Minimal is not as good as zero, but it's better than a lot.

Q. I'll give you that. And again same things. If you go to his next visit, April 26th of 2016, the joint exam of the right ankle. No swelling. No discoloration. No warmth. No skin changes. It's the same findings over and over and over again, correct?

A. That's correct.

Q. Okay. And same thing with the neurological exam. Same findings over and over and over again, correct?

A. That's correct.

Q. Let's jump ahead. We're getting close to the end, 2/23/17. So now we're into the current calendar year.

A. Yes.

Q. "Patient denies change in pain symptoms, which remain well controlled on current long-term medication regiment. Patient denies new numbness. He denies paresthesias. He denies weakness. He denies medication, side effects and displays no apparent behavior." So, when he was in for pain management on February 23rd, '17, again all the things we spoke about earlier are basically the same as far as what his complaints were and what they observed, correct?

A. Yes. They are similar.

Q. Okay. And again no side effects to medication, correct?

A. That's correct.

Q. We're still on February 23rd, '17. The examination of the ankle. Unremarkable, left ankle. Right ankle, no swelling. No discoloration. No warmth. Okay. And again now we're over the course of -- What's

the first date I read? Now we're more than a year and a half into the visits to the pain management center. And each and every time there is no swelling, correct?

A. That's correct.

Q. Each and every time there is no discoloration, correct?

A. With this physician's findings, yes.

Q. Well, this is the physician that we have to rely on, correct?

A. Right. Well, there are other physician findings.

Q. I'm asking you about when he went into the pain management center. This is what's in evidence. I'm asking you -- Have I read everything correctly so far?

A. You have read --

Q. Yes or no?

A. Yes, you have.

Q. Thank you. Okay. And again no allodynia. And again everything, including the ankle, is five over five, correct?

A. That's correct.

Q. Okay. Now, in the pain management records, is there so much as one time where they diagnosed RSD; yes or no?

A. I would --

Q. Sir --

A. I would say yes if you're referring to the pain management records in the totality.

Q. Okay. Is there a diagnosis of RSD anywhere in these records; yes or no? Do you see the words RSD, complex regional pain syndrome, or any other acronym or anything else you want to call it, do you see that anywhere in these records, yes or no? Yes or no?

A. Yes, I do.

Q. You do. Show us where you see the term RSD.

A. No.

Q. Show us where you see the term complex regional pain syndrome.

A. I see the term neuropathic pain.

Q. Okay. I understand that. We agree he has pain.

A. Which is what RSD is.

Q. We agree he has pain, okay. Regional -- Complex regional pain syndrome is a specific diagnosis, correct?

A. Yes.

Q. Is it in here, yes or no? Just yes or no.

A. He does not use that term in his notes, but there are other notes.

Q. Okay. Thank you. You said that in your

opinion Mr. McCullough is capable of returning to work in some capacity, correct?

A. I believe the question was asked of me is without the presence of the neuropathic condition, would he be able to work with the orthopedic conditions that he has. And my answer is he could do sedentary work.

Q. Let me ask you this question. Today, as he is today, do you have an opinion with a reasonable degree of medical certainty as to -- you told us he cannot work as an iron worker, okay?

A. That's correct.

Q. Do you have an opinion if he can work in any capacity at all, at any kind of job; yes or no? Just yes or no.

A. I'm not treating his neuropathic condition.

Q. Okay.

A. I do know that -- that he has trouble with prolonged standing and sitting.

Q. Okay. Then let me ask you a couple of questions. I want you to assume that over the course of the last week Mr. McCullough has come to court every single day and has been seated in court from approximately 9:30 to 4:30, okay. Gets up. Goes to the men's room. Gets up. Goes to lunch. But he's been in court. And he told us he's going to be in court every day for as long as

this trial takes. I want you to assume that he is able to sit for extended periods of time, okay?

MR. MC CRORIE: Objection.

MR. KAMINSKY: Could I get a stipulation --

THE COURT: Overruled.

MR. KAMINSKY: -- from counsel that he's been sitting in here in court for extended periods of time.

MR. MC CRORIE: He never claimed he couldn't sit.

MR. KAMINSKY: Well, the doctor is just claiming he can't.

MR. MC CRORIE: He said he can sit without pain.

Q. How far can he walk without experiencing any pain?

A. When I saw him last, he reported to me -- Let me find my note. That he develops specific pain after one or two blocks.

Q. What if he testified in court it's four blocks, does that matter to you at all, yes, no or you can care less?

A. Two and four blocks, I mean maybe for that particular day it's four blocks. Sometimes it can vary.

Q. Okay. Okay. Does he drive do you know?

Cross-Touliopoulos-Kaminsky

A. I'm not -- I don't know if he drives.

Q. Okay. Because I would imagine it would be very difficult for someone with this type of condition, it would probably be hard for him to drive, correct?

A. He has --

Q. Just --

A. I have not restricted him from driving but -- but I think he would have trouble, especially with prolonged driving.

Q. What if he says he's able to drive, do you care about that? Has no effect on anything you've testified to?

A. No. Again I have not restricted him from driving.

Q. I'm not suggesting you have restricted him from driving. You haven't restricted him from getting a job, have you?

MR. MC CRORIE: Objection.

THE COURT: Overruled.

A. In my notes I have said he can't return to work at his previous employment.

Q. Yes. I agree. That's what you said in your notes. My question to you is different. My question to you is, doctor's orders, are you telling this jury I hereby order Mr. McCullough never to return to work in any

capacity, at any job --

MR. MC CRORIE: Objection.

Q. -- doing any kind of work no matter how intelligent you are with your degrees in physics?

MR. MC CRORIE: Objection, speech and the order.

THE COURT: Sustained.

MR. KAMINSKY: I'm about to ask him a question.

THE COURT: Sustained.

Q. You've restricted him to return to work as an iron worker, correct?

A. That's correct.

Q. Are you restricting him to work in any capacity, sedentary capacity, less physical capacity? Are you restricting him from gainful employment in any type of job for the rest of his life; yes or no?

A. I -- I can answer, but I can't say yes or no. I've only treated his -- his ankle ligament arthritic conditions. I'm not a treating doctor for his neuropathic condition. With respect to his orthopedic conditions, I do believe he could do sedentary work.

Q. Okay. Thank you. In fact, I would imagine with all the surgeries you've done and all the people you've seen, you've seen people with much worse injuries,

correct --

MR. MC CRORIE: Objection.

Q. -- objectively?

THE COURT: Overruled.

A. I've seen people with worse injuries, yes.

Q. You've probably seen people who have lost legs, correct?

A. Yes.

Q. Have you seen people that have lost limbs return to work?

MR. MC CRORIE: Objection.

THE COURT: Overruled.

MR. MC CRORIE: I'll stipulate to that.

A. On rare occasion, yes.

Q. Have you seen people with significantly worse objective injuries than Mr. McCullough return to work; yes or no?

A. Again --

Q. Just yes or no.

A. -- I'm not treating his neuropathic condition.

Q. I'm not asking about that.

MR. MC CRORIE: Objection.

THE COURT: That objection is sustained. And you need to move on.

Cross-Touliopoulos-Kaminsky

MR. KAMINSKY: Okay. I will.

THE COURT: You have to give Mr. Brody a chance here.

Q. Now, isn't it true that the only reason Mr. McCullough is even under your care is because he was referred to you by the law firm of Sacks and Sacks?

MR. MC CRORIE: Objection.

THE COURT: Overruled.

A. I'm not certain how he was referred to me. It's quite possible he was referred by his attorney or by a fellow worker. I'm not certain.

Q. Do you have any notes with you as to how he came to see you?

A. Not that I have here, no.

Q. Do you have them somewhere else?

A. They should be here, but I don't have any notes.

MR. KAMINSKY: Judge, one minute to look at the doctor's file.

THE COURT: All right. Make it a New York minute.

MR. BRODY: Not when you're sitting in traffic.

THE COURT: Not that New York City traffic minute.

Cross-Touliopoulos-Kaminsky

MR. MC CRORIE: Judge, just at least one minute, as I gave him for redirect. One minute literally, please.

MR. KAMINSKY: You know, the very first page. Unfortunately I'm not going to have time to read this whole thing.

Q. But the very first page there is a question there, it says how did you get here today. And he wrote down, "I took the train and I walked", correct?

A. Yes.

(Continue on the next page.)

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Q. And, back in 2013, this is correspondence from the law firm of Sacks & Sacks addressed to you, correct?

A. That's correct.

MR. KAHN: All right, Judge. I said one minute.

THE COURT: All right. Mr. Brody. Go ahead.

MR. KAHN: Thank you, Doctor.

CROSS EXAMINATION

BY MR. BRODY

Q. Having an inviable task to keep the jury and everyone here late, I will be short.

A. Okay.

Q. Doctor, we have never met. I have never cross examined you before, correct?

A. I don't remember you. No.

Q. I wanted to just finish -- I'm not very good with pronunciation. What is the doctor, Dr. Peg? What's the pain doctor's name?

A. Which pain doctor.

Q. The one whose records you were looking at?

A. Padjen.

Q. Padjen. There was one that we didn't get to, unless I didn't hear it. It's 5/23/17. Do you have that one?

A. Let's see. No, I don't have that one.

Q. Do I have another copy it? I just want to complete what Mr. Kaminsky was asking you.

This is 5/23. This is two months prior to your last examination of the plaintiff, correct?

A. Yes.

Q. And, this one it's "Still pain symptoms which remain well controlled on current long term medication regimen." Is that what it says?

A. Yes.

Q. "Patient denies numbness, paresis or weakness. Patient denies medication side effects." Correct?

A. That's correct.

Q. Moving down to -- I think it is page three of four, to the joint exam. Two months prior to your examination. It says, "Skin color, texture normal. No rashes." Correct?

A. That's correct.

Q. "Extremities, no cyanosis." What does that mean?

A. Cyanosis is when there is a blue color to the skin. Usually, means that they're not getting enough oxygen.

Q. "No, cyanosis or edema." I think you did tell us what edema means?

A. Yes. Edema is swelling.

Q. "No joint swelling. EP2 plus bilaterally." What is that?

A. That's the pulses.

Q. And, "Two plus" is normal, isn't that?

A. Yes, it is.

Q. "Patient palpable bilaterally." That means?

A. I think he's referring to the pulses are palpable bilaterally.

Q. Now, to "joint exam. Left unremarkable." Correct?

A. That's correct.

Q. "Right, no swelling erythema." That's redness you said?

A. Yes.

Q. Or warmth?

A. Yes.

Q. "No skin changes, hair growth changes or nail changes," correct?

A. That's correct.

Q. Those would all be some signs of RSD if they were present, correct?

A. Those are some, potential, signs of RSD. Yes.

Q. Potential signs of RSD. And, in fact, those aren't, absolutely, a diagnosis of RSD, if they were present, correct?

A. That's correct.

Q. But, they're not present here, correct?

A. That's correct.

Q. No asymmetry between right and left feet or ankles. That's the same, correct?

A. Yes.

Q. And, moderate pain with plantar an dorsal flexion on the right ankle. The plantar is what? The bottom of the foot?

A. Plantar is when you point your toes downward.

Q. Right.

A. And, dorsal flexion is when you put your foot upward.

Q. So, if it goes downward or upward, it says there's moderate pain; is that correct?

A. That's correct.

Q. We agree pain a subjective, correct?

A. It's something that's reported by the patient, yes.

Q. And, you reported it to the doctor and doctor, in normal practice, will write down pain if it's reported to him, correct?

A. That's correct.

Q. Go down to the "Lower extremity or neurological lower extremity strength." They're still all fives?

A. Yes.

Q. Then, it says, "Left lower extremity sensory exam," correct?

A. Yes.

Q. "Normal, light touch, intact." Correct?

A. Correct.

Q. That means, when you touch lightly, it's a normal response. Correct?

A. That he is feeling it, yes.

Q. Correct. It's not hypersensitivity that was just mentioned earlier, correct.

A. That is correct.

Q. And, "Symmetric bilaterally" it means on both sides, correct?

A. That's correct.

Q. "Lateral medial aspects of the right ankle are TTP. No allodynia." That's again -- that's a sensitive to a touch that one doesn't expect that reaction?

A. Yeah, well "TTP" is tenderness to palpation.

Q. Okay. There's none of that.

A. And, "No allodynia," is hypersensitive reaction.

Q. You touch something you would expect a reaction. And, again, if the person is reacting, the patient, that would be subjective, correct?

A. Yes, it would be something that the patient poses

to the doctor.

Q. So, if you touch a patient on the arm, the patient says, "Oh, that hurts over there," you would have to take the patient's word for that. Correct?

A. Yes. But if it's not consistent with --

Q. "Yes" or "No" you have to or you don't?

A. You note it. But, you look at the patient's exam in its entirety.

Q. I want to go down to where it says, "Patient's ID."

A. Yes.

Q. "Fifty-three year old man, who presents for follow-up, right ankle, arthralgia, complaints of pain and numbness in ankle and foot," correct?

A. Correct.

Q. Those are his subjective complaints, correct?

A. Correct.

Q. 'patient presents with a history and physical entirely unchanged." Correct?

A. Yes.

Q. That means, from the last group and the last visit and the last visit there's been no change, correct?

A. That's correct.

Q. "It does not require medication refill as he's using it rarely," correct?

A. Correct.

Q. And, that means what it says, I suppose, correct, Doctor?

A. I assume, yes.

Q. Right. Didn't need more medicine, because he rarely uses it, correct.

A. That's correct.

Q. He again defers discussion referred to orthopedics or PT. So, again, deferred discussion means, he doesn't really want to talk about PT, correct?

MR. McCRORIE: Orthopedics.

MR. BRODY: Orthopedics or PT. Does it not say that?

MR. McCRORIE: Yes.

MR. BRODY: Thank you.

Q. He doesn't want to talk about physial therapy, correct? He's deferring the discussion; is that correct?

A. It says, "Differs discussion of referral to orthopedic." So, I'm not quite sure with the English. It's pretty bad English. So, I'm not quite sure what he's trying to say here.

Q. If I told you he testified that he doesn't want to do TP, because TP hurts him, did he say that to you?

A. He had said that to me, yes.

Q. Okay. Now, I just want to move along a little.

Dr.Touliopoulos - Plaintiff - Cross/Mr. Brody

And, I will keep it short. And, they may be just simple questions. You'll forgive me for it.

I noticed, I looked at all of your reports and I don't see you ever commented on whether there is atrophy or not in your reports?

A. Yeah, I don't believe I mentioned atrophy, because of the bilateral injuries.

Q. Well, if there were significant -- atrophy is a shrinking of a muscle, because of non-use?

A. It's shrinking of a muscle for different reasons, could be neurological, disuse, pain, so forth.

Q. Right. If there had been significant atrophy, would you have mentioned it? Would it have been good practice to put it in your report, your records?

A. Again, atrophy is a comparison of the normal leg to the injured leg. So, when you have two injured legs and both legs may be thin from atrophy, you really can't tell, sometimes, that they're actually atrophy from his baseline.

If one leg is normal, then you can make a simple measurement and measure it. But, with bilateral injuries, to the point where bilaterally surgery has been recommended to this patient, I believe, that both legs have been effected equally.

Q. Didn't he say that the left leg really isn't that bad compared to the right leg? Didn't he say that?

A. His pain in his left leg, but the rolling is as bad as the left leg.

Q. The leg that he's holding up and elevating, putting ice on all the time, that's the right leg. He never says that about the left leg; isn't that correct?

A. He elevates his legs. I didn't -- I don't know if it was both or one to be honest with you.

Q. Do you know if it's correct or not?

A. I have that he elevates his legs.

Q. Both legs you say in there?

A. I don't know. I just know he elevates.

Q. You don't know. By the way, if he had a RSD ice -- doesn't ice restrict the blood movement in the little capillaries in the blood vessels? That's what ice does, doesn't it?

A. Ice --

Q. "Yes" or "no." If it's not or you can't answer, tell me.

A. Say your question again, please?

Q. Ice, if you ice it, does it not cause a constriction of the little capillaries in the blood flow?

A. It does, yes.

Q. It does. By the way, during the time that you saw him, during this, when you saw him, to last month, have you ever prescribed for him orthotics for his shoes?

A. No.

Q. Have you ever ordered another three-phase bone scan?

A. No, I have not.

Q. Now, you saw that one in 20 --

A. I didn't.

Q. "Yes" or "No" you ordered or you didn't?

A. I didn't order the first one.

Q. I know you didn't. But, you said you saw it, Doctor?

A. I didn't order it for him, no.

Q. But, you never ordered a follow-up one?

A. That's correct.

Q. And, the first one was in 2011? And, you've seen him up through now, 2017, correct?

A. That's correct.

Q. Would it be fair to say, a three-phase bone scan is useful, objective test to determine if there's complex pain syndrome or RSD? Is that a fair statement?

A. It can be helpful. Again, I'm not treating his RSD. That's why I didn't order it.

Q. So, any opinions you've rendered, with respect to RSD, are opinions that you don't have expertise in; is that correct?

A. I have expertise as far as the relation to

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orthopedics. But, I don't manage or treat RSD.

Q. By the way, during the course of the time you were seeing him, what treatment did you render to him?

A. To the patient?

Q. Yes, the patient.

A. The treatment rendered is, basically, supportive. He has operative problems in his ankles. The problem is, he can't have surgery. So, as a surgeon, I'm very limited to what I can offer the patient.

Q. The question is, "What treatment did you render to him?" Did you understand my question?

A. Yes, I'm getting there. So, the treatment that I rendered has included his home exercises that I have explained to the patient, has also included medications, both narcotic and antiinflammatory medication. And, I have instructed the patient on appropriate activity modifications.

Q. The home exercises, when you see him each time, do you inquire whether he does his home exercises?

A. I do. As far as I'm aware, he's been complying with them, yes.

Q. When he testified -- if I told you, he testified here, he doesn't really do them because they hurt. And, he thinks, that, they caused -- that's what's really causing this pain?

Dr.Touliopoulos - Plaintiff - Redirect/Mr. McCrorie

A. The therapy caused the pain? Yes.

Q. I'm telling you what he testified. Do you know what he testified here before?

A. I wasn't --

Q. Were you told what testified?

A. No, I wasn't told what he testified.

Q. So, I'm telling you to assume he testified here. I actually went and did this as a demonstration for one stretching the ligament so one doesn't get plantar fasciitis. That's an exercise for that, isn't that (indicating)?

A. For plantar fasciitis, yes.

Q. And, I said, you do them and they --

THE COURT: Let's get to the question, please.

MR. BRODY: I did. I'm saying -- okay. We got lost in the question, but we'll get found again.

Q. Other than what he says here -- and, I don't see any notes here that he does home exercise. So, you don't know if he does it or doesn't; is that correct?

A. I believe --

THE COURT: Asked and answered. Go ahead. Move on.

Q. Osteophytes are overgrowth of bone; is that correct; basically, for laymen?

A. They are overgrowth of bone. And, they signify arthritis.

Q. And, you reach my age, you will have osteophytes, you will have arthritis, you will have that? It is a natural aging thing too?

A. It does occur with aging, yes.

Q. Yes. And, osteophyte is -- you could have osteophytes without causing pain; isn't that correct, too?

A. Some people can have osteophytes that are asymptomatic, that don't cause pain.

Q. So, the answer is yes?

A. Yes.

MR. BRODY: I have no further questions, your Honor.

THE COURT: Thank you.

REDIRECT EXAMINATION

BY MR. McCRORIE

Q. Is neuropathic pain caused by arthritic pain or any conditions from that twisted ankle or the surgeries?

A. His neuropathic pain is the result of the injuries. It, actually, occurred after the surgery. It could be the result of either trauma or surgery. In this particular case, it did occur after the operation.

Q. Okay. I will just do it real quickly. The first note from Langone New York Seaport, the place that bought

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the other seaport place, indicates he has no past medical history on file. So, that would indicate the doctor didn't know he was even previously treating there; is that right?

A. That's correct.

Q. On the same note that Mr. Kaminsky read you that says, "There were no side effects" -- and, I'm not at all saying Mr. Kaminsky misread that. It does say it. In the very same note, it says, "There was no side effects with the medication." And, the plan says, "He has not tolerated gabapentin or lyrica due sedation. He's on low dose tramadol and has sedation with even one tablet. No increase in opioids advised in this patient, because for nerve pain, because it's likely to cause sedation."

He notes, in the same note, that he says, "No side effects" side effects, correct?

A. That's correct.

Q. And, you knew he was seeing a pain management specialist, you have knew his history, your client, correct?

A. That is correct.

Q. And, did you see in the notes where Mr. Brody just read to you "He again defies -- defers discussion of referral to orthopedics"?

Did you see repeated references where this doctor was trying to get him to an orthopedic and he kept saying "I'm already with a orthopedic for two years." Did you see

that?

A. Yes.

Q. Repeated. Finally, doctor, did you find swelling on the last visit?

A. Yes, I did.

Q. Did you find discoloration to Mr. McCullough, his right ankle, did you final discoloration?

A. Yes, I did.

Q. Did you find hypersensitivity?

A. I did. And, I wish I could demonstrate to the jury.

Q. And, right here -- regardless of how many cases you've worked on, where a work accident occurred from a construction worker where we represented that person -- in 28E, is that arthritis?

A. Yes, it is.

Q. Does that have anything to do with who the attorney representing him is?

A. No, it doesn't.

Q. Okay. Nothing further.

THE COURT: Thank you so much for staying. Everybody appreciates it, especially, Dr. Touliopoulos. That means, he doesn't have to come back.

Don't talk about the case. Don't let anyone speak to you about the case. We are not here Thursday,

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Friday. See you Monday at 10:00 a.m.

(The trial was adjourned to October 16, 2017, at 10:00 a.m.)