

MAK5csi1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 GERGELY CSIKOS,

4 Plaintiff,

New York, N.Y.

5 v.

18 Civ. 9598 (VEC)

6 230 PARK SOUTH APARTMENTS,
7 INC.,

8 Defendant.

-----x

9
10 October 20, 2022
9:15 a.m.

11 Before:

12 HON. VALERIE E. CAPRONI,

13 U.S. District Judge

14
15 APPEARANCES

16
17 RONAI & RONAI LLP

18 Attorneys for Plaintiff

19 BY: JOHN F. DELLA JACONO

20 PERRY, VAN ETEN, ROZANSKI & KUTNER LLP

21 Attorneys for Defendant

22 BY: JEFFREY K. VAN ETEN
23
24
25

MAi5csi1

1 (Trial resumed; jury not present)

2 THE DEPUTY CLERK: Counsel, please state your
3 appearance for the record.

4 MR. DELLA JACONO: John Della Jacono from Ronai &
5 Ronai for the plaintiff.

6 THE COURT: Good morning, Mr. Della Jacono.

7 MR. VAN ETTEN: Jeffrey Van Etten, Perry, Van Etten
8 Rozanski & Kutner for the defendant 230 Park South Apartments.
9 Good morning, your Honor.

10 THE COURT: Good morning, Mr. Van Etten.

11 So, Angela mentioned there was an issue with the
12 second witness.

13 MR. VAN ETTEN: We discussed that. My concern had
14 been issues raised on hard hats and goggles during the opening
15 and some questions of Mr. Csikos since I wanted to make sure
16 since 241(6), the industrial code was out, that the liability
17 expert was not going to be questioned in that regard and I was
18 going to make *in limine* and counsel told me he is not going
19 there.

20 MR. DELLA JACONO: Your Honor, that was brought up
21 just because I was discussing what equipment was given to him,
22 I mean, full disclosure, but I'm not going into that, I'm not
23 looking to open up the door or a can of worms here. That's not
24 necessary.

25 THE COURT: OK. So are we ready to get the jury out.

MAi5csi1

1 Where is your witness?

2 MR. VAN ETTEN: Out in the hallway.

3 THE COURT: Do you want to put him on the front bench?

4 MR. VAN ETTEN: Yes.

5 THE COURT: Go ahead, let's get the jury.

6 (Continued on next page)

MAKGcsi4

AFTERNOON SESSION

2:00 p.m.

(In open court; jury not present)

MR. VAN ETEN: Two quick issues.

MR. DELLA JACONO: Can we approach?

THE COURT: Do you need to approach?

MR. DELLA JACONO: Yes.

MR. VAN ETEN: Yes.

(At sidebar; off the record)

(Continued on next page)

MAKGcsi4

Chernoff - Direct

1 (Jury present)

2 THE COURT: I am terribly sorry we kept you waiting
3 for so long. We had one person in the meeting that was very
4 long winded, and it was not me.

5 MR. VAN ETTEN: I hope you're not saying it was me,
6 Judge.

7 THE COURT: No. And it was none of these people.

8 MR. VAN ETTEN: Thank you.

9 The defense calls Dr. Ira Chernoff.

10 IRA CHERNOFF,

11 called as a witness by the Defendant,

12 having been duly sworn, testified as follows:

13 MR. VAN ETTEN: May I, your Honor.

14 THE COURT: You may.

15 DIRECT EXAMINATION

16 BY MR. VAN ETTEN:

17 Q. Good afternoon, Dr. Chernoff.

18 A. Good afternoon.

19 Q. Doctor, are you duly licensed to practice medicine in the
20 state of New York?

21 A. Yes.

22 Q. When did you achieve your licensing?

23 A. 1982.

24 Q. Can you tell the jury about your educational background
25 that led up to you getting your license.

1 A. I went to C.W. Post College on a scholarship. And then
2 I -- after I graduated from C.W. Post, I went to Downstate
3 Medical School. And then I did an internship at Nassau County
4 Medical Center in general surgery. And then I went and did my
5 residency in orthopedic surgery at Stony Brook University
6 Hospital. When I finished my residency, I then went to
7 Hospital for Special Surgery where I was trained in spine
8 surgery. After I finished my fellowship, Stony Brook
9 University hired me back to be a professor, assistant clinical
10 professor where I was there for ten years.

11 THE COURT: I'm going to ask you to talk a little bit
12 slower.

13 THE WITNESS: No problem.

14 BY MR. VAN ETEN:

15 Q. So your fellowship at spine was in orthopedics?

16 A. It was combined. We worked with neurosurgeons and
17 orthopedic surgeons.

18 Q. And can you tell the jury what the field of orthopedic
19 surgery is about.

20 A. So orthopedic surgery is bones and joints. So we do the
21 spine, we do hips and knees, if you have a fracture of a leg or
22 limb, we do surgery on that as well.

23 Q. With orthopedic surgery, do you have a subspecialty?

24 A. I subspecialize in spine surgery.

25 Q. And that would be both neck and back?

MAKGcsi4

Chernoff - Direct

1 A. Correct.

2 Q. Are you board certified?

3 A. Yes.

4 Q. What is the board certification?

5 A. After you do your fellowship and residency, you take a
6 test; written and oral. You pass that. Then every ten years,
7 they make us take another test, so I've done it about three
8 times now.

9 Q. Are you currently board certified?

10 A. Yes.

11 Q. So you talked through your education, you got to that
12 point, you said you went to Stony Brook. What did you do after
13 the ten years at Stony Brook?

14 A. I joined North Shore University Hospital. I worked there
15 for two years. And then I went into private practice.

16 Q. Are you affiliated with any hospitals at present?

17 A. Yes.

18 Q. What hospitals?

19 A. In the city, Lenox Hill. In Long Island, we're affiliated
20 with Winthrop Langone, NYU, and also St. Charles and Mather and
21 St. Catherines.

22 Q. Have you held any positions as a surgeon in any of those
23 facilities?

24 A. No.

25 Q. You said you taught at Stony Brook?

MAKGcsi4

Chernoff - Direct

1 A. That's correct.

2 Q. Did you teach anywhere else?

3 A. I did some teaching at the VA as well, but mostly at Stony
4 Brook. I was the assistant clinical professor in spine. I
5 taught the residents and I also taught the PAs.

6 Q. Did you ever have the opportunity to teach somebody by the
7 name of Dr. Sebastian Lattuga?

8 A. He was a resident at the time, yes.

9 Q. Are you currently a practicing surgeon?

10 A. Yes.

11 Q. How often do you operate?

12 A. About once a week.

13 Q. In your current practice, do you also do other work for
14 forensic consulting and litigation matters?

15 A. Yes.

16 Q. Have you testified as a result of that?

17 A. Yes.

18 Q. Have you also testified in matters on behalf of your own
19 patients?

20 A. Yes.

21 Q. Do you have a rough estimate of the breakdown of that?

22 A. About 10 percent for the -- first off, I don't do a lot
23 of -- I don't do a lot of court. About 10 percent for my
24 patients and about 90 percent for --

25 Q. Have you testified in state court where you have been

MAKGcsi4

Chernoff - Direct

1 qualified as an expert?

2 A. I'm not sure.

3 Q. Were you able to testify and they allowed you to testify
4 and give opinions?

5 A. Yes.

6 Q. Have you ever done it in federal court?

7 A. I'm not sure.

8 Q. This type of building here, Southern District or anything
9 else like that?

10 A. It's possible.

11 Q. Have you ever been in a situation where you tried to
12 testify and you were not qualified and they precluded you from
13 testifying?

14 A. No.

15 MR. VAN ETTEN: At this time, I would offer
16 Dr. Chernoff as an expert in spinal surgery.

17 THE COURT: Any objection?

18 MR. DELLA JACONO: No objection.

19 THE COURT: He's received as an expert for those
20 purposes.

21 BY MR. VAN ETTEN:

22 Q. Have you ever worked with my firm before?

23 A. I don't believe so.

24 Q. Now, in this case, were you retained by a prior defense
25 firm to conduct an examination of Mr. Csikos as part of this

MAKGcsi4

Chernoff - Direct

1 litigation?

2 A. Yes.

3 Q. And were you compensated for conducting that examination?

4 A. Yes.

5 Q. How much were you compensated at that time?

6 A. For the exam, review of the records, it was \$5,400.

7 Q. After that initial exam, did you do a report with that?

8 A. Yes.

9 Q. And did you ever do any supplements?

10 A. Yes, I did three supplements.

11 Q. What were the supplements based on?

12 A. Review of additional records.

13 Q. Did that include the actual diagnostic testing?

14 A. Yes.

15 Q. Did you actually review the diagnostic testing films of
16 Mr. Csikos?

17 A. Yes.

18 Q. Did you receive additional compensation when you did those
19 supplemental reviews?

20 A. Yes.

21 Q. Do you recall what the compensation was?

22 A. 300, 900 and 600.

23 Q. Are you being compensated today for your appearance?

24 A. Yes.

25 Q. How much you being compensated?

MAKGcsi4

Chernoff - Direct

1 A. 18,000.

2 Q. What is the basis for that?

3 A. Based on our practice rate for the day. It's also the fee
4 for me not being able to do surgery, being here, spending my
5 day.

6 Q. So as a practicing orthopedic spinal surgeon, I take it you
7 are familiar and treat patients with herniated discs in the
8 lumbar spine and the cervical spine?

9 A. Yes.

10 Q. Can you give the jury information on the mechanics of how
11 the spine operates.

12 A. Sure.

13 MR. VAN ETTEN: With counsel's permission and the
14 Court's permission.

15 Q. I had asked you if you had anything that would assist you.
16 Would these models assist you in that regard?

17 A. Yes.

18 MR. VAN ETTEN: Counsel, do you have any objection to
19 him using the models?

20 MR. DELLA JACONO: For demonstrative purposes.

21 BY MR. VAN ETTEN:

22 Q. By the way, these are yours, not mine?

23 A. Correct.

24 Q. Make sure you take them back when you go.

25 Which one would you like to start with?

1 A. Let's start with the cervical spine. So that's the neck
2 and there's seven segments in the cervical spine separated by a
3 disc. There are blocks in the spine, and then there are discs
4 between the blocks. What the discs do is allow the spine to
5 move; bend forward and bend back and rotate and bend to the
6 side.

7 Each level has a nerve that comes out, and that nerve
8 supplies function in your hand or your arm. So if you have a
9 herniated disc, it will press on that nerve and cause a
10 radiculopathy. So it's sort of like sciatica, pain down your
11 leg, but you can also have a pain down your arm. You can press
12 on the nerve.

13 The spinal cord runs in the center of the spine, so
14 it's protected. If you have pressure on the spinal cord, it's
15 not called a radiculopathy, it's a myelopathy. It's a pressure
16 actually on the spinal cord.

17 That's basically the mechanism of how you can move
18 your neck and without causing damage to the spinal cord. If
19 there's a herniated disc, you can press on the nerve or press
20 on the spinal cord. If you press on the nerve, you get a
21 radiculopathy. If you press on the spine, it's a myelopathy.

22 Q. Can you do the same for the lumbar spine and show the jury
23 the lumbar spine and how this works.

24 A. So it's a very similar kind of thing. So the motion in the
25 spine is basically in the cervical spine. The thoracic spine,

1 the upper part, rarely we'll see herniated discs because the
2 ribs support it and there's very little motion. So most of the
3 motion is in your neck and lower back. That's where people
4 have herniated discs.

5 So in the lumbar spine, there are five segments, each
6 separated by a disc. And the disc allows for movement. The
7 nerves come out through these holes called foramen. And if you
8 have a disc herniation, they press on the nerve.

9 At this segment, in the lower arc, the spinal cord
10 ends, and you have little dots, which are the nerves. And
11 they're in a fluid filled sack. You can see on the MRIs. I'll
12 show you the fluid filled sack. And so the disc herniations
13 can press on the nerve, in the spinal cord, you get a
14 myelopathy. If they press on the nerve, you get a
15 radiculopathy or sciatica and it shoots down the leg. When it
16 shoots down the leg, it goes in a certain pattern, so it can --
17 the most common are L4-5 and L5-S1.

18 THE COURT: So the spinal cord doesn't go as far your
19 lower back?

20 THE WITNESS: No.

21 THE COURT: Where does it end.

22 THE WITNESS: It ends at L1.

23 THE COURT: So that's like right below your rib cage?

24 THE WITNESS: Yeah.

25 Some people have an extension of the spinal cord all

MAKGcsi4

Chernoff - Direct

1 the way down. It's very rare. It's called a tethered cord.

2 But that's an extremely rare. But most people, it ends at L1.

3 THE COURT: We all learned something today.

4 MR. VAN ETTEN: We did.

5 BY MR. VAN ETTEN:

6 Q. Doctor, I'm going to ask this in a strange way -- I've done
7 this a few times -- I have heard doctors describe what the disc
8 does as a cushion, I have heard donut, I heard a Coke can. Is
9 there any way you would like to describe how the disc works?

10 A. It a cushion, and it's made up of different fibers. So
11 there is a central fiber, the nucleus pulposus, like a jelly,
12 and then there is a ring around the outside. That ring is very
13 supporting of the spine and allows for motion. People, when
14 they damage that ring, they'll have back pain, start with back
15 pain. When the disc herniates through that ring, they get
16 sciatica, it compresses on the nerves and they get a
17 radiculopathy.

18 Q. Let's move back to the examination that you did.

19 When you did the examination, did you prepare a
20 report?

21 A. Yes.

22 Q. And as part of the examination, did you also review various
23 medical records?

24 A. Yes.

25 Q. Did you address that in your report?

MAKGcsi4

Chernoff - Direct

1 A. Yes.

2 Q. Do you need an opportunity to review the reports?

3 A. Yes.

4 MR. VAN ETEN: With the Court's permission, I ask
5 that the witness be allowed to do so.

6 THE COURT: Yes. Just tell us when you are doing it.

7 BY MR. VAN ETEN:

8 Q. When was the examination of Mr. Csikos?

9 A. October 17, 2019.

10 Q. Prior to testifying today, did you have any opportunity to
11 review any of the testimony of any of the witnesses who
12 appeared in court?

13 A. Yes.

14 Q. What testimony did you review?

15 A. Dr. Lattuga.

16 Q. Was that last night?

17 A. Yes.

18 THE COURT: Your examined him on October 17th, 2019?

19 THE WITNESS: That's correct.

20 THE COURT: Thank you.

21 BY MR. VAN ETEN:

22 Q. So when you do the examination, do you do the physical
23 examination first or review the records first?

24 A. I usually review the records first. I go over all the
25 records so I can ask the claimant or the patient at that time

1 what the issue is.

2 Q. Can you tell the jury -- it's a couple pages -- actually,
3 it might be three pages, how many pages of records did you list
4 that you had reviewed?

5 A. I believe it's three pages.

6 THE COURT: Maybe you could lead on this and highlight
7 the records that you want the jury to know that he saw.

8 Q. Did you review the records of Dr. Lattuga and other doctors
9 affiliated at New York Spine Specialists?

10 A. Yes.

11 Q. Did you also review the operative reports and surgical
12 records of Dr. Lattuga?

13 A. Yes.

14 Q. Did you review the physical therapy records of the
15 plaintiff from Bay Medical, which we have consented -- I don't
16 know if we've put them into evidence yet, but they will be for
17 the jury.

18 A. Yes.

19 Q. Did you review various diagnostic testing films, initially,
20 the film reports from Nova Medical and Wellness Diagnostics?

21 A. Yes.

22 Q. And did you also review an addendum report from Wellness?

23 A. Yes.

24 Q. Did you review records from Dr. Hanna?

25 A. Yes.

MAKGcsi4

Chernoff - Direct

1 Q. Let's start there, because that was what you reviewed for
2 your first examination, the examination and report?

3 A. Okay.

4 Q. So we'll go from there.

5 After reviewing those records, you made comments at
6 that time on what you felt was relevant?

7 A. Correct.

8 Q. And then did you conduct an examination of Mr. Csikos?

9 A. Yes.

10 Q. Can you tell the jury what the examination consisted of.

11 A. Well, we were examining him for his neck and back. So we
12 do a range of motion. So it's a subjective test. We ask the
13 patient to bend their neck forward, bend their neck back, go to
14 the side and the other side and rotation. Similar with the
15 lumbar spine, we did range of motion testing. And we ask the
16 patient to do it, so it's subjective. We don't push them down
17 or anything like that. It's an active range of motion. We ask
18 the patient to do it.

19 Q. Okay.

20 A. And then we do a neurologic exam. That's basically part of
21 the exam.

22 Q. Did you get any information from Mr. Csikos?

23 A. As far as?

24 Q. Did you ask him about complaints, did you ask him history
25 of how he was injured or anything of that nature?

MAKGcsi4

Chernoff - Direct

1 A. Yes.

2 Q. Did you report that?

3 A. Yes.

4 Q. What did you learn from Mr. Csikos?

5 A. He said that he fell approximately 4 feet from a ladder
6 June 25th, 2018.

7 Q. And did he tell you what injuries that he sustained?

8 A. He said he went to Bellevue Hospital and he complained of
9 neck pain and lower back pain.

10 Q. Did he discuss the treatments that he had with Dr. Lattuga?

11 A. We went over some of the treatments, yes.

12 Q. Did that include at that time that he had undergone
13 surgery?

14 A. Yes.

15 Q. Did he tell you about medicines he was talking?

16 A. Yes.

17 Q. What medicines was he taking?

18 A. He said he was taking baclofen and Tylenol and a muscle
19 relaxant, which he couldn't recall.

20 Q. I think you have a section called on specific questioning?

21 A. Yes.

22 Q. And what was that about?

23 A. Well, I asked the claimant, the patient, you know, what his
24 complaints are. He said he had neck pain and lower back pain,
25 numbness in his hands at bedtime, weakness in his lower back,

MAKGcsi4

Chernoff - Direct

1 he had no bowel or bladder problems. He states that sneezing
2 increases his neck pain. He has pain at night in his neck and
3 lower back. With regard to walking, standing and sitting, has
4 difficulty sleeping, he wakes up.

5 Q. What did you ask him about next?

6 A. I did activities of daily living to see what the patient
7 can do. In other words, are they limited. We went over with
8 him, he was -- he was able to go to the bathroom, he was able
9 to get dressed, to put on shoes. He's independent with that.
10 He's able to feed himself, take medications, use the phone and
11 then he's able to drive.

12 Q. Is that where you did a physical examination of Mr. Csikos?

13 A. Yes.

14 Q. Can you tell the jury what you observed during the
15 examination.

16 A. Well, we examine the lumbar spine, and asked him to bend
17 forward and back. We asked him to do side bending and
18 rotation. He has some limitations bending forward, but then he
19 could sit at ninety degrees. So when you bend forward, most of
20 the bending is coming from your hips. When you sit at
21 90 degrees in a chair, you are able to sit at 90 degrees.
22 That's a discrepancy. You should be able to bend 90 degrees
23 when you are standing up if you could sit at 90 degrees,
24 because that all comes from your --

25 Q. When you did these measurements of range of motion, did you

MAKGcsi4

Chernoff - Direct

1 use any devices?

2 A. We use something called a goniometer, it's basically like a
3 ruler. And so we you use it as a measurement device.

4 Q. A protractor?

5 A. That's right.

6 Q. We learned about that this morning. That's why I am
7 smiling.

8 What did you find when you did the range of motion
9 examination, other than the bending forward?

10 A. Pretty much normal. I think he had hyperextension was
11 normal, lateral bending was normal, rotation was normal. The
12 only thing that was limiting him was the forward bending.

13 Q. And what other tests did you run?

14 A. So we run some other tests to see consistency -- we do
15 something called the Spurling test. So if I tap on your head,
16 you're not going to have back pain. If I tap on your head,
17 like this, you're not going to have back pain. But when I did
18 it to the patient, he had back pain. So that's a -- that's one
19 of the signs that we use that the exam is inconsistent. So you
20 shouldn't have back pain when I tap op your head.

21 Likewise, if I pinch your back, if you take your
22 finger and pinch your back, you don't have back pain from that.
23 He did have back pain. So it's a way of saying that it's not a
24 consistent examination.

25 Q. Two quick questions, I want to make sure the record is

MAKGcsi4

Chernoff - Direct

1 clear. You are calling him patient --

2 A. It's a claimant. I am sorry. It's a claimant, Mr. Csikos.

3 Q. So you have not rendered any medical care to him?

4 A. Absolutely not.

5 Q. You said the Spurling test, that is a test of the cervical
6 spine?

7 A. That is correct.

8 Q. And that is why when you said it was inconsistent, it's
9 because you were doing a cervical test and you were getting
10 complaints of the back?

11 A. Yes.

12 Q. What else did you do?

13 A. We also examined him for a neurologic examination. Again,
14 I told you the nerves run in certain patterns, so he said he
15 had numbness around his leg and knee. There's no anatomy to
16 that, so it's not consistent. It doesn't go with the nerves,
17 the nerves don't follow that track. The nerves follow a
18 different track, dermatomal patterns.

19 Q. And did you also do -- is that sensation?

20 A. Yes.

21 Q. Did you also do reflexes?

22 A. Yes.

23 Q. What did you find from the reflex testing?

24 A. They were normal.

25 Q. Those were for the lumbar spine; correct?

MAKGcsi4

Chernoff - Direct

1 A. I did lumbar and I also did --

2 Q. Cervical?

3 A. Cervical.

4 Q. With the cervical, was there any range of motion that
5 wasn't fully normal?

6 A. Yes. So the measurements, when he bent back, he didn't
7 bend backwards fully. So you can bend back 25 degrees, normal
8 is 30. So there was some. He was able to bend forward pretty
9 much within normal limits, normal range.

10 Q. I should have done this earlier. When you go to the first
11 page of your report, Mr. Csikos came in and when you were
12 getting the examination, did somebody accompany him?

13 A. Yes, a paralegal.

14 Q. From his law firm?

15 A. Yes.

16 Q. Did she fill out the intake sheet for Mr. Csikos?

17 A. Yes.

18 Q. Going back now to the examination as well. Did you observe
19 or test his ambulation and heel to toe walk?

20 A. Yes. He was able to ambulate, heel to toe walk, both.

21 Q. Did you make any observations about his body type?

22 A. I felt that he was very muscular. I put it in the report.

23 Q. Why did you make reference to that?

24 A. Because if you are disabled and you can't do anything, you
25 are not going to be very muscular. In other words, your

1 muscles atrophy very quickly. If you are muscular, you have to
2 be working out. Otherwise, your muscles will atrophy. If you
3 put somebody in a cast, in six weeks, they have no muscle. So
4 he must have been doing something.

5 Q. Now, you explained when you were talking about the
6 structure of the cervical spine and the lumbar spine, you
7 mentioned radiculopathy and you told the jury what
8 radiculopathy was.

9 During your examination, did you find any evidence of
10 radiculopathy in Mr. Csikos?

11 A. No.

12 Q. Now, at that point, did you do anything else on the
13 physical examination according to this visit?

14 A. No.

15 Q. And based on your examination and your review of the
16 medical records we discussed, did you form an impression of
17 what Mr. Csikos' injuries were from June 25?

18 A. Yes.

19 Q. What was your impression?

20 A. I thought he had a lumbosacral sprain. And I thought he
21 had a cervical sprain. He had surgery by Dr. Lattuga.

22 Q. At that point, did you also include a section of your
23 report called discussion?

24 A. Yes.

25 Q. What did you mention in your discussion portion of the

1 report?

2 A. Based on the MRI reports -- I'm just going to read it to
3 you.

4 THE COURT: Hang on. If you're going to read, that's
5 fine. But read it slowly. Remember, the court reporter has to
6 get it all done. And she is not normally taking dictation from
7 doctors.

8 A. Based on the MRI reports, which showed a bulging disc
9 initially with a subsequent addendum, there appears to be
10 minimal indications for the surgery performed on the plaintiff.
11 I would like to review the actual film from Wellness Diagnostic
12 Imaging, dated July 19, 2018, to determine the indications for
13 the surgery performed by Dr. Lattuga. Claimant had positive
14 Wadell signs on exam with pinching the spine, positive Spurling
15 test, and the ability to sit at 90 degrees when he could only
16 bend forward at 60 degrees.

17 Q. So at that point, you had not made any conclusions about
18 the surgery or anything at that time, and you were asking for
19 further records before you could come to a conclusion on
20 whether or not the injuries being alleged related to this
21 incident; fair?

22 A. Yes.

23 Q. After getting the films, did you issue a further addendum
24 report?

25 A. Yes.

1 Q. What is the date of that roar?

2 A. 1/20/20.

3 Q. At time you reviewed the films and did your impression of
4 the injuries, the lumbosacral sprain or cervical sprain change?

5 A. I reviewed the images of the cervical spine and they were
6 not the greatest quality films. It demonstrates some mild
7 bulging discs. There were no acute disc herniations from the
8 films I had reviewed. I analyzed the lumbar spine from
9 Wellness Diagnostic, July 24th, 2018, that demonstrates
10 degenerative disc disease multi-level, especially at the L1-2
11 level -- I'm sorry -- L4-5 and L5-S1. No spinal stenosis. No
12 acute injury was noted.

13 Q. What do you mean by no acute injury?

14 A. I did not see any acute disc herniation.

15 Q. I am going to ask you one other question. I am not sure I
16 have ever seen this before.

17 What is facet --

18 A. Let me just show you.

19 So the joints of the spine, if you look at the lumbar
20 spine, they're at a 45-degree angle. That allows for motion, a
21 twisting motion. In Ms. Csikos' case, the joints were
22 perpendicular, they go the opposite way. So the two lower
23 levels go transverse and not obliquely. And you can see it on
24 the MRIs. I can show it to you on the MRIs, how the joints
25 orientation is in the wrong direction, and some people can get

MAKGcsi4

Chernoff - Direct

1 back pain from that.

2 Q. Is that a congenital condition?

3 A. Yes, it is.

4 Q. By congenital, that's not related to trauma; is that
5 correct?

6 A. That's correct.

7 Q. Based on the review of the records that you had conducted,
8 based on your review of the actual films from Wellness
9 Diagnostic Imaging, do you have an opinion with a reasonable
10 degree of orthopedic spinal surgery certainty whether the
11 surgery that Mr. Csikos had on his neck was required?

12 A. In my report, in the discussion, I said there was no
13 indication for the cervical spine surgery based on the MRIs
14 that I reviewed dated July 19th, 2018.

15 Q. Now, would it help you to explain to the jury the basis of
16 your opinion by looking at the films and showing what they
17 show?

18 A. Sure.

19 MR. VAN ETTEN: Your Honor, if I am loud enough, can I
20 do this from the laptop over here because I have to move the
21 pointer because my paralegal --

22 THE COURT: We'll be fine. Make sure you have the
23 microphone in front of you.

24 MR. VAN ETTEN: Just for the record, your Honor, these
25 are the Wellness Diagnostic Imaging films, which are

MAKGcsi4

Chernoff - Direct

1 Plaintiff's 8, which the parties have consented to offer into
2 evidence.

3 Correct, Mr. Della Jacono?

4 MR. DELLA JACONO: Right.

5 MR. VAN ETTEN: Thank you.

6 THE COURT: Received.

7 (Plaintiff's Exhibit 8 received in evidence)

8 BY MR. VAN ETTEN:

9 Q. Doctor, do you have it in front of you?

10 A. No.

11 THE COURT: I used to have a screen that allowed the
12 witness to be like John Madden and you could draw things on the
13 screen and it would show up on your screen. They took that
14 away for reasons unknown and haven't brought it back. The
15 doctor, instead, is going to be describing. He's going to do
16 this slowly. Because, remember, you have to let them find
17 whatever piece of this picture you are talking about, so you
18 need to describe specifically what you want them to look at.
19 And I'm going to stop you if I can't find it. Because if I
20 can't find it, they can't find it.

21 BY MR. VAN ETTEN:

22 Q. Let me lay the foundation first, and then I'll let you
23 describe it.

24 Are you seeing the pointer right now on the screen?

25 A. Yes.

MAKGcsi4

Chernoff - Direct

1 Q. I am going to try to use that. And I'll be John Madden
2 without being as heavy and as much him.

3 Are these films authenticated in the upper right-hand
4 side?

5 A. Yes.

6 Q. And they say from Wellness Diagnostic and the date of
7 July 18?

8 A. It looks like July 19.

9 THE COURT: This says August 11th, 1991.

10 MR. VAN ETEN: That's the date of birth.

11 THE WITNESS: On the top, 7/19/18.

12 BY MR. VAN ETEN:

13 Q. That's the films we are talking about?

14 A. It's right here (indicating).

15 Q. Can you tell the jury what we're seeing where the pointer
16 is?

17 A. So on the screen to your left, you are seeing a side view
18 of the spine.

19 So the MRI is able to cut sections of the spine in
20 half, and you will see in the middle section of the spine. So
21 if you look at this model, you're seeing a cut right through
22 the middle, and that's what you're looking at. And you will
23 see that there's the bones, which are the blocks, the elongated
24 bone on the top is C2, and then you'll see blocks after that.
25 Each one is numbered. The elongated one is C2, then it's C3,

1 4, 5, 6 and 7. And those are the cervical vertebra, the seven
2 cervical vertebra. And in between those vertebra, you'll see
3 the discs, those black areas are the discs.

4 You guys understand? You can see it?

5 So if you look at the discs now, you'll see they're
6 abnormal, okay. They're degenerative, they are black. So in
7 someone who is 28 at the time, I guess, if you go down a little
8 further, you'll see that white area, that's a normal disc,
9 that's what a disc is supposed to look like. So that's the
10 annulus around it and the white in the middle is the nucleus
11 pulposus. In this case, you'll see degenerative discs and that
12 is extremely rare in someone his age, and it's not secondary to
13 trauma, because this film was taken right after the accident.

14 Q. Doctor, you read the transcript of Dr. Lattuga.

15 Dr. Lattuga had talked about the discs, and I asked him about
16 disc desiccation and discoloration, he said with loss of water,
17 discs change color; is that correct?

18 A. That is correct.

19 Q. I'm pointing at the whiter disc, is that the disc you said
20 to point out for the lighter one?

21 A. Yes, that's what a normal disc looks like.

22 Q. This I'm pointing out now, what level are we at?

23 A. That is C2-C3.

24 Q. At C2-C3, is there a disc herniation present?

25 A. So there's different ways to look at disc herniation. So

MAKGcsi4

Chernoff - Direct

1 first, you use the cross-section that we are looking at now.
2 And then on the right side of the screen, the MRI is able to
3 take cross-sections of your spine going right through your
4 spine like that (indicating). And that's the yellow line that
5 you see. So that yellow line is the disc at C2-3, it's cutting
6 right across the spine. It's pretty cool; right? So we're
7 able to see that.

8 And if you look at that section on the right side, in
9 the middle of the screen, you will see a round circle, that's
10 your spinal cord and that controls your arms and legs, your
11 breathing, controls your bowel and bladder function. And then
12 if you look a little above that right there, that's the disc.
13 And you will see the disc there. You see there's no
14 herniation. And you can actually see the nerve roots coming
15 out.

16 So you see the round dot, right by the circle, and
17 then you go -- that's a nerve and the other one is on the other
18 side. And those nerves come out through holes, which I showed
19 you before. Those nerves come out through holes. You'll see
20 there's no pressure on those nerves.

21 And then we can go down to the next level, now we're
22 going to do C3-4, and again, you see the nerves, the spinal
23 cord and you see the holes where the nerves come out, on the
24 side, that's where the nerves come out. And you see the disc
25 in the middle, it looks good. It's not herniated or anything.

MAKGcsi4

Chernoff - Direct

1 It looks good.

2 Now, I'm going to go to the next level, this is C4-5.
3 There's no disc herniation there. You don't see anything. The
4 disc is not pressing on the spinal cord. Those little dots,
5 are the nerves and you see the nerves coming out through those
6 holes again. Nothing wrong with that.

7 Next. Same thing on this one, there's no disc
8 herniation. No pressure on the nerve roots.

9 Next one. This is C6-7. And again, you see the
10 spinal cord in the middle and the nerves coming out and there's
11 no pressure on the spinal cord or on the nerves.

12 (Continued on next page)

13

14

15

16

17

18

19

20

21

22

23

24

25

MAK5csi5

Chernoff - Direct

1 BY MR. VAN ETTEN:

2 Q. Just for one second with the model that you had again with
3 the discs, can you show the -- I guess it is difficult to see
4 because they're so small with those models you have the cushion
5 where it comes out, so where you are saying there is nothing
6 going onto the nerve roots or the canal.

7 A. Right.

8 Q. That disc material hasn't been sticking out.

9 A. It is not sticking out into the nerve, correct. And you
10 can see where the hole where the nerve comes out and that's on
11 the side there.

12 Q. So, in looking at that diagnostic testing film from
13 Wellness Diagnostic Imaging from July 19, 2018, other than the
14 degenerative discs -- would that be degenerative disc disease?

15 A. Yes.

16 Q. Other than that, is there anything abnormal in the cervical
17 spine film studies?

18 A. You can see there is bulging discs but bulging discs are
19 normal and so there is really not -- there is no pressure on
20 the nerve or spinal cord.

21 Q. Are bulging discs normal in the situation where
22 degenerative disc disease is developing?

23 A. Of course.

24 Q. OK. See where we are at next.

25 So, do you have an opinion then, Doctor, within a

MAK5csi5

Chernoff - Direct

1 reasonable degree of orthopedic spinal surgery certainty,
2 whether there is any indication that a traumatic injury took
3 place in the cervical spine on June 25, 2018?

4 A. Based on these films, I would say no.

5 THE COURT: I'm sorry. And is that because if there
6 had been an injury the month before, you would already -- it
7 would already show up?

8 THE WITNESS: Yes.

9 THE COURT: It doesn't develop over time?

10 THE WITNESS: If you do an MRI within six weeks of the
11 injury you will see changes, edema, what is called edema, a
12 bright signal you will see, and there is no bright signals on
13 any of these images.

14 BY MR. VAN ETEN:

15 Q. In addition to edema, would hemorrhage also be seen if
16 there was a serious herniation?

17 A. Yes. Of course. That's what you see.

18 Q. We have had some testimony already when there is a serious
19 thing you might see a fracture, whether you would see the
20 fracture -- you could, I guess, on an MRI see a fracture bond
21 but on a --

22 A. CAT scan is better for bony injuries, MRIs are better for
23 soft tissue.

24 Q. And at some point, again -- I will jump ahead -- you got a
25 chance to see the films from Bellevue Hospital from the date of

MAK5csi5

Chernoff - Direct

1 the incident where they took CAT scans and x-rays and there
2 were no fractures?

3 A. I saw the reports, I didn't see the films.

4 Q. You didn't see the actual films. OK. Fair enough.

5 Were there also lumbar films taken by Wellness?

6 A. Yes.

7 Q. Did you review those films?

8 A. I did.

9 Q. And based on your review of those films, did you have an
10 opinion, within a reasonable degree of orthopedic spine
11 certainty, whether there was any injury that was causally
12 related to the June 25, 2018 incident?

13 A. There wasn't. There were normal films.

14 Q. And the basis of that is the films?

15 A. Yes.

16 Q. So we can look at the films and address that?

17 A. Can I address one thing with everybody?

18 Q. Sure.

19 A. So, if you look at the line, the yellow line, it goes
20 through the middle of the disc and it is parallel to the discs.
21 So, that is very important because if it is obliqued you are
22 going to get a different view of the spine. And so, instead of
23 seeing the circle where the nerves are, it is going to be
24 oblique. And so, you can be fooled into thinking that there is
25 a disc herniation there when it is very important that when the

MAK5csi5

Chernoff - Direct

1 MRI machine does this, that they make the line parallel to the
2 disc space. And if you go up and down on this MRI you will see
3 that that line becomes parallel, they actually move the line
4 rather than go straight down.

5 THE COURT: That is done by the MRI technician?

6 THE WITNESS: That was done by the MRI technician;
7 that is correct.

8 BY MR. VAN ETTEN:

9 Q. Before we do that, I want to go again --

10 A. Each level, it is right parallel, right straight through.

11 Q. The level that I am at right now, is that the first
12 thoracic level, first thoracic vertebrae?

13 A. That is C7-T1.

14 Q. Right down there, that's the thoracic one right there?

15 A. That's T1-T2, correct.

16 Q. The last one?

17 A. It is only cervical so it doesn't go down.

18 Q. The last one there is the last thoracic but that is also
19 showing the good color?

20 A. That is correct.

21 Q. Let's see if I can actually get to and find the next ones.
22 Excuse me just one second. Did I do it right this time, Doc?

23 A. Looks pretty good to me.

24 Q. Is this copies of the Wellness Diagnostic Imaging MRI film
25 studies from July 24, 2018 of the lumbar spine?

MAK5csi5

Chernoff - Direct

1 A. Yes.

2 Q. And you just gave your opinion that you did not believe
3 there was anything wrong with the lumbar spine. Can you
4 explain why?

5 A. OK. So there is something wrong, it is the degenerative
6 disc disease at 1-2.

7 Q. Right there?

8 A. Right. So, if you look at that -- can you move the line
9 down a little bit?

10 Q. Sure.

11 A. So the discs are normal here. So, if you look at the discs
12 you will see a bright signal, that is the nucleus pulposus, and
13 then you see the annulus around it and those are all normal
14 signals. So, every single one of those levels is normal. The
15 one on top is not normal, it is degenerative, and black -- it
16 is black disc -- and the disk space is normal, and I think
17 there is a Schmorl's node. So, sometimes what happens is the
18 disc can herniate into the bone and you will have what is
19 called a Schmorl's node.

20 Q. Is a Schmorl's node either a degenerative or congenital
21 condition?

22 A. It can be from trauma and from degeneration.

23 Q. In looking at those films, would the color of the disc at
24 L1-L2, is it your impression that the Schmorl's node would be
25 based on degeneration, trauma or --

MAK5csi5

Chernoff - Direct

1 A. So, if it was trauma -- acute trauma, you would see change,
2 signal changes, you would see bright signal in the disc or the
3 bone and there is no bright signal in that bone.

4 Q. So then --

5 A. This is old. This is old.

6 Q. This is old. OK.

7 And that's the L1-L2?

8 A. That's correct.

9 Q. Jumping ahead, that is not where Mr. Csikos had surgery on
10 his back?

11 A. That is correct.

12 Q. And subsequently, in August of 2020, he underwent a
13 surgery; correct?

14 A. Yes.

15 Q. Do you see the disc where the surgery was performed?

16 A. Yes.

17 Q. And what disc was that?

18 A. L5-S1.

19 Q. Let's see if I get it down the right way.

20 A. So, let me just explain.

21 Q. OK.

22 A. So, if you are looking on the right side of the screen
23 there is a big circle in the middle. Can you see that? And
24 there is little dots. Those dots are your nerves that go down
25 to your legs, they go to your bladder, supplies your legs

MAK5csi5

Chernoff - Direct

1 supplies the strength, supplies the sensation. And again, on
2 the side you will see little holes where they come out, like
3 this, and those holes are free, there is nothing pressing on
4 any of the nerves there. So, this is a high level of the spine
5 and, again, most disc herniation is on the low level, L5-S1,
6 and L4-5 90 percent, so it is rare to get disc herniation. And
7 you can see the dots and nerves coming out and it looks pretty
8 good.

9 Now we go to the next level

10 Q. That's L2-L3 where we just were, correct?

11 A. That's correct.

12 So, now you see L3-4 and, again, you see joints of the
13 spine, they're a little bit larger than normal so they're a
14 little hypertrophied. And look at the angle of the joints,
15 they're on a 45 degree. So, the joints, if you look at that,
16 there is an angle of 45 degrees.

17 Can you show that? Or no. That's it. That's it.

18 Q. OK.

19 A. That's at 45 degrees, can you see that?

20 THE COURT: You mean the fact that it --

21 THE WITNESS: The facet joints are 45 degrees, so when
22 you look at this thing here, the joint, it is at a 45-degree
23 angle.

24 THE COURT: So that the circle is a triangle instead
25 of a circle? Is that because it is at a 45-degree angle?

1 THE WITNESS: Those are the joints of the spine here,
2 those big round things here, these are the joints. And the
3 angle is 45 degrees and that's what this angle is, it is
4 shooting in like that, 45 degrees. Can you see that? Like
5 that and like that.

6 THE COURT: So he is indicating kind of around what is
7 the white triangle on the middle.

8 THE WITNESS: Right. And the white space between the
9 facet joints, that's fluid in the facet joint. So, it is a
10 joint that has fluid in so that's the synovial flood inside
11 the --

12 THE COURT: He is pointing to the line that runs
13 vertically just to the right and to the left of the white
14 triangle that's in the middle.

15 THE WITNESS: So now we are going to go down to the
16 next level which is L4-5 -- a little bit further down, please.
17 Now, look at the joints. Which way do they go now? They're
18 not at 45 degrees, they're like this. Can you see that?

19 THE COURT: Do y'all see that?

20 THE WITNESS: Does everybody see it, or not?

21 BY MR. VAN ETEN:

22 Q. Am I pointing in the right direction?

23 A. Yes. It is more transverse than oblique like this. It is
24 not like -- it is more like this than like that, and that's
25 call facet tropism.

1 THE COURT: Spell that.

2 A. T-R-O-P-I-S-M, I guess. Tropism. I don't know how to
3 spell it.

4 Next level?

5 Q. And facet tropism you talked about before, that is a
6 congenital condition?

7 A. Correct.

8 Now, look at the next level. Again, you see the
9 joints? They're transverse, not like this. So that's a
10 congenital problem with the spine. And the other thing you
11 want to look at is you want to look at the disc so you see the
12 disc -- if you go up a little bit with the yellow line on the
13 other side?

14 Q. Scroll up?

15 A. Where you were but scroll up.

16 So the disc there, there is a disc, right? There is
17 no pressure on the nerves and there is a little bulge there but
18 that's kind of normal and you can see the little dots, those
19 dots are your nerves, and the circle is the fluid around the
20 nerves, spinal fluid around the nerves. And, again, the most
21 important thing here is to see the joints are transverse,
22 they're not in the right direction. Do you see that?

23 Q. So, sir, based -- I think there was other films as well of
24 the lumbar spine, correct?

25 A. Yes, there is.

MAK5csi5

Chernoff - Direct

1 Q. There was one other film before the surgery?

2 A. There is a couple. There were three lumbar spine images,
3 one was by Nova, I believe, Radiology.

4 Q. Yes.

5 A. Again, look at the line. Do you see the line is going
6 right through the disc space, on this image now, you see the
7 yellow line goes right through the disc space.

8 OK, so now we are looking --

9 Q. Hold on one moment, Doc. Is that it?

10 A. Yes.

11 Q. Just, Doc, for me to do my job.

12 Plaintiff's Exhibit 9 are the medical diagnostic film
13 studies from Nova that the parties have consented into
14 evidence, your Honor. That's what we are showing the witness
15 now.

16 THE COURT: OK, so Plaintiff's 9 is received.

17 MR. VAN ETTEN: Thank you.

18 (Plaintiff's Exhibit 9 received in evidence)

19 THE WITNESS: So these are the images taken 8/13/18,
20 and again you look at the disc and see the white in the middle,
21 which are normal, and the annulus, the black around it, it is
22 all normal. Look again at the yellow line, it goes parallel to
23 the disc. That is important.

24 BY MR. VAN ETTEN:

25 Q. I am going to start at the top again for you.

1 A. So, that's the degenerative disc that we saw before and you
2 see this disc space narrowing and some osteophytes -- which are
3 bony prominences. It is very similar, these images are very
4 similar to the other ones. So, we are going to go down each
5 level again and you will see there is no disc herniations, at
6 least on the sagittal view. This is the side view on the left
7 and then we are going to go on the right side, we will go to
8 each level and see what it shows.

9 Q. Before we do that, if you don't mind me asking you a
10 question. Osteophytes that you just described, can you tell
11 the jury what osteophytes are?

12 A. It's a bony spur that develops over time.

13 Q. Is that something caused by trauma?

14 A. Can be.

15 Q. And in this instance do you see from that, with the
16 degenerative disc there, would that have been something that
17 would have been caused by trauma?

18 A. It can also be formed by arthritis as well, it is hard to
19 tell but there are definitely bony spurs there. I can't tell
20 you whether it is from trauma. Most likely it is but it can
21 also be from arthritis.

22 Q. You said let's go down each one?

23 A. Yes.

24 Again, you see the white and you see the nerves coming
25 out, there is no disc herniation -- just go up a little bit --

MAK5csi5

Chernoff - Direct

1 there you go.

2 So there is no disc herniation, you see the white, you
3 see the little dots. This image is not as good as the last one
4 because you can't see the little dots there as well but, again,
5 you see the line going straight across.

6 Next one? Same thing. See the line, look at the
7 facet joint, see the angle of the facet joints, they're 45
8 degrees.

9 Next one. So now you are seeing the joints are not at
10 45 degrees, they're more going transversely. The disc
11 herniation -- there is no disc herniation there, you don't see
12 any disc herniation there. You can say it is a little bulge
13 maybe.

14 Next one. And then you see the joints are transverse,
15 they're on the side going this way, and again you see maybe a
16 little bulge there but there is no pressure on any of the
17 nerves.

18 Q. And is L5-S1 where the, I think it is August 6, 2020
19 surgery was performed?

20 A. Yes.

21 THE COURT: I'm sorry. This disc?

22 MR. VAN ETEN: Where we are at right now.

23 THE WITNESS: That's where the surgery was performed;
24 that's correct.

25 BY MR. VAN ETEN:

MAK5csi5

Chernoff - Direct

1 Q. There is one other film by Kolb Radiology that was taken
2 before the surgery, correct?

3 A. Yes. I believe it was 2020. All the way up top, there you
4 go.

5 Q. 3/7/20?

6 A. T2.

7 Q. T2?

8 A. That's it.

9 Q. And axial.

10 A. Are you going to do your job here?

11 Q. I did it again. Sorry, Doc. I will start from the top.

12 A. So that's the degenerative disc, you see the roots there,
13 the little round dots, those are the roots that supply your
14 arms and your legs -- actually, legs -- and you see there is no
15 disc herniation -- you have to go down one more, that's a
16 degenerative disc.

17 Here you don't see disc herniation there, you see the
18 little dots and you see the nerves coming out from the side,
19 those nerves right there, that's it.

20 MR. DELLA JACONO: If I could ask one question? What
21 disc are we looking at here?

22 THE WITNESS: That disc is L2-3.

23 THE COURT: And this is a film that was taken on
24 March?

25 THE WITNESS: March 7, 2020.

MAK5csi5

Chernoff - Direct

1 MR. VAN ETTEN: This is the Kolb Radiology films, your
2 Honor, which are Plaintiff's 12 that the parties have consented
3 to be in evidence.

4 THE COURT: It is already in evidence.

5 MR. DELLA JACONO: Right.

6 MR. VAN ETTEN: Right.

7 THE WITNESS: So, let's go to the next level. This is
8 L3-4. Again, you see the dots, no pressure on the end of the
9 nerves, they are coming out of the foramen. There is a little
10 lateral recess stenosis, there may be a little lateral recess
11 stenosis.

12 THE COURT: Lateral recess stenosis.

13 THE WITNESS: It is arthritis.

14 So, if you can go up and down a little bit?

15 So, you can see the nerves coming out, but sometimes
16 the joints of the spine are lodged and they can put pressure on
17 the nerves. There is a little bit there but not too bad.

18 BY MR. VAN ETTEN:

19 Q. And arthritis would not be caused by trauma for something,
20 for the timing of this film?

21 A. That's correct.

22 Q. And go to the next one.

23 A. This is L4-5. Again, you see the joints are very large
24 there. And the hypertrophy. Again, they're more of a
25 transverse orientation. Now, look at the line that is going

MAK5csi5

Chernoff - Direct

1 straight through.

2 Next one. So, now look at that one. There is a line
3 going straight through the disc parallel? No. So you have to
4 be careful because if the line is not going straight through
5 the disc, it is going to oblique your circle, you are not going
6 to get a true circle. And so you can be fooled into thinking
7 that there may be a disc herniation there when -- so, in other
8 words, the circle is like this. If you go through the circle
9 you are going to see a straight circle. If you oblique it, the
10 circle is not going to be a circle and you can be fooled.

11 Ideally what you want is the line to go parallel to the disk.
12 And so, the person who did this MRI did not change that line,
13 it was not parallel. And so, you can see what people would say
14 is a bulging disc, whatever, but it is not really because it is
15 not parallel, you can't really determine that because of the
16 angle of the gantry -- it is called a gantry -- the angle of
17 that line, it is not right.

18 Q. Are there any other films that assist you in the opinions
19 that you have given and that you may give in the future?

20 A. No.

21 Q. I will turn it off now for everybody and if we need to get
22 it back, we will.

23 Now, the last sets of films that we reviewed, those
24 were part of your third and fourth supplemental reports,
25 correct?

1 A. Yes.

2 Q. I will pull the right glasses on so I can see you.

3 Now, we just discussed it briefly looking at it but
4 can you tell the jury what degenerative disc disease is?

5 A. You see on the MRIs that the disc space, the disc is not
6 normal so the white in the middle, you saw it on the top film,
7 will become black and the disc space narrows. That's what
8 degenerative disc disease is, it is part of a process. You see
9 it in aging a lot of times.

10 Q. Now, having looked at those films and explaining those
11 films and the film studies that you have reviewed, having
12 conducted your examination as well as the review of the various
13 medical records of Mr. Csikos, do you have an opinion, within a
14 reasonable degree of certain as an orthopedic spine surgeon
15 whether the bulges C3-C4, C4-C5, C5-C6 were causally related to
16 the June 25, 2018 incident?

17 A. I don't believe they are.

18 Q. And the basis for your opinion is it?

19 A. That he had degeneration of the discs in the cervical spine
20 and there was no pressure on any of the nerves from those
21 bulges, there was no documentation of instability so sometimes
22 we can see instability in the spine that can cause pressure on
23 the nerves. There is criteria for that, White and Punjabi
24 determined criteria which is if the spine shifts 3.5
25 millimeters or if there is an angulation deformity on the

1 flexion extension film. And that was never demonstrated here.

2 Q. Now, sir, still with the cervical spine I want you to
3 assume that Dr. Lattuga testified to the presence of herniated
4 discs in the cervical spine. Do you have an opinion, within a
5 reasonable degree of orthopedic spine surgery certainty,
6 whether there was an acute herniated disc sustained as a result
7 of the June 25, 2018 incident?

8 A. There were no acute disc herniations noted on the films.

9 Q. And what type of surgery was done by Dr. Lattuga?

10 A. So, that's an issue.

11 So, based on his report of February, the first time he
12 saw the patient --

13 Q. February 4?

14 A. February 4, 2019 was the first time he saw the claimant,
15 and he noted that the claimant had herniated discs at C5-6 and
16 C6-7. OK? And he did surgery at C4-5 and C5-C6. Different
17 levels. So how can -- it doesn't fit. I don't understand.

18 So he, in his report he said that -- and this is
19 before the surgery, OK, he only saw him one time from the
20 surgery for review -- and he said that the claimant had
21 herniated discs at C5-C6 and C6-C7, it is in the report and
22 then he did surgery at C4-C5 and C5-C6.

23 Q. And, Doctor, is that one of the reasons that you stated
24 previously that you believe, within a reasonable degree of
25 orthopedic spine surgeon certainty, that this surgery was not

1 medically necessary?

2 A. Yes. And, in fact, there was no disc herniations.

3 Q. Dr. Lattuga also did, I think he described as a lateral
4 extra foraminal --

5 A. Foraminal.

6 Q. Foraminal transpendicular lumbar approach surgery. What is
7 that?

8 A. It is basically putting a needle in the middle of the disc
9 and sucking out some of the disc material, and then he did an
10 ablation where he burned the disc.

11 Q. And if a person has a herniated disc are you going into the
12 middle of the disc?

13 A. Usually what I do, and what people do if you have a
14 herniated disc that is pressing on the nerve, you want to take
15 the pressure off the nerve, so you do an open procedure or a
16 limited open procedure so you can actually see the nerve and
17 see the disc and then take out the disc. When you go in the
18 middle you are not seeing the disc herniation, you are just
19 sucking out disc material in the middle and you are not really
20 relieving the pressure on the nerve which is the whole point of
21 the surgery.

22 Q. So, with that in mind, do you have an opinion, within a
23 reasonable degree of certainty as an orthopedic spine surgeon,
24 whether the surgery was required for the lumbar spine as a
25 result of the June 25, 2018 incident?

1 A. In my opinion the discs were normal. The alleged disc
2 herniation on the Kolb Radiology report is because the gantry
3 was tilted the wrong way, it wasn't parallel to the disc space.
4 It is a normal disc.

5 Q. And do you believe that whatever condition then, was in the
6 L5-S1 region or any area of the lumbar spine, was causally
7 related to the accident of June 25, 2018?

8 A. It is normal. There is no relationship to the accident.

9 Q. Final issues.

10 Dr. Lattuga has opined that Mr. Csikos will require
11 future revision surgery, I think he said more likely than not.
12 First, do all fusions require revisions?

13 A. No.

14 THE COURT: Do more than 50 percent of all fusions
15 require revisions?

16 THE WITNESS: I would say it is less.

17 BY MR. VAN ETTEN:

18 Q. And other than subjective pain complaints in the updated
19 records that you were forwarded, are you aware of any
20 post-surgical film studies that show that the cervical fusion
21 hasn't fused?

22 A. No.

23 Q. Are you aware of any post-surgery film studies that have
24 shown that there is a recurrence of the disc?

25 A. No.

MAK5csi5

Chernoff - Direct

1 Q. Have you seen any diagnostic film studies that show that
2 any of the adjacent discs have begun to herniate or weaken?

3 A. No.

4 Q. And would those types of things be required in order for
5 there to be a revision surgery?

6 A. Yes.

7 Q. Do you have an opinion, within a reasonable degree of
8 medical certainty as an orthopedic spine surgeon, whether a
9 revision surgery is required to Mr. Csikos?

10 A. It is hard to determine that. Over time, when you do a
11 fusion, there is a slight chance of degeneration of other
12 levels in the cervical spine.

13 Q. Is it required at this time?

14 A. No.

15 Q. So, if the condition stays the same it wouldn't be
16 required. If it worsens, it might be required. Is that fair?

17 A. That is correct.

18 Q. Finally, Doctor, I would like you to assume that
19 Dr. Lattuga testified that Mr. Csikos' condition, now that he
20 has had his surgeries, has gotten to the point where he could
21 work if he felt safe enough to do so in the labor field or he
22 could work in a sedentary field. OK. With that assumption --
23 and if I am incorrect with the testimony you reviewed tell
24 me -- do you have an opinion, within a reasonable degree of
25 certainty as an orthopedic spine surgeon, whether Mr. Csikos

MAK5csi5

Chernoff - Direct

1 can work?

2 A. I believe he can work in a sedentary-type position and I
3 think that he can do limited heavy duty work -- not heavy duty
4 work but I guess more line-type work. Limited.

5 Q. Would painting be something that he would be able to do?

6 A. It's -- maybe. When we do these surgeries it is 50/50 when
7 someone can do these types of labor.

8 Q. So when you do the surgeries you want it to be successful
9 first. Fair statement?

10 A. Correct.

11 Q. And if it is successful then you are hoping it is about a
12 50/50 chance that he may be able to go back?

13 A. Heavy labor, yes.

14 Q. For heavy labor.

15 A. Yes.

16 Q. But for other types of work he can go back?

17 A. I believe so, yes.

18 Q. That's within a reasonable degree of certainty?

19 A. Yes.

20 MR. VAN ETTEN: Thank you very much.

21 MR. DELLA JACONO: Your Honor, may I take a
22 five-minute break to go to the mens room?

23 THE COURT: That is way too much information. Yes.
24 Why don't we take --

25 MR. DELLA JACONO: I'm sorry.

MAK5csi5

Chernoff - Direct

1 THE COURT: We will take our afternoon break so about
2 a 10-minute break. We will bring you back at 20 till 4:00.

3 (Continued on next page)

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MAK5csi5

Chernoff - Direct

1 (Jury not present)

2 THE COURT: 10 minutes.

3 (recess)

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Jury present)

2 THE COURT: Please be seated. Mr. Van Etten realized
3 he had one more question.

4 MR. VAN ETTEN: One and a half.

5 THE COURT: Which will probably be five.

6 MR. VAN ETTEN: Promise not five.

7 BY MR. VAN ETTEN:

8 Q. Doctor, you mentioned earlier on your impression about the
9 sprains and strains on Mr. Csikos with the impression of the
10 injury. Do you remember that?

11 A. Yes.

12 Q. Do you have an opinion, within a reasonable degree of
13 orthopedic spin certainty, why those sprains and strains have
14 not resolved themselves?

15 A. That's a tough question but I believe that based on the
16 reports I reviewed, he had extensive physical therapy but he
17 didn't really have any exercises to the back or neck, it was
18 more heat, ultrasound massage. And so, you feel better with
19 that, but it is not long lasting and I think that I probably
20 would have done a more of an exercise program with him.

21 MR. VAN ETTEN: Thank you.

22 THE COURT: OK.

23 MR. DELLA JACONO: May I inquire?

24 THE COURT: Yes.

25 MR. DELLA JACONO: Thank you.

MAK5csi5

Chernoff - Cross

1 CROSS-EXAMINATION

2 BY MR. DELLA JACONO:

3 Q. Good afternoon, Doctor.

4 A. Good afternoon.

5 Q. Your last few questions, I'm going to start there. You
6 talked about what Mr. Csikos can do now as far as work goes and
7 you said sedentary work would be something that he would be
8 able to do at this time?

9 A. I believe. I believe.

10 Q. Dr. Lattuga had said that it would be difficult for him to
11 carry up compound, paint cans up a ladder and do that type of
12 work. Would you agree that that would be aggressive type of
13 labor work that maybe Mr. Csikos could not do at this point in
14 time?

15 A. I would agree, and I think there is chance of further
16 injury because he has a spinal fusion. So, if something
17 happened, it could be detrimental.

18 Q. Thank you.

19 When you first saw Mr. Csikos he did complain of pains
20 in his neck and in his lower back?

21 A. That is correct.

22 Q. Is that unusual, seven months post-cervical fusion, to
23 still have pains in his neck?

24 A. Yes.

25 Q. And why is that, sir?

1 A. Why is it unusual?

2 Q. Yes.

3 A. Because when we do the surgery, we hope to get the patients
4 better. And, most of them do get better.

5 Q. Is there some issue you found why he would continue to
6 still have these pains in his neck?

7 A. No.

8 Q. OK. You talked about the possibility of a revision or some
9 type of future surgery on the neck. Would that have to take
10 place if the pain in his neck does not dissipate or go away?

11 A. Basically, on any surgery I try to do it for a condition
12 that I think can help the claimant and I don't see anything on
13 the MRIs to indicate that he would benefit from any other
14 surgery at this point.

15 Q. So if he has pain now he will continue to have pain?

16 A. Pain is subjective so, you know, that's a tough question
17 because it is subjective. So, you know, that's the bottom
18 line, pain is subjective.

19 Q. I understand that pain is subjective and you have testified
20 to that that, but if he continues to have pain and he has
21 continued to have pain since the surgery, there is a likelihood
22 that the pain will continue at some point if there is no other
23 intervention that's in there?

24 A. I would not recommend any further intervention as far as
25 surgery for to the claimant.

MAK5csi5

Chernoff - Cross

1 Q. OK.

2 A. There is not much on the MRI that I could -- that is there
3 for the initial surgery. There is a question about levels that
4 were done. I don't recommend the surgery.

5 Q. Is there a possibility of continued instability at other
6 levels because the fusion was done at C4-5 and 6?

7 A. There is no documentation of instability, any flexion or
8 extension films to determine instability. So you have to do
9 bending films with x-rays or MRIs, bending films. And is there
10 a chance? Yes. You know, as time goes on there is other
11 levels that can degenerate. It is rare, but it can happen.

12 Q. Now, you had testified that osteophytes -- correct me if I
13 am wrong -- can be a sign of some type of a traumatic event?

14 A. Yes.

15 Q. Dr. Lattuga has testified that he had to, when he went to
16 do the surgery in his neck, that he found osteophytes and that
17 he needed to remove them because you can't have those continue
18 to be there once you put the fusion in. OK? Accept that. Is
19 it fair to say that those osteophytes that were in the neck
20 that Dr. Lattuga found when he went in to do the surgery, were
21 caused by trauma?

22 A. It is too soon.

23 Q. What do you mean by "it is too soon"?

24 A. Osteophytes is a bone that form, it takes years to form
25 that it is not like something that form in six weeks -- six,

MAK5csi5

Chernoff - Cross

1 eight weeks, three months, four months. It is a long process.
2 It is actually bone that calcifies the ligament and so if you
3 have osteophytes -- which I have no evidence of on the images I
4 reviewed -- it takes a long time to form, it doesn't form in
5 six months or nine months.

6 Q. That was my question. Is it possible -- is there a
7 possibility that osteophytes could form within a nine-month
8 period?

9 A. I don't believe so, no.

10 Q. Is there any reason to doubt that Dr. Lattuga, when he went
11 in to see the -- when he did the surgery, found osteophytes in
12 his cervical spine?

13 A. If that's what he says. But if you look at the images
14 there was not much on the MRIs. CAT scans would be better to
15 determine osteophytes so I'm not doubting what he said, I don't
16 see it on this.

17 Q. And there was no immediate CAT scan done before the
18 surgery, I haven't seen one. Have you seen one?

19 A. No.

20 Q. Now, you did also indicate that bone spurs could also be
21 trauma induced as well?

22 A. Yes.

23 Q. And you saw those in the lower spine?

24 A. Correct.

25 Q. The low back spine.

MAK5csi5

Chernoff - Cross

1 Doctor, if a -- withdrawn.

2 When you did your history of Mr. Csikos, did he tell
3 you he had a prior neck injury or trauma to his neck?

4 A. No.

5 Q. Did he tell you there was a prior back injury or injury to
6 his back?

7 A. No.

8 Q. Is it fair to say -- withdrawn.

9 Did he tell you that he had any pain, prior to this
10 accident, in his neck?

11 A. He did not say that.

12 Q. Did he say that he had any pain in his lower back prior to
13 this accident?

14 A. Not that I am aware of, no.

15 Q. So, the word we used yesterday with Dr. Lattuga was
16 asymptomatic, that means he had no symptoms?

17 A. If that's what the claimant says, yes.

18 Q. Can a trauma to the spine, or the lower spine, or the neck
19 that has some of the things that you pointed out, cause that
20 portion of the body to then become symptomatic?

21 A. It is possible.

22 Q. And that the trauma could then induce or cause the symptoms
23 or the back to start causing pain for someone. Is that a fair
24 comment?

25 A. I guess so, because there is nothing on the images that

1 would indicate that surgery would help a claimant. So I'm not
2 sure -- you know, we can do surgery but it didn't help. There
3 was no indication to do the surgery. So, I mean, people have
4 back pain and they have back pain. Obviously he has back pain
5 so I'm not going to dispute that. So, he has back pain.

6 Q. What I am getting at is if a person is asymptomatic before
7 a traumatic event and then becomes symptomatic after a
8 traumatic event, that traumatic event is an intervening cause
9 that can now cause pain in this particular person?

10 A. Yes.

11 Q. I'm not going to the surgery yet.

12 A. Yes. This is subjective, yes. Absolutely.

13 Q. Yes.

14 And then the treatment is a course that a doctor or
15 someone would then give to the patient about how to treat that
16 particular pain?

17 A. Sure.

18 Q. And he sees pain management people, correct?

19 A. Yes.

20 Q. We would try physical therapy, that's a conservative
21 method?

22 A. Correct. Correct.

23 Q. Mr. Csikos, and I believe you reviewed a number of them,
24 has had numerous injections.

25 A. Correct.

1 Q. Some epidural?

2 A. Yes.

3 Q. And some trigger point injections?

4 A. Yes.

5 Q. Is that a -- that's more than just a conservative approach
6 to trying to alleviate his pain. Is that a fair comment?

7 A. Yes.

8 Q. And surgery is obviously the last step in trying to relieve
9 someone's pain. Is that a fair comment?

10 A. Yes.

11 Q. OK. So, the steps that were taken by Dr. Lattuga's office
12 with respect to conservative, with physical therapy, and then
13 trigger point injections or epidural injections, and then the
14 surgery; is that a course of procedure that is accepted in your
15 profession?

16 A. I would say that the trigger point injections and the
17 physical therapy. I'm not sure that I would do surgery. There
18 is no indication to do any surgery.

19 Q. Is it fair to say that that doctors, professionals like
20 yourself, can have a difference in opinion as to whether
21 surgery is necessary or not?

22 A. Sure.

23 Q. OK. In Dr. Lattuga's operative report which you have
24 seen -- you have seen that, correct?

25 A. Which one?

MAK5csi5

Chernoff - Cross

1 Q. The cervical spine.

2 A. Yes.

3 Q. Can you bring that up for me, please?

4 Do you have that on your screen?

5 A. Yes.

6 Q. I am just going to ask you some questions because you had
7 mentioned about different levels of the C spine, that's where I
8 am going with my questions here. It says here that the
9 findings here were at a HNP -- herniated nucleus pulposus -- is
10 that correct?

11 A. Pulposus, yes.

12 Q. It has it at C4-5-6 and then it goes, see the body of the
13 report. Do you see that? That's one, two, three -- four lines
14 down.

15 A. See body of report, yes.

16 Q. And we are going to go to the fourth page where it says --
17 do you see where the double stars are?

18 A. Yes.

19 Q. It says intraoperative findings: Disc herniation at C4-5-6
20 with impingement and compression of the cord and nerve roots.
21 Do you see what Dr. Lattuga put in his operative report?

22 A. Yes.

23 Q. Do you have any reason to doubt that that's what he found
24 when he went in there?

25 A. I don't think he found it.

MAK5csi5

Chernoff - Cross

1 THE COURT: So the answer is yes?

2 THE WITNESS: I don't think that that's correct, that
3 statement.

4 Q. You don't think that that's -- that that statement is
5 correct?

6 A. Yes.

7 Q. Even though he was the surgeon that went in there and
8 actually -- let me finish my question. I am going to let you
9 give a full answer, I promise -- even though he is the surgeon
10 that went in there and did the surgery and wrote this down and
11 testified to that, you are saying that's not what he found
12 there?

13 A. That's what I am saying.

14 (Continued on next page)

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. DELLA JACONO:

2 Q. I'm going to ask the question, because I know he's going to
3 get help on redirect and do it. What makes you say that?

4 A. The MRIs, there's no disc herniation on the MRI. That's
5 what we use to determine if there's a disc herniation. He
6 wrote there's osteophytes, he wrote a lot of things. He also
7 wrote he did a vertebrectomy. There's no way he did a complete
8 vertebrectomy. You don't do a vertebrectomy when you do a
9 herniated disc. You take out a portion of the vertebra. So I
10 don't think the report is correct.

11 Q. So you think that this report, based on what you just said,
12 there's three or four items in there that are completely
13 incorrect and Dr. Lattuga put it in there and did not do that?

14 A. I didn't say he didn't do that. I said he did the surgery,
15 the discectomy. I'm just saying, I don't think there was a
16 disc herniation.

17 Q. In the Wellness films from July of 2018, right after the
18 plaintiff's accident in June, the original report, which you
19 had said was not a good quality report -- and that's why you
20 wanted to see the films yourself; is that correct?

21 A. I didn't say that. I said I wanted to see the films.

22 Q. And when you saw the films, you didn't find a herniation?

23 A. No.

24 Q. When there was an addendum to that report from Wellness
25 where they did find herniations, in the same areas that you say

1 there were not, is it possible that two people viewing that
2 particular film can have a difference of opinion on whether
3 there is a bulge or there is a herniation?

4 A. I guess so.

5 MR. DELLA JACONO: If we could go to the L spine
6 surgery.

7 Q. I'm going to get the operative report, doctor. Let me know
8 when you have it up there.

9 A. I have it up.

10 Q. Now, I have heard your testimony about the Kolb film and
11 how it was viewed on a certain level, as opposed to some of the
12 other films that we looked at here. In Dr. Lattuga's report,
13 his findings state that he found, again, a herniation at L5-S1.
14 Is it your opinion that when he went in there to look at the
15 disc and do the surgery, there was no herniation there?

16 A. You're mistaken.

17 Q. Okay.

18 A. Because this is done blindly. You're putting a needle in
19 the disc space. You are not visualizing any disc herniation.
20 It's impossible to determine whether there's a disc herniation
21 at that level doing the procedure that Dr. Lattuga performed.

22 MR. DELLA JACONO: If you could scroll down to the
23 second page.

24 Q. I just want to make it clear with the report, if you go to
25 the double star, it says, intraoperative findings consistent

1 with herniated disc. Are you saying that, based on what
2 Dr. Lattuga did, he could not tell that there was a herniated
3 disc at that point?

4 A. Yes.

5 Q. And if he testified here the other day saying that there
6 was a herniated disc --

7 A. Then he's lying.

8 Q. And there could not be a difference of opinion between --

9 A. No, absolutely not. It's a blind procedure. You do not
10 see the disc herniation. The needle is placed in the center of
11 the disc under fluoroscopy. He did not visualize any disc
12 herniation.

13 Q. You had testified when asked on direct about the
14 possibility of having a revision done with respect to the
15 cervical spine, and then the judge followed up and said, would
16 it be more or less than 50 percent, and you said you didn't
17 think it was 50 percent. Can you give me a percentage?

18 A. In my practice?

19 Q. Yes.

20 A. I would say, maybe 10 to 15 percent of people require a
21 revision.

22 MR. DELLA JACONO: I have nothing further, your Honor.

23 MR. VAN ETEN: Just a couple, your Honor.

24 REDIRECT EXAMINATION

25 BY MR. VAN ETEN:

1 Q. When you were just asked questions about the
2 symptomology -- and without being overly redundant --
3 symptomology and complaints of pain are subjective; is that
4 true?

5 A. That is absolutely correct.

6 Q. And with the possibility that trauma can cause something
7 that is an asymptomatic degenerative change, as counsel just
8 indicated and possibly make that symptomatic, that would also
9 require the history of being asymptomatic to be accurate;
10 correct?

11 A. That is correct.

12 Q. And in your practice, have you had patients that are
13 engaged in labor and construction work?

14 A. Sure.

15 Q. And do construction workers and labor workers tend to have
16 aches and pains, backaches by virtue of the nature of their
17 work?

18 A. Of course.

19 Q. Is it rare for them to never have complaints of pain?

20 A. I would say so.

21 Q. You were also asked -- and I want to make sure I get this
22 correct -- about the issue of after the surgery and if it was
23 unusual that when you saw him that there was still pain in the
24 neck. And you had said that usually most get better after the
25 surgery. And he asked if there was a reason why. And you said

MAKGcsi6

Chernoff - Redirect

1 you didn't have a reason why; is that correct?

2 A. That's correct.

3 THE COURT: Why he was still in pain.

4 THE WITNESS: Yes.

5 MR. VAN ETTEN: Why he was still in pain.

6 BY MR. VAN ETTEN:

7 Q. Would a surgery that you have opined that was unnecessary
8 to levels of the discs that were not even represented as being
9 the ones that were herniated, could having an unnecessary
10 surgery be the triggering event of an asymptomatic condition to
11 make it symptomatic?

12 A. It's possible.

13 MR. VAN ETTEN: Thank you.

14 THE COURT: Are you done?

15 MR. DELLA JACONO: I'm done.

16 THE COURT: Anything further?

17 MR. VAN ETTEN: I'm done with this witness, yes,
18 Judge. I'm sorry, I should let the witness go.

19 THE COURT: You may step down.

20 Mr. Van Etten.

21 MR. VAN ETTEN: Your Honor, at this time, as per our
22 discussions, I would like to do a brief read in from Alin
23 Vadanuta's deposition transcript.

24 THE COURT: Any objection?

25 MR. DELLA JACONO: You resolved the objection over

MAKGcsi6

1 MR. VAN ETTEN: No. Thank you, your Honor.

2 THE COURT: Any possibility you're going to settle
3 this case?

4 MR. DELLA JACONO: The money guy left.

5 THE COURT: He's been here all the time.

6 MR. DELLA JACONO: I have tried. I have tried.

7 (Adjourned to October 21, 2022, at 9:30 a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25