

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

2 COURT OFFICER: Come to order.

3 THE COURT: Dr. Guy, you can take your seat.

4 (Whereupon, the doctor is approaching the witness
5 stand)

6 COURT OFFICER: All rise. Jury entering.

7 (Whereupon, the jury enters the courtroom)

8 THE COURT: Welcome back. Take your seats. I hope
9 everyone enjoyed lunch. Dr. Guy, I remind you that you
10 remain under oath.

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Counsel, you may inquire when you're
13 ready.

14 CONTINUED CROSS-EXAMINATION BY

15 MR. VAN ETEN:

16 Q Doctor, did you get a chance to look at the records
17 from PMR?

18 A I did and it says therapeutic exercises included.

19 Q And when was that done?

20 A I think almost every single visit.

21 Q What I was asking was about core exercise, do you
22 recall that?

23 A Core?

24 Q Yes.

25 A There is no such thing as core exercises in itself,

1 it's under therapeutic exercises at the discretion of the
2 physical therapist.

3 Q Right. And here we have throughout and if you want an
4 example, we did some hot and cold presses, range of motion with
5 therapeutic exercises. Would that be stretching like we
6 discussed before?

7 A Yes, sir. It could be stretching.

8 Q And massage therapy. I would say sixty or seventy
9 percent of the time?

10 A And also flexibility and strengthening and endurance
11 exercises.

12 Q And doctor, strengthening, was there exercises to
13 strengthen the actual physical body other than stretching, is
14 what I am asking?

15 A I answered your question by stating that therapeutic
16 exercises was given to the patient and therapeutic exercises is
17 not just core exercises.

18 It's a combination of different exercises at the
19 discretion of the physical therapist and the patient's ability
20 to comply.

21 Q Okay. So, when they say therapeutic exercises, do you
22 know exactly what types of therapeutic exercises they gave on
23 any one of those given treatments?

24 A It doesn't list exactly what.

25 Q So, when I ask about strengthening when it just says

1 general flexibility or range of motion, that has nothing to do
2 with strengthen; is that correct?

3 A But it also says strengthening as well.

4 Q When I had asked you range of motion and flexibility,
5 that has nothing to do with strengthening; is that fair?

6 A The way that you phrase that question, yes.

7 Q Okay. So, the jury later on if they choose, they can
8 look at the notes and they can see on all of the fifty whether
9 or not any strengthening was done and how frequently; is that
10 fair?

11 A Okay, fair.

12 Q Good. In your notes -- by the way, Mr. Harris asked
13 you and I am jumping a little bit so I apologize.

14 You had talked about the physical therapy that you made
15 recommendations as part of your life care plan?

16 A Yes, sir.

17 Q And that was in January of 2024?

18 A That's correct.

19 Q And you recommended physical therapy one time per week?

20 A Correct.

21 Q And you also recommended some annual extra physical
22 therapy to check to see what they are doing to see if new
23 exercise or modalities are required?

24 A No. I did not say that.

25 Q I thought there was one visit a year as a follow-up?

1 A One physical therapy session per week and then I said
2 if the patient had surgery, the patient would need additional
3 physical therapy sessions three times a week for four to six
4 months.

5 Q So, you started treating her and you recommended that
6 she treat one time per week?

7 A That's correct.

8 Q And you would expect your patients to follow your
9 recommendations; is that correct?

10 A I would.

11 Q Because that is how they get better; is that fair?

12 A Yes.

13 Q So, that was just January of 2024. We are now in
14 December of 2024. One visit per week roughly four per month,
15 maybe a little more, but we will go with that, that would be a
16 minimum of forty or more visits of physical therapy if the
17 patient is following your recommendations; is that fair?

18 A Fair, yes.

19 Q And she has gone four times; is that correct?

20 A Correct.

21 Q So, would it be fair then if Ms. Watson testified to
22 this jury that physical therapy was not helping her for her to
23 stop physical therapy?

24 A Is that a question?

25 Q Yes.

1 A I don't understand your question.

2 Q Do you know why she stopped the physical therapy?

3 A I don't know. Ask her.

4 Q Doctor, you treated her --

5 A I don't know.

6 Q Did you ever ask your patient when she came in to see
7 you why are you stopping the physical therapy that I am
8 recommending that you need to get better?

9 A I did.

10 Q So, then you do know why she stopped?

11 A But the answer was not a good answer.

12 Q Okay. Did you ever say Ms. Watson, if I am going to be
13 able to treat you so that you can get to your utmost
14 capabilities, you need to follow my recommendations, could you
15 please do that?

16 A Not in those exact words.

17 Q In similar words?

18 A In some words.

19 Q Okay. And she chose to ignore you?

20 MR. HARRIS: Objection.

21 Q She is not getting the therapy so she chose to ignore
22 you; fair?

23 MR. HARRIS: Objection.

24 THE COURT: You can answer the question.

25 A I don't know. You have to ask the patient.

1 Q Now I want you to assume that she told the jury
2 physical therapy was not working for her; is that fair?

3 MRS. HOLLAND: Objection.

4 Q Sorry, make the assumption that she told the jury that.
5 If physical therapy was not working for her, would there be any
6 need for her to get it in the future if it's not working now?

7 MR. HARRIS: Objection. Improper predicate.

8 THE COURT: Ask it again.

9 MR. VAN ETTEN: Sure.

10 Q Let ask you this: We talked about PMR and physical
11 therapy stopped in July of 2021; is that fair?

12 A Yes.

13 Q So, July of 2022, July of 2023 and then about six
14 months later until you saw her, that is the first time she did
15 physical therapy again?

16 A Right.

17 Q And I want you to assume that she testified that the
18 physical therapy from PMR --

19 MR. VAN ETTEN: Withdrawn.

20 Q Did PMR say in the records that she was no longer
21 getting any benefits from physical therapy?

22 A There is a lot of notes. I don't remember seeing that
23 note.

24 Q Well, would that be relevant when you try to make a
25 life care plan if you have a patient that went for physical

1 therapy from almost a year and the physical therapy stopped
2 because it wasn't effective?

3 MR. HARRIS: Objection.

4 Q It wasn't effective and then she went to you at some
5 point in time in January and you said let's restart it and then
6 she stopped because as we assume she told the jury it wasn't
7 working for that reason?

8 MR. HARRIS: Objection.

9 Q I want you to make that assumption. So, if it did not
10 work after the first year and then she went to you four times
11 and it did not work.

12 Can you reasonably make a projection into the future
13 that she needs physical therapy one time per week and that she
14 will get it?

15 MR. HARRIS: Objection to the form and to
16 substance.

17 THE COURT: It's a very long question, doctor. Did
18 you understand it?

19 THE WITNESS: I did. And that question can be
20 answered with an explanation and it requires an explanation.
21 It cannot be answered with yes or no.

22 Q Go for it.

23 A Okay, very good. The purpose of physical therapy is
24 not designed to cure. A lot of patients get that mixed up.
25 They think that when they go to physical therapy, the pain is

1 going to disappear. No.

2 One of the most important parts of the physical therapy
3 is to prevent this from getting progressively worse. It's to
4 diminish some of pain and spasms.

5 In the medical field, we say if you don't use it, you
6 lose it. You have to do range of motion to the body. The body
7 gets its nourishment from range of motion.

8 The shoulder needs range of motion. The neck needs
9 range of motion. There is nothing like professional range of
10 motion and flexibility that they can do compared to what the
11 patient does.

12 The patient may go like this and say oh, it hurts so
13 let me stop. The professional physical therapist will go above
14 and beyond, but it may not cure the pain, but it's still
15 medically indicated to prevent this condition from getting
16 worse. A lot of patients don't understand this concept.

17 Q Okay. Now doctor, anything else that you want to add
18 to that?

19 A No.

20 Q Okay. So, you are aware that Ms. Watson had surgery on
21 her neck?

22 A Of course. We talked about it.

23 Q And would a natural and proper course of treatment
24 after surgery on the neck would be to undertake physical
25 therapy?

1 A Yes.

2 Q And did you review her notes from Dr. Macagno's office?

3 A I did.

4 Q And did she ever go for physical therapy after her
5 cervical spine surgery?

6 A I don't remember in the medical records. There is a
7 lot of records. I'm not sure.

8 Q We asked Dr. Macagno about that, just to assume that he
9 said in his notes, it kept saying patient still has not gone for
10 physical therapy and that is in the notes and records.

11 A Okay.

12 Q Would that be another example now we had stopping in
13 2021, being recommended by a surgeon after surgery, but not
14 doing it and you recommending one time per week to do it and
15 it's not being followed, would that be reasonable then to say
16 that in the future, she will need five hundred thousand dollars
17 in physical therapy costs to maintain or keep herself better?

18 A I still stand by my answer. It is still medically
19 indicated, whether or not the patient does it.

20 And I gave a very good example of a diabetic patient
21 that requires insulin twice a day and doesn't take it. It
22 doesn't mean it's not medically indicated. It just means that
23 the patient will have the ill effects and not have the proper
24 benefit from those treatment.

25 Q When you make that recommendation like an

1 endocrinologist may make a recommendation for someone that
2 requires insuline, the only way those treatments will occur
3 where she will be able to recover the money to pay for that is
4 if they are actually going to go forward; is that true?

5 A All I am talking about is what is medically indicated.
6 I am not her police person. I am not her detective. This is
7 what is medically indicated.

8 Q So, you have no way of knowing if she will ever undergo
9 physical therapy in the future?

10 A No.

11 Q That would be speculation to say that she will
12 particularly because she stopped in 2021, she never went after a
13 cervical spine surgery and she has not gone to physical therapy
14 with you since September of 2024; is that correct?

15 A Wrong. Not true. As the condition worsens, she will
16 have no choice, but to be forced to follow-up with all of the
17 medical advice given to her. She will have no choice. She will
18 have to do it by force. She will have no choice.

19 Q But you have no way of knowing that she will; is that
20 correct?

21 MR. HARRIS: Objection. Asked and answered.

22 THE COURT: Move on.

23 MR. VAN ETTEN: It was in response to his answer,
24 but I will move on, Judge.

25 THE COURT: Thank you.

1 Q You said that your office did physical therapy on four
2 occasions?

3 A Let me just make sure. Yes, that's correct.

4 Q And you were able to recite all of the future costs and
5 treatment, but you don't remember how many times she had
6 physical therapy without looking at your notes?

7 A I am very careful how I answer your questions, sir.
8 Because I want to be careful. I don't want you to set a trap
9 for me. I want to make sure. And now you are grinning again.

10 Q Doctor, I think you probably have done this more than I
11 have over the years so I am more worried about you setting
12 trap --

13 MR. HARRIS: Objection.

14 THE COURT: Sustained. Rephrase the question.

15 MR. VAN ETTEN: Sure, Judge.

16 Q The question on the physical therapy is since you had
17 this episode with the high blood pressure and in physical
18 therapy, if you are doing therapeutic exercises, you would agree
19 with me that you need to be concerned about her blood pressure
20 before she does physical therapy?

21 A If it's abnormally high, yes.

22 Q Do you have any indication that you actually checked
23 her blood pressure before she did physical therapy?

24 A You asked that question over times five times. And I
25 answered your question over five times. The answer is no. I

1 did not check it.

2 Q Okay. Now when you first started seeing her, she was
3 treating with Dr. Macagno; is that correct?

4 A Yes.

5 Q And you talked earlier with Mr. Harris about you refer
6 patients to doctors all the time; is that correct?

7 A When it's medically indicated, yes.

8 Q On my question, you said that doctors sometimes refer
9 you patients a lot?

10 A That's correct.

11 Q So, you knew she was treating with Dr. Macagno. Did
12 you ever then call him and consult with him and say hey, I am
13 starting to treat your patient, this is the plan that I want to
14 do for her, what do you think?

15 A That is not how it works in the medical field, sir.
16 No, I don't call the physician to tell him that.

17 I refer the patient back to Dr. Macagno for another
18 update and I am hoping that the doctor asks the patient the
19 right questions, who are you treating with and the patient will
20 state who she is treating with.

21 Q But doctor, you are saying that you are hoping the
22 doctor does the right thing and you hope the patient does the
23 right thing and all you have to do is make a phone call and say
24 I saw her and I have new MRI films, maybe you should be aware of
25 this?

1 MR. HARRIS: Objection. Asked and answered.

2 A That is not how it works.

3 THE COURT: He answered it.

4 Q Well, I believe you are saying that she needs a future
5 revision surgery; is that correct?

6 A Yes.

7 Q Did you recommend to Dr. Macagno, her treating spinal
8 surgeon saying, hey, I examined her, I got new X-rays, she needs
9 a spinal surgery?

10 MR. HARRIS: Objection, Your Honor.

11 THE COURT: Overruled.

12 A That is not how it works in the medical field. I refer
13 the patient back to Dr. Macagno. I leave it at his discretion.
14 He already told the patient she needs back surgery. It's up to
15 both the patient and the doctor to make the next move.

16 Q Exactly. It's up to Dr. Macagno and the patient, not
17 you to recommend a future surgery; is that true?

18 A In part, true, but not fully true.

19 Q So, then for the future cervical surgery and the future
20 lumbar spine surgery, it's up to Dr. Macagno and the patient,
21 not you to make the recommendation in the future; is that
22 correct?

23 A No, not true. I can make the recommendation. It's the
24 surgeon that will do the procedure.

25 Q Correct. You can make the recommendation because you

1 were hired to provide a life care plan from Mr. Harris' office;
2 is that correct?

3 MR. HARRIS: Objection.

4 THE COURT: Sustained.

5 Q When you wrote the life care plan, were you paid by Mr.
6 Harris' office for the plan?

7 A Yes.

8 Q How much were you paid?

9 A Three thousand.

10 Q And you testified earlier today and by the way, I am
11 not going to ask your history, but you said that you get five
12 thousand dollars for half day. So, I am assuming you will get
13 more today?

14 A Hopefully.

15 Q That is what my doctor said to me, too.

16 A Alright.

17 Q You made statements in your report about cognitive
18 deficits of Ms. Watson; did you not?

19 A I did.

20 Q And you are aware that she treated with a neurologist
21 after this incident; is that correct?

22 A Trying to think. I'm not sure.

23 Q Dr. Kwan?

24 A Yes.

25 Q And you saw his records?

1 A I did.

2 Q And you saw the diagnostic testing films because he
3 sent out her for an MRI of the brain and DT sensor imaging --

4 A That's correct.

5 Q Okay. So, you are aware that by November of 2020,
6 there was no indication in the treating neurologist of Ms.
7 Watson that she had a cognitive deficit; is that correct?

8 A That was postconcussion syndrome. Cognitive deficit is
9 part of the postconcussion syndrome.

10 Q Cognitive deficit would be certain things where you say
11 they may have memory loss?

12 A Correct.

13 Q And they may have other types of things where they are
14 effective with their mental capabilities; is that correct?

15 A Yes.

16 Q Did Dr. Kwan say that she had any of those types of
17 cognitive deficits?

18 A No, but the patient told me that she has those
19 cognitive deficits.

20 Q But you just said that you put her on medicine that
21 could make her sleepy and forget things?

22 A No, wait a minute. You are taking things out of
23 context.

24 THE COURT: Hold on now because you are both
25 talking over each other.

1 Q Well, didn't you say that you put her on Flexeril? You
2 said that you gave her medications called Flexeril that you said
3 could make her sleepy and have problems with memory; is that
4 correct?

5 A I was asked what the side effects are. I answered the
6 question. That is the side effects. So, when she has a lot of
7 spasms, you take it. And you stay home. You don't go out of
8 the house. You don't drive. You don't work with sharp objects
9 and you take the lesser of the two evils.

10 The lesser of the two evils is when she has a lot of
11 spasms, she takes the medication. She will be sleepy and she
12 will lie down.

13 Q And is she taking those medications now?

14 A As of today, I don't know, but as of the last time that
15 I saw her, yes.

16 Q That was in September?

17 A That's correct.

18 Q I want you to assume again that she testified
19 previously that she's only taking Ibuprofen right now for any
20 pain that she has and she previously had indicated when we asked
21 her about her deposition on November 14, 2024, that she also
22 said she was only taking Ibuprofen.

23 Would that be inconsistent with your providing her with
24 prescriptions for medication?

25 MR. HARRIS: Objection.

dq- B-take

1 THE COURT: Overruled.

2 A If true, then obviously yes, but Ibuprofen works
3 similarly as Meloxicam.

4 Q So, again, we go back to the future medicines that you
5 are prescribing that she is going to need for life, but she is
6 not following your instructions currently; is that fair?

7 A The answer is yes, for a very good reason.

8 Q Okay. So, we do not know whether these medicines will
9 be required or taken by her in the future without speculating,
10 is that true?

11 A False. They are medically indicated. Whether she
12 takes them or not, they are medically indicated.

13 Q And could you tell me how many times you have sent her
14 out for lab work since you gave her those medicines?

15 A None, for a very good reason.

16 Q You seem to have a very good reason for everything not
17 being done?

18 MR. HARRIS: Objection to the comment.

19 THE COURT: That is not a question. Next question,
20 please.

21 MR. VAN ETEN: That was his testimony.

22 THE COURT: Next question.

23 MR. VAN ETEN: Okay.

24 Q Have you done any lab work?

25 MR. HARRIS: Objection, Your Honor.

1 THE COURT: Sustained.

2 MR. VAN ETTEN: Thank you. So, I did ask it.

3 Thank you.

4 Q When she was treating with PMR and they prescribed
5 medicine, did they do any lab work for her?

6 A I don't know. I did not see anything in the records.

7 Q Okay. And when she got pain medicine after her
8 surgery, did they do follow-up lab work with Dr. Macagno's
9 office or anyone else?

10 A I don't know.

11 Q Okay. So, the only person who is recommending her to
12 do lab work to go with medicine that she may or may not take in
13 the future is you; is that fair?

14 A I am the only one that has been asked to do a life care
15 plan and that is part of the life care plan.

16 Q And that is for the purposes of this litigation; is
17 that fair?

18 A Yes.

19 Q A couple of quick background questions for you. When
20 you first got out of medical school, you started your residency
21 and you did not complete your first residency; is that fair?

22 A Sorry?

23 Q When you first got out of medical school, you started
24 internal medicine residency and did not complete it; is that
25 correct?

1 A I never planned to complete it. It was a requirement
2 for physical medicine and rehabilitation residency, one year of
3 internal medicine or one year of general surgery, ideally, one
4 of each.

5 Q And you did not complete your surgery residency?

6 A I just finished explaining to you.

7 Q Have you not testified in other litigations and cases
8 that have come to court about that issue?

9 MR. HARRIS: Objection to the form.

10 THE COURT: Overruled.

11 MR. HARRIS: I will withdraw the objection to save
12 time.

13 THE COURT: Okay.

14 Q Have you not testified in other lawsuits about your
15 residencies, doctor?

16 A Of course I have, yes.

17 Q Is one of them Cabrini as well?

18 A Yes.

19 Q What was that for?

20 A General surgery, one year.

21 Q I thought there was a five-year program?

22 A That's if you want to be a general surgeon.

23 Q And you testified about Queens College; is that
24 correct?

25 A Yes.

1 Q And you went there for college?

2 A Yes.

3 Q Did you graduate?

4 A No. You don't have to, I did three and a half years
5 and in Europe medical school and --

6 Q I asked if you graduated --

7 A No, I did not.

8 Q Did you graduate; yes or no?

9 A I did not.

10 Q Okay. So, you did not complete college?

11 A I did not have to. I went right into medical school.

12 Q Okay. Isn't it also true that you did not complete
13 college because you had failed biology and organizational chem
14 which were courses that you needed for medical school?

15 A No, that is not the reason why. Your question is
16 correct, but that is not the reason why. Would you like to know
17 the reason why?

18 Q So, you did fail biology and organizational --

19 MR. HARRIS: Objection.

20 THE COURT: Overruled.

21 Q Chem at Queens College; is that correct? You did fail
22 them; is that correct?

23 A Yes. One semester, I did. I took it the next semester
24 and I passed.

25 Q Thank you. Now I take it that you are treating Ms.

1 Watson for pain?

2 A Yes.

3 Q And are you board certified in pain management?

4 A No.

5 Q Is there a board certification in pain management?

6 A There is.

7 Q Now you commented today about you looked at some films.

8 In your report, I think we started at one point and I went past

9 it. In your report --

10 MR. HARRIS: Objection to the comment.

11 THE COURT: Ask a question.

12 MR. VAN ETTEN: It's foundation.

13 Q In your report in January, did you review various
14 reports of MRIs?

15 A Yes.

16 Q And that was the basis of your opinions at that time in
17 January of 2024?

18 A In part. Not in full. In part, yes.

19 Q Well, let me ask you this: Does it say in that report
20 that is in part and not full?

21 A That is not how it works in the medical field. No,
22 sir. That is not how it's written. That is not how I write
23 things.

24 Q Because if I am mistaken, let me know.

25 The reports that you reviewed were from MRIs in 2022

1 and 2024 subsequently, the ones that you referred her for; is
2 that correct?

3 A Correct.

4 Q So, you talked about 2019 this morning; is that
5 correct?

6 A Correct.

7 Q As well as 2020?

8 A That's correct.

9 Q But you did not have those films when you prepared your
10 report; is that correct?

11 A That's correct.

12 Q Were you aware that she had these tests done in 2019
13 and 2020 of her cervical spine and her lumbar spine?

14 A 2020, yes. 2019, no.

15 Q Okay. So, you knew about 2020, but you did not look at
16 those films to review them when you prepared your report; is
17 that correct?

18 A That's correct.

19 Q And again, in your report, you state that you looked at
20 the reports, not the actual films; is that correct?

21 A That's correct.

22 Q And one of the things that you said in there was that
23 you believe that these were her complaints to you were caused
24 and related to the August 24, 2020 incident; is that correct?

25 A That's correct.

1 Q And you did so without having looked at any of the
2 actual film studies taken within three weeks of the incident; is
3 that correct?

4 A That's correct.

5 Q And then earlier today, you just talked about the 2019
6 film studies from May 24, 2019 of the cervical spine; is that
7 correct?

8 A That's correct.

9 Q And you said that you did not look at that until this
10 morning?

11 A That's correct.

12 Q How long did you review it before you testified?

13 A You were right there watching me when I was reviewing
14 it.

15 Q I know. And I am asking you --

16 A Did I look at my watch and count minutes, no. I
17 reviewed it to the point that it needed to be reviewed.

18 Q Okay. Doctor, again, to be fair, you have done this
19 before. The jury wasn't there when you were reviewing it; is
20 that right?

21 A But you were there.

22 Q Right, but I can't tell testify for you. So, that's
23 why I asked you how long it took to review it --

24 A And I answered your question. I did not look at the
25 watch to count minutes.

1 Q Was it more than two minutes?

2 A Yes.

3 Q For one film?

4 A You cannot go by just one film. You have to look at
5 all of them and pick the right film.

6 Q And had you to go through all of them to find the right
7 film to show the jury what you wanted to say --

8 A No, what is best --

9 MR. HARRIS: Objection.

10 THE COURT: Sustained.

11 MR. HARRIS: Move to strike.

12 THE COURT: So stricken. The jury will disregard
13 that last question.

14 Q Well, you looked at multiple slides --

15 A Yes.

16 Q And you chose which ones that you wanted to show to
17 best illustrate your thoughts; is that fair?

18 A Not to best illustrate my thoughts. To best illustrate
19 the pathology. My thoughts are not on the picture. It's the
20 actually anatomy that is on the picture.

21 Q And in 2019, there was pathology in Ms. Watson's neck;
22 is that true?

23 A Yes, and I showed them to everyone.

24 Q But when you gave your opinion on causation of the
25 injuries, you were unaware of that; is that true?

1 A That was asked and answered several times. The answer
2 is true, yes.

3 Q And Mr. Harris asked you about symptomology and if it
4 was asymptomatic before the incident, do you remember him asking
5 you that?

6 A I do.

7 Q And asymptomatic would be no complaints of pain; is
8 that true?

9 A That's correct.

10 Q Would it also be no complaints of numbness?

11 A Asymptomatic means no complaints of anything. No
12 numbness. No pain.

13 Q Showing you Plaintiff's Exhibit 15 in evidence, doctor.
14 Could you take a look at this document, please? (Hanging.)

15 A Okay.

16 Q Is that from May 24, 2019?

17 A Yes.

18 Q Is that the date of the MRIs of the ones that you
19 looked at and showed the jury this morning?

20 A Yes.

21 Q Does that indicate something under history about Ms.
22 Watson?

23 A Yes.

24 Q What does it say?

25 A Patient complains of neck pain that radiates to the

1 right extremities with numbness, weakness and headaches.

2 Q Those would be symptoms?

3 A Yes.

4 Q Those would be symptoms involving an injury to her
5 neck?

6 A No, not necessarily an injury, but a condition to her
7 neck.

8 Q A condition to her neck, not an injury?

9 A Yes.

10 Q Just like the films from 2020 could show a condition in
11 her neck, not related to an injury; is that true?

12 A The way you phrase the question is it possible, yes,
13 but not in this case.

14 Q Okay, doctor, do you know how she got these herniations
15 because you said herniated discs in C2/C3, C3/C4, C4/C5 C5/C6,
16 C6/C7, C7/C8 but not C8/T1; correct?

17 A C7 is where it ends.

18 Q Correct. So, do we know how she got these herniations?

19 A I did not examine her. I did not take any history. I
20 did not see any notes. I did not see any physical examination
21 findings. All I see is the MRI. So, I can't answer your
22 question nor can anybody else without the notes.

23 Q The first thing that you do is take a history; is that
24 correct?

25 A Yes.

1 Q You asked about prior injuries?

2 A Yes.

3 Q Did you ask Ms. Watson about prior injuries or problems
4 with her neck?

5 A I did.

6 Q And she denied them?

7 A Correct. Only the right shoulder is all she told me
8 about.

9 Q And this would be inconsistent with that history that
10 you were given; is that correct?

11 A Yes.

12 Q And if you are going to make a causal connection,
13 wouldn't it be necessary for you to have all of the records in a
14 full and good history of prior injuries, treatments and testing?

15 A The way you phrase the question, the answer is yes.

16 Q And you have testified to that before; is that correct?

17 A Yes.

18 Q So, having seen the May 29, 2019 film, would you agree
19 that you did not get a good history before you made your
20 opinions on causation?

21 A About that neck, that's correct.

22 Q Can disc herniations such as the ones that you saw on
23 the 2019 films be caused by degeneration?

24 A Can it?

25 Q Yes.

1 A With a remote possibility, yes.

2 Q You are familiar disc herniations and I think you even
3 said you compared me and said looking at me with my age and with
4 my gray hair, you might expect that I would have degenerative
5 conditions in my back; is that correct?

6 A That's correct. I said that, yes.

7 Q If I happen to have a herniation in my back without any
8 history of injury, that would be a degenerative condition; is
9 that correct?

10 A That's correct.

11 Q So, that is something that you are familiar with as a
12 physician that disc herniations can be caused by degeneration?

13 MR. HARRIS: Asked and answered.

14 THE COURT: I will allow it.

15 A It can be.

16 MR. VAN ETTEN: Thank you.

17 Q And sometimes you can see the manifestations of the
18 degeneration; is that correct?

19 A Yes.

20 Q And I think you mentioned osteophytes being one thing?

21 A Right.

22 Q I think at some point you may have mentioned
23 desiccation?

24 A Correct.

25 Q And what is desiccation?

1 A Disc.

2 Q The drying out of the disc?

3 A Yes.

4 Q And is disc dehydration the same thing as that,
5 synonymous to that?

6 A Yes.

7 Q Bone spurring can also be evidence of a degenerative
8 condition?

9 A Yes.

10 Q Arthritis could be evidence of a degenerative
11 condition?

12 A Yes.

13 Q Because these are all things that take time to develop;
14 is that fair?

15 A Yes.

16 Q And we have no history of a prior accident in 2019 for
17 Ms. Watson; you would agree with that?

18 A Yes.

19 Q So, would it be fair then to opine that the conditions
20 in her neck that you see in the 2019 films are from the aging
21 process and degeneration?

22 A It's a possibility, yes.

23 Q And doctor, would you agree with me also that with
24 degeneration --

25 MR. VAN ETTEN: Withdrawn.

1 Q Doctor, would you agree with me also that with
2 herniations, once you get that herniation, the disc starts
3 leaking?

4 A Yes.

5 Q And you have testified to that before?

6 A That's correct.

7 Q So, here sixteen months before the incident, we have
8 disc herniations; is that true?

9 A Yes.

10 Q So, sixteen months before the incident, her discs in
11 the neck are leaking; is that true?

12 A True.

13 Q So, that condition as you just said, once you get a
14 herniation, that is progressive; is that true?

15 A And I also said trauma makes it works.

16 MR. VAN ETTEN: Move to strike as not responsive.

17 THE COURT: It was responsive. Next question.

18 MR. HARRIS: Objection to his motion.

19 THE COURT: Okay.

20 Q Doctor, did you not say that once the disc starts
21 leaking, that it's progressive? And I am not asking about
22 trauma making it worse. Only that it will continue to
23 progress --

24 MR. HARRIS: Objection. Asked and answered.

25 THE COURT: It was answered. I will allow it. Did

1 you understand it?

2 THE WITNESS: I did.

3 THE COURT: You can answer it.

4 THE WITNESS: It can.

5 THE COURT: Okay.

6 Q So, for sixteen months, we have a progression of the
7 herniations in her neck before the accident, would you agree
8 with that?

9 MR. HARRIS: Objection. Asked and answered.

10 THE COURT: It was answered. It's repetitive.
11 Move on, please.

12 Q Doctor, it's your testimony that all of the discs were
13 worse when you saw them on the films three weeks after the
14 accident?

15 A You can clearly see them that it's worse. It was also
16 reported by the board certified radiologist that it showed a
17 pathology and it's clearly worse.

18 Q And doctor, did you look at the Stand-Up MRI reports
19 from 2020?

20 A Yes.

21 Q For the back and neck?

22 A Yes.

23 Q Are they part of your records now?

24 A Yes.

25 Q And they were not before?

1 A I believe they were part of my records before as well.
2 It was not the actual viewing, but the reports, yes.

3 Q I am talking about September 18th because we said
4 before, you had only talked about the 2022 and the 2024 in your
5 reports; is that correct?

6 A Right there on page one, third paragraph. It's right
7 here in nice, big, bold letters.

8 Q Okay. What is levoscoliosis?

9 A Shifting of the spine.

10 Q And is that something that could cause degenerative
11 disease?

12 MR. HARRIS: Objection.

13 THE COURT: Overruled.

14 A If it's severe, it can. If it's mild, no.

15 Q Did you comment on it in your report?

16 A Insignificant.

17 Q By the way, we are talking about the Stand-Up MRI
18 reports now of the cervical spine. We just talked about disc
19 desiccation.

20 I am going to show you the report from Stand-Up MRI
21 from September 20, 2020. This is from Plaintiff's 14 in
22 evidence. Right there --

23 A It's only disc desiccation at C3/C4 and C4/C5, not at
24 the other levels.

25 Q Doctor, I did not ask the question yet. Doctor, does

1 that report indicate that there was disc desiccation in the
2 cervical spine three weeks after the incident and I will
3 follow-up?

4 A At two levels, yes.

5 Q And you said it was only two, C4/C5. Is that one of
6 the two?

7 A Yes.

8 Q Where did she have the surgery?

9 A C4 through C6.

10 Q So, already developing three weeks after the incident
11 is desiccation --

12 A Is that a question?

13 Q Isn't it true that desiccation would be developing
14 before the incident of August 24, 2020?

15 MR. HARRIS: Objection to the form. He made a
16 statement and then he asked the question.

17 THE COURT: Ask the question.

18 Q Doctor, would you agree then if desiccation was found
19 by Stand-Up MRI three weeks after the incident, that had to
20 preexisted the August 24, 2020 incident?

21 A Yes and no. We don't know for sure. It's possible
22 both ways.

23 Q So, a drying out of the disc which is what you said is
24 disc desiccation would occur in three weeks is your testimony?

25 A A slight amount of disc desiccation when the water

1 leaks out, it could have happen as early as three weeks, yes.
2 The amount of desiccation is. It's very minimal. It's not a
3 lot. It's a very, very minimal.

4 Q So, if it's very minimal, it's a very minimal injury
5 then; is that true?

6 A No. That is not how it works.

7 Q So, let me ask you this: You have already said that
8 leaking out starts when the herniation occurs. So, you had
9 sixteen months of leaking from that very disc; is that true?

10 MR. HARRIS: Objection. Asked and answered.

11 THE COURT: I will allow it.

12 A It could leak. I also said it takes several months to
13 several years to occur.

14 So, could it have not leaked out during that time?
15 It's also a possibility. That's why we have to compare
16 everything from A to Z.

17 We have to see the full picture, the full clinical
18 picture, the electrodiagnostic studies, the MRIs, the
19 interoperative findings.

20 You have to put it all together. You cannot go by one
21 single MRI and say this is the whole picture and this is caused
22 by this, no. You have to put it all together.

23 Q And you did not do that when you wrote your report
24 because you did not even know about the 2019 films; is that
25 correct?

1 A You asked me that question ten times already.

2 Q But you just said the whole picture. You did not have
3 the whole picture --

4 MR. HARRIS: Objection. Asked and answered.

5 A I did not.

6 THE COURT: Move on.

7 Q I have another one that is interesting.

8 MR. HARRIS: Objection to comments.

9 THE COURT: Stop.

10 MR. HARRIS: You keep doing this.

11 MR. VAN ETTEN: I can't help myself. It's my
12 personality. I apologize. It's obnoxious.

13 MR. HARRIS: But you have to be a professional
14 attorney in court, Judge.

15 THE COURT: Ask another question.

16 Q Doctor, did you not in your life care plan make a
17 projection about the need for future MRIs of the shoulder of Ms.
18 Watson?

19 A I was told not to talk about the shoulder.

20 Q By who?

21 A By Mr. Harris.

22 Q That's fine. Is it in your report?

23 A Yes. It is in my report.

24 Q So, you make that recommendation in January, is that
25 true?

1 A Yes.

2 MR. HARRIS: Objection.

3 THE COURT: Let's approach.

4 MR. HARRIS: Now I have to move to strike that
5 testimony.

6 (Whereupon, at this time, a discussion was held at
7 sidebar.)

8 THE COURT: Let's take a five-minute bathroom
9 break. Don't discuss the case.

10 (Whereupon, a brief break was taken as requested.)

11 COURT OFFICER: All rise, jury exiting.

12 (Whereupon, the jury exits the courtroom.)

13 THE COURT: Okay. There was an objection made, at
14 which time, I called for sidebar.

15 The jury has taken a five-minute recess so the
16 objection is from Mr. Harris.

17 MR. HARRIS: The objection was based upon our
18 withdrawal of the shoulder claim and I asked him no
19 questions or opinions about the shoulder because we have
20 withdrawn the shoulder claim.

21 Counsel is now opening the door to a previous
22 claim. There is just no basis for it at this point and
23 frankly, it's confusing and it's a waste of time.

24 THE COURT: Okay. I will say that when that line
25 of inquiry started, I did not see where it was going either.

1 There is no longer a shoulder claim.

2 So, why is it relevant and what are we doing here,
3 counsel?

4 MR. VAN ETTEN: Number one, the economist testified
5 to it and projected it out as part of her life care plan.

6 So, now I have to be able to attack that and take
7 that out because I was not allowed to finish the questioning
8 that I had on these issues.

9 Number two, they opened on it. They said they were
10 proving it and Ms. Watson testified to it and said she
11 needed surgery and wanted surgery and that is why she went
12 to Dr. Katzman before trial and that was her plan.

13 And now it's being withdrawn. Our claim is that
14 these injuries are being exaggerated and that is what we
15 opened with and that's what we told them and now they are
16 withdrawing one of the exaggerated claims.

17 I have every right to question this doctor about
18 what he said she needed ten or eleven months ago and now
19 they chose to withdraw it because it's an exaggerated claim
20 that did not exist.

21 THE COURT: Is it in the economist's report?

22 MR. HARRIS: Judge, I don't know if it's in the
23 report. It was probably in there initially in the actual
24 chart.

25 THE COURT: The issue is if they ask for that chart

1 and it goes back, now the calculations are now off.

2 MR. HARRIS: But you have our representation, Your
3 Honor.

4 THE COURT: I know. The verdict sheet will not say
5 anything about it --

6 MR. HARRIS: And we will also cross it out during
7 summation and explain to the jury that we are not seeking
8 any economic future costs, as it relates to the shoulder, if
9 it is in fact still in that exhibit. Now I am saying that
10 and binding my client on that.

11 THE COURT: I agree.

12 MR. HARRIS: Now what?

13 MR. VAN ETEN: Judge --

14 MRS. HOLLAND: I have to actually speak now because
15 I did the examination of the economist and there was
16 absolutely no testimony from the economist regarding any
17 body parts that were injured in this case. Absolutely none.
18 She said that she relied on the report of Dr. Guy. And
19 that's it.

20 THE COURT: But the issue is Dr. Guy's report --

21 MRS. HOLLAND: Your Honor, the charts that are in
22 evidence that are the charts that outline the specific
23 categories of care and the cost. That is number one.

24 So, there has been no testimony from any economist
25 about a shoulder and that is counsel's basis or one of the

1 basis for his claim that he should be able to cross-examine
2 Dr. Guy regarding the shoulder.

3 THE COURT: Okay.

4 MR. VAN ETTEN: Item two of the life care plan of
5 Dr. Guy, the patient will need periodic MRIs of the cervical
6 spine, lumbar spine, brain and the right shoulder. And then
7 he prices them out and she projected out the cost.

8 THE COURT: Mr. Van Etten, I share your concern. I
9 don't want the jury seeing numbers that are calculated
10 because it should not be because you withdrew the claim.

11 So, with respect to Mrs. Holland, I don't know that
12 answered my question. Do those numbers include treatment
13 for the shoulder? That is the problem.

14 MRS. HOLLAND: Give me one second, Your Honor.

15 MR. HARRIS: Mr. Van Etten, could you tell me which
16 column you are specifically referring to?

17 MR. VAN ETTEN: MRIs.

18 MR. HARRIS: Okay. According to Dr. Guy's report,
19 he says the patient will need periodic MRIs of the cervical
20 spine, lumbar spine, brain and the right shoulder.

21 So, with respect to one of the four categories, it
22 includes the right shoulder.

23 So, we will if the Court permits, if counsel
24 agrees, we will just take twenty-five percent off of that
25 number because that is one-quarter of the actual number,

1 unless you have a better way to do that.

2 MR. VAN ETTEN: I do not agree and I will do it
3 with the brain, too. I will go through each item on this
4 list as to why they are not necessary.

5 MR. HARRIS: You will do what the Court allows you
6 to do, I would think.

7 MR. VAN ETTEN: Yes, and I believe that I am
8 allowed to. And I will abide by the Court's decision.

9 THE COURT: The issue is whether these -- we need a
10 solution to pars out treatment related to the shoulder.

11 MR. HARRIS: I have a suggestion, Judge.

12 THE COURT: Go ahead because shaving twenty-five
13 percent off --

14 MR. HARRIS: We can just ask Dr. Guy, out of the
15 four areas that you recommended MRIs for, what percentage is
16 related to the shoulder and then just back that percentage
17 out because that is what I will do on redirect, but we will
18 spend a lot of time on nothing here.

19 MR. VAN ETTEN: But it all adds up. Each little
20 cost that you do adds up.

21 MR. HARRIS: I am willing to withdraw it.

22 MR. VAN ETTEN: But it goes to the credibility of
23 him and it goes to the credibility of the economist.

24 MR. HARRIS: You just want to make a mess out of
25 things and I am trying to clean it up and I am doing it

1 reasonably.

2 Maybe it will be less than twenty-five percent so
3 just bring Dr. Guy up here and we will withdraw it. That's
4 all.

5 MR. VAN ETTEN: But then I think they will make
6 another application before I sum up and say that he cannot
7 say that and say that we withdraw the shoulder claim.

8 THE COURT: He is not going to say that. This
9 Court is binding Mr. Harris to his statement that the
10 shoulder claim is withdrawn.

11 MR. VAN ETTEN: But in this Dr. Guy's report, he
12 also says there is positive Hawkins, positive O'Brien signs,
13 positive signs all within the shoulder --

14 THE COURT: It all can be redacted. We can
15 blackout all of that, if they ask to see it.

16 MR. VAN ETTEN: I get to cross him on how he made
17 these causations. He said she needs MRIs for the shoulder
18 and is that from the physical examination that you found in
19 the shoulder, hey, they are all withdrawn. That goes to his
20 credibility because they withdraw the claims.

21 MR. HARRIS: Objection, Judge.

22 THE COURT: Mr. Van Etten, a plaintiff electing to
23 not continue a claim or to sue for personal injuries related
24 to the shoulder doesn't mean the shoulder is not injured.

25 We are all lawyers. If they elect to forgo not

1 proving that part, she could abandon this whole thing if she
2 wants to right now and say just kidding. That is her
3 election to do so. Clearly, there is an issue here. I
4 share your concern.

5 I share your concern. I don't want the numbers
6 reflecting anything to do with the shoulder and it looks
7 like it's going to have to be a question that you ask him
8 percentage-wise and let's see what he comes back with and we
9 will pars it out. And it will come down to redacting the
10 report. We have to try to move forward.

11 MR. VAN ETTEN: I understand, Judge. This is on
12 the record before.

13 This is what I was trying to do with the economist
14 before and that is why I was trying to get the foundation
15 that she said it's only based on what he said and it was
16 based on the medical necessity that Dr. Guy gave her and he
17 said it's a medical necessity for the shoulder and now they
18 are withdrawing it and she doesn't need it. That goes to
19 his credibility.

20 THE COURT: I disagree with your credibility
21 argument. I disagree.

22 MR. VAN ETTEN: Okay.

23 THE COURT: She can discontinue claims at her
24 leisure. She has the right to do so.

25 MR. HARRIS: That would be like allowing me now to

1 bring in the super and talk about notice even though they
2 conceded liability. I can't stop them from conceding
3 liability. I can't revisit those issues now just like he
4 can't here.

5 MR. VAN ETTEN: We did not object to any of the
6 photographs or anything like that to show them the
7 conditions that were there because that is part of the
8 foundation. That goes to the whole issue, Judge.

9 MR. HARRIS: But now you are conflating impact with
10 notice, Jeff, but okay.

11 THE COURT: We have to move forward. I can tell
12 you now that we are a hard stop at 4:00 PM.

13 Let the witness know she is coming back tomorrow
14 afternoon. We have to try to move forward. They have
15 withdrawn the shoulder claim. Mr. Harris, you said on your
16 redirect --

17 MR. HARRIS: Yes. I can do that in two seconds.
18 As far as Dr. Sapan Cohn who was just directed by counsel to
19 come back tomorrow afternoon, I would suggest tomorrow at
20 noon because we have one witness tomorrow morning, the
21 orthopedic surgeon and unless Mr. Van Etten is saying he is
22 doing a three-hour direct, I don't take as long as he does.

23 THE COURT: She is coming back tomorrow. Our
24 bigger issue is these numbers.

25 MR. HARRIS: Okay. Got it.

1 THE COURT: Off the record.

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

3 THE COURT: Let's get the doctor.

4 (Whereupon, the doctor is approaching the witness
5 stand)

6 COURT OFFICER: All rise, jury entering.

7 (Whereupon, the jury enters the courtroom)

8 THE COURT: Take your seats. Welcome back. Mr.
9 Van Etten, you may resume when you are ready.

10 MR. VAN ETTEN: Can I have the last question,
11 please.

12 (Whereupon, the record was read back by the
13 reporter, as requested)

14 Q And Doctor, I want you to assume that since you made
15 your recommendation for right shoulder MRI in January and after
16 this trial started, that the plaintiffs have withdrawn the
17 claims for the right shoulder. Could you make that assumption?

18 A Okay.

19 Q So, would you agree with me then if the right shoulder
20 claims are no longer part of this case, there would be no need
21 for future right shoulder MRIs as part of the life care plan for
22 this trial?

23 A Obviously, yes.

24 Q Okay. And so, you had mentioned cervical spine, lumbar
25 spine, brain and right shoulder.

1 So, that is one out of four. Could we reduce that by
2 twenty-five percent?

3 A That is not how it works. Just the MRI you can
4 remove --

5 Q I was only talking about the MRI --

6 A Then the answer is yes.

7 Q Item two on your report; is that right?

8 A Yes, just the right shoulder removed.

9 Q Okay. Let's stick there for one second. You also made
10 a recommendation for a brain MRI?

11 A Yes.

12 Q Since November of 2020, no neurologist has seen Ms.
13 Watson; is that correct?

14 A To the best of my recollection, that's correct, yes.

15 Q Okay. And at that point, the brain MRIs that were
16 performed as we said before were normal without any problems; is
17 that correct?

18 A The answer is yes with an explanation.

19 Q So, you would agree with me then, that brain MRIs for
20 someone in the future for someone that has not had any treatment
21 for over four years, there is no need for a future MRI for the
22 brain?

23 A Absolutely incorrect. And would you like to know why?

24 Q No, doctor.

25 A Okay.

1 Q Doctor, even though she is not treating for a brain
2 injury, even though she has not been diagnosed with a current
3 brain injury that requires treatment because you have not
4 referred her to a neurologist; is that true?

5 A That way you phrase that question is true, but that
6 doesn't mean that she doesn't need an MRI.

7 Q Doctor, if she has a brain injury, she has to go to a
8 neurologist or a neuropsychologist; is that true?

9 A Absolutely not, no. She could go to a medical doctor.
10 She could go to a primary doctor. She could go to a family
11 practitioner. She could go to a physiatrist that covers the
12 whole body from head to toe. And I explained all of that this
13 morning.

14 Q And if she has a regular treating doctor like Dr. Gail,
15 are you familiar with him?

16 A No.

17 Q Do you know that she was treating with Dr. Gail for
18 over twenty years?

19 A I don't know who Dr. Gail is.

20 Q So, you had no concern about her prior medical history
21 when you examined her?

22 MR. HARRIS: Objection. Argumentative.

23 THE COURT: I will allow it.

24 A Other than what is in my records, no.

25 Q The records that you are talking about, you got home

1 from anymore from Mr. Harris' office; is that correct?

2 A Yes.

3 Q So, you only got the records to do this life care plan
4 from the attorney; is that correct?

5 A Yes.

6 Q And they chose not to give you the 2019 films showing
7 the prior injury; is that true?

8 MR. HARRIS: How would he know what we chose to do,
9 Judge?

10 THE COURT: Ask it another way.

11 MR. VAN ETEN: Sure.

12 Q Would it have been helpful to you to have the 2019
13 films when you were making your initial life care plan?

14 A That is number twelve. It's the twelfth time that you
15 asked that question. I explained that to you. I answered that
16 several times. The answer is yes. Yes, it would be helpful.

17 Q Now maximum medical improvement we were talking about
18 with the cervical surgery and you disagreed with me about that
19 earlier before lunch; is that right?

20 MR. HARRIS: Objection. Asked and answered.

21 MR. VAN ETEN: Foundation.

22 THE COURT: Go ahead.

23 Q Right. You disagreed with me that you think she needs
24 surgery even though Dr. Macagno said no surgery for her right
25 now?

1 A At that time. At that time when he saw the patient the
2 last time, but now it's changed. Everything has changed. There
3 is new EMGs. There is new MRIs. There is new clinical
4 findings.

5 Q When you say at that time, I am talking about from
6 December 11th when he testified, that's what he told the jury.
7 At that time, he told the jury no surgery needed in the
8 future --

9 A I would disagree with that.

10 Q What EMGs happened after December 11th?

11 A Of this year?

12 Q Yes.

13 A No. The EMG was done before.

14 Q You did not share your EMGs with Dr. Macagno; is that
15 correct?

16 A I did not have to.

17 Q So, you would agree then if he thinks she has reached
18 maximum medical improvement and doesn't need any more treatment
19 at this time --

20 MR. VAN ETTEN: Withdrawn.

21 Q With maximum medical improvement, doesn't that mean
22 with a surgeon that the patient no longer has to come in for
23 that problem unless the problem worsens or causes her new
24 complaints?

25 A I cannot answer that question. I am not in Dr.

1 Macagno's head. He has his opinions. I have my opinions. They
2 may be different.

3 Q You earlier testified about when the surgeons make that
4 maximum medical improvement assessment on Mr. Harris'
5 questioning. So, obviously, you knew what they meant by that;
6 didn't you?

7 A Maximum medical improvement means different things to
8 different people, including different specialists. In my
9 opinion, the patient has not reached maximum medical
10 improvement.

11 Q But Dr. Macagno, the surgeon who actually opened her up
12 and looked into her spine, he has made that known that she has
13 reached maximum medical improvement and that she would not
14 require MRIs; is that true?

15 MR. HARRIS: Objection. Asked and answered now
16 several times.

17 THE COURT: Sustained. He disagrees.

18 Q So, you would not reduce another twenty-five percent
19 for cervical MRIs despite what Dr. Macagno testified to?

20 A No. The results of the MRI is in the pudding. It is
21 positive. It's still abnormal.

22 Q Would it be the same for the lumbar spine, you think
23 she still needs to get lumbar spine MRIs even if she has no new
24 complaints?

25 A She has the same complaints getting progressively

1 worse.

2 Q My question was new complaints. If she has no new
3 complaints, it's your position, it doesn't matter, still keep
4 going for the MRIs no matter what?

5 A The answer is yes.

6 MR. HARRIS: Objection. Dr. Macagno recommended
7 lumbar surgery in the future. So, I don't know what the
8 basis for this question is.

9 THE COURT: It's overruled. Ask the question,
10 again.

11 Q With the lumbar spine, if she has no new problems or
12 complaints with the lumbar spine, it's your position that she
13 still needs to get MRIs every two years?

14 A Yes.

15 Q And Mr. Harris just told us about what Dr. Macagno
16 said. Are you aware that she saw Dr. Macagno on November 14,
17 2024?

18 A Okay.

19 Q You have those records?

20 A I don't.

21 Q Was that part of your opinion today?

22 A Let me just make sure whether I have it or not. I am
23 just making sure. There is a lot of records here. If you have
24 it handy, it would save a lot of time.

25 Q The reason that I asked you is because you came in to

1 testify, you were given the 2019 MRIs and I want to know if
2 counsel gave you the November 12, 2024 report of Dr. Macagno
3 that he testified about?

4 THE COURT: Can you show it to the witness?

5 MR. VAN ETTEN: There are markings on it, Judge.

6 MR. HARRIS: There are records in evidence.

7 MR. VAN ETTEN: I don't believe they are in
8 evidence.

9 THE COURT: Show that to Mr. Harris.

10 MR. HARRIS: I don't understand that.

11 MR. VAN ETTEN: Sure. (Handing)

12 MR. HARRIS: No objection.

13 Q I am going to ask you to look at Dr. Macagno's note
14 from November 12, 2024.

15 Just right there where they are talking about the
16 lumbar surgery, can you read what that says from there?

17 MR. HARRIS: To himself or out loud?

18 MR. VAN ETTEN: Either way. Well, he testified to
19 it --

20 THE COURT: Take a look at that. Read it and look
21 up when you are done.

22 THE WITNESS: Okay. (Witness complies)

23 Q You said before Dr. Macagno was recommending surgery.
24 Are you aware that he testified that she was a candidate for
25 lumbar surgery?

1 A It means the same thing to me.

2 Q Well, there could be emergency circumstances where a
3 person has to get emergency surgery; is that correct?

4 A This is not an emergency --

5 Q I understand that. There is a distinction --

6 A Right.

7 Q And a person may have a medical necessity for a surgery
8 that is not an emergency. Would you agree with that?

9 A Yes.

10 Q And there can be an opportunity that the person may be
11 a candidate because of some of the diagnostic films and
12 symptoms; is that correct?

13 A Or just the progression of the symptomatology alone,
14 yes.

15 Q Right. So, if that is the case when they are a
16 candidate, it becomes the patient's choice for the surgery; is
17 that correct?

18 A In part, yes.

19 Q And did you just read Dr. Macagno's note where he said
20 that the patient did not --

21 MR. HARRIS: Objection. He is referring to
22 something that he knows is not in evidence, Judge. An
23 experienced attorney, mind you.

24 THE COURT: Please ask the question.

25 MR. VAN ETTEN: May I approach, Judge?

1 THE COURT: Yes.

2 (Whereupon, at this time, a discussion was held at
3 sidebar.)

4 Q Doctor, I would ask you to assume that Dr. Macagno
5 testified that when he last saw Ms. Watson on November 12, 2024,
6 the issue of surgery was discussed, options, risks and things
7 like that.

8 And she declined and said she wanted to continue with
9 conservative care and the doctor said to this jury it's the
10 patient's choice, not his if the surgery goes forward. Do you
11 have that assumption?

12 A Okay.

13 Q Would you agree then that it's up the surgeon and the
14 patient ultimately for surgery to go forward?

15 A Correct.

16 Q Okay. Doctor, you talked about bilateral carpal tunnel
17 syndrome?

18 A Yes.

19 Q Are you aware that carpal tunnel syndrome is not a
20 claim in this case?

21 A Whether it is or is not, the patient has it.

22 Q I understand that. The plaintiffs are not making a
23 claim of carpal tunnel syndrome as one of the injuries that Ms.
24 Watson sustained on August 24, 2020.

25 Yet, you put it in your life care plan --

1 A Because that is the condition she has and that's what
2 she needs for future treatment for that.

3 Q But if that is not being claimed, would you agree that
4 is a cost that she is not entitled to recover --

5 MR. HARRIS: Objection. That is a matter of law
6 and obviously we are not going to seek it, Judge.

7 THE COURT: What is it specifically about the cost?

8 MR. VAN ETTEN: Sure, Your Honor. It's on item --

9 MR. HARRIS: Judge, we are not seeking any costs as
10 to carpal tunnel syndrome. So, yes. It was in there, but
11 we are not seeking the costs --

12 Q So, if they are not seeking them, nerve conduction
13 studies, item 13 would not be a cost that should be awarded to
14 Ms. Watson; is that correct?

15 A Obviously.

16 Q So, if Dr. San Martin testified to that, that cost
17 would have to be reduced and taken out; is that correct?

18 A Yes.

19 Q So, any reference to it in your report about the carpal
20 tunnel syndrome would have to be taken out; is that correct?

21 MR. HARRIS: We just agreed to that. He's just
22 repeating what we already agreed to.

23 Q EMGs you also had in addition?

24 A That is different. That is not for carpal tunnel.
25 That is for the nerve conduction.

1 Q You also had other treatment for the carpal tunnel that
2 she would need like braces?

3 A No. I said nothing about braces.

4 Q Now how many radiofrequency ablations has she had since
5 you started treating her?

6 A She's on the schedule to continue with those treatments
7 with me. It's a step-by-step process.

8 You don't go from first base to home base. You go from
9 first, second, third and then home base.

10 The next thing is the medial branch block injection.
11 She is scheduled for the medial branch block injection. If that
12 works, then we do the second one and then we go to
13 radiofrequency ablation.

14 Q Has she had any was my question, doctor?

15 A Radiofrequency, not yet.

16 Q Has she had any of the branch blocks yet?

17 A Not yet.

18 Q And had she had any of the trigger-points yet?

19 A No.

20 Q I want you to just to assume now that with Dr. San
21 Martin --

22 MR. VAN ETTEN: Withdrawn.

23 Q You are aware in situations where it does come into
24 court like this, when you given a life care plan, the economist
25 will usually follow you to then compute out what the cost will

1 be as well as the extra costs that are incurred and increased in
2 the future?

3 THE COURT: Start all over again.

4 MR. VAN ETTEN: Okay.

5 Q Doctor, are you aware that when you come in and provide
6 a life care plan, the economist will come in and talk about what
7 you say is medically necessary and then project out the future
8 costs including --

9 MR. HARRIS: In the present value?

10 THE COURT: In present value.

11 A Yes, I am aware of it. Yes, sir.

12 Q And are you aware that in the original report that was
13 done, that she included costs in 2024 for trigger-point
14 injections, cervical radiofrequency ablations and cervical
15 medical branch block injections?

16 A Right.

17 Q And if they have not taken place in 2024, those would
18 be not something that Ms. Watson would be entitled to recover
19 from?

20 A Slightly incorrect. I just started treating her. We
21 go step-by-step. This is a step-by-step interventional pain
22 management treatment plan, as I explained.

23 You don't go from first base to third base. You go in
24 a step-by-step fashion. First you do the medial branch blocks
25 and if it works, you do the second one and then you go into

1 radiofrequency.

2 Q Did you ever look at the economic report of the
3 projection by Dr. San Martin?

4 A I don't even know who Dr. San Martin is.

5 Q Okay. And you have done epidurals; is that correct?

6 A Yes.

7 Q How many to the cervical spine --

8 A Three.

9 Q To the cervical spine, how many?

10 A Lumbar spine, three. Cervical spine, not yet.

11 THE COURT: Wait for the question because you are
12 stepping on each other.

13 Q And I think you said before when you expect that when
14 you do them, to have some form of relief, you would like it to
15 be longer and sometimes it's only a short-term basis?

16 A Correct.

17 Q Okay. And if it's only a short-term basis and it's not
18 giving any long-term relief, you don't continue to them; is that
19 true?

20 A Incorrect. Wrong again.

21 Q You always give them even if they are not giving the
22 patient any relief?

23 A You see, you are very tricky. You just changed the
24 words around.

25 First you said it gives short-term relief and then you

1 said long-term relief and if it doesn't give long-term relief,
2 you don't do it anymore and I said from the beginning, it's only
3 designed to give short-term relief.

4 I said that from the beginning. It gives you
5 short-term relief of pain so that you can build up your body
6 better to put yourself into better shape. That is the purpose
7 of the epidurals.

8 Q And what do you consider a reasonable short-term relief
9 in order for an epidural injection to be effective in that
10 manner?

11 A It varies from patient to patient. The first one, one
12 to two weeks. The second one, two to three weeks. Sometimes
13 more. Sometimes less.

14 Q And I want you to assume that your patient, Ms. Watson
15 testified to this jury that the most that she got of relief from
16 the epidural was only one day and she did not find it effective
17 and that's why you were going to do other treatment such as
18 possibly the trigger-points or others. I want you to assume
19 that --

20 A Well, let me see what she told me.

21 Q I am just asking you that, doctor. I am asking you to
22 assume --

23 MR. HARRIS: Objection.

24 Q Please don't look at your records.

25 Doctor, I am asking you to assume that was her

1 testimony to this jury that she only got maybe a day worth of
2 relief.

3 Now you just said it needs two weeks or more so it
4 builds itself up.

5 If she is only getting one day of relief, would you
6 agree with me it's not proper to continue with that type of
7 treatment because it's not effective and you would not provide
8 ineffective treatment to a patient; is that correct?

9 MR. HARRIS: Compound question.

10 THE COURT: Ask it again.

11 Q You would not provide epidurals to a patient if they
12 were only getting one day of relief; would you?

13 A I would have to ask the patient a lot more questions.
14 I would have to ask the patient the first day that you came in,
15 what was your pain level? When you left, what is the patient's
16 pain level.

17 The next day, what was the pain level and what was your
18 functional level and the third day, what was your pain level and
19 what was your functional level. How far could you walk extra
20 from the epidural injection. It's not just pain alone. It's
21 function as well and that is not what she told me in my records.

22 Q When Ms. Watson came to you on that first visit in
23 January of 2024, you said her gait was normal?

24 A On that date, yes.

25 Q And you talked earlier when Mr. Harris was asking you

1 questions about the positive range of motion loss with the PMR
2 doctors and then the only person who found no range of motion
3 was Dr. Feuer; is that correct?

4 A Yes. I said that.

5 Q Are you aware that when Ms. Watson went to Dr. Feuer's
6 office for the examination he conducted on behalf of the
7 defendant, she was using a cane?

8 A Okay.

9 Q Are you aware of that?

10 A No.

11 Q Okay. And in any of the records that you have seen for
12 Ms. Watson, did PMR prescribe her a cane?

13 A I did not see -- a cane is not something that you
14 prescribe. You buy that over-the-counter.

15 Anybody can walk into the pharmacy and buy a cane. You
16 don't need a prescription for it.

17 Q People, doctors and therapists and even physical
18 rehabilitation medicine personnel like yourself sometimes make
19 life care plans where they talk about assistive devices; is that
20 correct?

21 MR. HARRIS: Objection. Relevance.

22 A They do.

23 THE COURT: Is that in this life care plan?

24 MR. HARRIS: No.

25 Q Is a cane an assisted device?

1 THE COURT: I'll allow it.

2 A Of course it is.

3 Q And did you make a recommendation for her to have a
4 cane?

5 A I did not.

6 Q So, you don't think she needs a cane in the future?

7 A It's of no material. If she wants it, she could buy it
8 for a couple of bucks at the pharmacy.

9 I did not make any recommendations where the amount is
10 so minimal that it's not worth mentioning. I did not mention a
11 raised toilet seat either.

12 Q I take it that you did not agree with Dr. Feuer's
13 opinion about Ms. Watson having a normal range of motion
14 examination?

15 A It is physically impossible to have a normal range of
16 motion of the neck when you have two level fusion.

17 Q He saw her before the fusion. Aren't you aware of
18 that?

19 A I don't know when he saw the patient. I am saying if
20 he saw the patient after the fusion or even before the fusion,
21 nobody found a normal range of motion in the neck even before
22 the cervical fusion. Keep laughing, sir. Keep on laughing.

23 Q Sorry, doctor, but you just said it would be impossible
24 if he saw her after. So, you don't even know when he saw her;
25 do you?

1 A Exact date, I do not know.

2 Q So, when Mr. Harris asked you about range of motion
3 with Dr. Feuer and the other doctors, you don't have Dr. Feuer's
4 report there; do you?

5 A No. He showed me the report this morning.

6 Q So, he showed you more records this morning. You did
7 not tell the jury that; did you?

8 MR. HARRIS: Objection.

9 THE COURT: Overruled.

10 A It's not part of my medical decision making. I am not
11 interested in what a defense doctor writes or doesn't write.
12 It's immaterial. He's not treating the patient. He's not on
13 the patient's side. He's on your side.

14 Q Don't you come in and give an assessment when you are
15 hired by the plaintiff because you are on their side?

16 A No. I give an assessment based on what I find.

17 Q And didn't he give an assessment based on what he
18 found --

19 MR. HARRIS: Objection.

20 THE COURT: Move on.

21 MR. HARRIS: Speculation.

22 THE COURT: Move on.

23 Q And by the way, you have some duplicates in your
24 records?

25 A I do.

1 Q Did you correct that when you testified?

2 A No. Duplicate doesn't need to be repeated.

3 Q Okay. I believe items three and twelve for the EMGs,
4 you did them twice?

5 A I said them once. I wrote them twice, yes.

6 Q Okay. And I also believe in your report for on 4 and
7 11, you did them twice for physical therapy?

8 A Yes, I did.

9 Q So, when you are doing this report to make all of these
10 projections in the future for the care she needs, shouldn't it
11 be accurate?

12 A It is accurate. I said it once. Once a week is all
13 she needs. I did not say twice a week. I said once a week.

14 Q But you listed the cost twice?

15 A It is understood that it gets calculated once a week.

16 Q Did you speak to Dr. San Martin to show that she
17 understood that because she said that she took everything in
18 your report and projected it out, did you speak to her so that
19 she understands your mistake --

20 A I don't know who she is. How could I speak to someone
21 if I don't know who they are.

22 Q Did you correct the report before you came in here and
23 informed --

24 MR. HARRIS: Objection, Your Honor. There is no
25 predicate for this line of questioning. It's only counted

1 once.

2 MR. VAN ETTEN: No speaking objections.

3 MR. HARRIS: But he is trying to trick everybody
4 with this.

5 THE COURT: Come on up.

6 (Whereupon, at this time, a discussion was held at
7 sidebar.)

8 THE COURT: Ladies and gentlemen of the jury, you
9 just heard testimony that there is an error in Dr. Guy's
10 life care plan where physical therapy is counted twice.

11 I would like you all to know in viewing Plaintiff's
12 29, which is the economist's report, it is only counted
13 once.

14 So, what that means is Dr. Guy just testified that
15 when he prepared a life care report, physical therapy was in
16 there counted twice. That was an error because it's only
17 one time per week.

18 When the economist did the calculation, she had it
19 correct and that is what is important for you all to know.
20 You can continue with your examination, sir.

21 MR. VAN ETTEN: Thank you, Judge.

22 Q To clear up on the home health aide issue, I am going
23 to ask you to assume that Ms. Watson testified for a short
24 period of time after her neck surgery, she had a visiting nurse
25 come in. Is that what you mean by home health aide?

1 A No.

2 Q So, after her neck surgery, she did not require a home
3 health aide. Would you agree with that?

4 A Correct.

5 Q Okay. And she has not had any other surgeries; is that
6 correct?

7 A Correct.

8 Q I think we established and I want you to assume that we
9 talked about during the week of November 13th, 14th, 15th and
10 12th, Ms. Watson was able to go to your office, she was able to
11 do a deposition at her attorney's office, she was able to go to
12 Dr. Macagno and she was able to go get an MRI of her shoulder
13 all during that week and go to Queens to go shopping for holiday
14 items.

15 With her being able to do that physically, it's your
16 belief it's medically necessary for her to have a home health
17 aide?

18 A Yes. For optimal level of care. So, she doesn't fall.
19 So, she doesn't crack her skull open. So, she doesn't break a
20 hip. So, she doesn't cause any other complications because she
21 is still having weakness in her left lower extremities.

22 Q Good one. On the left --

23 MR. HARRIS: Objection.

24 Q Dr. Macagno found it all in the right lower extremities
25 and not the left. Are you aware of that?

1 A I was not aware of that, but she still has weakness.

2 Q But you found left lower extremities; is that correct?

3 A That's correct.

4 Q Dr. Macagno found right; is that true?

5 A On 12/2/24, I found weakness on both sides. Does that
6 surprise you?

7 Q I am looking at your report, doctor.

8 A Okay.

9 Q Left-sided weakness, is that what you said?

10 MR. HARRIS: What day?

11 THE COURT: Be more specific.

12 Q It's in the January report. You saw her three times?

13 MR. HARRIS: Objection. What is the date?

14 MR. VAN ETTEN: It's his report. He can tell us.

15 THE COURT: Do you have your report?

16 THE WITNESS: I do.

17 THE COURT: Take a look at your report. Ask the
18 question with the report in front of him.

19 MR. VAN ETTEN: Yes.

20 Q It's on sensation examination that you conducted that
21 is in your report and it says diminished to pinprick and touch
22 on left biceps and left medial calf; is that correct?

23 A That's correct.

24 Q And the cervical injury on the cervical spine that we
25 are talking about, she is claiming that she is having dropping

1 problems with her right arm; is that true?

2 A That's correct.

3 Q Okay. Yet when you measure sensation in your report,
4 you find a left bycep defect; is that true?

5 A One second.

6 Q Just look at the report.

7 A One second. On the first date, yes. On 1/22/24 in my
8 report, I found there was a sensory deficit right biceps, right
9 hand, first three fingers and right calf. So, the sensation is
10 changing from time to time, as it may.

11 Q It's changing from time to time as you -- you said
12 before coming in, you can take a witness and believe them if you
13 want to or not.

14 Isn't that what you said before when Mr. Harris asked
15 you about the other witnesses that will come in --

16 A Oh, yes.

17 Q You said oh, yeah, you can believe them or not, that is
18 up to you; is that right?

19 A I did. That's correct.

20 Q And that applies to you then, too; is that correct?

21 A Yes, it does.

22 Q Thank you.

23 A But the EMG -- you did not let me finish.

24 Q Thank you.

25 A Okay.

1 Q You found and you put in your report that is the report
2 for the basis of this life care plan, left side sensation
3 deficits and left medial calf deficits, which is the left lower
4 leg; is that correct?

5 A It's still L5/S1 distribution and whether it's the left
6 or right biceps, its still C5/C6 distribution and the EMG
7 confirms it was on both sides on 1/22/24.

8 THE COURT: We need to take a five-minute bathroom
9 break. Don't discuss the case and just five minutes,
10 please.

11 COURT OFFICER: All rise. Jury exiting.

12 (Whereupon, the jury exits the courtroom.)

13 (Whereupon, a brief break was taken as requested.)

14 THE COURT: Okay. Let's go back on.

15 COURT OFFICER: All rise. Jury entering.

16 (Whereupon, the jury enters the courtroom)

17 THE COURT: You may be seated. Mr. Van Etten, you
18 can resume when you are ready.

19 MR. VAN ETTEN: Thank you.

20 Q You are aware of what I was saying that all of Dr.
21 Macagno's records indicate that it was always right-sided issues
22 with the lower extremities; is that correct?

23 A As far as I can recall, yes.

24 Q And it was always right-sided upper extremities, the
25 right arm was the arm that she was complaining of dropping

1 things?

2 A Initially, yes.

3 Q Throughout his record, throughout the records that you
4 have I am asking you; is that correct?

5 A Throughout my records, I have both sides. I have both
6 sides.

7 Q From Dr. Macagno, I'm saying?

8 A The answer is yes.

9 Q Thank you. I will show you one last thing and then I
10 will be done.

11 Exhibit 3, Dr. Macagno's New York Spine records on
12 November 28, 2022, the last visit before the surgery, I want to
13 show you Dr. Macagno's diagnosis since this is in evidence.
14 Could you read the diagnosis by Dr. Macagno?

15 A Cervicalgia, low back pain, unspecified back pain
16 laterally, unspecified chronicity, unspecified whether sciatica
17 is present. This is not a proper medical diagnosis for any
18 physician.

19 Q I asked you to read it and you read it --

20 A Yes.

21 Q Did I ask you any question after that?

22 A I did not hear a question after that.

23 Q Thank you.

24 THE COURT: Now wait for a question.

25 Q So, my question is, doctor, for the lumbar, where it

1 says question of sciatic, that means they are not sure if there
2 is any radicular pain from that diagnosis; is that correct?

3 A I can't answer that. I am not in Dr. Macagno's mind.
4 I don't agree with that diagnosis. It's incorrect.

5 Q Were you treating her then back in 2022?

6 A This is 2014, you said.

7 Q This is 2022. The last visit --

8 A Yes, no. I did not treat her until after January of
9 2024.

10 Q So, you ignored that record in reaching your opinion;
11 is that true?

12 A This says nothing. This says nothing to me of any
13 value.

14 Q Does it also say that the pain in the back was
15 laterally, not radicular?

16 MRS. HOLLAND: Objection. I have to object. I
17 object because counsel knows --

18 MR. VAN ETTEN: This is not her witness.

19 MRS. HOLLAND: Mr Harris was not here. I was.

20 THE COURT: Do we need sidebar?

21 MRS. HOLLAND: Yes, Judge.

22 THE COURT: Come on.

23 (Whereupon, at this time, a discussion was held at
24 sidebar.)

25 MR. VAN ETTEN: Can I have the last question,

1 please?

2 THE COURT: Read it back, please.

3 (Whereupon, the record was read back by the
4 reporter, as requested)

5 THE COURT: You can answer.

6 A Reading from this, that is what it says.

7 Q Thank you.

8 A Welcome.

9 THE COURT: Are you finished?

10 MR. VAN ETTEN: Yes.

11 THE COURT: Mr. Harris, whenever you are ready,
12 sir.

13 MR. HARRIS: Thank you, Judge.

14 REDIRECT EXAMINATION BY

15 MR. HARRIS:

16 Q Just to touch up on a couple of points, hopefully, I
17 will not be too long here Dr. Guy.

18 I want to begin with going back to the portion of `your
19 cross-examination where Mr. Van Etten was discussing Dr.
20 Macagno's testimony with maximum medical improvement.

21 And he gave a quote no surgery for you and then was
22 trying I think to use that statement by Dr. Macagno to discredit
23 your recommendation for future surgery. Do you recall that line
24 of questioning?

25 MR. VAN ETTEN: Objection.

1 THE COURT: I will allow it.

2 A I recall that question, yes.

3 Q Now you seeing a patient in 2024 and Dr. Macagno saying
4 no surgery for you after the cervical fusion was done in 2022,
5 do you have an opinion within a reasonable degree of medical
6 certainty as to whether or not the adjacent levels in her neck
7 will require future care and treatment including the surgery you
8 previously referred to?

9 MR. VAN ETEN: Objection. Beyond scope of the
10 cross. I did not ask about the adjacent levels.

11 THE COURT: Overruled.

12 A Yes. She will need future surgery as time goes on. As
13 I mentioned, traumatic arthritis and as adjacent segmental
14 pathology sets in, she will need future neck surgery.

15 Q And just because I believe you said there was a trick
16 question in there when that subject came up with regard to the
17 future back surgery that Dr. Macagno recommended because Dr.
18 Macagno we know never operated on Ms. Watson's lower back?

19 A Correct.

20 Q But he recommended and he told this jury that he was
21 recommending that she have a fusion of her lower back?

22 A Right.

23 Q Based on the MRI studies?

24 A Correct.

25 Q And the other evidence in the case?

1 A Right.

2 MR. VAN ETTEN: Objection.

3 Q Do you have an opinion within a reasonable degree of
4 medical certainty as to whether or not this patient will need a
5 future lower back surgery consistent with Dr. Macagno's
6 recommendation?

7 MR. VAN ETTEN: Objection.

8 THE COURT: Overruled.

9 A As well as my recommendation as well, yes.

10 Q What is the basis for your opinion, doctor?

11 A The radicular pain has continued as of my last
12 examination of the patient on 12/2/24.

13 There is weakness on both sides. The gait remains
14 antalgic and as of my examination of 9/18/24, muscle power in
15 both legs remains weak, the gait remains antalgic and my prior
16 examination on 8/21/24, the right side was weaker than the left
17 side and the condition is progressing to both sides, not just
18 the right side, but both sides.

19 Q Why is it suggested that it's increasing to both sides,
20 doctor? I know counsel made a big deal about left verse right,
21 but why is that important?

22 A It's not important to me because that is the nature of
23 this condition. It's progressive. It affects both sides.

24 As I showed that diagram, those chemicals are released
25 from both sides.

1 They irritate the nerve roots. There is compression on
2 both sides and clinically, the problem is on both sides.
3 Sometimes the patient feels it more on one side than on the
4 other.

5 Q Understood. Now with regard to the medications you
6 recommended in your life care plan, counsel brought up she is
7 not taking those medications now.

8 A Right.

9 Q So, why should the jury pay for her future medication
10 costs, what say you about that, doctor?

11 A As time continues, as her condition is worsening and
12 will continue to worsen, she will have no choice, but to take
13 those medications. And maybe even stronger medications.

14 Q Doctor, counsel also brought up the 2019 MRI from
15 before this accident?

16 A Right.

17 Q He asked you about whether you had it when you
18 initially formed your opinion regarding causation. Do you
19 recall that question?

20 A I do.

21 Q Doctor, is anything about the 2019 film that you read
22 today and explained to this jury, does anything about that study
23 affect your opinion as to whether or not this accident was the
24 cause of her neck injuries and specifically, the cervical fusion
25 that Dr. Macagno performed?

1 A It does not change my opinion, no.

2 Q Why is that, doctor?

3 A Because she was damaged goods, as I said, in layman's
4 terms. She had prior preexisting conditions, but she was
5 asymptomatic. It renders her more vulnerable to a reoccurring
6 injury.

7 It's like the last straw breaking the camel's back. If
8 you put 99 straws on the camel's back and it doesn't break, but
9 if you put one more, it breaks the camel's back. That is what
10 happened here in my opinion.

11 Q Doctor, you pointed out and correct me if I'm wrong,
12 but I believe it was C4/C5 level had a small herniation from
13 2019?

14 A Right.

15 Q But C5/C6 level that was also fused had no herniation
16 before?

17 A In 2019?

18 Q Yes, or a very small herniation?

19 A They were all very small herniations. All of them were
20 ver small.

21 Q In 2020, the Stand-Up MRI report specifically said that
22 C5/C6 level was a new injury. Do you recall that in the report,
23 doctor?

24 A Meaning it got worse, yes.

25 Q Okay. And so, is that consistent with your explanation

1 that it was the straw that broke the camel's back when this
2 ceiling collapsed on her head, which the jury saw the pictures
3 of with her head on the toilet?

4 MR. VAN ETEN: Objection. Beyond the scope.

5 THE COURT: Overruled.

6 A The answer is yes. And also it confirms the
7 interoperative findings of a large disc herniation at C5/C6.
8 And it also confirms with the EMGs that I have performed in 2024
9 showing bilateral cervical radiculopathy.

10 Q And with regard to the last question about the prior
11 study of the MRI in 2019, with the shoulder surgery that she had
12 and we withdrew our claim about injuries to the shoulder because
13 she had a prior shoulder surgery, is that prior shoulder surgery
14 consistent with the neck complaints that counsel brought out
15 that drew the shoulder doctor to order the MRI of her neck in
16 2019?

17 A It can. Shoulder problems refer pain to the neck.
18 Neck problems refer pain to the shoulder. So, sometimes a
19 patient is confused as to what is coming from what.

20 So, the physician is obligated to pursue to make sure
21 he knows where it's coming from.

22 Q Now there was a question about disc desiccation
23 preexisting and I believe you gave an answer of possible both
24 ways. Do you recall that?

25 A Possible what?

1 Q Both ways. Maybe I wrote it wrong. I don't know. I
2 was just going to ask you to explain how there could be disc
3 desiccation both ways or maybe I heard you wrong?

4 A What I was trying to say is that if you had any disc
5 desiccation, it was so minimal, it was not worthy to even
6 mention it.

7 Q Understood. Thank you.

8 Why does she still need an MRI of the brain given what
9 was said in the ER records about the traumatic brain injury and
10 so forth that counsel brought up?

11 MR. VAN ETTEN: Objection.

12 THE COURT: Overruled.

13 MR. VAN ETTEN: Description.

14 THE COURT: Overruled.

15 A We have a condition called posttraumatic
16 encephalomalacia and we have a condition called normal pressure
17 hydrocephalus.

18 The incubation period of these conditions of five to
19 fifteen years later after trauma.

20 So, if you don't catch it early, you don't treat it
21 early, you may not be able to reverse those early signs and
22 symptoms and they usually require surgical intervention.

23 Q In the emergency room at Bronx Lebanon, was she
24 discharged and it's in evidence with the sheet about
25 postconcussion syndrome and mild traumatic brain injury, in

1 evidence?

2 A Yes. It also mentioned that she had cervical and back
3 problems and that this condition with the brain can consist of
4 the following symptoms headaches, nausea, periodic vomiting,
5 confusion, concentration deficit and it should be followed-up
6 with another doctor and not ignored.

7 Q What was the medical significance for vomiting that was
8 noting in the emergency room, doctor?

9 A From the head trauma.

10 Q Well, if you bang your head, are you normally going to
11 just vomit?

12 MR. VAN ETEN: Objection.

13 THE COURT: Overruled.

14 A When you bang your head, you have a whole battery of
15 symptoms. Some come right away. Some come later on. So,
16 vomiting is one of the early signs and symptoms of a head
17 trauma.

18 Q Doctor, I want you to assume that Dr. Macagno testified
19 that the diagnosis in his November of 2022 was not his
20 diagnosis, but actually a billing diagnosis. Do you know what
21 is meant by a billing diagnosis?

22 A I do.

23 Q What is that?

24 A It's a CPT code of M54.16 and M54.17 that points to
25 this.

1 This is not a doctor's diagnosis as cervicalgia. It's
2 a layman's garbage diagnosis and I am surprised that the spinal
3 surgeon would give that diagnosis knowing there were multiple
4 herniations. And the same for the lumbar spine knowing there
5 were multiple herniations and clinical radiculopathy to put down
6 low back pain. That is not a medical diagnosis.

7 Q Thank you, doctor. One last thing about Dr. Macagno
8 and then I will be done.

9 Counsel brought out about the left side verse the right
10 side with regard to the radiation down the upper extremities.
11 Do you recall that line of questioning?

12 A I do.

13 Q He notes on every post-operative visit from Dr. Macagno
14 that since the accident, the patient is complaining of
15 significant neck pain radiating to bilateral upper extremities
16 with numbness and tingling to the fingers with associated
17 increasing weakness.

18 Additionally, she notes that she has been increasing
19 frequency of dropping objects.

20 When you use the term extremities, what does that mean
21 in terms of the left or the right, doctor?

22 A Both sides, both upper arms.

23 MR. HARRIS: Thank you, doctor. No further
24 questions.

25 MR. VAN ETEN: Briefly, if I may?

1 THE COURT: Very briefly. Go ahead.

2 MR. VAN ETTEN: Thank you.

3 RECROSS EXAMINATION BY

4 MR. VAN ETTEN:

5 Q You were just asked by Mr. Harris about the cervical
6 and the prior shoulder injury about maybe doing different
7 diagnosis with the MRIs.

8 Mr. Harris just asked you about that. If you have a
9 shoulder problems, you might get a neck MRI to check --

10 A You may get inferred pain from the shoulder to the neck
11 and vise versa.

12 Q Do you know which came first?

13 A I think in this case both. The major symptomatology
14 was from the right shoulder. That's why the doctor did the
15 right shoulder surgery.

16 Q If I were to tell you that the cervical MRI that we
17 know about was May 24, 2019, but the right shoulder was August
18 7, 2019, the initial complaints that were being by Ms. Watson
19 was for the neck, not the shoulder based on the history that you
20 got; is that correct?

21 A That's why he did do the shoulder surgery and not for
22 the neck.

23 Q I am not asking you about the doctor that is not
24 here --

25 A Same with me.

1 Q Isn't that relevant if she went for cervical pain
2 complaints first and then they followed up with the shoulder
3 later, is that significant; yes or no?

4 A I can't answer that question.

5 Q Fair enough. The last question for you, when you
6 talked about these EMGs in your records, you were discussing the
7 fact that you found spasms; is that correct?

8 MR. HARRIS: Objection. Beyond the scope.

9 MR. VAN ETTEN: He just brought up the EMGs again.

10 MR. HARRIS: I did not ask any questions about
11 EMGs, Judge. He was limited. I should be able to object
12 without him talking over me.

13 THE COURT: Right.

14 MR. VAN ETTEN: As part of the opinion, he spoke
15 about the EMG findings as the basis of his opinion that he
16 gave in response to Mr. Harris' question.

17 THE COURT: Sustained.

18 MR. VAN ETTEN: Then I am done, Your Honor.

19 THE COURT: Thank you very much. Doctor, you are
20 excused, sir.

21 THE WITNESS: Thank you.

22 THE COURT: Be careful stepping down.

23 THE WITNESS: Thank you.

24 (Whereupon, the witness is leaving the stand)

25 THE COURT: We are done for the day. I told you

1 that you would be done with jury service this week. I said
2 that. I meant it.

3 Tomorrow, you will hear from two witnesses. On
4 Thursday, you will hear closing arguments from both sides.
5 I will tell you the law and then the case is for you to
6 decide. And that is what we are doing.

7 Everybody is on board. I will see you all tomorrow
8 at 9:30 AM. Don't discuss the case. Don't do any research.
9 Deliberations will begin on Thursday. Thank you all very
10 much. Get home safe.

11 COURT OFFICER: All rise. Jury exiting.

12 (Whereupon, the jury exits the courtroom.)

13 THE COURT: Thank you, all. If there is anything
14 for the record, we will do it tomorrow. We stand adjourned.
15 Thank you all very much. Get home safe.

16 MR. HARRIS: Thank you, Judge.

17 MR. VAN ETEN: Thank you.

18 (Whereupon, the trial will resume Wednesday,
19 December 18, 2024 at 9:30 a.m.)

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