

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF QUEENS : CIVIL TERM : PART 7

-----X
 3 MOAZZAM R. GILL,

Plaintiff, Index No.
 706989/20

4 -against-

JURY TRIAL

6 SIGFREDO VALLADARES-LOPEZ &
 7 FLEETWASH, INC.,

Defendants.

-----X

Supreme Courthouse
 88-11 Sutphin Boulevard
 Jamaica, New York 11435
 May 23, 2025

11 B E F O R E:

12 THE HONORABLE NICOLE MCGREGOR MUNDY
 13 Supreme Court Justice

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

16 For the Plaintiff:

LAW OFFICE OF MICHAEL S. LAMONSOFF
 32 Old Slip, 8th Floor
 New York, New York 10005
 18 BY: JASON LESNEVEC, ESQ.

19 For the Defendant:

MULHOLLAND MINION DAVEY McNIFF & BEYRER
 200 Park Avenue, Suite 1700
 New York, New York 10166
 21 BY: KEVIN McNIFF, ESQ.

24 VICTORIA A. BIFULCO
 FRANCINE SPAULDING
 25 Senior Court Reporters

Proceedings

1 THE CLERK: Come to order.

2 Queens Supreme Court Part 7, the Honorable
3 Nicole McGregor Mundy presiding.

4 Calling continued case on trial, index number
5 706989 of 2020, Moazzam R. Gill, plaintiff, against
6 Sigfredo Valladares-Lopez and Fleetwash, Inc.,
7 defendants.

8 Counsel, please state your appearances for the
9 record.

10 MR. LESNEVEC: Good morning, your Honor.

11 The Law Office of Michael S. Lamonsoff, 32 Old
12 Slip, Eighth Floor, New York, New York, 10005, by Jason
13 Lesnevec for the plaintiff.

14 MR. McNIFF: For the defendants, Mulholland
15 Minion Davey McNiff and Beyrer, 200 Park Avenue, Suite
16 1700, New York, New York 10166, by Kevin McNiff.

17 Good morning, your Honor.

18 THE COURT: Good morning.

19 Let's go off the record.

20 (Whereupon, at this time, a discussion was held
21 off the record.)

22 THE COURT: On the record.

23 Okay. Before we get started today with the
24 witnesses, I just want to resolve plaintiff's motion.

25 So plaintiff made a motion in limine to preclude

1 defendant from cross examination of plaintiff's treating
2 orthopedic surgeon, Steven Touliopoulos, M.D., and
3 treating neuropsychologist, mere dad Golzad, M.D., as
4 well as anyone affiliated with that.

5 Before we get started, I understand that
6 plaintiff is not calling Dr. Golzad to testify; is that
7 correct?

8 MR. LESNEVEC: That's correct, Judge.

9 It would be duplicative of the testimony we
10 heard yesterday.

11 THE COURT: Okay. So then motion is moot as to
12 Dr. Golzad since he is not going to be called.

13 So plaintiff submitted a motion in limine along
14 with supporting exhibits, and defendant submitted
15 opposition to plaintiff's motion in limine along with
16 supporting exhibits.

17 Off the record.

18 (Whereupon, at this time, a discussion was held
19 off the record.)

20 THE COURT: On the record.

21 The motion record before the Court indicates
22 that there are two lawsuits that were mentioned which
23 named Dr. Touliopoulos, one of which has been -- just for
24 the record I want to indicate -- one of which was
25 voluntarily discontinued with prejudice. Okay.

1 Upon reading plaintiff's motion and supporting
2 documents and defendant's opposition and supporting
3 documents, the Court finds as follows:

4 Initially the Court notes that counsel for both
5 parties were informed on May 8, 2025, which was the
6 scheduled first day of trial that all motions in limine
7 were to be submitted on that first scheduled trial date
8 pursuant to the Court's part rules, and my directions
9 were given to both counsel in court.

10 Plaintiff did not submit this subject motion in
11 limine until May 15, 2025, however, although plaintiff's
12 motion in limine isn't timely, the defendant was
13 permitted by the Court time to submit opposition to do
14 so.

15 The Court can not discern any prejudice to
16 either party and entertain the motion at this juncture
17 particularly since based on the subject matter of the
18 motion entertain the motion will in the Court's opinion
19 facilitate the continued efficient and orderly conduction
20 of this trial.

21 Now, after reading plaintiff's motion and
22 defendant's opposition thereto, the Court and the Court
23 finding that defendant's opposition sets forth a good
24 faith basis for cross examining Dr. Touliopoulos
25 regarding the lawsuit in which the doctor's name is a

1 party and the specific allegations that defendant deems
2 relevant to the doctor's credibility, the Court in its
3 discretion will permit defendant to ask Dr. Touliopoulos
4 limited, general, non self-incriminating questions
5 regarding only the pending lawsuit against Dr.
6 Touliopoulos.

7 The Court will Court will entertain and rule on
8 any objections made by plaintiffs' counsel to any of the
9 said questions.

10 In further discretion of this Court, defendant
11 is not permitted to offer any collateral evidence with
12 regard to this line of cross examination of Dr.
13 Touliopoulos, nor questions that will confuse or mislead
14 the jury or create a substantial risk of prejudice to the
15 witness or to the party.

16 So off the record.

17 (Whereupon, at this time, a discussion was held
18 off the record.)

19 THE COURT: On the record.

20 MR. LESNEVEC: Your Honor, I would just note our
21 exception to your Honor's ruling on this matter.

22 MR. McNIFF: We also note an exception.

23 Thank you, your Honor.

24 THE COURT: Both exceptions are noted.

25 Is everyone ready to proceed?

Proceedings

1 MR. LESNEVEC: Yes.

2 MR. McNIFF: Yes, your Honor.

3 THE COURT: All right. Let us bring in the
4 jury.

5 THE COURT OFFICER: Yes, your Honor.

6 THE COURT: Bring them in.

7 THE COURT OFFICER: All rise. The jury is
8 entering.

9 (Whereupon, at this time, the jury enters the
10 courtroom.)

11 THE CLERK: Do all parties stipulate to the
12 presence and proper seating of the jury?

13 MR. LESNEVEC: I do.

14 MR. McNIFF: I do.

15 THE COURT: You may all be seated.

16 Good morning, members of the jury, welcome back.

17 We'll proceed with the trial of this action.

18 Counsel, you may call your next witness.

19 MR. LESNEVEC: Thank you, your Honor.

20 At this time plaintiff calls Dr. Steven
21 Touliopoulos.

22 (Whereupon, at this time, the witness takes the
23 stand.)

24 THE COURT OFFICER: Remain standing.

25 THE CLERK: Raise your right hand.

1 Do you swear or affirm to tell the truth, the
2 whole truth, and nothing but the truth, under penalty of
3 perjury?

4 THE WITNESS: I do.

5 S T E V E N T O U L I O P O U L O S, M. D., a witness
6 called on behalf of the Plaintiff, after having been first
7 duly sworn by the Clerk of the Court, took the witness
8 stand and testified as follows:

9 THE CLERK: In a loud, clear voice, please state
10 and spell your name and give your address for the record.

11 THE WITNESS: My name is Steven John
12 Touliopoulos. My address is 23-25 31st Street, Suite
13 800, Astoria, New York 11105.

14 THE CLERK: Please spell your name.

15 THE WITNESS: Last name,
16 T-O-U-L-I-O-P-O-U-L-O-S.

17 THE CLERK: Thank you.

18 Witness has been sworn, your Honor.

19 THE COURT: Thank you.

20 Good morning, Doctor.

21 THE WITNESS: Good morning, your Honor.

22 THE COURT: You may proceed.

23 MR. LESNEVEC: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MR. LESNEVEC:

1 Q Good morning, Doctor.

2 A Good morning.

3 Q Have testified in court before where I was the
4 attorney asking questions?

5 A Yes.

6 Q And that was approximately two times?

7 A That's correct.

8 Q Did we discuss this case before today?

9 A We discussed the medical facts over the phone a
10 couple of days ago, yes.

11 Q Can you give us a brief history about your
12 educational background?

13 A Yes. I attended college at Columbia University. I
14 majored in chemical engineering. I stayed on at Columbia and
15 obtained a master's in bioengineering before entering medical
16 school at SUNY Downstate in Brooklyn.

17 After I finished medical school, I applied for and
18 was accepted into a residency program also downstate.

19 After completing that in 1996, I did a fellowship in
20 sports medicine at Lenox Hill Hospital which I finished in
21 1997.

22 After that I started in my private practice. I have
23 been in private practice ever since.

24 I am board certified in both orthopedic surgery as
25 well as orthopedic sports medicine.

1 Q Can you just tell us about the field of sports
2 medicine?

3 A Yes. It's a branch of orthopedic surgery that
4 studies and treats disorders of the musculoskeletal system
5 related to sports injuries, specifically of the shoulder, hip,
6 knee, elbow, wrist and ankle.

7 Q And what is the orthopedic surgery, specifically?

8 A It's a branch of medicine that studies disorders of
9 the bones and joints. Muscles, ligaments and tendons. It
10 includes the spine as well as the extremities, the upper
11 extremities as well as the lower extremities.

12 Q Are you affiliated with any hospitals?

13 A Yes, I am.

14 Q Which hospitals?

15 A I am affiliated with Lenox Hill Hospital, Mount Sinai
16 Hospital Queens, and New York Presbyterian Hospital lower
17 Manhattan.

18 Q And how long have you been in private practice for
19 now?

20 A Since 1997.

21 Q What parts of patients' bodies have you operated on
22 throughout your career?

23 A So basically I limit my practice to the extremities.
24 I do not treat or operate on the spine. So anything from the
25 shoulder to the fingers and from the hip to the toes are areas

1 I have operated on.

2 Q Can you give us some examples of types of surgery you
3 performed?

4 A Yes. It could be a hip replacement. Could be a
5 shoulder replacement. It could be an arthroscopy where we
6 operate with cameras of the elbow, wrist, hip, knee and
7 shoulder. I also operate on fractures such as thigh
8 fractures, ankle fractures.

9 Q And how do you obtain your patients?

10 A Through a myriad of referrals. Sometimes it's word
11 of mouth from former patients and family members. It could be
12 from the hospital from other physicians. Sometimes it is from
13 law firms.

14 Q And are you being compensated for your time here
15 today?

16 A Yes, I am.

17 Q How much are you being compensated?

18 A I believe it's \$10,000.

19 Q How many offices do you have?

20 A I have two offices.

21 Q Where are they located?

22 A In Astoria, Queens, as well as in Manhattan.

23 Q What types of patients do you treat at your offices,
24 Doctor?

25 A All types of patients, again. I have patients of all

1 ages from elderly to children. Of patients that have
2 traumatic injuries, such as fractures or muscle tears. As
3 well as degenerative conditions such as osteoarthritis.

4 Q I am going to be focusing specifically on the
5 shoulder during your testimony today.

6 MR. LESNEVEC: I would like to have this marked,
7 your Honor, for demonstrative purpose.

8 I will show it to defense.

9 THE COURT: Show it to counsel.

10 MR. LESNEVEC: Yes.

11 THE COURT: Would you mark that as Exhibit 20
12 for identification?

13 (Whereupon, at this time, Plaintiff's Exhibit 20
14 was marked for identification.)

15 THE COURT OFFICER: Plaintiff's 20 has been
16 marked for identification.

17 MR. LESNEVEC: Thank you.

18 Q Doctor, what are we looking at with Exhibit 20? What
19 is that?

20 A This is a model of a shoulder.

21 Q Can you just tell us the different parts of the
22 shoulder by using the model?

23 A Yes. So the shoulder is made up -- it's a ball and
24 joint socket. The ball is the upper part of the arm. It's
25 right here (indicating). That's called the humerus, the

1 humeral head, and then the cup.

2 THE COURT: One second, Doctor.

3 Excuse me.

4 Come up, both of you.

5 (Whereupon, at this time, a discussion was held
6 off the record.)

7 THE COURT: On the record.

8 I'm sorry, Doctor.

9 You may continue.

10 THE WITNESS: Yes, your Honor.

11 A The cup is called the glenoid. It's on the other
12 side of the ball.

13 And the shoulder, unlike the hip, has a big ball and
14 a small socket, so it's inherently unstable, and to keep the
15 ball in the socket, we rely on ligaments that wrap around the
16 shoulder depicted by this orange or yellow structure here
17 (indicating).

18 And on top of the ligaments is an envelope of tendons
19 and muscles which we call the rotator cuff. Those allow you
20 to move the arm.

21 This is the clavicle or the collarbone (pointing),
22 and the cup is part of the scapular which is just this bigger
23 bone here.

24 Q And what happens if there is damage, let's say, to
25 the rotator cuff?

1 How does that effect the functionality of the
2 shoulder?

3 A If there is damage to any structure of the shoulder,
4 it can result in symptoms such as pain or limitation of
5 motion.

6 If you hurt the roots of the cuff which is a muscle
7 and tendon, you obviously would have potentially weakness in
8 the shoulder and difficulty lifting and carrying objects.

9 Q When a physician like yourself wants to look at the
10 inner workings of the shoulder, how would you do that? What
11 would you use?

12 A Well, we rely on various diagnostic studies. One
13 could be x-rays of primarily the shoulder bones of the
14 shoulder.

15 And another is an MRI scan which not only helps see
16 bones but also helps see the soft tissue of the shoulder such
17 as the muscles, ligaments and tendons, and the gold standard
18 to know what is going on actually is to go into the shoulder
19 with a camera.

20 Even with an MRI scan, you may have false positives
21 and false negatives. In other words, the MRI may say
22 something is there and it's not there, and vice versa.

23 Q What is the name of your practice by the way?

24 A University Orthopedics of New York.

25 Q Did there come a point in time where Moazzam Gill

1 came under the care of your practice?

2 A Yes.

3 Q As part of the your practice, do you keep medical
4 records for patients that you treat?

5 A Yes, I do.

6 MR. LESNEVEC: Your Honor, if I could have this
7 marked.

8 THE COURT: Yes.

9 Show it to counsel.

10 MR. LESNEVEC: Yes, Judge.

11 THE COURT: We are going to mark this as
12 Plaintiff's Exhibit 21 for identification purposes.

13 (Whereupon, at this time, Plaintiff's Exhibit 21
14 was marked for identification.)

15 THE COURT OFFICER: Plaintiff's Exhibit 21 has
16 been marked for identification.

17 MR. LESNEVEC: Thank you.

18 Q Doctor, take a look at Exhibit 21 and let me know if
19 you recognize it.

20 A Yes. These are medical records from my office
21 including office notes as well as interoperative photos. The
22 office notes are from both myself as well as Dr. DeMarco.

23 Q Are those records for Moazzam Gill, a patient that
24 you treated?

25 A Yes.

1 Q Are those accurate copies of those records?

2 A Yes, I believe so.

3 MR. LESNEVEC: I would ask that they be admitted
4 into evidence.

5 THE COURT: Any objection?

6 MR. McNIFF: No objection, your Honor.

7 THE COURT: What was previously marked as
8 Plaintiff's Exhibit 21 for identification will be entered
9 as Plaintiff's Exhibit 21 in evidence.

10 (Whereupon, at this time, Plaintiff's Exhibit 21
11 was marked into evidence.)

12 THE COURT OFFICER: Plaintiff's 21 has been
13 marked into evidence.

14 MR. LESNEVEC: Thank you.

15 Q And, Doctor, when did Mr. Gill come under your
16 practice's care?

17 A First visit was on January 21 of 2020.

18 Q And do you know how he was referred to your practice?

19 A I'm not sure how he was referred to me.

20 Q What did he come under your care for?

21 A For injuries of his left shoulder.

22 Q Did you take a history from him?

23 A Yes, I did.

24 Q And what was the history that Mr. Gill gave to you,
25 Doctor?

1 A At the time of his visit he was 45 years of age and
2 right hand dominant. He was involved in a motor vehicle
3 accident while driving. He states that he was rear ended in
4 the accident, and during the accident his left shoulder struck
5 the window on the driver's side.

6 He denied any prior history of left shoulder trauma
7 or symptoms prior to this accident. He also reported injury
8 is his neck and back in this accident, and he did have ongoing
9 symptoms in his spine for which a consultation with a spine
10 specialist was recommended.

11 With respect to his left shoulder, he reported his
12 level of pain could be as high as nine out of ten. He also
13 had feelings of looseness, that his shoulder was coming out of
14 place and that his symptoms persisted despite the treatment he
15 received which included medicine such as ibuprofen and
16 physical therapy which he was attending five times a week.

17 This resulted only in partial and temporary
18 improvement in his shoulder symptoms, and he had difficulty
19 using his left arm and shoulder for daily activities.

20 He also reported developing tremors of his left upper
21 extremity from the accident as well as episodes of the
22 dizziness.

23 Q That was January 21, 2020?

24 A That's correct.

25 Q That was approximately seven weeks after the

1 collision?

2 A That's correct.

3 Q And tremors, can you describe what is a tremor?

4 A Basically, shaking.

5 Q Did you find any medical significance to the symptoms
6 that Mr. Gill reported to you that day?

7 A Well, with respect to the shoulder, yes, I suspected
8 derangement injuries of the shoulder, and I did recommend that
9 he continue with conservative treatment including physical
10 therapy.

11 I prescribed him an anti-inflammatory medication
12 named Voltaren, and recommend he follow up with us.

13 Q Did you perform a range of motion testing on him on
14 that day?

15 A Yes, I did.

16 Q And can you tell us what testing you performed and
17 what the results were?

18 A Yes. On range of motion testing I found that his
19 active flexion was one hundred degrees. In other words,
20 flexion is your ability to raise your arm forward and over
21 your head. Normally it's 180 degrees. In this case it was
22 barely above his shoulder. It was about a hundred degrees.
23 That was active. Basically active means you ask the patient
24 to move his arm.

25 And then passively when I move his arm, it was up to,

1 like, 120 degrees. His abduction which is sideways motion
2 again normally is 180 degrees. In this case it was 80
3 degrees. So it wasn't even to shoulder level. That was his
4 active motion.

5 His passive motion based on when I moved it, it was
6 about 95 degrees, still very limited.

7 His external rotation which is your ability to rotate
8 your arm outward was 35 to 40 degrees. Normally it's
9 approximately 90 degrees.

10 And his internal rotation which is your ability to
11 turn your arm inward which he also measured by how far up our
12 back you can reach, he could only reach into his rear pocket
13 so that was also really limited.

14 He had positive apprehension and relocation tests,
15 which are basically tests to assess your shoulder stability.
16 He had complaints of his shoulder being loose, so that's
17 something that we wanted to look into. That's basically done
18 by bringing the arm backward and seeing if that reproduces his
19 pain, and that usually signifies that the ball is kind of
20 slipping out of the socket and you kind of reproduce the
21 symptoms that he was having.

22 Relocation test is when I kind of pushed back the
23 ball into the socket, and if that alleviates or reduced his
24 pain, that is also considered positive.

25 Also on examination I did note that the shoulder was

1 looser when I applied forces to the left shoulder. It moved
2 more than the right shoulder.

3 And also his rotator cuff was -- his rotator cuff
4 strength was very weak when this was tested.

5 Q How do you test for rotator cuff strength
6 specifically?

7 A Basically you ask the patient to hold their arms up,
8 and you push down to see if there is weakness. Also you test
9 strength in different plains of motion.

10 I asked him to push inward and outward, and those
11 strength levels are assessed.

12 Q And did Mr. Gill undergo an MRI to the left shoulder?

13 A Yes, he did.

14 Q Did you review that MRI?

15 A Yes, I did.

16 MR. LESNEVEC: Your Honor, I have an exhibit I
17 would like to offer and put on the screen.

18 THE COURT: Okay.

19 You have hard copies of it?

20 MR. LESNEVEC: Yes, I do. That copy is actually
21 marked into evidence. This is a separate film.

22 THE COURT: Which is it?

23 MR. LESNEVEC: We would need a new exhibit
24 number because this is for the shoulder, but the actual
25 disk that it is on has been marked as an exhibit and is

1 in evidence.

2 THE COURT: As what?

3 MR. LESNEVEC: Exhibit 2, 3, 4 -- yes, 2, 3 and
4 4. So we would add this as a separate -- it would be a
5 new exhibit with a new number.

6 THE COURT: Okay. Tell us the number so we can
7 mark it for identification.

8 MR. LESNEVEC: It would be a new marking,
9 Exhibit 22.

10 THE COURT: Okay.

11 MR. LESNEVEC: So we would mark this as Exhibit
12 22, and this would be sequence 104/5, and image 8/17.

13 THE COURT: You got it?

14 We are marking this as Plaintiff's Exhibit 22
15 for identification purposes.

16 MR. LESNEVEC: Yes, thank you, your Honor.

17 (Whereupon, at this time, Plaintiff's Exhibit 22
18 was marked for identification.)

19 MR. LESNEVEC: At the top right corner it
20 indicates Moazzam Gill and the date, December 18, 2019,
21 just for the record.

22 THE COURT: Yes.

23 Q Are you able to see this, Doctor, or do you want to
24 step down to go over this with the Court's permission?

25 A With the judge's permission it may be easier for me

1 to look.

2 THE COURT: Just make sure you don't step in
3 front of the jury.

4 Q Doctor, keep your voice up.

5 A Yes.

6 Q Do you recognize this, Doctor?

7 A Yes.

8 Q What are we looking adhere?

9 A We are looking at an MRI image of the left shoulder
10 on patient Moazzam Gill. This is basically the way the MRI
11 works. It kind of takes slices through your shoulder. This
12 is a slice through the shoulder showing the humeral held, the
13 ball and the glenoid which is the cup here (indicating).

14 This structure here on the outside is the deltoid
15 muscle. That's something you can feel on yourself. It's the
16 muscle on the outside of the shoulder.

17 The muscles here are the rotator cuff muscles
18 (indicating). Those are something that you usually can't
19 feel. They are areas that you may be able to feel if you
20 touch on your scapular back here, but this is the
21 supraspinatus muscle, and that becomes a tendon, and the
22 tendon attaches to the humeral head which is bone, so when the
23 muscle contracts, it pulls on the tendon, and the tendon pulls
24 on the bone, and you are able to raise your arm up.

25 The tendon should be -- on the MRI scan should be a

1 very dark black structure. Here you see where it's attaching
2 this white area, we call that petrogenicity. In other words,
3 there is variations in the signal of the tendon. This is the
4 area where we also noted during the surgery the partial tear
5 in the rotator cuff.

6 Q So where you indicate that is the rotator cuff and
7 that's the tear where you noted towards the right where it's a
8 different color?

9 A Yes. On the MRI report it's noted to be like
10 tendonitis or inflammation, although it is hard to tell from
11 this MRI whether or not there was actually tearing, but the
12 tear is what we did note at the time of the surgery.

13 Q Is that a fair and accurate copy of the MRI film of
14 Mr. Gill's left shoulder that you reviewed?

15 A Yes.

16 MR. LESNEVEC: I would ask that it be entered
17 into evidence.

18 MR. McNIFF: No objection.

19 THE COURT: What was previously marked as
20 Plaintiff's Exhibit 22 for identification will be entered
21 as Plaintiff's Exhibit 22 in evidence.

22 Q You can take a seat, Doctor.

23 A Thank you.

24 Q Can you just tell us about how MRIs work in terms of
25 there being different slices or different sequences?

1 A Yes. So an MRI unlike an x-ray which uses radiation,
2 MRI uses magnets, and it generates signals that are picked up,
3 and you can see soft tissue structures like muscles and
4 tendons that you can't see with the x-ray.

5 There are different sequences such as tier one and
6 tier two, where tier one picks up more of a fat signal and the
7 other picks up more of the water signal.

8 And then there are different plains, such as plains
9 in this direction, coronal, and then the sagittal direction
10 and then the axial direction, so there are three different
11 kinds of cuts that you do through the shoulder.

12 Q And, Doctor, you saw Mr. Gill first on January, 2020,
13 correct?

14 A Yes.

15 Q When was the next time you saw him?

16 A The in next time was on September 22 of 2020.

17 Q So in between that time period, covid 19 had started,
18 correct?

19 A Yes.

20 Q And how was Mr. Gill progressing when you saw him in
21 September of 2020?

22 A Well, he wasn't doing well. He still had pain,
23 limitation of motion. He was not getting better with physical
24 therapy and medications. He reported no significant
25 improvement.

1 We discussed a possible shoulder injection, but since
2 injections to his neck and back did not help him, he deferred
3 the shoulder injection, and his examination on this date was
4 not significantly different, and because of his ongoing
5 symptoms of pain, the findings on examination as well as the
6 imaging findings, I did recommend left shoulder surgery.

7 Q And what kind of surgery was that?

8 A Arthroscopic surgery.

9 Q And when was the surgery performed?

10 A That surgery was performed, I believe, on October 16
11 of 2020.

12 Q That's what I have.

13 A Yes.

14 Q And so can you just tell us about the operation.

15 A Yes. So basically the patient, once they are in the
16 operating room, they receive anesthesia, and in this case he
17 received both regional anesthesia where they inject the neck
18 area to make the whole arm numb. And the benefit of that is
19 when you wake up from the surgery, you may not feel pain for
20 maybe even 12 hours because the arm is numb.

21 And they did general anesthesia that is used for the
22 surgery, and that is with a tube that's placed into the
23 trachea so the patient can breath during the surgery.

24 One of the first things that we do during the surgery
25 is we do an examination of the shoulder because we have the

1 benefit of the patient not having any pain, so we are able to
2 really move the arm around and perhaps get a better exam than
3 we can in the office.

4 Q When you do that, Doctor -- sorry to interrupt -- is
5 the patient conscious or unconscious?

6 A The patient is unconscious at this point in this
7 case.

8 Q All right.

9 A Now, the significant findings of that examination
10 under anesthesia was that the shoulder was loose. Again, we
11 could feel like the ball slipping out of the socket when we
12 examined the shoulder.

13 That's frequently -- that's a clinical diagnosis.
14 That's the result of the ligaments around the shoulder being
15 loose and stretched. It's a hard finding for an MRI to pick
16 up on, so we rely on examination findings as well as
17 interoperative findings for that diagnosis.

18 Then we proceeded with the surgery. We cleaned the
19 arm up with Betadine, and we made four portals around the
20 shoulder, one in the back, one on the side, and two in the
21 front, through which we enter with a camera through one and
22 with our arthroscopic instruments through the other portals to
23 do the surgery.

24 MR. LESNEVEC: And so actually with the Court's
25 permission, I would like to show some exhibits which are

1 blown up which are already in evidence as part of his
2 records.

3 May I use the easel for that, your Honor?

4 THE COURT: Yes. The officer will set it up.
5 Counsel, move it back.

6 MR. LESNEVEC: Yes, your Honor.

7 THE COURT: You can move.

8 MR. McNIFF: Thank you, your Honor.

9 MR. LESNEVEC: With the Court's permission, I
10 would ask that the doctor be able to step down.

11 THE COURT: You can step down towards the easel,
12 Doctor.

13 THE WITNESS: Yes.

14 Q Just for the record, I am showing you Exhibit 21,
15 Doctor.

16 Tell us what are we looking at here?

17 A Yes. So these are intra-operative photos, so on the
18 camera that we use during the surgery, we are able to actually
19 take pictures, and these are some of the photos that we
20 capture during the surgery.

21 Q Before you go any further, just for the record, we
22 are at the bottom left hand corner. It states Moazzam Gill;
23 is that correct?

24 A That's correct.

25 Q And there is eight photographs on this page; is that

1 correct?

2 A That's correct.

3 Q And they are labeled one through eight; is that
4 right?

5 A That's correct.

6 Q And your name, Dr. Touliopoulos, is in the center
7 bottom?

8 A Yes.

9 Q And the right-hand corner is October 16, 2020, and
10 there is a number one at the bottom?

11 A That's correct.

12 THE COURT: Doctor, I am just going to ask you
13 to just stand a little bit farther back so the jury can
14 see.

15 Q If you could go through those numbers, Doctor, and
16 tell us what they show.

17 A Yes. So I would bring your attention to images two,
18 three and four, and that is showing the partial tear of the
19 rotator cuff tendon.

20 There are four tendons in the rotator cuff. The one
21 that's torn is called the supraspinatus tendon. And
22 originally if you look at number three, the tendon should be
23 this white surface (indicating).

24 Here you could see the area where it's torn.

25 Actually, this is where it's torn in here. And these are the

1 torn pieces of the rotator cuff tendon.

2 What we did is we debrided it with a shaver. This is
3 on image number seven. In the corner you can see the image of
4 the silver structure. It's a shaver that we use to remove the
5 torn pieces of the rotator cuff tendon. We kind of gauge the
6 depth of the tear to be about 75 percent of the thickness of
7 the tendon, so it was enough for us to decide to repair it.

8 And, again, this is image seven and eight showing the
9 tendon tear after we debrided it. But you can see how deep
10 the tear goes into the substance of the rotator cuff tendon.

11 This image number six is showing the biceps tendon
12 which was normal during the arthroscopy.

13 Q I'll go to the next page.

14 A Yeah.

15 Q On the bottom right-hand corner of this it's listed
16 as page number two and it shows photos nine through sixteen;
17 is that correct?

18 A Yes.

19 Q Can you tell us what we are looking at in this
20 portion of the operation?

21 A Yeah. So this portion of the surgery is primarily
22 showing the loose ligaments in the shoulder.

23 So, again, even from his initial visit he was
24 complaining that his shoulder was loose. I noted it was loose
25 during the office exam and also during the exam before the

1 surgery.

2 This structure here on image 13 shows the loose
3 ligaments that we were able to actually grab and pull upon.

4 To address this we performed something called a
5 capsulorrhaphy which was a tightening of the loose ligaments in
6 the shoulder. We basically pass a suture through those
7 ligaments with a suture passer, again, depicted in image 13.

8 This is the suture in image 14 after it is passed
9 around the ligament, and then in image 15 it shows it after
10 it's tied.

11 So basically we are implicating the ligament, we are
12 tightening up the ligament so the shoulder is more stable, and
13 he doesn't have a feeling like it's going to come out again.

14 Q I'll move on to the next page.

15 On the bottom of this page, it's indicated as number
16 three.

17 A Yes.

18 Q It also indicates photos 17 through 24; is that
19 correct?

20 A Yes.

21 Q Can you tell us what we are looking at here, Doctor?

22 A Yes. So on the top image on the left of image 17 it
23 shows the two sutures that are in place after we did the
24 capsulorrhaphy.

25 We then went on to entering the subacromial space of

1 the shoulder, so it's a space that -- if you pass me the
2 model. I'm sorry.

3 Q Sure.

4 A It may be easier.

5 Q Okay.

6 A So there is a shoulder joint which is ball and
7 socket, but there is a space above the ball and above the
8 rotator cuff and above this bone here which is the achromia,
9 which is a potential space.

10 So it's not part of the joint, but it's a space that
11 is part of the shoulder structure, and we entered that space
12 and we noted inflammation. You can see the redness here
13 (pointing), which we call bursitis.

14 We address that with a bursectomy. We use a shaver
15 to remove the inflamed bursa.

16 We also noted a bony prominence which is like
17 basically a curvature of the bone. Obviously this is
18 something that has been here his whole life, and that was
19 never symptomatic, but following the accident it became
20 symptomatic because of the instability of the shoulder.

21 And this can result in a second impingement syndrome.
22 Impingement syndrome is when the arm is raised and this bone
23 rubs against that bone and the tendon between the bones gets
24 pinched.

25 Because he developed that impingement syndrome, we

1 did a decompression which involved the bursectomy that I
2 described earlier, as well as shaving down this bone
3 prominence and make it smooth.

4 Q I'll go to the next page.

5 This is page number four. It lists photos 25 through
6 30; is that correct?

7 A Yes.

8 Q Can you just tell us what we are looking at here,
9 Doctor?

10 A So this goes through the steps involved with the
11 rotator cuff repair.

12 So the rotator cuff tear is repaired using this
13 anchor. The anchor is plastic, but it does have a metal core
14 so it's a combination of metal which is titanium with the
15 plastic.

16 After the sutures are passed through the tendon, they
17 are attached to the anchor which is hammered into the bone.
18 This is actually the tip of this anchor, once it's inside the
19 bone. Then the sutures are tightened to bring the tendon down
20 to the bone.

21 Again, in images 28 through 30 are just pictures of
22 the repaired rotator cuff tendon.

23 Q And that hardware above that you had to insert, is
24 that in there permanently?

25 A Excuse me?

1 Q Is the hardware permanent?

2 A Yes. The hardware is permanent. Usually it is not
3 removed unless there a reason to, infection or it becomes
4 loose.

5 Q Was there any issue with it becoming loose or any
6 infection as you are aware?

7 A No. It was not as of the last visit I had with the
8 patient.

9 Q Okay, Doctor.
10 You could take your seat.

11 A Thank you.

12 Q What is the recovery process like for this type of
13 surgery, Doctor?

14 A Well, it's part of the lengthy recovery. Basically
15 the first four to six weeks is spent in a sling. The patient
16 is allowed to do some exercises at home. We don't usually
17 start formal physical therapy for four to six weeks, sometimes
18 even longer.

19 At this point they continue with therapy for a period
20 of months.

21 Q Doctor, did you continue to see him at all after the
22 surgery?

23 A Yes.

24 Q When did you see him after surgery?

25 A I saw him again on November 9 of 2020.

1 Q And how was Mr. Gill progressing at that point,
2 Doctor?

3 A He was progressing. He had some improvement, and in
4 his level of pain relief as well as his motion at this visit.

5 Q Did Mr. Gill continue to follow up with anyone else
6 at your practice?

7 A Yes.

8 Q Who was that?

9 A Dr. DeMarco.

10 Q Who was that?

11 A He is also a board certified orthopedic surgeon that
12 is a physician in the practice.

13 Q Did you form any opinions with regards to Mr. Gill's
14 ability to work at all?

15 A Yes. At this point in time when I saw him on
16 November 9, I had him as being totally disabled from his
17 employment.

18 Q Why is that?

19 A By this point in time he had just undergone a
20 shoulder surgery, and was recovering from he procedure.

21 Q Are you aware of any prior injuries that Mr. Gill had
22 to his left shoulder?

23 A I asked him that question, and he denied any prior
24 history of injuries to the shoulder or even ever having any
25 symptoms in the shoulder such as stiffness and pain.

1 Q Are you aware of any prior accidents or car accidents
2 or anything of that nature with Mr. Gill prior to this one?

3 A Only with reference to the shoulder there is no
4 history of trauma.

5 Q Do you have an opinion within a reasonable degree of
6 medical certainty as to what the cause of Mr. Gill's left
7 shoulder torn rotator cuff as well as the impingement syndrome
8 was?

9 A Yes.

10 Q What is your opinion?

11 A That it is as a result of the accident.

12 Q Why is that your opinion?

13 A This is a patient that never had a shoulder problem,
14 never injured his shoulder.

15 He had pain immediately after the accident.

16 In fact, it was seen in the emergency room, and they
17 even did x-ray of the shoulder because of his pain level.

18 This all developed the day of the accident. On
19 findings and during the time of surgery, he had tearing of the
20 rotator cuff tendon and stretching of the ligaments which I
21 believe were traumatic in origin.

22 Q Do you have an opinion within a reasonable degree of
23 medical certainty as to whether or not Mr. Gill's left
24 shoulder injuries are permanent?

25 A Yes, I do.

1 Q What is your opinion?

2 A That they are.

3 Q And why is that your opinion?

4 A Because of the tearing in the shoulder and the need
5 for other surgery and the anchors in the shoulder. Again,
6 those are permanently in his shoulder.

7 MR. LESNEVEC: I have no further questions.

8 Thank you.

9 THE COURT: Thank you.

10 You have cross?

11 MR. McNIFF: Yes, thank you, your Honor.

12 CROSS EXAMINATION

13 BY MR. McNIFF:

14 Q Good afternoon, Doctor.

15 A Good afternoon.

16 Q How many times have you testified in a courtroom
17 during your career?

18 A I don't know the exact number. I would say on
19 average it may be four or five times a year on behalf of
20 patients I have treated.

21 Q That's going back how many years?

22 A I started practice in 1997.

23 Q Has that been true pretty much throughout, four or
24 five times a year?

25 A There is some years it is a lot less and many years

1 it is more, but I would say on average that that's about
2 right.

3 Q In addition, do you prepare what's called a narrative
4 report for some of your patients?

5 A When asked, I do for some of my patients.

6 Q And when asked that would be when asked by attorneys,
7 for example, to prepare those reports?

8 A Usually it would be an attorney that would asking for
9 narrative report, yes.

10 Q When you prepare narrative reports for attorneys, do
11 you charge for that?

12 A It's up to my office manager, and I believe sometimes
13 we do and sometimes we don't.

14 Q You are not involved completely with the billing in
15 your office?

16 A I am not.

17 Q Okay. The procedure that you performed on Mr. Gill
18 was described in your operative report, right?

19 A Yes.

20 Q Did you describe it as a left shoulder diagnostic
21 arthroscopy?

22 A That's part of the procedure, yes.

23 Q Okay. And that's going in and taking a look as to
24 what's going on; is that what that means in general?

25 A Yes.

1 Q And in total how many visits did Mr. Gill have to
2 your practice?

3 A There were through myself -- I am just going to count
4 and see how many times he saw Dr. DeMarco. Four times with
5 Dr. DeMarco.

6 Q What was the date of the last visit?

7 A August 19, 2021.

8 Q So he hasn't seen you or anyone in your practice for
9 three and a half years, something like that?

10 A Yes. Since August 21 he has not been seen.

11 Q The procedure that you performed, would you say that
12 took about 45 minutes on average?

13 A You know, the time of the surgery would be noted in
14 the anesthesia report.

15 I would say that for what I did, it would likely be
16 under an hour, but it could be longer.

17 Q And this is done on an out patient basis; is that
18 right?

19 A In this case it is, yes.

20 Q And that means the patient comes to the hospital in
21 the morning, and they are released sometime later that day,
22 right?

23 A That's correct.

24 Q The procedure as you described to the jury is done
25 with portals; is that right?

1 A Yes.

2 Q It's not an open procedure where you use a scalpel
3 and open up the shoulder?

4 A It's -- so -- I would --

5 Q Doctor, if you can't answer my question yes or no,
6 just let me know.

7 A A scalpel is used.

8 Q To puncture?

9 A To make the portals.

10 Q But in terms of an open procedure with a scalpel
11 where you slice and open somebody up, you didn't do that, did
12 you?

13 A This is arthro, which is different from opening up.
14 That's correct.

15 Q You would describe it as minimally invasive?

16 A I would call it arthroscopic which is different than
17 open.

18 Q And it leaves I think you said a couple of portal
19 marks on the shoulder, one in the back in the front and on the
20 side?

21 A Yes. Four total.

22 Q When you were seeing Mr. Gill, what office was he
23 coming to?

24 A I have two office locations. It doesn't specify in
25 the note.

1 I would need to look at my computer database to tell
2 you that.

3 (Whereupon, at this time, Senior Court Reporter
4 Victoria Bifulco was relieved by Senior Court Reporter
5 Francine Spaulding.)

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1 Q So, what you have there is that a complete copy of your
2 chart in front of you or is that part of it?

3 A This is a printout of my office chart that I brought
4 with me that I am using today.

5 Q In addition, we've submitted into evidence the records
6 from your office?

7 A Yes.

8 Q Do you have those in front of you?

9 A Yes.

10 Q The records that are in evidence, that you have in
11 front of you, is that a complete copy of the chart?

12 A This is a complete copy of the office visit, but not of
13 the entire chart.

14 MR. MCNIFF: With the Court's permission, can I
15 look at the records in evidence?

16 THE COURT: Yes, please hand the attorney the
17 records.

18 Q Doctor, let's go through what happens when a patient
19 comes to your office. They come in for the first time, they see
20 you, you took a history in this case; is that right?

21 A That is correct.

22 Q You asked them essentially how are you, what brings you
23 here, something like that?

24 A Yes.

25 Q At that point, they put forth complaints to you, right?

1 A Yes. For the areas that I am going to be treating,
2 yes.

3 Q I mean, you ask, I guess first in general and then you
4 take note of areas that are within your field of expertise?

5 A In this case, he did have other complaints that I
6 documented but I only examined his shoulder.

7 Q When they make complaints to you, a patient, those
8 complaints are subjective in nature?

9 A That is correct.

10 Q Then you do a work up, among other things, to try to
11 figure out if the complaints correlate with whatever your
12 findings are, right?

13 A That is part of the visit, yes.

14 Q When you do range of motion testing in this case, you
15 are relying on the patient to be accurate, right?

16 A I am relying on the patient to participate with the --
17 especially with the active motion which is something I ask the
18 patient to do. So, they are actively involved during that part
19 of the exam.

20 Q You are relying on the patient to be accurate and
21 honest about when they actually feel pain?

22 A Yes.

23 Q You are not trying to push the patient to the point
24 they can't take the pain any more, right?

25 A When I am asking them to do the motion, I say as much

1 as you can tolerate so pain can be a limitation. Also with past
2 emotion, pain can also be a limitation. So, we take it to the
3 point where it is uncomfortable but obviously we don't want to
4 recreate a lot of pain.

5 Q So, when they do active range of motion, you ask them
6 on their own to show you how far they can lift their arm?

7 A That is correct.

8 Q You are relying on the patient to tell you honestly
9 when they feel pain?

10 A Yes.

11 Q When you do a passive range of motion test, you are
12 actually pushing on the arm, true?

13 A It is raising the arm, yes.

14 Q But you are using force, some force, right?

15 A Yes.

16 Q When you use that force, you are also relying on the
17 patient to be honest and accurate about when they feel pain;
18 just yes or no?

19 A I can't -- I can answer, but I can't answer that yes or
20 no.

21 Q Okay. You document your findings with regard to range
22 of motion in your chart, right?

23 A Yes.

24 Q Do you mention in your chart the type of device you use
25 to measure the range of motion?

1 A It is not mentioned but I use a goniometer when there
2 is a numerical value.

3 Q In any of the visits that you have in the notes in
4 front of you, did you actually mention you used a goniometer?

5 A No, it is just the custom in my practice to use it.

6 MR. MCNIFF: Thank you, Doctor, I have no further
7 questions.

8 A Thank you.

9 THE COURT: Any redirect?

10 MR. LESNEVEC: Yes, your Honor.

11 REDIRECT EXAMINATION

12 BY MR. LESNEVEC:

13 Q Doctor, how many range of motion tests have you
14 performed throughout your career of the left shoulder of
15 patients?

16 A On patients? A number of hundreds or thousands,
17 probably.

18 Q During any of the visits that you had with Mr. Gill,
19 did you feel he was exaggerating in any way?

20 A No, I believe that his complaints were consistent with
21 my physical findings which were also consistent with the MRI
22 findings and also with the MRI arthroscopy findings.

23 Q Did you find in any way during any of the range of
24 motion testing that Mr. Gill was giving less than full effort?

25 A No, I believed he was giving his best effort.

1 MR. LESNEVEC: I have nothing else.

2 THE COURT: Thank you, Doctor, you may stand down.

3 THE WITNESS: Thank you, your Honor.

4 (Whereupon, the witness exited the courtroom.)

5 THE COURT: Counsel, you may call your next
6 witness.

7 MR. LESNEVEC: Yes, your Honor, at this time the
8 plaintiff calls Dr. Debra Dwyer.

9 THE COURT: Please Bring in the witness.

10 THE COURT OFFICER: Witness is entering.

11 (Whereupon, the witness is entering the
12 courtroom.)

13 THE CLERK: Do you swear to tell the truth, whole
14 truth and nothing but the truth?

15 THE WITNESS: I do.

16 THE CLERK: In a loud clear voice, state and spell
17 your full name and state your address for the record.

18 THE WITNESS: Debra, D-E-B-R-A, Dwyer D-W-Y-E-R
19 address is 17 Springbriar, one word, and it is B-R-I-A-R,
20 Centereach, C-E-N-T-E-R-E-A-C-H, New York, 11720.

21 THE CLERK: Thank you, please be seated.

22 THE COURT: Thank you. You may proceed, counsel.

23 MR. LESNEVEC: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MR. LESNEVEC:

1 Q Good afternoon. Is it Dr. Dwyer?

2 A Yes.

3 Q Have we ever met before today?

4 A I don't think so.

5 Q Have you ever testified before in court where I was an
6 attorney asking questions?

7 A Yes, I believe we have actually. I don't recall,
8 sorry. I was just actually trying to look that up because I
9 don't remember. I don't think we testified before, I think I
10 have worked with you before.

11 Q Did we speak at all before today about this case?

12 A No.

13 Q Can you tell us about your educational background?

14 A Sure. I got my bachelors degree from Queens College in
15 Flushing, New York. That was in English literature and
16 economics. I went on to get my masters and my Ph.D from Cornell
17 University in economics with field specialities in health
18 economics, labor economics, and public economics. Then I went
19 on to do a one year post-doctoral fellowship at the Center of
20 Policy Research in Syracuse University.

21 Q Are you here today as an economist?

22 A Yes, I am.

23 Q What is an economist?

24 A In general an economist studies how societies decide
25 what to do with their resources. It is that broad. We answer

1 three basic questions, what to produce, how to produce it, and
2 who gets what. Again that is very, very broad, so we have
3 specialities within that.

4 So my specialities is to monitor trends and policy and
5 what is going on in the health markets and the labor markets.
6 And, those are two very large markets. So, I will keep up with
7 what is happening with prices and costs and health care and
8 equity issues and health care policy issues, that sort of thing.
9 And, then in the labor market what is happening with wages,
10 unemployment, industry analysis, that sort of thing.

11 Q Can you tell us about the honors, awards or
12 publications that you have written?

13 A Sure, I have been doing this since 1996, so I have a
14 couple of dozen peer review journal articles, a couple of book
15 chapters, I have done a lot of reviews and I have received many
16 honors and awards over the years including grants from the
17 National Institute of Health, and others. I serve on the Board
18 of Directors for an economics organization and I am a member of
19 many economics organizations.

20 Q Are you also a professor?

21 A Yes.

22 Q Tell us where you teach and what you teach?

23 A I spent the last couple of decades in the State
24 University of New York system, predominantly at Stony Brook,
25 where I spent about 21 years. I was a faculty member, a

1 chairperson and ultimately the assistant dean for strategic
2 planning. I stepped away from that role full-time. I am just
3 teaching and doing research now. I teach health economics and
4 public policy.

5 This semester I am teaching at Farmingdale State
6 College, also a SUNY. I developed a relationship with a
7 researcher there and we have grants to provide financial
8 literacy training to vulnerable populations in New York. So, I
9 am I working on that and teaching health economics.

10 Q Have you testified in court before?

11 A I have.

12 Q Approximately, how many times?

13 A Hundreds, I have been doing this since 2012.

14 Q Which jurisdictions have you testified in?

15 A All over the New York City area. That would be Nassau,
16 Suffolk, Queens, Bronx, Brooklyn, Staten Island, Westchester and
17 I testified a couple of times outside. Once in Connecticut,
18 once in Maryland.

19 Q As part of your field of economics, do you get involved
20 in the economic loss analysis of people who have litigation or
21 cases that are going on?

22 A Yes, I do.

23 Q Can you tell us about the type work you do in that
24 respect?

25 A Sure, one of the things I did when I stepped back from

1 my full-time administrative role was to start my own business,
2 Deb Dwyer Analytics. And, within that, I do a lot of this kind
3 of this work where I consult with attorneys on cases to
4 determine economic damages for people who are involved in
5 lawsuits like this.

6 So, if somebody is injured and unable to work or
7 experiences a reduction in their earnings capacity, it is my job
8 to determine what would they have earned for the rest of their
9 work life had the incident never occurred. That includes losses
10 in income, losses in fringe benefits. That sort of thing.

11 I also, because I am an health economist, have the
12 expertise predict what is going to happen to prices and costs in
13 health care. I am not a medical doctor, so, I would take the
14 treatment recommendations of a medical expert, a life care
15 planner and they provide me with the categorizes of services
16 that would be required for the plaintiff, in this case Mr. Gill.
17 The services required related to the injury in the case.

18 The doctor will provide the frequency, the duration,
19 and the current costs. So, how much does it cost in today's
20 dollars. I need to make sure Mr. Gill has enough money to cover
21 those expenses into the future because we are predicting over
22 the next 30 years or so. We know prices will go up. My main
23 role is to talk about inflation. What is going to happen to
24 those prices.

25 The US Bureau or Labor Statics collects data on prices,

1 they are the agency that puts out the consumer price index or
2 the inflation rate in general, that you guys read about. That
3 rate captures the change in prices and trends for the typical
4 goods and services that a typical household would consume.

5 In doing that, the agency is very large and they
6 collect data on all sub categories of goods and services
7 including medical care. And, they break it down, the general
8 inflation rate for medical care for example over the last 25
9 years has been about 3.3 percent, on average, which is pretty
10 much in line with the general inflation rate. Which is good,
11 because historically it has been very high. It has been very
12 high again in the last few years as we all know.

13 I take the closest match of category of health care
14 services from that Department Labor Data to the recommendations
15 of the life care planner and I come up with what I believe is a
16 good growth rate, an accurate growth rate to predict what the
17 prices will be into the future. There is uncertainty, we don't
18 want to take just one year's worth because it does change it --
19 while prices go up every year for the most part, they go up some
20 years higher than others. Right now we are in a period of very
21 high inflation.

22 So, if I were just to take the current rates to project
23 forward the costs for Mr. Gill's case, it would be too much,
24 probably too much money that he would need because right now the
25 rates are really high and we know that they are not going to

1 stay that high for the next 30 years. If we happen to be in a
2 recession where the rates were below one percent, then the
3 prediction would not be enough money for Mr. Gill to cover those
4 health care services.

5 So, my job is to say what is reasonable when we can't
6 read the future in terms of reasonable amount to cover the
7 expenses of health care for the plaintiff, in this case
8 Mr. Gill.

9 I also do advising for advocacy groups and policy
10 makers, that sort of thing. But, this is the biggest part of my
11 business.

12 Q In terms of your business with economic loss analysis
13 for injured plaintiffs, how many times do you think you have
14 performed that type of analysis throughout your career?

15 A Again hundreds.

16 Q Are you being compensated for your time here today?

17 A Yes.

18 Q How much are you being compensate?

19 A \$5,000.

20 Q If you were not here today, what would you be doing?

21 A I would be working on research analysis on other cases.
22 I have a lot of grading to do. It is the end of the semester,
23 that sort of thing.

24 Q In terms of the facts of this case, Mr. Gill, was he
25 working as of December 4, 2019 the date of the accident?

1 A Yes.

2 Q Do you know what kind of work he did?

3 A He was involved in the car service, taxi industry.

4 Q He was an Uber driver; is that right?

5 A Okay.

6 Q As part of your work in this case, did you examine
7 Mr. Gills' tax records?

8 A I did.

9 Q What did you examine?

10 A I examined the 1040 -- the one I relied upon the most
11 was 2019, but I had 2018 and 2017. As well, in this case, the
12 most recent one was the most relevant.

13 MR. LESNEVEC: Your Honor, I would like this
14 marked.

15 THE COURT: We are going to mark this as
16 Plaintiff's 23, for identification purposes.

17 THE COURT: Please approach, counsel.

18 (Whereupon, an off-the-record discussion was held
19 at the bench.)

20 THE COURT: Members of the jury, we are going to
21 take a brief five minute comfort break. During the break,
22 do not discuss the case with anyone, including your fellow
23 jurors, do not speak to with the parties, the attorneys or
24 the witnesses. If anyone attempts to discuss the matter
25 with you, please notify my court officer who will notify

1 me.

2 We are taking a very brief comfort break. Okay.

3 THE COURT OFFICER: All rise, jury exiting.

4 THE COURT: Off the record.

5 (Whereupon, a short recess was taken.)

6 THE COURT: On the record. Pleas bring in the
7 jury.

8 THE COURT OFFICER: All rise, jury is entering.

9 (Whereupon, the jury entered the courtroom.)

10 THE CLERK: All parties stipulate to the presence
11 and proper seating of the jury?

12 MR. LESNEVEC: I do.

13 MR. MCNIFF: I do.

14 THE COURT: You may all be seated.

15 We are going to mark this document as
16 Plaintiff's 23, for identification purposes.

17 (Whereupon, Plaintiff's Exhibit 23, was marked for
18 identification by the Reporter.)

19 THE COURT OFFICER: Plaintiff's 23, marked for
20 identification.

21 Q Doctor, can you tell us what we are looking at,
22 Exhibit 23, please?

23 A These are Moazzam Gill's tax returns, 2019. Let's see,
24 maybe just 2019.

25 Q Yes, 2019, is that correct?

1 A Yes.

2 Q Is that a fair and accurate of the 2019 tax returns
3 that you reviewed for Mr. Gill?

4 A Yes.

5 THE PLAINTIFF: I would ask they be admitted in
6 evidence.

7 THE COURT: Any objection?

8 MR. MCNIFF: No objection.

9 THE COURT: What was marked as Plaintiff's 23 for
10 ID, will be entered into evidence.

11 (Whereupon, Plaintiff's Exhibit 23, was marked in
12 evidence by the Reporter.)

13 THE COURT OFFICER: Plaintiff's 23, in evidence.

14 Q Doctor, why did you primarily rely on the 2019 tax
15 returns?

16 A The accident occurred in December, so it was pretty
17 much a full year and it was consistent with what he had done the
18 prior two years.

19 Q How much did he earn in the year 2019?

20 A He earned \$22,939.

21 Q Did you calculate Mr. Gill's projected loss earnings
22 meaning from the date of the December 4, 2019 accident until the
23 present?

24 A Yes, I did

25 Q What were your calculations, what did that add up to?

1 A The total over his life work expectancy is \$699,516 and
2 that is over the next 22 or so years.

3 Q So, that would be -- is that from today's date moving
4 forward or from the date of the accident moving forward; how do
5 you calculate that?

6 A That was from the date of the accident moving forward.

7 Q Is that calculation based on a reasonable degree of
8 economic certainty?

9 A Yes, it is.

10 Q How did you compute that or calculate that?

11 A So, just like I had to take averages in the change of
12 prices for health care, I had to take into account average wage
13 growth. So, I applied an average wage growth rate of 3 percent.
14 That is based on the national average which is now up to
15 3.4 percent over the last 20 years. That is based on Department
16 of Labor data also.

17 I could have started that 3 percent in 2025 because the
18 years before that between 2020 and 2024 we know what the growth
19 rates were and they averaged about 5 percent, so significantly
20 higher. I was being conservative and I just used the flat 3
21 percent from 2020 until he would retire at age 67 and that is
22 another one of my assumptions, the retirement age. I have him
23 working until his full age of retirement under the social
24 security system.

25 Q What age is that?

1 A Sixty-seven.

2 Q Did you chart that into a yearly break down?

3 A I did.

4 Q Yes.

5 MR. LESNEVEC: Can I have this marked?

6 THE COURT: Do one at time. Does it matter which
7 one?

8 MR. LESNEVEC: Yes, the one that indicates, Income
9 Loss at the top, in the center.

10 THE COURT: Okay. We will mark this document as
11 Plaintiff's 24, for identification purposes.

12 (Whereupon, Plaintiff's Exhibit 24, was marked
13 for identification by the Reporter.)

14 THE COURT OFFICER: Plaintiff's 24, marked for ID.

15 THE COURT: We are going to mark this document as
16 Plaintiff's 25, for identification purposes.

17 (Whereupon, Plaintiff's Exhibit 25, was marked
18 for identification by the Reporter.)

19 THE COURT OFFICER: Plaintiff's 25, marked for ID.

20 Q Take a look, Doctor, at Exhibit 24, first.

21 MR. LESNEVEC: With regards to income, this is for
22 demonstrative purposes, your Honor, I blew this up. May I
23 show the jury?

24 THE COURT: Sure.

25 MR. LESNEVEC: Thank you,

1 Q So, if you want to follow along with your chart or this
2 one, whatever you prefer?

3 A Do you want me step down?

4 Q Whatever you prefer, whatever is easy for you.

5 THE COURT: You can come around.

6 Q Can you tell us how you charted his loss of income?

7 A Sure. You see the loss started 2020 because the
8 accident was December 4, 2019, the end of the year. So, I took
9 his annual salary and used that as his earnings capacity. What
10 he was capable of earning on the lay market and what he was
11 likely to earn. So, I said in 2019 he earned \$22,939. So, I
12 will write that over here as the starting point. And, again,
13 that is based on his tax return.

14 So, you see I have a loss at \$23,627 in 2020, that is
15 giving him a three percent raise from what he had earned in
16 2019, and again, the national average over the last 20 years has
17 been 3.4 percent. I will write, I used a 3 percent growth rate.
18 And, keep in mind, had I used the actual growth rate, these
19 would be higher numbers. So, I am pretty conservative.

20 So, I give him a 3 percent raise every year from that
21 starting salary of roughly \$23,000 until he reaches the age of
22 67 which happens here in 2041. That is when he reaches 67, and
23 it is a partial year because he would retire on his birthday and
24 the life time cost then is \$699,516, that's the value what he
25 would have earned under the assumption he would have worked at

1 driving at \$22,939 per year with a 3 percent raise each year and
2 work until his full age of retirement under social security.

3 Q Did you also factor in the loss of social security
4 retirement income?

5 A I did. So, your social security pension is based on
6 your years of work and your highest earnings and given he lost
7 over 20 years of work, he is going to collect less at age 62.
8 What I calculated was the difference in the future between what
9 he would have earned and what he will earn. So, roughly, \$9,000
10 a little bit more annually in future dollars. So, current
11 dollars that would be more like 7,000.

12 The growth rate here, I wrote this report in 2022.
13 And, the 20-year average cost of living adjustment applied by
14 the social security administration at that time was two percent.
15 Under Joe Biden, it went up to 8.4 percent one year and that
16 20-year average jumped up 2.7 percent. So, now I am using the
17 2.5 percent. Nobody anticipated that big jump. But, it would
18 have been significantly higher than what I did here. I did the
19 math and it would be about a 100,00, maybe a little more
20 difference than what I have here.

21 Q What do you have there by the way?

22 A I have a \$105,532. The way I came to that was using
23 that 2022, 20-year average of 2 percent average. I think I said
24 2022, 20-year average at 2 percent. Sorry, that was a lot of
25 two's. Starting at the time he retires and you see it ends here

1 in 2051 using the data from the National Center for Health
2 Statics I came up with this life expectancy. They put out what
3 is called life tables every year, those are tables of survival
4 probabilities. They tell you the average amount of time left to
5 live, giving the year you were born and your gender.

6 So, in this case it is 78.4. That's the life
7 expectancy age for Mr. Gill. So, he could collect his pension
8 until the end, until he passes and that total comes out to
9 \$105,532. So, what this chart is telling you, is the life-time
10 loss from losing all of those years of work comes out to the sum
11 of these two numbers and I can give you that sum if you want.

12 Q Yes.

13 A So, the total sum wages and social security benefits is
14 \$805,048.

15 Q These calculations with the social security retirement
16 economics as well as loss of income are made within a reasonable
17 degree of economics certainty?

18 A They are.

19 Q Are you familiar with narrative reports, Doctor, by the
20 way?

21 A Yes.

22 Q Life care plans, are you familiar with those?

23 A Yes.

24 Q Did you review a life care plan for Mr. Gill?

25 A I did.

1 Q Was that from Dr. Root?

2 A Yes.

3 Q What, if any, work did you do with regards to charting
4 future medical care and costs?

5 A I took each recommendation of Dr. Root, each category
6 of care, for example physical therapy, seeing the doctor, I
7 analyze the costs and then projected how those costs would
8 increase each year to determine how much money Mr. Gill would
9 need to cover the recommended services.

10 Q Did you chart that separately?

11 A I did.

12 Q I will show you Exhibit 25, tell me if you recognize
13 this?

14 A Yes.

15 THE COURT: Counselors.

16 (Whereupon, an off-the-record discussion was held
17 at the bench.)

18 THE COURT: You may proceed.

19 Q Can you tell us what we are looking at in Exhibit 25?

20 A What you see here is the summary of the annual costs
21 for each category of service recommended by Dr. Root. You see
22 that the starting year here is 2023, my original report was in
23 2022, when Dr. Root also wrote his report. My job is only to
24 tell you what the losses would be into the future. Anything
25 that occurred in the past, we have receipts for. We know what

1 the past loss is. We start at 2023 because that is when I wrote
2 the report but I will draw a line here, I don't add those years
3 into the bottom. So, we will start with July 1, 2025 since we
4 are already at the of May. So, I am counting the future from
5 July 1, 2025 through his life expectancy age of 78 in the year
6 2051. So, that is true for all of these columns.

7 Now, the first category is medical care, Dr. Root
8 recommends medical care, office visits, that sort of thing, the
9 annualize cost of those services according to Dr. Root is
10 \$5,525. So, accounting for inflation, today the same visits
11 would cost \$5,839. And the growth rate I applied there is
12 2.8 percent. That is based on the US Bureau Labor Statistics
13 Data, the 25-year average for general medical care services.

14 Diagnostic testing, I will go through each column and
15 tell you what the growth rate is, the annualize amount and the
16 total, and I failed to tell you this total. The total cost of
17 visiting doctors and general medical care \$238,005 over the
18 course of Mr. Gill's life and we are projecting over 30 years.

19 Diagnostic testing, prescribed by a doctor, read by a
20 doctor, so I use that general of 2.8 percent. Starting value is
21 \$2,475 worth of X-rays and MRIs, that sort of thing. In today's
22 dollars it bumps up \$2,616 with that 2.8 growth rate, Mr. Gill
23 will require \$106,617 of diagnostic testing according to
24 Dr. Root.

25 Medications, pharmaceuticals had a higher rate of

1 growth than in other areas in medicine, 3.5 percent of growth
2 rate, that we apply there based on a 25 year average. That
3 doesn't include Tylenol because these are prescription drugs.
4 So, the prescription drugs have a higher growth rate than
5 non-prescription drugs. Annually, those prescription drugs
6 would cost \$192, in today's dollars \$206, lifetime cost of
7 prescription medications is \$9,215.

8 Cervical fusions, two surgeries, one to the cervical
9 spine, one to the lumbar spine. The surgery with the associated
10 costs based on Dr. Root is \$100,000 and it should occur within 8
11 and 13 years. So, I take the mid point which would take us to
12 11 years out. The cost then \$157,385 and for surgery and the
13 hospitalization costs, the growth rate on average is
14 4.2 percent.

15 So anything to do with surgical procedures, outpatient,
16 inpatient those rates are higher than the average and that is
17 why it is 4.2 percent. The lumbar fusion is 5 to 10 years. So,
18 we have at it at 7 years and that costs, the \$125,000 becomes
19 \$173,261 in the future. And, these are both just one time.

20 THE COURT: One moment, Doctor, I'd ask you to
21 just step back to your chair.

22 Members of the jury, at this time we are going to
23 break for lunch. Remember my admonitions. During the
24 break, please do not do any research on any topic
25 pertaining to the case. Do not discuss the case with

1 anyone including your fellow jurors and do not speak to the
2 parties, attorneys or witnesses.

3 If anyone attempts to discuss this matter with
4 you, notify my court officer who will notify me. Everyone
5 have a good lunch. I will see everyone back here at
6 two o'clock sharp.

7 THE COURT OFFICER: All rise, jury is exiting.

8 (Whereupon, the jury exits the courtroom.)

9 THE COURT: Off the record.

10 (Whereupon, a lunch recess was taken.)
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1 THE CLERK: All rise, come to order.

2 THE COURT: You may be seated.

3 MR. LESNEVEC: Yes, your Honor.

4 THE COURT: If Dr. Dwyer can take the stand,
5 please.

6 Please bring in the jury.

7 THE COURT OFFICER: All rise, jurors are entering.
8 (Whereupon, the jury entered the courtroom.)

9 THE CLERK: Do all parties stipulate to the
10 presence and proper seating of the jury?

11 MR. LESNEVEC: I do.

12 MR. MCNIFF: I do.

13 THE CLERK: To the witness, you are reminded you
14 are under oath.

15 THE COURT: You may be seated.

16 Counsel, you may continue.

17 MR. LESNEVEC: If I could have the Doctor step
18 back down.

19 THE COURT: Doctor, you may step down.

20 Counsel you may come around.

21 Q Doctor, if could you just pick up where you left off.

22 I think we were talking about therapeutic intervention, if I am
23 not mistaken?

24 A I think we were at steroid injections. So, the steroid
25 injections and the nerve blocks are for pain management.

1 Dr. Root only prescribed them for three years. So, you would
2 only get them for three years and then it stops. The cost
3 annually for these injections, for the steroid injections, is
4 6,600 and for the nerve blocks 900. I used the 2.8 percent
5 growth rate there, and this again is for the office visits.

6 Now, those pain management interventions can take place
7 either at a doctor's office or at an outpatient facility. If it
8 is in an office, it is a lower growth rate. That is the one I
9 used here. If it took place at an outpatient facility, it would
10 be a significantly higher growth rate, closer to that of a
11 hospital. The life time cost of steroid injections then would
12 be \$20,360; and, for the nerve blocks it would \$2,776.

13 Then we get to the physical therapy, the therapeutic
14 treatment. \$4,500 worth of physical therapy per year. Physical
15 therapy has a lower growth rate over the last 25 years, it falls
16 into the category of other medical professional services and
17 25-year average is 2.2 percent. So, using a 2.2 percent growth
18 rate starting with \$4,500 over the next 30 years, the lifetime
19 cost is \$177,031.

20 The last category, DME stands for durable medical
21 equipment, that is just medical supplies like bandages, that
22 sort of thing and Tylenol, a much lower growth rate is applied
23 here 1.2 percent. And, the life time cost would be \$13,649.
24 This total that you see here was from the original report
25 starting in 2023. So, I will give you the new total for future

1 health care costs for all categories based on Dr. Root is
2 \$845,717.

3 Q How did you come up with the \$845,717 number?

4 A That is the sum of all these totals down here.

5 Q Those are the totals contained in the chart that you
6 wrote, correct?

7 A Let me be clear, after subtracting off the first two
8 rows. This \$898,299 is the sum of this row but that is starting
9 into 2023. So, I calculated the new total removing the past.

10 Q So, it is actually lower than what previously you
11 calculated when you wrote the report?

12 A Yes, passage of time.

13 Q Got it. These calculations, future cost of medical
14 care, are they made within a reasonable degree of economic
15 certainty?

16 A Yes.

17 Q In terms of the totals of all the combined costs,
18 health care, loss wages, loss of social security retirement
19 income, would you calculate that total to us?

20 A Sure. The total with economic loss -- so the income
21 loss, benefits loss, and future health care loss, is \$1,650,765.
22 And again, that is starting with today for health care into the
23 year 2051.

24 Q Again, is that within a reasonable degree of economic
25 certainty that calculation?

1 A Yes.

2 Q I would ask you to retake your seat?

3 A Sure.

4 Q Just to finish up here, you are not a medical doctor,
5 correct?

6 A That is correct.

7 Q And, you relied upon Dr. Root who is a medical doctor
8 in terms of his recommendations for future health care?

9 A Yes.

10 Q Is it fair to say that if his numbers are off, your
11 numbers are off; is that correct?

12 A Yes.

13 Q In other words, if the categories he gave us and the
14 values are lower, your numbers are different than what you
15 presented today, correct?

16 A Correct.

17 Q If they were higher, if he needs more care, you would
18 have to -- your numbers would be higher; is that correct?

19 A That is correct.

20 MR. LESNEVEC: I have no further questions, thank
21 you.

22 THE COURT: Any cross?

23 MR. MCNIFF: Yes, thank you, your Honor.

24 CROSS EXAMINATION

25 BY MR. MCNIFF:

1 Q Good afternoon, Doctor.

2 A Good afternoon.

3 Q So to pick up where we just left off, your numbers are
4 based on a report prepared by Dr. Barry Root, is that correct?
5 Is that the foundation for your report?

6 A Yes.

7 Q And that report was provided to you by plaintiff's
8 counsel?

9 A Yes.

10 Q Did you speak to Dr. Root?

11 A No, I did not.

12 Q Did you speak to any of the treating doctors that
13 treated the plaintiff in this case?

14 A No.

15 Q So, if the cost for the surgery were whatever they were
16 on your report, and the plaintiff doesn't need surgery in the
17 future, we could remove that cost then from your analysis; is
18 that correct?

19 A Sure. If he doesn't need it, that would be an
20 amendment to the report.

21 Q That would be true for any item on the report, right?

22 A Yes.

23 Q So, you are not offering any opinions that he needs
24 surgery for example, right?

25 A Right, I am not a medical doctor.

1 Q You are not offering an opinion for any one of those
2 categories at all?

3 A No, I just take Dr. Root's recommendations.

4 Q You mentioned something before about when it comes to
5 the earnings component, that sometimes you will prepare an
6 analysis based on -- did you say diminutions in earnings?

7 A Yes.

8 Q Is that when you deal with the vocational
9 rehabilitation counselor where somebody comes in and says, Yes
10 you can go back to work, but you are not making as much money as
11 you did?

12 A Sometimes. Sometimes it's if somebody actually returns
13 to work and I have before and after numbers.

14 Q Is this a part of your professional life about
15 preparing the reports in connection with litigation about 65 to
16 70 percent today, of your professional life?

17 A Okay. I wasn't sure -- yes, that's probably a little
18 bit more. Like 75 percent.

19 Q And is it roughly about 93 percent plaintiff, 7 percent
20 defendant. Not testifying, but in general?

21 A Yes, in general.

22 Q When you testify it is almost exclusively for
23 plaintiffs, right?

24 A It is only more recently. I testified twice for
25 defense.

1 Q In your career?

2 A Correct.

3 Q Did you say you testified hundreds of times?

4 A Yes.

5 Q Did you request any records or any other information
6 from the plaintiff?

7 A No.

8 Q If you wanted to look at what the treating doctor said,
9 you could have requested that information, right?

10 A I could, I wouldn't, because I could not distinguish
11 between Dr. Root's recommendation and anybody else's.

12 Q So, you took what the plaintiff said he would need in
13 the future from one source, Dr. Root?

14 A That is correct.

15 Q You did not look at what his treating doctor said about
16 future care, correct?

17 A Correct.

18 MR. MCNIFF: Thank you. No further question.

19 THE COURT: Any redirect?

20 MR. LESNEVEC: No thank you.

21 THE COURT: Doctor, you can stand down. Thank
22 you.

23 (Whereupon, the witness exits the courtroom.)

24 THE COURT: Counsel, you may call your next
25 witness.

1 MR. LESNEVEC: At this time, your Honor, the
2 plaintiff will rest on this case.

3 THE COURT: Okay. Please approach.

4 (Whereupon, an off-the-record discussion was held
5 at the bench.)

6 Members of the jury, we are going to have an early
7 out today. Another early out. So, I want to give you
8 these admonitions for the last time today. That during
9 this break, please do not discuss this case with anyone
10 including your fellow jurors. Do not speak to the parties,
11 attorneys or witnesses.

12 If anyone attempts to discuss the case with you
13 during the break, notify my officer, who in turn will
14 notify me. Everyone have a wonderful and relaxing weekend
15 and holiday. I will see everyone back here Tuesday morning
16 at 10:00 a.m. Have a good evening. Get home safely.

17 THE COURT OFFICER: All rise, jury exiting.

18 (Whereupon, the jury exits the courtroom.)

19 THE COURT: Okay. Any motions?

20 MR. MCNIFF: Can we approach for a second?

21 THE COURT: Sure.

22 (Whereupon, an off-the-record discussion was held
23 at the bench.)

24 THE CLERK: All rise, come to order.

25 THE COURT: You may be seated. Any motions?

1 MR. MCNIFF: No, your Honor.

2 THE COURT: Okay.

3 Any motions, counsel?

4 MR. LESNEVEC: Nothing, your Honor.

5 THE COURT: So then we will resume on Tuesday
6 morning at 9:30 because I can decide to -- read the
7 decision on plaintiff's motions in limine with regard to
8 one of the reports of the doctor, Dr. Chernoff, I believe
9 that you are calling on Tuesday. The jury will come back
10 at 10:00 a.m., counsel you come back at 9:30. Okay.

11 MR. LESNEVEC: Yes, your Honor.

12 THE COURT: Off the record.

13 (Whereupon, the trial was adjourned until May 27,
14 2025.)

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