

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF QUEENS: CIVIL TERM: PART 7
 3 -----X
 4 MOAZZAM R. GILL,
 5
 6 Plaintiff,
 7
 8 -against- Index No. 706989/2020
 9 JURY TRIAL
 10
 11 SIGFREDO VALLADARES-LOPEZ AND
 12 FLEETWASH, INC.,
 13
 14 Defendant.
 15 -----X
 16 Supreme Courthouse
 17 88-11 Sutphin Boulevard
 18 Jamaica, New York 11435
 19 May 27, 2025
 20
 21 B E F O R E:
 22
 23 HONORABLE NICOLE MCGREGOR-MUNDY,
 24 Justice of the Supreme Court
 25
 A P P E A R A N C E S:
 LAW OFFICES OF MICHAEL LAMONSOFF, PLLC
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 BY: MORGANN MCCARTHY, ESQ.
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 MONICA JENKINS
 Senior Court Reporters

1 THE CLERK: All rise. Queens Supreme Court Part 7
2 is in session. The Honorable Nicole McGregor-Mundy is
3 presiding.

4 THE COURT: Mr. McNiff, do you have the schedule
5 for your remaining your witnesses?

6 MR. McNIFF: We have this morning only
7 Dr. Chernoff. No witness this afternoon.

8 THE COURT: So Gary Young is not going to be
9 testifying?

10 MR. McNIFF: No.

11 THE COURT: Is he testifying any other day?

12 MR. McNIFF: Right now, I don't believe so.
13 Thursday is still set, and that's probably going to be the
14 end. I will confirm that, but that's the way it's looking.

15 THE COURT: We would need to know the day before
16 if Mr. Young is going to be testifying.

17 MR. McNIFF: I would definitely do that for sure.

18 THE COURT: We are off the record for a moment.

19 (An off-the-record discussion was held.)

20 THE COURT: On the record. Please call in the
21 case.

22 THE CLERK: This matter is on for continued trial.
23 Index Number 706989/2020, Moazzam R. Gill versus Sigfredo
24 Valladares-Lopez and Fleetwash, Inc.

25 Counsels, please state your appearances for the

1 record.

2 MR. LESNEVEC: Yes. Good morning, Your Honor.

3 Jason Lesnevec from the Law Office of Michael
4 Lamonsoff on behalf of the plaintiff, Moazzam Gill, who is
5 present in the court.

6 THE COURT: Good morning.

7 MR. McNIFF: Good morning, Your Honor. Kevin
8 McNiff, Mulholland Minion, 374 Hillside Avenue, Williston
9 Park, New York 11956. Attorney for the defendant.

10 THE COURT: Good morning.

11 MR. McNIFF: Good morning.

12 MS. MCCARTHY: Good morning, Your Honor.
13 Morgann McCarthy of Mulholland Minion Davey McNiff and
14 Beyrer for the defendants.

15 THE COURT: Good morning. Okay.

16 So we are going to start off this morning with
17 brief arguments with regard to the plaintiff's motion in
18 limine to preclude Defendant's Dr. Marc Chernoff from
19 testifying with regard to his review of nine stated
20 radiological films.

21 MR. LESNEVEC: Yes, Your Honor.

22 THE COURT: For the record, the Court has
23 Plaintiff's motion in limine, as well as Defendant's
24 opposition, so just take brief arguments and nothing
25 outside of what's been submitted to the Court and the

1 motion and opposition.

2 MR. LESNEVEC: Thank you, Your Honor.

3 THE COURT: You may begin, Counsel.

4 MR. LESNEVEC: Plaintiff's motion to preclude only
5 those items listed in the May 7, 2025 supplemental expert
6 disclosure of Dr. Chernoff's. It is not to preclude the
7 entire testimony of the doctor, but simply the nine films
8 that he reviewed as outlined in May 7, 2025 disclosure,
9 which by the way was disclosed the day before we began this
10 trial. So it's late.

11 Defendants first disclosed Dr. Chernoff back on
12 April 28, 2022. He had a initial report, which was dated
13 February 17th, 2022, which we attached Exhibit 1. There
14 was no notation of any review of MRI films or x-ray films
15 in that report. He did request that they be provided to
16 him in that report. Subsequently they were. And only some
17 of them. Defendant's gave him the lumbar spine MRI dated
18 December 18, 2019, and cervical spine MRI dated
19 December 11, 2020, which were given to him. And he noted
20 that in his March 21st, 2022 report. So he was given these
21 MRI films. Defendants, obviously, had copies of them to
22 give to him, and they did. And then, again --

23 THE COURT: When? Tell me when they were given to
24 him.

25 MR. LESNEVEC: He did in his report March 21,

1 2022.

2 THE COURT: Which report?

3 MR. LESNEVEC: That was his second report that's
4 dated -- so it's our Exhibit 1 on page 13.

5 THE COURT: Just tell me the dates of the films
6 that you said.

7 MR. LESNEVEC: That was the lumbar spine
8 December 18, 2019, and cervical spine, December 11, 2020.

9 The interesting fact about that, Judge, is that
10 there was also a cervical MRI from the same exact facility
11 dated the same exact date, it was not given to him, that he
12 now comments on and was apparently now given in the May
13 disclosure from this year. That's really the problem here.
14 And that shows the ill intent.

15 The defendants had these films all along. They
16 could have given it to him back in 2022, with the others,
17 and they did not do that. So they now do it in May of this
18 year, on the day of trial in order to do this last minute,
19 to prejudice Plaintiff's case.

20 There was a third report March 10, 2005. Again,
21 Defendant's had the opportunity to give him all these
22 radiological films that he talks about in his May report,
23 but there was no mention of any new radiological films in
24 March 10, 2025 report. He was given a lot of new records,
25 but no radiological films. And then suddenly May 7, 2025,

1 he's now commenting on nine of these films. Films
2 including x-ray and CT studies from the hospital that the
3 defendants would have been in possession of all along. And
4 never provided to him or they did, and they did it very
5 late.

6 So it's prejudicial to my client to all of a
7 sudden when these films could have been provided years ago,
8 to now provide it on the eve of trial, and hit me with a
9 supplemental disclosure. For that reason, they should be
10 precluded.

11 THE COURT: And with regard to these nine films,
12 when were they provided to defendants?

13 MR. LESNEVEC: Years ago, Judge. These are films
14 from the hospital dated December 4, 2019.

15 THE COURT: And they're films?

16 MR. LESNEVEC: Yes. These are the films. All
17 dated 2019, 2020 and 2021.

18 THE COURT: And when did Defendant get them?

19 MR. LESNEVEC: That was with our Bill of
20 Particulars back in 2020 or 2021 when we served it. We
21 serve it with authorizations.

22 THE COURT: Authorizations for the films?

23 MR. LESNEVEC: For the films, as well as all the
24 hospital records.

25 THE COURT: Okay. And just indicate any

1 prejudice.

2 MR. LESNEVEC: Yes. The prejudice, Judge, is that
3 first of all, any comment on anything in his report about
4 reading radiology reports is hearsay. None of the
5 radiology reports are in evidence in this case. The actual
6 x-ray and CT scans from the hospital, they are also not in
7 evidence in this case. The only thing that's in evidence
8 is the Lynbrook MRI films of the left shoulder, neck and
9 back. That's all that's in evidence at this point. And
10 for the doctor to have never commented on these or given us
11 a report until the eve of trial, is extremely prejudicial
12 for us to prepare a case during trial with this late
13 disclosure that could have been done many many months ago
14 or even years ago.

15 THE COURT: And this supplemental report was given
16 to the plaintiff on May 8?

17 MR. LESNEVEC: Yes. May 8 is when I received it.
18 It's dated May 7, and May 8 is when we were here for jury
19 selection.

20 THE COURT: Thank you. Counselor.

21 MS. MCCARTHY: Good morning, Your Honor.

22 Dr. Chernoff's most recent report should not be
23 precluded at all as far as any testimony or in any way.
24 The standard is whether there is evidence of intentional or
25 willful failure to disclose and showing of prejudice, and

1 in this case there has been none. I mean, Plaintiff just
2 even pointed out certain positions that have no proof at
3 all.

4 First of all, with respect to the intentional
5 willful delay, there was none in this case. It's been
6 clear since we got this case that we were retained
7 approximately two weeks before the time of trial, and
8 immediately upon being retained, we went to the subpoena --
9 we went to the subpoenaed courthouse -- I'm sorry -- the
10 subpoena room and got copies of the actual films, which is
11 what was provided to Dr. Chernoff, and then what he
12 ultimately reviewed and provided in evaluation of -- in the
13 supplemental report. In this case, Dr. Chernoff, back in
14 2022 and thereafter in his reports that he issued, had the
15 same exact opinion, and his opinion has not changed from
16 the most recent report that was served.

17 In the case Saldivar versus I.J. White, the
18 opponent of the alleged late disclosure had appraised the
19 opposing party of the subject matter, and the substance of
20 the expert's testimony years before trial, which is just
21 what happened in this case, and they were not precluded in
22 any way.

23 In this case, the plaintiff has been well aware of
24 the opinions of Dr. Chernoff. He was not provided with any
25 of the films before the most recent report that he had

1 reviewed and opined on in his most recent report. The
2 plaintiff's position that he had these films back in 2021,
3 is not established with any evidence at all. Plaintiff is
4 just making a baseless statement. The films, as we already
5 pointed out, were obtained when we immediately were
6 retained for trial and received them from a subpoenaed
7 courthouse.

8 In another case Martin versus Triborough Bridge
9 and Tunnel Authority 73 A.D.3d 481, First Department, it
10 was not willful or the delay for failure to prepare when
11 the attorneys were just retained in that case before trial,
12 which is similar to our case as well.

13 And most importantly, at this point, the plaintiff
14 has been in possession of Dr. Chernoff's supplemental
15 report for approximately three weeks now, and there's
16 absolutely no prejudice to the plaintiff. There wasn't
17 when we started this trial, and there's absolutely no
18 prejudice at this point in time. He has had this report
19 for three weeks now. Significantly, his opinions have not
20 changed from his initial report or any supplemental
21 reports. He simply reviewed films when we received them or
22 were provided with them, which is why they were served at
23 the time that they were.

24 Finally, any prejudice could have been eliminated
25 by an adjournment. We had requested an adjournment and was

1 denied, and Plaintiff specifically opposed. If he had
2 taken a position that he was prejudiced and he needed more
3 time to review it, he could have asked for an adjournment.
4 And case law says that it would have been eliminated with
5 an adjournment had it been requested, which Plaintiff
6 specifically did not want. With that said, ultimately, all
7 the case law supports our position that there is no
8 evidence of any willful or failure to disclose, and
9 absolutely no prejudice in this case.

10 Finally, the plaintiff had more than enough time
11 to prepare for the cross-examination of Dr. Chernoff and
12 his opinions that were set in his most recent report, and
13 Dr. Chernoff's testimony should not be precluded in any
14 way.

15 Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. LESNEVEC: Do you need a response, Your Honor?

18 THE COURT: Very briefly. Very briefly.

19 MR. LESNEVEC: Judge, being retained as new
20 counsel is not an excuse. The attorney that had this case
21 had it for five years. The defense attorney. He could
22 have given the records to their own expert years ago. He
23 had the case all along. That's not really a good faith
24 excuse.

25 The other thing is these records were subpoenaed

1 to the courthouse back when we had our first trial date.
2 Remember this case was adjourned already once before
3 because an expert -- a defendant expert died. These
4 records have been at the courthouse since January of this
5 year, 2025.

6 Defendants even disclosed a March 2025 report with
7 new records. They could have given to him at that point.
8 I'm not moving to preclude the March report, because I have
9 had time to review that. The difference here is these I
10 haven't had time to review this. And for Counsel to say
11 that it's the same opinion, the issue is that it's the same
12 opinion based on hearsay before when he comes to these
13 conclusions about what may or may not be in these films is
14 based on a radiology report, which is hearsay. He now
15 allegedly looks at them and has an actual opinion. That's
16 the difference here, and that's what's been offered at the
17 last minute and is prejudicial.

18 THE COURT: Thank you. Give me one moment,
19 Counselors.

20 (An off-the-record discussion was held.)

21 THE COURT: On the record, please.

22 With regard to the plaintiff's motion in limine,
23 after hearing, reading the papers submitted in support and
24 opposition of said motion, and hearing arguments on the
25 record by Counsel, motion in limine by Plaintiff to

1 preclude Dr. Marc Chernoff from testifying or reducing any
2 evidence with regard to the nine radiological films set
3 forth in Plaintiff's motion papers is granted.

4 The scheduled trial date for this matter was
5 May 8, 2025, which is the day the parties first appeared
6 before this Court for jury selection in trial. Defendants
7 served Dr. Chernoff supplemental report dated May 7, 2025,
8 on the plaintiff on May 8, 2025. Upon the papers submitted
9 and the arguments by counsel, the Court finds that
10 Plaintiff provided defendants' prior counsel with
11 authorizations to obtain the subject radiological films in
12 or about 2020 or 2021. Yet Defendants' prior counsel
13 apparently did not obtain the films or did not provide
14 current counsel for defendant with the films if obtained.
15 Although Defendants' present counsel states they were
16 retained a couple weeks prior to the start of the trial,
17 the Court will not start dissecting, which of Defendants'
18 counsel did or failed to do what. No reasonable
19 explanation has been offered as to why the subject
20 radiological films were not obtained or exchanged by
21 Defendant at any time over the past four years.

22 Counsel for Defendants took the case as it was
23 when they were retained, and were aware of the May 8, 2025,
24 trial date, since the trial date had previously been
25 adjourned from January of this year. The Court further

1 finds that plaintiff would be extremely prejudiced by
2 permitting Dr. Chernoff to testify or offer any evidence
3 regarding the subject films with regard to the report that
4 was provided to Plaintiff on the very day that the parties
5 appeared for jury selection and trial. Plaintiff at that
6 point having prepared his case for trial.

7 Contrary to Defendant's arguments, Dr. Chernoff's
8 May 7, 2025, supplemental report is -- and I quote from
9 their opposition papers: Essentially unchanged. And that
10 Plaintiff could have requested an adjournment of the trial
11 to review Dr. Chernoff's May 7, 2025, report.

12 Dr. Chernoff's report would nonetheless be based on
13 hearsay, and it is not Plaintiff's burden to seek an
14 adjournment on account of Defendants untimely exchange.

15 And the Court notes that -- I believe the
16 adjournment request by Defendants were in any event denied
17 by, I believe, the administrative judge.

18 MS. McCARTHY: Your Honor, may I note my
19 exception?

20 THE COURT: Noted, Counsel.

21 MR. McNIFF: Can we go off the record for a
22 second?

23 THE COURT: Off the record. Yes, sir.

24 (An off-the-record discussion was held.)

25 THE CLERK: All rise.

1 THE COURT: You may be seated, everyone.

2 Off the record.

3 (An off-the-record discussion was held.)

4 THE COURT: On the record.

5 Ready to proceed, Counselors?

6 MR. LESNEVEC: Yes, Your Honor.

7 MR. McNIFF: Yes, Your Honor.

8 THE COURT: Please bring in the jury.

9 THE COURT OFFICER: All rise. Jury entering.

10 (The jury enters the courtroom.)

11 THE CLERK: Do all parties stipulate to the
12 presence and proper placement of the jurors? Beginning
13 with the counsel for the plaintiff.

14 MR. LESNEVEC: I do.

15 THE CLERK: Defense?

16 MR. McNIFF: I do.

17 THE CLERK: Thank you. Jurors, you may be seated.

18 THE COURT: You may be seated, everyone.

19 Good morning. Welcome back. I hope everyone had
20 a relaxing holiday. Warm holiday weekend.

21 We are going to continue with the trial. At this
22 point, Counsel you may proceed.

23 MR. McNIFF: Thank you, Your Honor. Defense calls
24 Dr. Marc Chernoff.

25 THE COURT: Please bring in Dr. Chernoff.

1 THE CLERK: Please raise your right-hand.

2 M A R C C H E R N O F F, M.D., having been
3 called as a witness herein, was duly sworn and testified as
4 follows:

5 THE CLERK: You may be seated. You can adjust the
6 microphone. In a loud clear voice state and spell your
7 name.

8 THE WITNESS: Marc -- M-a-r-c -- Chernoff --
9 C-h-e-r-n-o-f-f -- M.D.

10 THE CLERK: And please state your business address
11 for the record.

12 THE WITNESS: 2500 Nesconset Highway, Building
13 Nine, Stony Brook, New York 11790.

14 THE CLERK: Thank you.

15 THE COURT: You may proceed.

16 MR. McNIFF: Thank you, Your Honor. Good morning,
17 Doctor.

18 THE WITNESS: Good morning.

19 DIRECT EXAMINATION

20 BY MR. McNIFF:

21 Q Are you a physician licensed to practice medicine in
22 the State of New York?

23 A I am.

24 Q When did you become licensed?

25 A Approximately, 1998.

1 Q Okay. Can you explain to the Court and the jury your
2 educational background and training?

3 A Sure. So my medical training started at the City
4 University of New York, which after high school is a seven-year
5 B.S. MD accelerated program. And so, that's the first seven
6 years. And I was awarded a -- I graduated from the City
7 University with a summa cum laude, and then I attended Stony
8 Brook University for medical school for the two-year portion of
9 the seven years. And I was awarded an MD degree from Stony
10 Brook, and that would be in 1993. And was elected into AOA
11 honor society my junior year.

12 I then stayed at Stony Brook and completed a five-year
13 orthopedic residency. So orthopedic residency is dealing with
14 musculoskeletal conditions and surgeries. So, fractures, soft
15 tissue injuries, and that's a five-year residency program.
16 Serving as the chief resident in 1998.

17 Then after that, I went on for specialized training.
18 In orthopedics, you can special in hips and knees and joint
19 replacements and ankles or shoulders. My fellowship was in
20 spine surgery, and that was at the Harvard Spine Fellow in
21 Boston, Massachusetts. And then after finishing that
22 fellowship, returned to Long Island, joined my brother in
23 practice -- who is my older brother, who is also a spine
24 surgeon -- and have been in practice with him for 25 years
25 together.

1 And part of that training obviously is also being board
2 certified, taking orthopedic boards. And actually, board
3 certified you do that in orthopedics; and so, that consists of a
4 written exam and oral exam. You actually can't be board
5 certified for the first two years that you are -- after you
6 finish your training, you are considered board eligible, and
7 then the first time that you are able to be board certified is
8 in 2001 after you take both written and oral exam, which I
9 passed. And then you are considered board certified.

10 Part of the board certification then, is every ten
11 years you have to recertify and take a written test. I was
12 board certified in 2001, which was the earliest possible time to
13 be board certificated. I was recertified in 2011, and then
14 again in 2021. Expiring in 2031.

15 Q Have you been qualified as an expert in the courts of
16 the State of New York before today?

17 A Yes.

18 Q And can you tell us approximately how many times you
19 have testified?

20 A Sure. So I would say, approximately, somewhere maybe
21 15 to 20 times over a 25-year career.

22 Q Can you tell us, approximately, how many times have you
23 performed spinal surgery throughout your career?

24 A That would be thousands.

25 Q And tell us a little bit about your day-to-day

1 activities in your practice seeing patients and performing
2 surgery.

3 A Sure. I'm in practice myself. And my brother is also
4 a spine surgeon. There is a physician assistant who also helps
5 us, comes into the surgeries with us. My brother and myself
6 often assist each other in surgeries, and we also work with
7 various other surgeons in the community.

8 Office hours are seeing patients. So they start at
9 nine o'clock in the morning, eight o'clock on Fridays. We see
10 various patients. As part of that I have also done independent
11 medical examinations and do office visits and then surgeries
12 certain days, such as usually Tuesday. But it varies. We do
13 sometimes Tuesdays, sometimes Thursdays we do surgery, and then
14 that's doing cervical surgery on the neck, such as cervical
15 discectomy and fusions, lumbar surgeries. That could entail
16 open discectomies or instrumented fusions. We deal with trauma.
17 We take calls from various hospitals over the years, and --

18 Q Can I stop you. Can you explain what it means to take
19 calls.

20 A Sure. Taking calls, basically, for through your
21 practice, if a patient has an issue, and they need to reach out.
22 So we are all reachable. My brother and myself, can reach both
23 of us on a telephone, through a page system. Years ago we used
24 to have pagers, now everybody has telephones. And then various
25 times throughout our careers we have been on a call for the

1 hospital itself. So, you we've had people had traumas, they
2 have been knocked off of ATVs, have fractured their spines,
3 coming in sometimes in the middle of the night to -- if they are
4 neurological -- say neurological injury to assess them and to
5 operate on them sometimes emergently.

6 Q You also mentioned independent medical examinations.
7 Is that what you did in this case?

8 A Yes, it is.

9 Q Okay. And can you tell us what percentage of your
10 practice is devoted to that type of work?

11 A Sure. And it's varied throughout the years. In the
12 beginning, before you are board certified, the first two years
13 you actually can't do independent medical exams. And then, I
14 have said throughout the years, sometimes seven -- seven to ten
15 percent, I think in 2022 probably about ten to 12 percent, and
16 now it might be up to maybe 15 percent.

17 Q Okay. Are you being compensated for your time here
18 today?

19 A Yes.

20 Q How much are you being compensated?

21 A For today it's \$9,000.

22 Q And can tell us the total compensation for this?

23 A Yes. So obviously writing the reports, and back in
24 2022 there would have been fees associated with that. Prior to
25 trial, there is reviewing the records, reviewing films, sitting

1 down with you and having a face-to-face discussion, the pretrial
2 discussion, the charge is \$9,000, and then today.

3 Q If you weren't here today, what would you be doing?

4 A I would either be seeing patients in the office or
5 doing surgery. Cleared out today to be here.

6 Q Now, we met; you just mentioned that right?

7 A Yes. So Sunday over the holiday weekend.

8 Q And how long did we meet, approximately?

9 A Approximately two hours.

10 Q And had we ever worked together before on a case?

11 A No. Not that I know of.

12 Q Now, there came a time when you performed an
13 examination of the plaintiff in this case, correct?

14 A That's correct.

15 Q And did you prepare a report following that
16 examination?

17 A I did.

18 Q Do you have the report with you?

19 A I do.

20 Q Please feel free to refer to your report to refresh
21 your recollection. Okay?

22 A Sure.

23 Q Can you tell us when the examination took place?

24 A That was on February 17 of 2022.

25 Q And as part of the examination, did you take what's

1 known as a history?

2 A Yes, I did.

3 Q The jury's heard a little bit about histories. Can you
4 explain again what a history is?

5 A So we ask them how old are you? Is he right- or left-
6 handed. Then we go through what the complaint he has. So he
7 had some neck pain, some headaches, some back pain, some
8 shoulder pain. So we ask him about his history and what
9 happened. He was in an accident. How did that occur? We also
10 take a medical history. We ask him about whether he had any
11 medical problems; whether he had any prior surgeries; and what
12 surgeries they were. That includes, medications, allergies to
13 medications, systems, any prior injuries or subsequent injuries
14 to the accident, and a physical examination, obviously.

15 Q Okay. And can we go to the history that you took in
16 this case?

17 A Sure.

18 Q Go ahead.

19 A So -- and I agree with you, somewhat kind of familiar
20 with this. So he was in an accident on December 4, 2019. He
21 was the driver of his car, and he was involved in a rear-end
22 impact. He, when he presented to me, presented with headaches,
23 neck and back pain, and shoulder pain. And he stated that after
24 he was involved in the accident, he was seen initially at Long
25 Island Jewish Hospital in Queens, where he had some imaging

1 studies performed, and then he saw Dr. Raj Tolat, who is a
2 physiatrist. He saw Dr. Tolat, who ordered physical therapy. I
3 believe he saw Dr. Tolat on day seven. It was a week out and he
4 saw Dr. Tolat. And he then had various appointments, and
5 obvious part of this reviewed records as well.

6 And at the time that he saw Dr. Tolat, he already had
7 appointments with a spine surgeon, Dr. Macagno Dr. Kalter for
8 pain management, and Dr. -- and there was a neurologist he even
9 seen for his headaches. Dr. Brown. And so, we take that
10 history. And then, obviously I had reviewed records, as well.
11 But we kind of confirm the history when I talked to him.

12 He had shoulder surgery with Dr. Touliopoulos; and so,
13 he gave a history of seeing Dr. Touliopoulos, and having
14 postoperative physical therapy. And when he presented, we also
15 note that he was wearing a lower back brace. So he was wearing
16 a brace at the time. And then he continued to have various
17 treatment. And then we talked about the treatments.

18 Q Okay. Did you also perform the physical examination of
19 the plaintiff?

20 A Yes. Yes. So we go through the physical exam, and
21 we -- part of the history is also occupational employment, what
22 did you do; have you worked at all after this, which we
23 discussed. And then we do an exam.

24 Q Okay. Can we go through the exam? Tell us what that
25 consists of. First in general, and then we will get into the

1 specifics.

2 A Sure. Sure. So in general, since I specialize in the
3 spine, we assess his neck and his back. So, part of the lumbar
4 exam is you want to test reflexes, sensation, strength testing.
5 And the same for the neck. There's reflexes in your arms that
6 are reflexes that come from the nerves in your neck. There is
7 sensation or different -- what we call dermatomal distributions.
8 Each nerve enervates a certain area of skin and supplies a
9 certain area of muscle.

10 MR. McNIFF: Doctor, if I can interrupt for a
11 second. Your Honor, with the Court's permission, can we
12 mark a model as Defendant's Exhibit C for identification?

13 THE COURT: Yes.

14 MR. LESNEVEC: No objection. That's fine.

15 THE COURT: We are going to mark this model as
16 Defendant's C for identification purposes.

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

19 THE COURT OFFICER: Defendant's Exhibit C so
20 marked for identification only is being handed to the
21 witness.

22 Q Doctor, will that assist you in explaining the
23 different aspects of --

24 A Yes. Yes. So here you have basically the spine. The
25 anatomy of the spine. What's missing on this model, obviously,

1 there's soft tissues surrounding this. There's muscles and
2 there's ligaments. And obviously that can be injured at well.
3 And the vertebral bodies are these white structures. So you
4 have seven cervical vertebra, and twelve thoracic, and you have
5 typically five lumbar vertebra. And each level there is a disc
6 in between them, which is basically like jelly donut discs.

7 At each level, for instance, if we are going to say
8 this level, we labelled the disc C -- let's say 5-6. C5-6 is
9 between the fifth and the sixth cervical vertebra. We count
10 here, two, three, four, five, six let's say. Then there's
11 nerves that come out at each level. And a nerve comes out at
12 each level on each side. So we know, for instance, that the
13 C5-6 nerves that comes out, if there is a disc herniation that's
14 going to push back or osteophytes or spurs or fractures, that
15 that might hit the nerve that's coming out. It wouldn't hit a
16 nerve above, or it's not going to hit a nerve below. This is
17 going to hit that nerve. At C5-6, it would hit the C6 nerve.
18 Likewise throughout the spine each level is responsible for
19 either possibly impinging upon a nerve or not.

20 And also, there's the spinal cord here, which is kind
21 of the structure in the middle that runs down like a tube. And
22 that's where the nerve roots are coming out of. And the spinal
23 cord actually goes down to around the L1-2. Then the spinal
24 cord ends. So some people think the spinal cord continues to go
25 all the way down. There's actually no spinal fluid below that

1 L1-2 area. Then there is nerve roots.

2 And this yellow structure is all nerve roots, and at
3 each level are nerve rootlets, and at each level a nerve
4 continues to leave.

5 Q Okay. Thank you. Now let's go back to your physical
6 exam.

7 (Whereupon, the following was recorded and
8 transcribed by Senior Court Reporter Monica Jenkins.)

9 (Continued on next page.)

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1 CONTINUED DIRECT-EXAMINATION BY MR. MCNIFF:

2 Q Okay. Go ahead take us through the physical exam,
3 doctor?

4 A So, first we measure range of motion and we have the
5 patient do, first let's say the lumbar spine, I believe I
6 examined first. So, we ask him to attempt toe and heel walk.
7 In this case he said he couldn't.

8 He said he had too much pain to toe and heel walk but
9 toe rising and heel rising, when he did that, he said he had
10 pain in the lower back. Then I test flexion, extension, lateral
11 bending, rotation, we use what's --

12 Q Can I stop you right there. Can you explain to the
13 jury what that is, flexion, extension and lateral --

14 A Sure. We use what's known as a goniometer which is
15 almost like a protractor to measure and I basically asked him,
16 can you bend forward and touch your toes. How far can you bend
17 forward. That's flexion.

18 Can you bend backwards. That's extension. Can you
19 bend to the left side. Can you bend to the right side. That's
20 lateral bending and can you rotate. Can you rotate to one side.
21 Can you rotate to the other.

22 And obviously some of this is his ability to do it,
23 right. I'm not forcing him actively to forward bend. He's
24 doing it on his own and I'm recording it.

25 Q Is that passive range of motion?

1 A No. That would be active or what's called active
2 assisted range of motion. So, I asked him to bend forward. He
3 bent forward to 35 degrees. Normal is about 90, right. So he
4 had some restriction in flexion.

5 Again, some of the records he was able to bend to 70
6 degree. So, sometimes if someone has more pain, that's going to
7 limit how far you can bend, right. We're not actively pushing
8 him forward.

9 Extension at that time was 10 degrees, normal being
10 about 30. He had some limitation in each area. He complained
11 of pain and active guarding and active guarding is basically my
12 hands are on him when he's bending forwards and backwards and at
13 a certain point he stops.

14 He's not going to bend more forward. He said it hurts
15 and so lateral bending was 15 degrees to both sides. Normal is
16 20 to 25 degrees. Lateral rotation was 35 degrees to the right,
17 20 degrees to the left and normal was about 45.

18 So, that, he had some restriction in his, you know, in
19 his ability or his, when he stops and complained of pain.

20 Q Is that a subjective finding in part?

21 A Yes. So, you know because we're not actively pushing
22 him, he's doing it and stopping and maybe better on certain days
23 and worse on others.

24 Q Continue.

25 A So, then I test reflexes and so flexes in the lower

1 extremities in the knees and the ankles and those correlate to
2 certain nerve roots. So, the knee reflex or knee jerk would be
3 an L4, correlates an L4 nerve root issue.

4 An ankle reflex correlates to the S1 nerve root, um,
5 and it's graded. So, he had 2 plus normal reflexes in both his
6 knees and his ankles. Then I test sensation. And in sensation
7 we're testing what's called a dermatomal distribution or
8 different areas.

9 He had some decrease in the left L2 area which really
10 was more so in what's called a lateral cutaneous nerve which is
11 a little skin nerve and sometimes we see that it could be caused
12 by tight belts or something like that, not really a spine nerve.

13 He had some numbness in the outer aspect of his thigh
14 and I jotted that down. He had normal sensation in what's
15 called the L3, the L4 and S1 distribution. He had some
16 decreased sensation in the left L5 distribution compared to the
17 right.

18 And that's with me touching skin and asking him, does
19 this feel normal or is this decreased compared to the other.

20 Q Is there a subjective component to that test?

21 A Yes, obviously because we're asking him. Anything that
22 comes from the patient would be subjective. So, we're asking
23 him, you know, does he feel this, relying on him.

24 Q Is that true on the range of motion testing too when it
25 comes to pain?

1 A Yes, it is. Things that are totally objective would be
2 reflexes. So, a reflex you can't really control. You are
3 testing a reflex and it goes from the spinal cord and back. You
4 don't have control over that but sensation and range of motion
5 you do have control over.

6 Q Continue.

7 A Sure. So then after the sensory exam I do a motor exam
8 and the motor exam on him we grade it from 0 to 5, 5 being
9 normal. His strength was normal in the quadriceps and the
10 hamstrings and the tibialis anterior.

11 And that's basically forcing your leg out. That's your
12 quadriceps but extending your knee. Your hamstrings you're
13 pulling in against resistance and your tibial anterior is
14 bringing your foot up, right.

15 Um, he on exam and that was on both sides he had good
16 strength. It was noted that on the left side he had what I
17 termed as 4 plus to 5 strength, um, and that was on the, well,
18 the left DHL we said 4 plus to 5 out of 5.

19 What that means is DHL is extensor hallucis longus in
20 technical terms. That's bringing your big toe up. When he
21 brought his big toe up, he had relatively good strength but then
22 he would give way.

23 And so, there's something called giving way to
24 resistance and it's difficult to assess people's strength when
25 they give way. So, if you have weakness, right, and you bring

1 your wrist up and you have weakness, you're pushing it down,
2 that weakness should be weak throughout the entire arc of coming
3 down.

4 If you have initial good strength, you have 5 out of 5,
5 4 plus out of 5 but then as I continue you go like this, then
6 that's giving way to resistance, right, so he demonstrated to
7 some giving way on resistance in his left DHL but on repetitive
8 testing I thought it was 4 plus to 5 out of 5 and he's plantar
9 flexion also which plantar flexes are pushing down against
10 resistance.

11 So, although he could lift his body weight up and do a
12 toe rise, the plantar flexion, I thought on exam was a 4 plus
13 out of 5 which is a very slight amount of weakness but also
14 giving way, so hard to fully appreciate because as he had the
15 resistance, then he would give way.

16 And then straight leg raises which was negative on both
17 the right and lower, left lower extremities.

18 Q Can you tell us, Doctor, how long this examination took
19 approximately?

20 A Well, just like I'm explaining it to you, it takes
21 sometime to do because number 1, history, number 2 the just
22 doing all these tests, testing the reflexes. So, I mean I leave
23 an hour for an exam with the history the intake and everything.

24 I did not record it. So, I would say it's an estimate,
25 you know, anywhere from 15 minutes to 45 minutes over to an

1 hour. Um, it all depends how quickly he answered the questions.
2 If someone's, you have to test people multiple times, it takes a
3 little longer.

4 And then there's someone called Miami Watchdog. It
5 actually records the time. I have a notation there was someone
6 there from the representing attorney's office will actually
7 record the time and typically I don't record the times but they
8 do.

9 Q And the time that you just told us about, doesn't
10 include review of records, right?

11 A That's correct.

12 Q There's additional time associated with record review
13 or film review?

14 A That's correct. So, him, it was extensive records and
15 films that took hours to review.

16 Q Those records include records from Dr. Root?

17 A Yes, they do. It was life care plan from him.

18 Q Did they include records from a Dr. Macagno you
19 mentioned?

20 A Yes. Macagno is the spine surgeon who initially saw
21 him approximately one month after the accident.

22 Q Is there also Premiere Physical Therapy records?

23 A Yes. Premiere I believe was Dr. Touliopolous' reports
24 and there was also pain management that I reviewed from Dr.
25 Iqbal and later from Dr. Kalter.

1 Q And did you review some of the MRI's in this case?

2 A Yes, I did.

3 MR. MCNIFF: With the Court's permission I would
4 like to put the MRI's up for the doctor to go through with
5 the jury. And with the Court's permission can the doctor
6 step down?

7 THE COURT: Sure.

8 THE WITNESS: And also I reviewed the lumbar but I
9 didn't talk about the cervical exam.

10 MR. MCNIFF: Definitely.

11 Q Well, go through the cervical exam?

12 A So, after the lumbar exam then I do a cervical exam.
13 That's also range of motion testing, right. So, we ask him to
14 do flexion, extension, lateral bending, lateral rotation, um,
15 and we look at his neck.

16 He had an incision on his neck, approximately 5
17 centimeter incision on his neck that would be consistent with
18 having had the cervical surgery. His flexion was 45 degrees.
19 Normal is about 60.

20 And that's about right for having had a 2-level fusion.
21 Extension was 20 degree which was limited. Normal is typically
22 around 30. Cervical bending was 25 degrees. So, bending to the
23 side which is also somewhat restricted.

24 Normal being approximately 30 to 45. And lateral
25 rotation was noted to be 50 degree bilaterally. Um, and normal

1 is about 80 degrees. So, there was some restriction in his
2 turning ability. We then do reflexes. We test reflexes that is
3 biceps, triceps, his brachioradialis which are 3 different
4 reflexes.

5 And those were all normal. Those were 2 plus in his
6 upper extremities. I then do sensation testing and those
7 correlate to the nerves that I showed you on the model. We test
8 the C5 distribution which is the lateral aspect of your arm.

9 So, we go to C5, then I do C6, C7, C8 and T1, um, and
10 those were normal. So, the sensation was normal in his upper
11 extremities. It didn't have decrease in sensation. Then I test
12 power strength.

13 Power strength even though I test it in different
14 muscles, each of those represent certain nerve root
15 distributions. So, I tested it's strength testing, that's
16 deltoids which is pushing against resistance, biceps strength,
17 triceps strength, wrist extensor and wrist flexor strength
18 interossei or having the fingers spreading apart and grip
19 strength.

20 And his strength in the upper extremities were 5 out of
21 5 or normal. So, he had normal sensation, normal reflexes,
22 normal strength but did have decrease range of motion in his
23 neck and an incisional scar.

24 Q Again decrease range of motion is in part subjective,
25 right?

1 A Yes, but unlike the lumbar spine, the cervical spine
2 since he had the 2-level fusion there would be some expected
3 decreased range of motion.

4 Q Anything else with the physical examination?

5 A Nope.

6 MR. MCNIFF: Now, with the Court's permission we'd
7 like to have the doctor step down.

8 THE COURT: You may step to the television,
9 Doctor.

10 THE WITNESS: So, these MRI's are labeled here.
11 You see Moazzam Gill, that's his name and the date of
12 these. These are the cervical MRI's and these are dated
13 December 11th of 2020.

14 That would be the presurgical cervical MRI's that
15 he had. Um, and just like on the model you see these
16 vertebral bodies. These are these white structures, and
17 then these little darker structures are the disc or jelly
18 donuts between them.

19 So, this is C2, C3, C4, C5, C6, C7 and encompass
20 the thoracic spine. I'm going to blowup the area C5-6 and
21 C6-7 and by the way, these axials, so this is a called a
22 sagittal slice and that's slicing this.

23 So, this is his face. This is the front. This is
24 the back of his spine and then this is the spine here. So,
25 he's facing towards me. The slice is this way. What's on

1 this image and that sometimes even a little more important,
2 these are axial images.

3 And the axial images are slicing someone like a
4 loaf of bread, right, and what we see, it's amazing because
5 it's all done by magnets. What you see here is, let me go
6 to a normal kind of level, right.

7 So, what you can see here is, this is coming up
8 above, right, C4-5. You could see the disc and the bone,
9 right. So, here's disc and here's bone and then there's a
10 little wide shaped bone in the back here which is the
11 lamina.

12 Then there are joints on the side called facet
13 joints and then this is the spinal cord. So, the spinal
14 cord is this gray structure in the center and then between
15 here and here and here and here, so, between the vertebral
16 body edges and the facet joints, that's where the nerves
17 lay.

18 And so you'll have a nerve leaf here and a nerve
19 leaf there. So, then we're going to come down to C5-6 and
20 at C5-6 what you can see is, there's what's called a disc
21 osteophyte. What that is, is bone and disc that are
22 pushing out towards the spinal canal.

23 Here is the spinal cord and you can see that on
24 the left side there's some ridging and some what's called
25 disc osteophyte here and the same thing over here, the same

1 thing at, the same thing, we're going to come down to this
2 level.

3 You see the same thing. You see this here, which
4 is an osteophyte on the left side of the spine. Now, when
5 I blow those up here, you see how the bone is white, okay,
6 and the discs are dark.

7 It's hard to make out here but here is the bone.
8 If I trace out the bone it comes here, here and then
9 there's a big osteophyte off of C5 and this is bone. That
10 bone takes years to develop.

11 So, there's a large osteophyte emanating at the
12 C5-6 area and then also see these osteophytes here coming
13 out here. Even in the back here this is a kind of white
14 coloration and that's calcification and that's bone.

15 So, there are large osteophytes or bone production
16 at C5-6 and C6-7. Um, and that correlates with these
17 films. These are osteophytes here that come out and they
18 have, you can see actually that this line is where the
19 slice is.

20 This line isn't even at the disc space. This line
21 is actually below the disc space but below the disc space
22 where the bone is, you see this. That's an osteocytic
23 projection off of bone, off of the, off of these, you can
24 actually see how this comes as a square.

25 It ends, but this actually comes as a point and

1 this comes as a point. This comes as a point and those are
2 called osteophytes and also, you can actually see the
3 osteophytes in the front.

4 You can see these big spurs come off of the bone
5 in the front at C5-6. So, all of this white is all bone.
6 That shouldn't be there. See this one it ends. It's flat.
7 So, at the C3 or C4 area there's no osteophytes here.

8 But at C5-6 and C6-7, there are these large
9 osteophytes that come in the front and then there are
10 osteophytes that come in the back and they are plying some
11 slight pressure on the cord on the left side.

12 Q Anything else with respect to this?

13 A No. I think that's the major aspect of it is that
14 these compressions are what's called disc osteophytes and
15 osteophytic progression and that these osteophytes certainly
16 take a long time to develop.

17 This is not something that would have developed in a
18 year. This takes years.

19 Q And are the osteophytes at the levels where the
20 plaintiff had the surgery?

21 A That's right. They're done at C5-6 and C6-7 and that
22 also correlates with the operative reports.

23 Q Can you just explain it and I guess you can sit down
24 now. Can you explain the degenerative process in general with
25 respect to the spine for the jury?

1 A Sure. So, in what's called degenerative disc disease
2 on these MRI's some of the spaces are narrow or they collapse a
3 little bit. So, at C5-6 it's a little collapsed. It's a little
4 narrower.

5 That's called disc desiccation or degenerative disc
6 disease and then as part of the degenerative disc disease
7 osteophytes form and you can have osteophytes anywhere. It
8 means spurs.

9 They're bone spurs. So, when people have hip
10 arthritis, you get spurs and you get arthritis in the hip.
11 Sometimes it comes to needing a hip replacement. It restricts
12 the motion, you know, so you can have osteophytes anywhere.

13 So, in his case he has large osteophytes at C5-6, C6-7
14 and part of the disc degeneration is as the disc degenerate and
15 smash down, these osteophytes form and the osteophytes are the
16 body's way of trying to stiffen the neck.

17 So, they form in the front and they form in the back.
18 You see that. You see that in the front of the levels at C5-6
19 and C6-7 and the back of the levels you see osteophytes. When
20 the osteophytes form, the discs come with them.

21 So, the discs are not excluded past the osteophytes.
22 So, if you have an osteophyte that forms and the disc is level
23 with the osteophyte, that's a chronic condition. Now, it's
24 possible that you could have an osteophyte and the disc can
25 herniate out but you would expect that disc to go further than

1 the osteophyte.

2 Q You didn't have that in this case?

3 A That's correct.

4 Q Okay. You also reviewed the MRI of the lumbar spine?

5 A Yes, I did.

6 Q And can you tell us about your findings on the MRI of
7 the lumbar spine?

8 A So, there was an MRI I reviewed I believe was December
9 2019 and that showed disc desiccation or degenerative disc
10 disease at L4-5 and L5-S1 as well as disc herniations at those
11 levels.

12 Q And now, Doctor, was there a surgery performed in the
13 lumbar spine as well?

14 A There was from the records after I evaluated them.

15 Q Is that a percutaneous discectomy?

16 A Yes. I would say it's a procedure. I wouldn't term it
17 as a surgery because it's not an incision. It's done through
18 needles. Through needles a percutaneous discectomy was done.
19 It was done by Dr. Kalter, L4-5 and L5-S1. Needles are
20 introduced into the spine and through the needles a little
21 trocar is placed and then disc is kind of tried to decompress or
22 suck back.

23 It's a small pieces of the disc from the center of the
24 disc. That's a pain management procedure to try to help back
25 pain.

1 Q Okay. Now, Doctor I have some questions for you. I'm
2 going to ask you then within a reasonable degree of medical
3 certainty; first, do you have an opinion within a reasonable
4 degree of medical certainty as whether the plaintiff sustained
5 an injury through his neck as a result of this accident?

6 A I do.

7 Q What is your opinion?

8 A My opinion is he did. He had a sprain which is a soft
9 tissue injury. He had neck pain in the ER and some of the
10 additional records and that would be consistent with the
11 cervical sprain.

12 Q Can you just tell us what happens when a person has a
13 sprain; take us through that process?

14 A So, you know, you could have a whiplash injury, your
15 neck is thrown forward and back and there's muscles, there's
16 ligaments and it's not uncommon for people to have neck or back
17 pain after an injury.

18 Even a trivial injury you could have neck or back pain.
19 Sometimes you can get it a little worse, you know, few days
20 later maybe initially it's not as bad but as the days go by can
21 get more irritated.

22 It's treated with anti-inflammatories. It's typically
23 not treated with having, you know, ordering MRI's weeks after or
24 something like that. It's treated basically with conservative
25 treatment and times if it doesn't get better a little bit of

1 physical therapy.

2 Q Can you tell us approximately and I'm sure it's a range
3 but how long does that take to resolve?

4 A Very variable, I would say anywhere from sometimes it's
5 weeks 6 weeks to maybe up to 6 months.

6 Q Okay. Doctor and do you have an opinion within a
7 reasonable degree of medical certainty as to whether the surgery
8 that was performed on the plaintiff's neck was related to the
9 motor vehicle accident?

10 A I do.

11 Q What is your opinion?

12 A My opinion is it is not related, that this surgery was
13 done for osteophytes for degeneration and for impingement from
14 these disc osteophytes.

15 These were present on the MRI's that I showed you and
16 takes years to develop and in the operative report from Dr.
17 Macagno he notes cleaning out osteophytes and cleaned out
18 osteophytes.

19 In fact he said he uses Kerrison Rongeur ropes with a
20 Kerrison through a punch, curettes which are little scrapers and
21 then a burr. A burr is like a mechanical burr and that is used
22 to drill down bone.

23 And that burr was used to drill down the osteophytes,
24 remove the osteophytes. He notes in the Op Report that he
25 removed the entirety of the posterior osteophytes that were

1 present.

2 Q Okay. Doctor, do you have an opinion within a
3 reasonable degree of medical certainty as to whether the
4 plaintiff sustained an injury to his back or lumbar spine as a
5 result of the accident?

6 A I do.

7 Q What is your opinion?

8 A I believe he did sustain an injury, that he had back
9 pain and that I would.

10 THE COURT: Sorry, I didn't hear what you said?

11 A That he had back pain and the injury would be lumbar
12 sprain.

13 Q What is that based on?

14 A So, that's based on review of multiple records and I
15 reviewed records from Dr. Kalter, Dr. Macagno, Dr. Tolatz (ph);
16 Dr. Iqbal, Premier Medical, um, there were MRI studies that I
17 reviewed and those were the cervical MRI studies that I showed
18 you from December of 2020.

19 There were lumbar MRI's studies that I reviewed as well
20 from December of 2019.

21 Q Okay. And do you have an opinion within a reasonable
22 degree of medical certainty as to whether the percutaneous
23 discectomy procedure is related to the motor vehicle accident?

24 A I do.

25 Q What is your opinion?

1 A The percutaneous procedure which was done in 2024, so
2 years later, um, was done at levels that showed significant
3 degenerative changes and my opinion is that there's no evidence
4 that and certainly no definitive evidence that was related to
5 the accident.

6 Q And do you have an opinion within a reasonable degree
7 of medical certainty as to whether the plaintiff can obtain
8 employment as, following the accident?

9 A I do.

10 Q What is your opinion?

11 A For a spine perspective, he has full strength and
12 sensation in the upper extremities. He has almost complete
13 strength maybe some minor weakness in the left lower extremity,
14 full strength in the right.

15 He has no narcotic medications at time I saw him and
16 again this is based on when I saw him in 2022 when I evaluated
17 him but at that time I believe that he would be employable.

18 Q Do you have an opinion within a reasonable degree of
19 medical certainty as to whether the plaintiff requires future
20 medical care as a result of the accident?

21 A Yes. As a result of the accident he does not require
22 future medical care.

23 Q Do you have an opinion within a reasonable degree of
24 medical certainty as to whether the plaintiff requires
25 additional surgeries as a result of the motor vehicle accident?

1 A Yes. I do have an opinion. As a result of the motor
2 vehicle accident he does not require any additional surgery.

3 Q Okay. Now, Doctor, I want you to assume that Dr.
4 Macagno testified that he did not perform any type of surgery
5 due to osteophytes; do you agree with that testimony?

6 A Well, the MRI clearly that I showed you demonstrate
7 large osteophytes and in his own operative report, he notes the
8 posterior osteophytes he completely removed using the
9 instruments we discussed.

10 So, I would think that if he included in his
11 osteophytes that he took out, that he included in his operative
12 report that he took out osteophytes, that's in the body of his
13 operative report so that's what I would go by.

14 MR. MCNIFF: Thank you, Doctor, I have no further
15 questions.

16 THE COURT: Any cross, Counsel?

17 MR. LESNEVEC: Yes.

18 THE COURT: You may proceed.

19 MR. LESNEVEC: May I proceed, Your Honor.

20 THE COURT: Yes.

21 CROSS-EXAMINATION BY MR. LESNEVEC:

22 Q Good morning, Doctor. Your testimony today was based
23 on opinions contained in reports that you wrote, correct?

24 A Well, they were based on what I had mentioned. They
25 were based on and my testimony today is based on the multiple

1 records from Dr. Iqbal, Dr. Kalter and Dr. Macagno, from Premier
2 Medical and from the two MRI studies that I had referenced and
3 showed one of them today.

4 MR. LESNEVEC: And if you could, Doctor, please
5 answer the questions with a yes or no or if you can't let
6 me know moving forward; is that okay with you?

7 THE WITNESS: Sure.

8 Q Are all of your opinions are contained within the
9 reports that you wrote?

10 A I mean my opinions today is based on what I'm
11 telling --

12 Q Just a yes or no if you could?

13 THE COURT: Doctor, if you can answer it yes or
14 no, please do, and if not, tell counsel you can't answer it
15 yes or no.

16 A What's the question, I'm not sure I understand it?

17 Q I read your reports. You wrote a few reports, right?

18 A Yes.

19 Q Are all of your opinions contained within those reports
20 or is there something I'm missing outside of those reports; yes
21 or no?

22 A There is something outside of the reports. There's
23 other things that I've been -- there were things after the first
24 report that I was given, right, so when I had the first report I
25 didn't have --

1 Q Let me stop you. All of the reports though, your
2 opinions are contained within all of the reports that you wrote;
3 can we agree on that?

4 A I would say my opinion is as of today what I'm
5 testifying to.

6 Q Has that opinion changed at all from the reports?

7 A Well, it might have --

8 Q Yes or no, Doctor, please?

9 A It's not really a yes or no.

10 Q That's sufficient.

11 THE COURT: One second. One second. Only one
12 person can speak at one time. Doctor, counsel has asked
13 you to answer yes or no. If you can't tell him no and then
14 he will ask another question.

15 THE WITNESS: Got it.

16 THE COURT: You need the question repeated?

17 Q Were you able to answer the question yes or no?

18 A No, I can't answer that.

19 Q All right. You saw Mr. Gill one time; is that right?

20 A That's correct.

21 Q And that was February 17th of 2022?

22 A That's correct.

23 Q That was over two years after the crash; is that
24 correct?

25 A That's correct.

1 Q You haven't examined him in the past three years,
2 correct?

3 A That's correct.

4 Q So, You don't know what his condition is as you sit
5 here today, do you?

6 A That's correct, only what was gleamed in the records
7 sent to me afterwards.

8 Q You ain't say whether he's gotten better, can you?

9 A I don't have information --

10 Q Yes or no? If you could with a yes or no, please. You
11 can't say if he's gotten better?

12 A As of today, that's correct.

13 Q You can't say if he's gotten worse?

14 A That's correct.

15 Q And when you examined Mr. Gill that was not as your
16 patient, correct?

17 A That's correct.

18 Q You examined him on behalf of the defense Fleetwash Inc
19 in this case; is that true?

20 A I don't know who Fleetwash Inc is but --

21 Q You did it on behalf of the defense, would you agree
22 with that?

23 A On a, yeah, it was set up by a third-party I believe
24 but it was the attorney's office for the defense.

25 Q Okay. You called it during your direct testimony you

1 called it an independent medical examine; is that what you said?

2 A Yes. That's what it's referred to as.

3 Q Can we agree these exams like the one you performed
4 they're not really independent, are they?

5 A Well, it's independent that my opinion is independent,
6 right. So I'm testifying today under oath. I'm going to give
7 you my straight opinion. So, it is my independent opinion that
8 no one is, um, telling me how to give my opinion one way or the
9 other.

10 Q You were paid and chosen by the defense attorney's --

11 THE COURT: Doctor, one second. One second. It's
12 very important, Doctor, that she, the reporter can only
13 take down one person at a time. We've got to get a clean
14 record here. Go ahead, Counsel.

15 Q So, you were paid and chosen by the defense without any
16 input from me; can we agree on that, yes or no?

17 A It's paid by a third-party but basically comes from
18 defense, yes.

19 Q We have a judge sitting here, Judge McGregor-Mundy, she
20 didn't choose you for this case, correct?

21 A Correct.

22 Q When you wrote your reports you knew that you were
23 being hired by defense attorney as you say some third-party; you
24 knew that at the time you wrote your reports?

25 A That's correct.

1 Q Now, in your initial report you note a section titled,
2 medical records reviewed; is that right?

3 A Yes.

4 Q The very first documents you list under medical records
5 is a verified Bill of Particular's; is that true?

6 A That's correct.

7 Q That's not a medical record, is it?

8 A That's correct.

9 Q That's a legal pleading, correct?

10 A That's correct, so, I know what the injuries are.

11 Q My question is that's not a medical record, is it?

12 A That's correct.

13 Q That's a legal pleading, correct?

14 A Yes.

15 Q You also reviewed what you wrote was a supplemental
16 verified Bill of Particulars also?

17 A That's correct.

18 Q That's also a legal pleading, correct?

19 A That's correct.

20 Q Is it your practice if one of your own patients come to
21 see you, you say, before I review the medical records let me
22 take a look at the legal proceedings; do you do that?

23 A My patients don't typically have legal proceedings but
24 in this case you want to review them because you want to know
25 what injuries are being claimed. If I have to examine people I

1 have to know what the injuries are.

2 I don't want to examine someone's neck and they leave
3 and say there's also there was a back injury and I didn't
4 examine that. So, in these cases those are sent to me so I can
5 see what injuries are being claimed.

6 Q Is it your testimony you don't have any patients who
7 are involved an accident where there's some type of litigation?

8 A There might be over the years 25 years.

9 Q In those 25 years did you ask and say, hey, can I look
10 at the legal proceedings first; yes or no?

11 THE COURT: One second. Doctor, Counselor, only
12 one person can speak at a time. Doctor, if you can answer
13 yes or no, do so. If you can't say I can't.

14 A No, it's not typical.

15 Q It's a yes or no or I can't answer yes or no?

16 A You are not going to have --

17 MR. LESNEVEC: Your Honor, if the witness can be
18 instructed.

19 THE COURT: Doctor, you have to say yes or no.
20 Counsel is asking you for a yes or no. If you can't answer
21 it, just say I cannot answer that a yes or no.

22 A Sure. So, in my patients --

23 THE COURT: Sir.

24 Q If you can please follow the instructions of Your
25 Honor, yes, no or if you can't tell me I can't answer yes or no;

1 is that fair?

2 A Sure.

3 Q Okay. Basically the invitation for you to get involved
4 in this case did not come from me or the Court, it came from the
5 third-party for the defense; is that correct?

6 A Yes.

7 Q Now, you did review Mr. Gill's medical records as well,
8 correct?

9 A Yes.

10 Q Actual medical records, right?

11 A Yes.

12 Q And as a part of your examine, did you also request
13 more records from the defense after you got the first set did
14 you request more?

15 A I did.

16 Q Did you review the hospital record from Long Island
17 Jewish Medical Center?

18 A Yes.

19 Q And Mr. Gill was taken there by ambulance; is that
20 true?

21 A I believe he was.

22 Q Do you need to check the records, we have them here?

23 A I believe he was.

24 Q Okay. Um, in the ER records he complained of neck and
25 back pain?

1 A Correct.

2 Q He complained of left shoulder pain?

3 A Yes.

4 Q Also complained of headaches at the ER?

5 A Yes.

6 Q And he was complaining of feeling dizzy; is that
7 correct?

8 A That I wouldn't know. If I -- believe so. I trust
9 you, um, but that's not something, dizziness is not in the
10 orthopedic realm so that's not something I would have
11 necessarily jotted down.

12 That sounds right. He was sent to a neurologist
13 afterwards for headache issues.

14 MR. LESNEVEC: If I can show Exhibit 16 in
15 evidence, please.

16 THE COURT: You may.

17 COURT OFFICER: Plaintiff's Exhibit 16 being
18 handed to the witness.

19 MR. LESNEVEC: If you need to refer to those,
20 those are the hospital records. Doctor, if you need page
21 through them if you need to take a look at them.

22 Q He had complained of being light-headed in the
23 hospital; is that true?

24 A Again, if you can refer to me where these records are
25 quite sometime so.

1 Q Take a look. Are those the records that reviewed in
2 preparation --

3 A Yes. I have the hospital care report summary and I
4 have the records from the ER here, um, and if you are reading
5 from them, yeah, that sounds about right.

6 MR. LESNEVEC: I believe it's Page 2 out of 20,
7 should be marked on the bottom. Don't go by the page
8 numbers there.

9 THE WITNESS: Okay. So I have Page 2 out of 20.
10 It's another Page 2, hold on. I have a Page 3 out of 20
11 but there is no Page 2 out of 20.

12 MR. LESNEVEC: Can I take a look?

13 THE WITNESS: Sure. There's a Page 3 out of 20.
14 I don't see Page 2 out of 20.

15 MR. LESNEVEC: Can you take a look at that Page 2
16 out of 20.

17 THE WITNESS: I got it.

18 Q You see there he made complaints of feeling dizzy; is
19 that correct?

20 A Yes. Positive dizziness.

21 Q And he also complained of light-headedness?

22 A Says positive dizziness described as light-headedness,
23 sound like all the same, yes.

24 Q And those records indicate tenderness to his neck,
25 correct, if you go to Page 3, the next page?

1 A They're not in order. Bear with me while I get to Page
2 3 of 20. Okay. So, on the physical exam the neck says supple
3 vertebral point tenderness.

4 Q Now, tenderness, can that be considered as an objective
5 finding; yes or no?

6 A No.

7 Q Okay.

8 A It's objective.

9 Q In your records it also lists tenderness in the lumbar
10 spine; is that correct?

11 A Yes, so there's midline tenderness in the lumbar.

12 Q In the lumbar, that's the lower back, correct?

13 A Yes.

14 Q He had limited range of motion in his back, correct?

15 A Yes, due to pain.

16 Q And ER records also list swelling; is that correct,
17 swelling to the shoulder?

18 A Oh, to the shoulder not something I would look at but
19 I'll look at it now for you.

20 Q Page 4?

21 A On Page 4, yeah, left-upper extremity swelling,
22 tenderness.

23 Q And they also listed tenderness, that's the left
24 shoulder upper extremity; is that correct?

25 A Left-upper extremity is the entire arm -- anterior

1 shoulder no deformity, yes.

2 Q There were also discharge instructions as part of the
3 ER records?

4 A Correct.

5 Q Discharge instructions are given to the patient before
6 they're discharged to leave the hospital; is that correct?

7 A That's correct.

8 Q Mr. Gill's discharge instructions state that he should
9 apply ice to his shoulder and heat to his neck for 15 to 20
10 minutes 3 to 4 times per day; is that correct?

11 A That's correct and take Ibuprofen and Tylenol.

12 Q Well, it also says he should take Flexeril?

13 A Also take Flexeril, yes.

14 Q Not just Tylenol and Ibuprofen, Flexeril which is a
15 muscle relaxer; is that correct?

16 A Correct.

17 Q That's the instructions from the hospital before he was
18 discharged, correct?

19 A Yes.

20 Q Also says he should follow up with a primary care
21 physician and orthopedic doctor; is that correct?

22 A Yes, that's correct.

23 Q Now, a week after his release he started treating at
24 Premier Physical Medicine and Rehab; is that true?

25 A Yes, exactly 7 days.

1 Q Seven days and you read those records?

2 A I did.

3 Q You reviewed them in preparation for today?

4 A I did. If you are going to quote them, I would
5 appreciate having them but I do.

6 MR. LESNEVEC: If I could hand the witness Exhibit
7 18 and I will refer you to that page?

8 THE COURT: Yes, you may.

9 COURT OFFICER: Plaintiff's Exhibit 18 in evidence
10 being handed to the witness.

11 Q Now, he made the same complaints of pain in his back,
12 his neck and his shoulder when he went 7 days later to that
13 doctor; is that correct?

14 A That's correct. I recall that.

15 Q That's Premier Physical Medicine Rehab?

16 A Yes.

17 Q And initially he complained of neck pain that radiated;
18 is that correct?

19 A That's sounds correct. I think it was to the left but
20 where are you reading?

21 Q It's on the very page you're on?

22 A I see it. Neck pain, radiation pain to the left upper
23 extremity.

24 Q And he made that complaint 7 days after this accident?

25 A Yes.

1 Q And it also noted that the pain travelled from his neck
2 to his left arm, correct?

3 A Correct.

4 Q And that record also indicates numbness and weakness of
5 the left arm?

6 A That's correct.

7 Q In the initial visit PT also notes he had numbness and
8 pins and needles in the left hand; you see that there?

9 A I believe I did, yup.

10 Q Just confirm?

11 A On here, yeah, from you said physical therapy, I
12 thought you were referring to physical therapy records.

13 Q I'm referring to the record that you have in front of
14 you from the doctor's record.

15 A Yes. He has weakness, pins and needles both legs,
16 lower extremities notes --

17 Q Those records note that he has that in his left hand as
18 well as his legs; am I correct?

19 A Numbness and weakness in the left arm it says, yeah.

20 Q It also notes he had pins and needles in both of his
21 legs, is that true?

22 A Yes.

23 Q Now, what is radiculopathy?

24 A So, radiculopathy is, could be pain, um, but
25 radiculitis is pain. Radiculopathy is more weakness or numbness

1 in a particular nerve root distribution.

2 Q Can that be caused by a herniated disc?

3 A Yeah, it's possible as well as other things.

4 Q Now, what is an EMG?

5 A An EMG is a nerve test, um, typically, done by a
6 neurologist or someone that, you know, studies nerves. And
7 that's an electro test that they do of the upper or lower
8 extremities or both to try to qualify whether there's a
9 particular nerve root that's irritated.

10

11 (Whereupon, Senior Court Reporter Dalila Cummings
12 began recording the following proceedings:)

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1 CROSS-EXAMINATION

2 BY MR. LESNEVEC:

3 Q And that's one way to test for radiculopathy, is it?

4 A It is.

5 Q Mr. Gill underwent an EMG, did he not?

6 A He did, but it didn't correlate.

7 Q So he underwent the EMG, correct? That was two months
8 after the crash?

9 A He did. It showed a left C8 radiculopathy and left L4
10 radiculopathy.

11 Q He had radiculopathy in the neck and back according to
12 that test? Yes or no?

13 A Yes. In the C8 and L4 nerve roots. Yes.

14 Q Now, Mr. Gill also had epidural injections to the neck
15 before he had surgery to the neck; is that true?

16 A Yes.

17 Q What is an epidural injection?

18 A An epidural -- the epidural space is around the area
19 where the nerves are, and an epidural is basically a needle
20 that's introduced and some steroids, some numbing medicine is
21 placed to try to -- it's like almost like a strong
22 antiinflammatory in around the nerves.

23 Q Would you advise one of your own patients to try
24 physical therapy before it was ordered? The spine surgery? Yes
25 or no?

1 A Well, that would depend. Sometimes people need surgery
2 right away depending on the condition. Right. So typically,
3 yes, for mild things, but if someone has an epidural abscess, I
4 don't order therapy.

5 Q If emergency surgery is needed, you do surgery right
6 away?

7 A That's correct.

8 Q Outside of the circumstances, would you advise a
9 patient -- one of your own, to get physical therapy first to
10 try?

11 A Typically, yes.

12 Q Would you also advise to try an injection before
13 ordered the surgery in a non-emergent situation?

14 A Typically, depending on the situation, yes.

15 Q Did Mr. Gill have complaints of neck pain radiating
16 down his arm before this crash?

17 A Not to what he told me or any of the records that I
18 reviewed.

19 Q You didn't see that in any of the records, did you?

20 A That's correct.

21 Q Did he ever experience numbness in his arms before this
22 crash that you saw anywhere?

23 A Not in the record.

24 Q Did you see or did Mr. Gill tell you about any lower
25 back pain that radiate down his legs before this crash?

1 A No. I have no knowledge before this crash.

2 Q Are you aware of any prior accidents that Mr. Gill was
3 involved in before December 4, 2019?

4 A Again, I am not aware.

5 Q Are you aware of any treatment, whatsoever, to his neck
6 or back from before this crash?

7 A Not that was supplied to me.

8 Q Now, you talked a lot about the degenerative disc
9 disease that predated the crash. Do you remember during your
10 direct? Was that causing him pain before this crash?

11 A Again --

12 Q Yes or no?

13 A -- I wouldn't know.

14 Q You wouldn't know? Okay.

15 A But it was there.

16 THE COURT: One second. Doctor, you have to wait
17 for the question, sir. Okay.

18 Q Did you ask Mr. Gill if he had pain due to this
19 syndrome before the crash?

20 A I asked him if he had any prior accidents or injuries
21 and he said no.

22 Q Did you ask him if he had any prior pain?

23 A That would be part of the history.

24 Q What did he tell you about that?

25 A So if he would have mentioned he had prior pain, I

1 would ask jotted that down. There's no notation that he
2 admitted having prior pain.

3 Q You didn't see that documented in any of the medical
4 records, did you?

5 A From his treating providers, no.

6 Q One of the factors that you relied upon in coming to
7 your conclusions that Mr. Gill has degeneration is the MRI
8 films, correct?

9 A Yes.

10 Q And initially, when you wrote your first report, you
11 did not have his MRI films for his neck and back, true?

12 A That's true. I asked for completeness sake.

13 Q You requested those MRI films, right?

14 A That's correct.

15 Q You asked the third-party source or the defense counsel
16 provide those to me, correct?

17 A Yes.

18 Q For the neck and the back?

19 A Yes.

20 Q Okay. And then you wrote another report; is that
21 correct? After the first one?

22 A That's correct. After reviewing films.

23 Q And so, at this point you were given the December 18,
24 2019, MRI to the lower back, correct?

25 A That's correct.

1 Q And that was the one that was taken two weeks after the
2 crash; is that right?

3 A That's correct.

4 Q That was taken at Standup MRI of Lynbrook?

5 A Yes.

6 Q And on that same day, at the same facility, Mr. Gill
7 actually underwent a MRI to his neck, didn't he?

8 A I believe that he did, but I'm not basing my opinion on
9 that. I'm basing my opinion on what I reviewed.

10 Q There was an MRI of his neck taken two weeks after the
11 crash?

12 A If you say so, sure.

13 Q Your opinion is not based on that MRI, correct?

14 A That's correct.

15 Q You went over a film dated 2020, correct?

16 A The presurgical MRIs is what I'm basing my opinion on,
17 which was I think a couple weeks before the surgery.

18 Q So when you asked for those additional MRI films, you
19 weren't provided those MRI film at that point of your second
20 report, correct?

21 A I was provided the neck and back we discussed.

22 Q You were not provided the neck MRI that was taken two
23 weeks after the crash, were you?

24 A Not as of yet.

25 Q But that was one of the ones you would have asked to be

1 provided?

2 A I asked for all films so I could review them for
3 completeness.

4 Q And then you came to the conclusions in your report;
5 conclusions from your second report as well, correct?

6 A Yes, there was a second and third report.

7 Q And so, by the time you come to the conclusions in the
8 second report, you still did not have the neck MRI that was
9 taken two weeks after the crash, correct? Yes or no?

10 A That's correct. I reviewed the December 2020.

11 Q By the way, what was the rate of speed of the vehicles
12 in the crash?

13 A Well, I mean, this is from memory. He was travelling
14 at 40 miles an hour is what he said in the records, and it was a
15 rear impact by a commercial van.

16 Q He was moving at the time of the accident?

17 A He was moving at the time, correct.

18 Q That means the vehicle had struck him was going faster
19 than that, would you agree?

20 A Yes.

21 Q Do you know what kind of vehicle struck Mr. Gill?

22 A I believe he told me or from the records it was a
23 commercial van. I don't know the exact vehicle.

24 Q Do you know how much property damage was to the
25 vehicle?

1 A I don't.

2 Q I'm sorry?

3 A I don't.

4 Q Do you know what kind of damage at all there was to
5 either of the vehicles?

6 A He told me there was rear-end damage, but I was not --
7 was not supplied with any estimates for repair.

8 Q Do you know if the van was carrying anything inside of
9 it or how heavy the van was that struck Mr. Gill?

10 A No.

11 Q Did you ever ask the defense counsels for pictures of
12 the damage?

13 A No, that was --

14 Q Yes or no?

15 A No.

16 Q Did you ever speak to any of Mr. Gill's doctors?

17 A No.

18 Q You talked a lot about Dr. Macagno, what he did or did
19 not do in his surgery. Did you ever call him to talk to him
20 about that? Yes or no?

21 A That would be inappropriate. No.

22 Q You did not?

23 A That would be inappropriate. No.

24 Q Mr. Gill, when he came to see you, he was 47 years old;
25 is that correct?

1 A Correct.

2 Q And when he saw you he made complaints of pain to you
3 as well, right?

4 A Yes.

5 Q Back pain, neck pain, correct?

6 A Yes.

7 Q He also told you he had headaches when he saw you?

8 A Correct.

9 Q And he told you that he had pain in his arms and legs
10 as well, correct?

11 A Correct.

12 Q You said that you had performed range of motion
13 testing; is that right?

14 A Yes.

15 Q And he had a loss of range of motion in every test you
16 gave him, correct? Yes or no?

17 A That's correct.

18 Q And again, did you just show us flexion? How is that
19 test performed?

20 A Flexion is forward bending. And he had -- well,
21 flexion of your lower back and neck.

22 Q Neck.

23 A Neck, if you forward bend, I believe it was --
24 forty-four, forty-five. It was restricted, as compared to
25 normal being sixty. So there was restriction in flexion. There

1 was restriction in extension, and lateral -- bending lateral
2 rotation.

3 Q Restriction in all categories that you checked?

4 A Yes.

5 Q You noted that he had tenderness along the midline of
6 his lower back when you examined him, correct?

7 A Superficial tenderness, yes.

8 Q But tenderness, yes? You noted that?

9 A Superficial tenderness, yes.

10 Q Is that something that he was making up?

11 A Well, superficial --

12 Q Yes or no? Is that something he was making up in your
13 opinion?

14 A Again, I wouldn't speak to what someone makes up.
15 That's not bony tenderness. That's superficial tenderness along
16 the skin. That's usually a hyperexaggerated.

17 Q Did any of Mr. Gill's treating doctors write
18 pre-existing degenerative disc disease in any of his records?

19 A Treating doctors you don't mean --

20 Q Yes or no?

21 A -- MRI reports as treating doctors?

22 Q I'm talking about his treating doctors. Did you see in
23 any of those treating doctors' reports that they wrote that he
24 was suffering from preexisting degenerative disc disease? Yes
25 or no?

1 A Not in the records that I reviewed from his treating
2 doctors.

3 Q Okay. There were how many pages of records that you
4 reviewed? Thousands? Hundreds?

5 A There was a considerable amount of records. They may
6 have quoted some of the MRI reports; and so, I can't speak to
7 that. And none of their diagnosis, I think, said degenerative
8 disc disease, but whether there was -- sometimes a report is
9 quoted in the record and he might have said that but.

10 Q When Mr. Gill made his complaints as you described, did
11 you find those complaints of pain to be credible?

12 A I had no reason to doubt his complaints. His
13 complaints are what his complaints were. And that's what I
14 recorded.

15 Q You have no reason to believe he was less than truthful
16 to you, do you?

17 A No. I mean, no.

18 Q Do you have an opinion, was he exaggerating in your
19 opinion?

20 A Well, that's what I alluded to before. There are
21 certain things that we --

22 Q Yes or no if you could?

23 A Well, it's an explanation.

24 Q Doctor, is it --

25 A There were some --

1 Q Yes or no?

2 A -- components.

3 THE COURT: One second, everyone. Doctor, if you
4 can answer yes or no, please do so. If not, say to counsel
5 I cannot answer yes or no, and then he would rephrase --

6 THE WITNESS: I can't.

7 THE COURT: We can't talk at the time, Doctor.
8 Please, sir. Okay.

9 THE WITNESS: Yes.

10 THE COURT: You want the question repeated?

11 THE WITNESS: Sure.

12 THE COURT: Madam Court Reporter, please reread
13 the last question.

14 (The reporter reads back the requested portion of
15 the proceedings.)

16 A His complaints, no.

17 Q So you believe that he was truthful about his
18 complaints of pain, which were about two years after the crash
19 to you? Yes or no?

20 A I mean, from what he said. Obviously, the secondary
21 gain that you have to consider. I didn't have anything to doubt
22 that.

23 Q Is it your position that he's doing something or making
24 complaints for secondary gain? Is that your position?

25 A I think he did have pain.

1 Q Did you find him to be credible?

2 A Mostly.

3 Q Well, mostly. You found that he was not credible about
4 some things?

5 A Yes. So, yes. So --

6 Q It's yes or no.

7 A Well --

8 MR. LESNEVEC: Your Honor.

9 THE COURT: Doctor, yes or no, sir. Just a yes or
10 no.

11 A Yes, there was.

12 Q So he's not credible about some things, but other
13 things he is inflating or he is exaggerating, in your opinion?
14 Yes or no?

15 A Yes, there were some signs.

16 Q Now, the surgeries that Mr. Gill underwent, especially
17 the cervical surgery, that's pretty serious, would you agree?

18 A Well, I mean serious for patients; routine for the
19 spinal surgeon performing it.

20 Q I understand. From the patient's --

21 THE COURT: One second. Counsel -- Doctor.

22 Counsel, let the doctor answer. Go ahead, Doctor.

23 A So it is a surgical procedure that's done. I think it
24 was done ambulatory. It's described sometimes as minimally
25 invasive, but it is a surgery.

1 Q And is it your position that he underwent that surgery
2 due to pain? Yes or no?

3 A In part.

4 Q It is a yes or no, Doctor. If you can't answer with
5 yes or no, please tell me.

6 A I can't answer that yes or no.

7 Q Now, he told you after he had the neck surgery that he
8 no longer had the numbness in his hands, correct?

9 A That's correct.

10 Q Did you find him to be credible about that?

11 A Yes. It correlated to the sensation that I tested.

12 Q Is it your position that he should not have gotten the
13 surgery to his neck? Yes or no?

14 THE COURT: If you can answer it yes or no.

15 A I can't answer that because it's -- it's what it
16 resulted from, but --

17 Q You can't answer with yes or no. That's sufficient.
18 I'm okay with that. Just tell me yes; no; I can't answer with
19 yes or no.

20 A That would also require an explanation, obviously, to
21 be full and truthful.

22 Q Mr. Gill told you that he had attempted to go back to
23 work approximately four months after his neck surgery, correct?

24 A Yes. And I believe he went back to work for a few
25 weeks. Couple weeks.

1 Q Couple days or weeks?

2 A I would have to check my report. He did go back to
3 work for sometime and he couldn't do it.

4 Q His doctor, Dr. Macagno, had actually cleared him to
5 try to go back to work; are you aware of that?

6 A Yes. And in the report was two weeks, just to qualify.
7 He worked for two weeks, and then he went out again.

8 Q After the doctor clears him to go back to work, he
9 attempted to do so, correct?

10 A Correct. And worked for two weeks.

11 Q And he wasn't able to continue due to his pain?

12 A That's what he told me.

13 MR. LESNEVEC: Okay. I have no further questions.
14 Thank you.

15 THE COURT: Thank you. Any redirect?

16 MR. McNIFF: Thank you.

17 RE-DIRECT EXAMINATION

18 BY MR. McNIFF:

19 Q Doctor, you were asked questions first about
20 Dr. Olat (phonetic), and you went through some of those records,
21 right?

22 A Yes.

23 Q And you were asked questions about complaints made by
24 the plaintiff, right?

25 A Correct.

1 Q Are those complaints subjective?

2 A Yes. Absolutely.

3 Q Do you have any way to verify whether somebody is
4 actually feeling pain?

5 A No. That's why it's subjective. It's his complaints,
6 and that's what the doctors write down.

7 Q And when you were asked questions about the plaintiff,
8 believing the plaintiff -- you are relying on the plaintiff to
9 be truthful to you?

10 A That's correct.

11 Q And I mean, you don't do any independent investigation
12 into the plaintiff, right?

13 A That's correct. I would not call treating providers
14 and talk to them. That would be inappropriate.

15 Q We will get to that in a second. You were asked that
16 question. Not that we expect you to, but you don't research the
17 person that comes in to see what kind of person, do you?

18 A That's correct.

19 Q You meet him for that examination?

20 A Right.

21 Q And you are relying on them to completely be honest,
22 right?

23 A Yes.

24 Q You also mentioned something about exaggerating a
25 couple of times. Can you explain to the jury what you meant by

1 things not correlated?

2 A So when we test people, we say okay, do you have
3 tenderness? And sometimes what I will do, I will superficially
4 touch their back, and the patient may say yes, yes, oh, that
5 hurts, that hurts. You are just the testing the skin. You are
6 just touching the skin. Not deeply palpating into the spine.
7 That's something we consider as an exaggeration, and that's why
8 I noted that he had superficial tenderness.

9 The other thing is active guarding. When we have them
10 bend forward, at thirty-five degrees he can't bend forward any
11 further, and he has pain. But yet on multiple evaluations from
12 his treating provider, his flexion is seventy degrees of forward
13 bending in the lumbar spine. So that would also be if I look at
14 the records and I see five, six, seven, eight, ten times, where
15 the lumbar flexion is documented at seventy, and when he comes
16 in to see me it's thirty-five, that might be a little bit of an
17 exaggeration or he might have had a bad day. That's something I
18 wouldn't know.

19 Q You are finding changes when you review the records for
20 muscle strength?

21 A Say that again.

22 Q Muscle strength. You have seen different findings for
23 muscle strength?

24 A Other providers five out of five strength, multiple
25 multiple occasions. And then Dr. Macagno, when he did the

1 surgery, he had weakness. The weakness was in his right arm,
2 and it wasn't in his left arm. The EMGs showed a C8
3 radiculopathy, but the surgery and on the left side, but he had
4 weakness in his right arm documented by Dr. Macagno. That
5 doesn't correlate. And the MRI showed these large osteophytes
6 at C5-6 and C6-7, which would push on the C6 and C7 nerve roots.
7 It wouldn't cause a C8 radiculopathy. That doesn't correlate.
8 You can have a test, and the test could be positive, and then
9 you would have correlate it to the imaging studies to the
10 patient.

11 Q So you have subjective complaints in this case from the
12 plaintiff, right?

13 A Correct.

14 Q And then you have various tests and diagnostic tools
15 that you have looked at, right?

16 A That's correct.

17 Q And they don't all correlate, do they?

18 A They do not all correlate. And the surgery was done at
19 the levels that showed significant osteophytes. And I believe
20 that's why the surgery was performed.

21 MR. McNIFF: Thank you, Doctor. I have no further
22 questions.

23 THE COURT: Thank you, Doctor. You may stand
24 down. Thank you, sir.

25 Counsel, please approach.

1 MR. McNIFF: Sure.

2 (An off-the-record discussion was held away from
3 the jury.)

4 THE COURT: Members of the Jury, that concludes
5 today's testimony for the trial. So you have a very early
6 out today. We are going to resume trial Thursday morning
7 at 10:00 a.m. Not tomorrow, but Thursday morning,
8 10:00 a.m.

9 So here comes those admonitions once again.
10 During break, please do not discuss anything with regard to
11 this trial with anyone, including your fellow jurors. Do
12 not speak with the parties, attorneys or witnesses. If
13 anyone attempts to discuss this matter with you, please
14 notify my court officer, who will in turn notify me.

15 So I bid you all fair well for the afternoon. It
16 is a very nice afternoon. Good day to get an early out.
17 Everyone have a good day tomorrow, and I will see everybody
18 back here Thursday, 10:00 a.m. sharp. Have a good day.

19 THE COURT OFFICER: All rise. Jury exiting.

20 (The jury exits the courtroom.)

21 THE COURT: Okay. Off the record.

22 (An off-the-record discussion was held.)

23 THE COURT: All right. Counsels, so we will see
24 everyone Thursday, 10:00 a.m.

25 MR. McNIFF: Thank you.

1 THE COURT: Have a good rest of the day.

2 MR. McNIFF: Thank you, Your Honor.

3 THE COURT: Everybody get home safely.

4 MR. LESNEVEC: You too.

5 (The trial was adjourned to May 29, 2025 at
6 10:00 a.m.)

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