UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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RENE H. MANLAPIG and
MARISTELLA MANLAPIG,

Plaintiffs,

v. 14 CV 235 (LGS)

JEREMY HORACE JUPITER, A. ANASTASIO & SONS TRUCKING COMPANY, INC., A. ANASTASIO & SONS TRUCKING CO. 1 and THE ANASTASIO GROUP,

Defendants.

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New York, N.Y.
May 9, 2016
9:30 a.m.

Before:

HON. LORNA G. SCHOFIELD,

District Judge
and a jury

APPEARANCES

LAW OFFICE OF SOUREN A. ISRAELYAN
Attorneys for Plaintiffs
BY: SOUREN A. ISRAELYAN

GALLO VITUCCI KLAR LLP
Attorneys for Defendants
BY: MATTHEW J. VITUCCI
MICHAEL FRAGGETTA

(Trial resumed)

(Jury not present; in open court)

THE COURT: Good morning. You may be seated. I understand that one of the parties, or both, perhaps, I don't know, wanted to raise a matter.

MR. VITUCCI: Yes, your Honor. There was testimony the other day in questioning from plaintiff's counsel saying, in effect, that in any accident, a report must be made to the DOT. The defendants have maintained that not all accidents are reportable, only those involving a tow away of a vehicle or a serious bodily injury to one of the accident participants. That is the law, and counsel is telling the jury in his questioning that that is not the law, that all accidents need to be reported.

I would like an opportunity to hand something up to the Court. I don't know if I have the exact section here, but perhaps we can give a curative instruction to the jury.

THE COURT: What I'd actually like to do, since I distributed a new version of the charge to you yesterday, and I did include the defendant's request for charge on the Motor Vehicle Safety Law simply because it seemed to me that, to the extent the jury is asked to consider the law, they ought to hear what it is from me, so that's why I included it in the jury's restriction. If you'd like to give me an instruction, I will include it in the final charge.

MR. VITUCCI: One other thing, we had an issue with the verdict sheet. I don't know if you want to hear it now.

THE COURT: If you want to say it fast now. If it's a long discussion, we can discuss it at the charging conference.

MR. VITUCCI: I'll be very brief. The first three questions deal with serious injury --

THE COURT: That was in your letter.

MR. VITUCCI: -- and if the answer is no, that's the end of the case. You can't go on to Question 4, "What are the medical bills?" because the jury would be awarding payment for medical bills, including Dr. Radna's recitation of $1 million necessary for future care, for injuries that they've already determined did not come from the accident. So it's inviting -- it's an inconsistent verdict on its face.

THE COURT: I read your letter, but it looked to me -- not looked -- I looked at the case law. There is case law that is on point and directly contrary to what you say. We can discuss it more at the charging conference, but I'm pretty firm in my decision. The cases you cite simply say that -- they go to the issue of whether the plaintiff has established a prima facie case of serious injury. If not, it doesn't go to the jury, there's nothing for the jury to do. But it seems also clear, there's a Fourth Department case, and I think a Second Department case, that basically say that once it goes to the jury, even if they don't find a serious injury, it's

appropriate for them to find future damages once they've established at least a prima facie case.

You may disagree with that, you may say that it isn't entirely rational. I think in a No-fault system, it does make some sense. But if you look at the Fourth Department case plaintiff cited, as well as the cases cited in that case, the law seems pretty clear. I'm not a New York State Judge, I need to follow what they say. That's all matters for the charging conference.

The other thing that I wanted to remember to ask you to raise at the charging conference -- and remind me when I said that was going to be today? I think today after my one and only conference -- you had asked to preclude -- or asked the jury not to consider the future damages for chiropractic care. To the extent that there is any disclosure of that, if you could get me a copy between now and then and, to the extent there's any disclosure of future damages, I'll consider that visa vis what the evidence has been of future damages, just so you're prepared for that at our charging conference.

MR. ISRAELYAN: There was one more issue that I would like to bring for the charging conference just very briefly, if you want to hear.

THE COURT: Just tell me what the subject is.

MR. ISRAELYAN: The subject matter is the proximate cause charge, your Honor. None of the parties requested it. I

understand the Court will charge it, and that's fine. However, I would like to add one or two sentences about the direct cause, because the charge only deals with the proximate cause, it omits the direct cause consideration.

THE COURT: It would be really helpful if you either gave me the pattern jury instruction number or some language to look at before the conference, so for example something to look at at lunch, that way I can look at it, think about it.

MR. ISRAELYAN: I was hoping if you could give me until the end of today, because today we don't have a full day.

THE COURT: That's fine, it's just we will have our charging conference today. I'm going to finalize the charge today because I believe we'll charge the jury tomorrow.

MR. ISRAELYAN: Okay.

THE COURT: Is there anything else? Yes.

MR. ISRAELYAN: No.

MR. VITUCCI: I was going to ask for one second.

THE COURT: You may.

MR. VITUCCI: Thank you.

MR. ISRAELYAN: One of the witnesses is in the courtroom.

THE COURT: Okay. Mr. Street will take care of that.

Mr. Vitucci, had you started your cross of Mr. Anastasio?

MR. VITUCCI: I had not.

THE COURT: All right.

MR. VITUCCI: He's still on his direct.

THE COURT: Thank you.

(Jury present)

THE COURT: Good morning, everyone. Please be seated. I hope you had a nice weekend.

GREGORY MONTALBANO, M.D.,

called as a witness by the Defendant,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: Please be seated and pull yourself as close to the microphone as possible.

State your first and last name into the microphone, spelling both.

THE WITNESS: Gregory Montalbano. G-r-e-g-o-r-y, M-o-n-t-a-l-b-a-n-o.

THE COURT: You'll recall when we finished on Friday, we finished the direct testimony of Mr. Anastasio. He still needs to be cross examined, but because of scheduling, we're taking Dr. Montalbano now first thing. We'll get back to Mr. Anastasio.

Thank you. Go ahead.

DIRECT EXAMINATION

BY MR. VITUCCI:

Q. Good morning, Doctor.

A. Good morning.

Q. Can you tell us about your background and qualifications? Tell the jury, please.

A. Certainly. I graduated with a Bachelor of Science in Biology from St. Francis College. I got my medical degree from Albany Medical College, Upstate New York. I did an internship in general surgery at New York University. I did a residency in orthopedic surgery, also at New York University, Hospital for Joint Diseases. Did a fellowship in sports medicine arthroscopy at Georgetown University. I did a clerkship in orthopedic trauma at University of Washington in Seattle. I'm currently a faculty member at NYU School of Medicine. I have privileges to work and operate at NYU Bellevue Hospital and Metropolitan Surgical Institute.

Q. Doctor, what kind of doctor are you?

A. I'm an orthopedic surgeon.

Q. In connection with your being an orthopedic surgeon, do you maintain an office for orthopedic surgery?

A. I maintain two offices.

Q. Where are those offices?

A. I have an office at 111 Broadway, I have another office on Staten Island.

Q. Now, I said, "Do you maintain an office for the practice of orthopedic surgery." Do you do surgeries?

A. I do.

Q. Where do you do surgeries?

A. I do my inpatient surgeries at NYU, I do my outpatient surgeries at NYU, and also at Metropolitan Surgical.

Q. Are those the two places you have operating privileges at?

A. Yes.

Q. When I say "operating privileges", what am I referring to?

A. Authorization to enter the facility and bring patients to the facility for the purposes of performing surgery.

Q. Now, can you tell us a little bit about the practice of orthopedic surgery; what kind of patients you see and what kind of treatments do you afford?

A. Specifically to myself --

Q. You know what? That was a compound question. I withdraw my question.

Tell us a little bit about the practice of orthopedic surgery.

A. Orthopedic surgery is the specialty of medicine which focuses on diagnosis and treatment of conditions relating to diseases effecting the musculoskeletal system. That would include bones, joints, ligaments, tendons, muscles. It would include extremities, as well as the spine.

Q. When you say "extremities", we're talking about the arm and the leg?

A. Correct.

Q. When you say "the spine", do you treat patients with spinal conditions?

A. Yes.

Q. How do you treat them?

A. Personally?

Q. Yes.

A. My treatment begins with diagnosis. My diagnosis begins with a clinical examination, begins with diagnostic imaging, sometimes electrodiagnostic studies. Once a diagnosis is made, then treatment is recommended. Treatment can be nonsurgical treatment, which would be medications, activity modifications, physical therapy. It could be minimally invasive procedures such as injections, trigger point injections, epidural injections, or it could be surgery. I would make a referral for surgery to a spine specialist, and they would perform any number of procedures in order to correct the disease process.

Q. You say you make referrals for spine surgeries; is that correct?

A. That's correct.

Q. Before you make referrals, do you treat and evaluate patients with spinal injuries?

A. Yes.

Q. When you treat those people, do you also, as part of your practice, review MRI films?

A. I do.

Q. In the course of your practice -- by the way, how long have you been practicing?

A. I started practicing in 1999.

Q. In the course of your practice, have you reviewed MRI films during that 17 years?

A. Yes, I have.

Q. How many MRI films have you reviewed over that course of 17 years?

A. Many.

Q. When you say "many", can you quantify that in any way?

A. It would be hard to quantify. But reviewing them every week, and that's for probably 50 weeks a year for all the years I've been practicing.

THE COURT: Can you do the math? Is it more than -- I'll be silly -- more than a hundred?

THE WITNESS: Yes.

THE COURT: More than a thousand?

THE WITNESS: In the thousands, I would say.

THE COURT: Thousands?

THE WITNESS: I would say in the thousands.

Q. Do you review the films in connection with your evaluations of patients and make decisions for their care based upon your review of the films?

A. Yes, I do.

Q. Now, Doctor, you mentioned in your credentials the hospitals you're affiliated with. Do you have any teaching responsibilities?

A. I do.

Q. Where do you have teaching responsibilities?

A. At New York University.

Q. How often do you teach?

A. I teach one to two days a week. I mean, one to two days a week, yes.

Q. Now, Doctor, you're here today, obviously. If you weren't here today, where would you be?

A. I would be in my office seeing patients on Monday.

Q. Are you being compensated for your time in court today?

A. I am.

Q. Do you know your rate of compensation?

A. I do not know the rate of compensation.

Q. Who takes care of that? Somebody in your office?

A. Yes.

Q. Now, Doctor, did there come a time that you were asked to evaluate a certain patient or certain person named Rene Manlapig?

A. Yes.

Q. Do you remember when, about, that was?

A. Yes. The date of that examination was October 6, 2014.

Q. In connection with your being retained to evaluate him, were you provided with any records?

A. I was.

Q. What kind of records were you provided with, if you know?

A. I was provided with records from the date of accident, an EMS call sheet, I was provided with records from the emergency department where he was seen, that was New York Presbyterian Hospital, I was provided with subsequent records from Dr. Gary Cullin, also from Dr. Radna and Dr. Patil. I was also given MRI reports for the neck and for the lower back. There was also a radiology report from New York Presbyterian Hospital for X-rays of the cervical spine. I was also given electrodiagnostic testing for review for the lower extremities post-accident and for the upper extremities pre-accident. I was also given, as an addendum, I was given the MRI films for the neck and lower back so that I could review the images. I was also given pictures of the vehicle involved in the accident, as well as the container.

Q. Doctor, you mentioned the records that you were forwarded. Did you review the records?

A. I did.

Q. What's the purpose of reviewing the records, Doctor?

A. In order to formulate an opinion.

Q. What were you asked to do in this case? What were you asked to do in any case where you've been retained?

A. In cases such as this where I am not a treating physician, I'm examining physician, and I'm giving an opinion as relates to questions of diagnosis and causal relationship. I review the records for the purposes of understanding all of the

conditions surrounding the date of accident, understanding the mechanism of the accident, the claims that are being made in the case and trying to put all of that together to come up with, again, diagnosis and answer questions as relates to causal relationships to civility.

Q. When you say "causal relationship", if you could explain that a little bit better for the jury?

A. Causal relationship would mean a cause and effect. It would mean that there was a single event force application at the time of the event, and that single force application resulted in injury. The nature of the injury, whether or not that injury is permanent and to what level of cause of disability. Those would be areas that I am an expert in.

Q. Now, Doctor, do you, as part of your resume and credentials, do you have any credentials in terms of what you do during a physical examination, whether you've received any kind of certification in that regard?

A. I'm a Board certified orthopedic surgeon, and I think that would be inclusive of being certified to perform a clinical examination.

Q. Can you tell us what a Board certified orthopedic surgeon is and how you go about obtaining that designation?

A. Board certification is an elective process done subsequent to graduating at an approved or accredited residency in surgery and involves a written test, as well as an oral examination.

Following completion those two parts of the examination you become Board certified, and recertification is mandated every 10 years. My recertification stands as of 2011.

Q. Doctor, have you ever been published in your field?

A. I have.

Q. What have you been published in?

A. I've been published in a study relating to the hip. This was a condition of iliopsoas syndrome, it was the largest clinical series done at its time, and I was awarded a recognition for that, which was given at NYU.

I've done research on the shoulder. I've looked at a rotator cuff footprint. I also did a clinical series related to shoulder instability and outcomes following open surgery.

To my recollection at this time, those are the research projects that I've completed.

Q. Now, Doctor, before today, we've met before; is that correct?

A. Yes, we have.

Q. Have you testified on cases in court where I represented the defendant before today?

A. Yes.

Q. In addition, has my office retained you for evaluations in any other cases?

A. It's possible.

Q. Do you know one way or the other, or an amount, a number,

anything like that?

A. I don't know number. I know we have met before for the purposes of reviewing this case, but I've also met you for prior cases, I just don't -- I'm not aware of the actual number.

Q. Now, Doctor, you mentioned the records that you reviewed. Can you encapsulate for us just briefly the sum and substance of the records that you reviewed and what you feel to be relevant and determinative for your opinions in this case? And by the way, you did reach opinions, correct?

A. I did.

Q. Okay. Go ahead, sir.

A. So I reviewed the documents from the date of the accident, and based on my review of those documents, there appeared to be a mechanism that was documented which, in my opinion, had the potential to create a serious injury. The evaluation done by the emergency responders at the scene of the accident documented in their record that there was complaints of neck pain. They applied appropriate spinal stabilization devices, and he was transported to the emergency room for evaluation.

Q. Where was that emergency room?

A. This was New York Presbyterian Hospital.

Q. Go ahead. Tell us about what you saw in the New York Presbyterian Hospital referable to this event that occurred on July 17 of 2012.

A. Sure. Upon his arrival, he was evaluated by a triage nurse. His complaints continued to be localized to the neck. He described pain at a descriptive level of 6 out of 10. He was given a triage level of 2, which is moderate urgency. He was subsequently seen -- oh, sorry. Vital signs were recorded as within normal limits; normal blood pressure, normal heart rate and respiration.

Q. What does that tell you, Doctor?

A. That based on objective physiologic parameters, he did not appear to have a significant adrenaline response to the event.

Q. Meaning what?

A. If there is a traumatic failure, a substantial traumatic failure of soft tissue bone, ligaments, there's generally a physiologic response which would elevate your heart rate, respirations, blood pressure, and that's a system that is designed to allow us to survive injuries.

Q. Continue.

A. He was subsequently evaluated -- oh. At the time that he was seen by the triage nurse, he described a motor vehicle accident. He described the rate of speed had to be approximately 45 miles per hour. This was a bit different than what he told the emergency responders. At that time, he did not recall exactly the speed of the vehicle. He also described to the triage nurse significant damage to the front of his vehicle. He reported that he was restrained at the time of the

accident, and he denied any head injury, loss of consciousness. He also denied any head pain.

He was then seen by the physician at New York Presbyterian Hospital, and there were two documented in the record, Dr. Ostolski and Dr. Smith. At that time, their review of the history was consistent of that of the triage nurse, except there was a single discrepancy, which was that he reported to them that there was little or no damage to the front of the vehicle. He continued to complain of neck pain. The examination was done by the physicians. The physicians reported as positive findings minimal tenderness in the lower cervical spine. There was no documented muscle spasm, loss of motion. There was normal examination reported for the lumbar spine.

Q. Doctor, let me stop you there. When you said there was no spasm, are you describing the neck or the lower back?

A. There was no reported spasm for either the neck or the lower back.

Q. Okay. Go ahead. In other words, despite the fact that he didn't complain about his lower back, they examined it; is that correct?

A. They documented examination of the lower back. They documented palpation of the --

Q. When you say "documented palpation", what did they do?

A. Put their hands and applied pressure to the neck and the

lower back. The purpose of applying pressure is to elicit a response of sensitivity or pain, and they did note that in the lower cervical spine there was what they described as mild or minimal tenderness with no tenderness in the lumbar spine. There would also be the opportunity at that time to make note of muscle tenderness. So rigidity of the muscles, as opposed to having more compliant muscles, would be a sign of muscle spasm. Typically, as part of the examination, it would typically be documented as a positive finding, and I could not find in the record any documentation either positive or negative. I make the presumption, if it was present, they would have documented that.

Q. Doctor, by the way, are you familiar with emergency room protocols?

A. I am.

Q. Did you ever treat patients in the emergency room?

A. Yes, I have.

Q. Did you receive patients over the course of your career from the emergency room?

A. Yes.

Q. How many times?

A. I've worked in Level 1 trauma centers during my residency. Also, for the first 10 years of my practice, I took call at Level 1 trauma centers. So I'm very familiar with the protocols in the emergency room as relates to trauma patients.

I've derived, at least in the first 10 years of my practice, a good number of patients through that pathway.

THE COURT: What is Level 1?

THE WITNESS: Level 1 would be an emergency room that's qualified and certified to see the most severe trauma.

Q. Doctor, you can continue with regard to your analysis of the emergency room record. Go ahead.

A. Certainly. There was a request made or an order placed for radiographic examination of the cervical spine, and that order was fulfilled, and the radiologist reported on that study. It was four views of the cervical spine, and what the radiologist reported was no evidence of acute trauma. There was -- there were no --

THE COURT: Were these X-rays?

THE WITNESS: They were.

THE COURT: Okay.

THE WITNESS: There was no evidence of fracture, there was no evidence dislocation, there was no evidence of prevertebral soft tissue swelling. What was described was multiple levels of changes which were indicative of moderate degeneration.

The disposition following the history, examination, review of the X-rays, was a motor vehicle accident and a neck sprain or neck pain.

The treatment which was provided was a recommendation

to use Tylenol for pain and follow up with a medical doctor within one to two weeks for re-evaluation. There was no -- there was no diagnosis of a more severe cervical spine injury. There was no upgrade of the imaging to a CT scan of the cervical spine, which would be typical in this scenario if there was a suspicion on behalf of the medical personnel that there was a more serious injury that has sprain/strain.

MR. ISRAELYAN: Objection, speculative.

THE COURT: I'll allow it.

THE WITNESS: There was no consultation ordered. New York Presbyterian Hospital is a university-affiliated hospital, and it's also staffed with specialists 24 hours, 7 days a week. So a neurosurgeon and orthopedic surgeon, any of these specialties would be available to come down and consult on the case if there was a suspicion of a potentially unstable and serious neck or back injury, lower back injury.

Also, upon the time of discharge, there was no recommendation to see a specialist, there was no recommendation to see a spine specialist, there was also no neck brace dispensed, there was no back brace dispensed, or none of these things recommended to be acquired following discharge from the hospital. There was also, from what I could tell from the records, there was no strong pain medications given in the emergency room. There was no narcotics given, there was no injection of a nonsteroidal, either by intermuscular or

intravenous route. There was no giving steroids, muscle relaxants. Also, knowing these things were not given in the emergency room, he was not given prescriptions for any of these things to be taken on an outpatient basis, which would include muscle relaxants, nonsteroidal antiinflammatory medications, narcotic pain medications, any of the things that, in my experience, would be consistent with a diagnosis of a serious or moderately serious spinal injury with the potential for permanency.

Q. Doctor, was there anything noted, from your review of the hospital record, as regarding this patient's complaints of pain?

A. Yes.

Q. What was noted?

A. Pain levels were rated as 6 out of 10.

Q. What does that tell you, Doctor?

A. 6 out of 10 would be a moderate level of pain.

Q. Doctor, what does your summary review of the emergency room records show you about Rene Manlapig on July 17 of 2012?

A. Well, in my review of the record, and in my experience, it did not show any documentation which would be consistent, in my experience, with likely having sustained any permanent injury of either the neck or the lower back.

I'll also add that there was no extenuating circumstances that I could elicit from the record. There was no report of

suspected alcohol intoxication, use of pain medications, there was no report of loss of consciousness or head injury.

Q. Why do you bring those things up, Doctor?

A. Because there are circumstances under which someone may be involved in a traumatic event and not have the physiologic capacity to perceive a serious injury. For instance, someone who has a mentally altered state from alcohol consumption, that person may not have an awareness of a serious injury after it occurs. Also, someone who has a head trauma, closed head trauma. If the brain has been injured, that also may substantially diminish their ability to experience a serious trauma. If they have a serious other injury, that may become so paramount that they're unable to perceive pain that is -- pain messages being delivered from other areas of the body. So for instance, someone with maybe an open fracture of their tibia may not experience pain from a shoulder injury, which is of a lower severity but still significant.

I could not find anything in the record that would represent an extenuating circumstance like that which would lead me to a conclusion that what I'm seeing in the emergency room records as relates to all these things I just described are for a reason based on some extenuating circumstance.

Q. Now, Doctor, there's nothing in that emergency room record, am I correct in saying this, about a complaint regarding his lower back? Am I correct?

A. That is correct.

Q. What is that telling you, Doctor?

MR. ISRAELYAN: Objection.

THE COURT: I'll allow it.

THE WITNESS: Well, what it tells me is that there appears to be no pain messages being delivered from the low back, and that generally means that there was no traumatic failure of the lower back at that time. Again, we're talking about a single event, single event force application, sort of like stubbing your toe. You know it immediately, you know you stubbed your toe, you know you can localize it. These things are not something that you're unaware of when it happens and then become aware of at some later time, outside of the extenuating circumstances that I described.

So the fact that there was no complaints of lower back pain would mean to me, within the context that we're describing, that there was no traumatic disruption of the discs or supporting structures in the lower back on the basis of that single force application delivered on that day.

Q. Doctor, did you see anything in the emergency room record that would show that perhaps the lower back complaints were masked due to pain sustained in the cervical level?

A. Based upon the examination of the cervical spine, which, again, reported only minimal tenderness in the cervical spine, based upon the fact that there was no narcotic medications

required, or essentially any pain medications required, in the emergency room to treat his pain, I would not be of that belief that there was an inability to experience pain for the lower back on the basis of the theory you just described.

Q. And the Tylenol they gave him, that was when he left, right?

A. Well, they recommended that he use Tylenol.

Q. Is Tylenol an antiinflammatory?

A. It is not.

Q. Is that the lowest class of pain relieving drug one can take?

MR. ISRAELYAN: Objection.

Q. How would you define Tylenol, Doctor?

A. Tylenol is an over-the-counter in medication. It doesn't require a prescription. It is a pain medication that does not reduce pain by inflammation, it's centrally acting. And it generally is recommended in the context of having an injury which is not severe. Otherwise, there would be a stronger medications which would be better alternatives.

Q. Doctor, I'd like you to assume for this question that there has been a claim in this case that Mr. Manlapig sustained herniations at several levels in the cervical spine. Further, it is the testimony of a chiropractor that Mr. Manlapig has been left in a dire situation with regard to his cervical spine, and testimony from Dr. Radna that he will need an

involved surgical procedure in the future involving the implantation of hardware in the cervical spine. Can you assume those things for this question, Doctor?

A. I will.

Q. Did you see anything in the hospital record that in any way indicates complaints consistent with those type of claims?

A. I do not.

Q. Doctor, do you have an opinion with regard to a reasonable degree of orthopedic surgery, at least with respect to the hospital record on the day of the accident, what kind of injury Mr. Manlapig was dealing with?

A. Based on the documentation, it had the appearance of a cervical strain or sprain.

Q. What is that? What kind of injury is that, Doctor?

A. So that relates to an injury of the soft tissue envelope.

THE COURT: Soft tissue what?

THE WITNESS: Soft tissue envelope. The soft tissues that surround the spine. So the muscles that surround the spine, if those muscles are stretched or torn, that would be a diagnosis of a strain. Then there are ligaments that connect the vertebra together. If those ligaments are stretched, that would be an indication of a sprain.

Q. Doctor, if Mr. Manlapig had sustained acute herniations from an accident earlier in the day at every level of his cervical spine, what kind of level of complaints would you

expect to see in the emergency room for him on July 17 of 2012?

MR. ISRAELYAN: Objection, speculative.

THE COURT: Overruled.

THE WITNESS: So that would be a very severe spinal injury, and it's my opinion that, in the context of being evaluated at a center such as New York Presbyterian Hospital, it would be met with evaluation by a specialist, it would be a spine specialist, neurosurgical team, or orthopedic team, the imaging would have been updated, he would have had at least a CT scan of the cervical spine done and/or MRI. The purpose of these things would be to rule out the possibility that there was mechanically or neurologically unstable spinal injury. There would have been delivery of medications in the emergency room in order to treat pain, which would be at a high level. Also, to reduce the potential for inflammatory damage, so steroids are typically given in that scenario. And I would expect that he most likely would have been admitted to the hospital for observation. If he was discharged, it would have been a discharge at the very least with a disposition from the specialist that it was safe to discharge the spine. Also, with a neck brace and with a follow up which would be recommended with a surgical specialist.

Q. Doctor, assuming those things that you just said in your last answer, what would you expect to see on the 1 to 10 pain scale for Mr. Manlapig in terms of his complaints of pain on

the day of this accident?

A. Well, there is a range of variability in terms of how people perceive pain. I believe that on the average, those pain scores on a 1 to 10 basis would be approaching 10, or would be 10. But also, maybe even more importantly, in the clinical examination there would have been findings consistent with that level of injury. So the tenderness in the spine would not have been described by the examiner as minimal or mild, there would have been moderate or severe tenderness.

Also, there would have been other features, you know, such as muscle spasm, there may have been neurologic findings. In this case, the neurological examination is reported as completely normal. So none of the features represent what you're describing.

Q. Doctor, did you see anything that told you that Mr. Manlapig had injured his lower back to any degree in this accident? I'm talking about the day of the accident, the emergency room record.

A. There was nothing in the record to lead me to that belief.

Q. Now, Doctor, you mentioned that the X-ray, the only X-ray that was taken, was of his neck; is that correct?

A. According to the record, yes.

Q. And you indicated it showed moderate degeneration, correct?

A. That's correct.

Q. Doctor, can you tell us, just in brief form, a little bit

about the process of degeneration and the vertebra and discs of the cervical and lumbar spine, what it is secondary to and how it develops?

A. Spinal degeneration is a process that occurs over the course of time. The onset is variable. I've seen it on MRIs anywhere from adolescence all the way up through the subsequent decades. It generally begins with loss of disc hydration.

The discs are cushions that sit in between the vertebral bodies. The vertebral bodies are made of bone. Those discs carry a very high water content. The water content is what gives them their resiliency and their shock absorbency, and over time, the water content diminishes in those discs.

As the water content diminishes, the characteristics of that disc change. They're no longer as good at absorbing shock. The discs begin to flatten and lose height. As they lose height, the volume of the discs begin to protrude in a circumferential direction, which can be anterolateral or posterior.

At an extreme level, the disc can completely collapse, the disc material can herniate into the spinal canal, and that can cause a volume reduction in the space for the spinal cord and/or the nerves, which result in nerve compression, and generally results in back pain or radiating pain into the extremities as a result of nerve compression.

In addition, as the disc begins to malfunction and does not

absorb stress appropriately, there are small joints also which make up the posterior elements of the spine, and these joints, as they begin to see more and more stress, will become arthritic. The arthritic process causes hypertrophy of the joints, bone spurs develop, and that also can cause volume reduction for the neural elements. This is called spinal stenosis, again resulting in pain and a nerve compression.

Q. Doctor, you're describing an arthritic process; is that correct?

A. That's correct.

Q. How long does this arthritic process take to develop?

A. It takes years. Happens over the course of years.

Q. Doctor, do you typically see such changes in individuals who are in their, let's say, late 50s?

A. Yes.

Q. Doctor, do you typically see these kinds of changes in people that have jobs that involve certain stresses on the spine who are also in their late 50s?

A. Yes.

Q. Would truck driver fit the bill for that kind of description?

A. Yes.

Q. Now, Doctor, you were forwarded MRI films concerning Mr. Manlapig; is that correct?

A. Yes.

Q. Did you review those films?

A. I did.

Q. Did you offer opinions on those films?

A. I did.

Q. Were those opinions delivered with a reasonable degree of orthopedic certainty?

A. Yes.

Q. Now, Doctor, when you see an MRI film of someone who has degenerative changes, what kind of things do you see in a film that shows you those things are degenerative, if you could describe that generally? For instance, the color of a disc on an MRI film, if you could tell the jury a little bit about that.

A. Sure. On the MRI, the MRI is able to see protons or hydrogen atoms which are in water, H2O, so you can see a pattern of hydration in the spine with the MRI.

So one of the first changes that is seen is loss of what's called signal intensity coming from the discs. Normally, the discs show a bright signal intensity, so it appears very white, very bright. Then, as you lose water content in those discs, the brightness diminishes and can go completely black.

Q. A whiter disc would be a disc that's younger, healthy, and absent any kind of degeneration; is that correct?

A. Yes.

Q. What would a black disc signify?

A. Signify a degenerated disc.

Q. Doctor, is it necessary that one undergo an automobile accident in order for a disc to herniate?

A. No.

Q. Can discs herniate as a process of degeneration that you described?

A. Yes.

Q. Is, in fact, that the typical process that you see in your practice?

A. The more common process, yes.

Q. Yes. In other words, age and stresses to the body through life and work.

A. Correct.

Q. Now, Doctor, you mentioned you saw the films. And without further ado, I will show them to you. If you could stand up.

MR. VITUCCI: Judge, can he stand from the witness box and describe --

THE COURT: Sure. Yes.

Q. Can you do that and orient yourself so the jury can see what you're describing? You don't have a pointer, do you?

A. I do not.

Q. So use your finger. That's the pointer.

Tell us what we're looking at here, Doctor.

A. So this is an MRI of the cervical spine. This would represent the head.

Q. This is Mr. Manlapig's cervical spine MRI, correct?

A. It is Mr. Manlapig's.

Q. And you've seen this before?

A. Correct. Yes, I have seen this study before.

Q. Go ahead.

A. So this is the head, brainstem, and this is the cervical spine here. If you look at these square boxes here, these square boxes represent the vertebra. And in a cervical spine there are seven; 2, 3, 4, 5, 6, and 7. In between the vertebra you see these darkened spaces. Those darkened spaces represent the discs.

I'm going to direct you now to behind the vertebra. You see this black structure here that goes all the way down, that represents the spinal cord. If you look at the bright signal around the spinal cord, that represents the spinal fluid. So you can see how, on the MRI, fluid shows up as very, very bright signal. Okay? And if you look at the discs, you do not see that bright signal in the discs, you see the discs are dark black. Again, that represents the loss of hydration in the discs.

Also, if you look at the space, if you look at the height of the disc between the vertebra and you compare, let's say this level here, which is C2-C3, compare that to 4-5, 5-6, and 6-7, you can see that the space is reduced. Okay? So that represents the process that I was talking about, which is the

loss of water content from the disc and a resulting collapse of the disc.

Also, if you notice, we're seeing it at multiple levels. So you're seeing every level of the spine is affected, not a single level.

If you look in the back here, if you look here, you see the spinal fluid, you see this column of fluid. If you get down here to this level here, which is C3-4, you see that column is indented. So you see this area here is indented or scalloped, you see the scalloping here at this level, and this level here, and this level here. That scalloping is what I was talking about. As the discs collapse, the volume begins to extend in the peripheral direction, and on this view we're able to see how posteriorly it's beginning to reduce the volume of the spinal canal where the spinal cord lives, and that's what I was talking about, that's a diagnosis of spinal stenosis.

Also, you can see some straightening of the cervical spine. Normally, the spine has a curvature, and this represents loss of curvature. That is seen on MRIs for -- it can be seen for more than one reason. One reason would be based on positioning. If someone's lying down and their head is on a platform or pillow, that can flatten out the spine. It can also be seen in cases of degeneration. Gravity pulls the head towards the ground, and so the muscles weaken, so we lose cervical lordosis as a result of degeneration. It can also be

seen on the basis of muscle spasm. If you have an acute injury and the muscles are in spasm, you can see it also as a result of the loss of lordosis. And this MRI was done, I believe, two months after the accident.

Q. Doctor, is it showing anything in regard to straightening of the spine?

A. It does show straightening, yes.

Q. Can straightening of the spine come from a sprain?

A. It can.

Q. Do you see anything in that film that in any way indicates a traumatic cause?

A. I do not. I do not see anything on the MRI which would be, as a single data point, would represent traumatic injury.

Q. Correct. What are we looking at here in terms of what is shown in this film with regard to Mr. Rene Manlapig in this film that's taken in September of 2012?

A. What I'm seeing is age-related changes consistent with his age, consistent with his occupation, and what I routinely see in spines at this decade.

Q. Sir, I'm going to show you another film. If you could take that in your hands and show it to the jury in the same way.

First of all, tell us, what is that?

A. This is the lumbar spine.

Q. Is that a lumbar spine image for Mr. Rene Manlapig?

A. Yes, it is.

Q. And have you seen this before?

A. Yes, I have.

Q. Can you tell us about it?

A. So this is the sacrum. So that's the pelvis. That's the lowest portion of the spine. And then this is 5, 4, 3, 2, 1. And L1 to L5 represents what we call the lumbar spine. And again, what I'll show you also is, in the back, this is the spinal canal. Again, what you can see is, for instance, look at this disc here. If you look at this disc here, this is outside the lumbar spine, this is at the thoracolumbar junction. You see this distal has a little signal in it. It's not as bright as it would normally be, but there's still some signal here.

As you come down the spine, you see that that signal is not as apparent. That's what I was talking about. That's the loss of hydration. We saw it in the cervical spine, we're seeing it also in the lumbar spine. And that's what I typically see is that you don't just degenerate in one part of your spine, you degenerate throughout your spine.

Then also, we're seeing there is some scalloping of the fluid column in the spinal canal indicating some disc bulging, which was my opinion on review of the MRI. I thought also at L4-5 there was a central disc herniation. If you look here, if you look closely, you see this disc tends to scallop a bit more than the others, and I thought it was a central herniation

consistent with the end spectrum of degeneration which begins with bulging, then leads to protrusion, and then eventually you get herniation.

Q. In other words, not a traumatic cause.

A. Not based on the MRI, but more importantly, doesn't correlate with the records. If the records had shown what appeared to be a significant injury to the lumbar spine, if that was in the documents --

Q. I see.

A. -- then I wouldn't discount it solely on the basis of the MRI. But in this case, it correlates.

Q. Doctor, what are you seeing? What kind of changes are you seeing in this film?

A. I'm seeing degeneration.

Q. You can resume your seat, Doctor?

A. Okay.

Q. Doctor, can the process of degeneration of the spine cause occasional, intermittent, mild to moderate pain to be sustained by a patient?

A. Yes.

Q. Doctor, did you review other records that I sent you?

A. I did.

Q. Did you review the records of Dr. Cullin?

A. I did.

Q. A chiropractor?

A. Yes.

Q. Did you review the records of Dr. Desai, a general practitioner?

A. I did. No, Dr. Patil. And I did see some records from Dr. Desai, yes.

Q. If you could just tell us briefly, Doctor, what did those records show you?

MR. ISRAELYAN: Objection. Can he clarify what he saw? Because he didn't see Dr. Desai's records.

THE COURT: Okay. There's no objection there, but you may proceed. Why don't you clarify.

Q. What did the records you reviewed show you, Doctor?

THE COURT: Well, wait. Why don't we clarify to what extent he saw Dr. Desai's records.

Q. Did you see Dr. Desai's records?

A. Not at the time of my report.

Q. Have you seen them since?

A. Yes.

Q. What did the records show you?

MR. ISRAELYAN: Well, objection, your Honor. It's not disclosed. So if he has seen --

THE COURT: Has your opinion changed?

THE WITNESS: My opinion has not changed.

THE COURT: You may go ahead.

Q. Go ahead.

A. So what I became aware of, upon review of those records, is that there is a history, there's a pre-existing history of musculoskeletal complaints. There were prior EMGs performed which often relate to neurologic complaints, typically related to spinal complaints.

Dr. Radna, in his record, also reports a history of lower back pain with prior use of, I believe, Naprosyn for treatment of his spinal condition. So there appears to be in the records a documentation that does support a theory that there were pre-existing symptoms which were being evaluated and treated.

Q. Doctor, there's been testimony in the courtroom that Mr. Manlapig underwent in 2006 an NCV of his lower extremities. I'd like you to assume that testimony. Do you have an opinion with regard to that? Why would a doctor order that, Doctor?

MR. ISRAELYAN: Objection, your Honor.

THE COURT: I'll allow it.

MR. ISRAELYAN: State of mind of another doctor.

THE COURT: I'll allow it.

Q. Go ahead.

A. So diagnostic nerve studies are performed for evaluation of symptoms. For the lower extremities, it's typically performed to evaluate for lumbar radiculopathy, nerve root compression, or what's more commonly referred to as sciatica.

Q. What kind of complaint and what part of the body would somebody be making a complaint about in 2006 if he went to a

doctor and that doctor ordered an NCV test of the lower extremities?

MR. ISRAELYAN: Same objection.

THE COURT: Overruled.

THE WITNESS: It would typically be for the lower back and does correlate with Dr. Radna's documentation that there is a history of lower back pain for which he was being treated.

Q. Doctor, you mentioned the records that you reviewed, you reviewed the hospital record, the records of Dr. Cullin, the records of Dr. Desai, the records of Dr. Patil, the records of Dr. Radna. After you reviewed those, or in connection with your review of those records, did you also perform a physical examination of Mr. Manlapig?

A. I did.

Q. What did your examination reveal, Doctor?

A. May I refer to my report?

Q. Go ahead.

A. So my examination of Mr. Manlapig found him to be of average height and weight with a normal body mass index. He was right-hand dominant. When he presented to the office, he was appropriately dressed. He did not wear any braces, no neck braces, no back braces, and he was able to move unassisted.

There was no -- I was not able to visualize any significant gait abnormalities, he was not limping, did not appear to have any difficulty moving.

Examination of the neck was significant for tenderness, and there was a tenderness noted around the neck, both in the perispinal and parascapular muscles. Parascapular relates to around the shoulder blades.

Q. Doctor, is tenderness a complaint, or how does one record tenderness?

A. So tenderness is an indication made by the person being examined that the pressure applied by the examiner's fingers is uncomfortable. That would be a finding of tenderness. And that was found on both the right and the left side.

He's also noted to withdraw from the examination when I was performing that maneuver with complaints of pain. Withdrawal would be moving his body away from my hands.

Q. He said it hurt.

A. Correct.

Q. What else?

A. I did range of motion testing. And his range of motion measured in the sagittal plane, flexion and extension was 30 degrees. Rotation was to the right 28 and to the left 42 degrees. I believe that these are below average reference values. Even adjusted for his age and MRI findings, 50 degrees would be the average normal. So this represented a reduction in his ability to look towards the right shoulder and look towards the left shoulder.

Q. Doctor, is --

A. Also --

Q. I'm sorry. If you can just interrupt you.

When you're doing range of motion tests, are you forcing the plaintiff to do anything?

A. So the range of motion testing I do is based upon a command to display motion, and I will typically explain the motion that I am asking to be displayed. So I do not have my hands on the person being examined at that time, it's, again, just based upon a command to show me what type of motion they can display.

Q. Would the ranges of motion be something that's in control of the person you're examining?

A. Yes.

Q. Doctor, did you do any measurements with regard to ranges of motion of Mr. Manlapig's lower back?

A. Yes.

Q. What did you record?

A. So for the lower back, there was a reduction in flexion, so 90 degrees.

Q. 90 degrees flexion is reaching down?

A. Yup.

Q. He said he couldn't do it?

A. And that would be considered a normal reference value. And he was able to display 75 degrees. And I measured this with the goniotomy. A goniometer is an instrument that I use which measures angles. I hold that up to the body part I'm

examining, and that's how I derive the number.

Q. Now, Doctor, how long did your examination take?

A. I did not document the time for the examination.

Q. Is there a typical time for an orthopedic examination?

A. Not in general. It depends upon a variety of factors.

Q. Did you conduct a full orthopedic examination of Mr. Manlapig?

A. I did.

Q. And did you review all the records that were provided?

A. I did.

Q. And you mentioned the films and you described them; is that correct?

A. Correct.

Q. Doctor, following your taking of a history, your review of records, and your performing of physical examination, did you render an opinion within a reasonable degree of orthopedic surgery --

THE COURT: Certainty.

Q. -- certainty, excuse me -- with regard to Mr. Rene Manlapig?

A. I did.

Q. What was your opinion?

A. My opinion was that he had sustained, as a result of the accident, a cervical spine strain/sprain type injury. It was my opinion that he did not sustain permanent injuries on the

basis of the accident. I do not believe that he sustained disc herniations.

For the lumbar spine, it was my opinion that there was no significant injury which he sustained as a result of the accident.

(Continued on next page)

BY MR. VITUCCI:

Q Now, Doctor, following your examination, Mr. Manlapig had an operation. Are you aware of that?

A Yes.

Q Did you then reexamine him?

A I did.

Q Did anything about that reexamination change your opinion in any way?

A My opinion regarding?

Q You had an initial opinion in your first exam, which I believe was in October of 2014. Then you did another examination. If you could tell us, did the results of your second examination, anything reviewed, anything you took of the history, anything you saw in the physical exam, change your opinion that you just expressed to this jury?

A No.

Q Doctor, Mr. Manlapig had treatment. He had surgery. Can you tell us, do you have an opinion as to what that treatment was for?

MR. ISRAELYAN: Objection.

THE COURT: Overruled.

THE WITNESS: I believe the initial treatment, which began approximately one month after the accident, from Dr. Cullin, the chiropractor, he performed chiropractic

manipulations, that was for the cervical spine. I believe that was for treatment of the cervical spine injury, sprain/strain. I believe that the treatments for the lower back, inclusive of the procedure performed at L3-4 and L4-5 --

THE COURT: You mean the surgery?

THE WITNESS: Yes. Was for the treatment of a degenerative condition of the lumbar spine and was not for treatment of injuries sustained as a result of the accident.

BY MR. VITUCCI:

Q Is that an opinion within a reasonable degree of orthopedic certainty?

A Yes, it is.

Q The strain or sprain, is that permanent injury?

A No, it is not.

Q Is it what we call a self-limiting injury?

A Yes, it is.

Q Does it go away by itself without any substantial treatment?

A Yes.

Q You mentioned your involvement in some cases where you have testified for my office.

A Yes.

Q You do testify for other offices; is that correct?

A I do.

Q You have been retained by other law firms to offer an

opinion with regard to your evaluation of a plaintiff in a lawsuit?

A Yes.

Q Have you been involved in litigation where you have been involved in the litigation; in other words, claims made against you?

A Yes.

Q And about how many occasions has that happened?

A I have had claims made against my medical practice approximately four times.

Q What was the general sum and substance of those claims?

A There was never any finding of malpractice. There were settlements made in those cases, for expediency, it was my understanding. And that was the extent of my involvement in litigation.

Q Thank you.

Your Honor, could we take a one-minute break?

THE COURT: One minute break, yes. We will just sit here.

MR. VITUCCI: No further questions. Thank you.

(Recess)

MR. ISRAELYAN: May I.

THE COURT: Yes, you may proceed.

CROSS-EXAMINATION

BY MR. ISRAELYAN:

Q Doctor, the cases of malpractice that you testified about, there were four cases?

A I don't have an accounting with me today, but I believe in that range.

Q You settled them, so there will not be any findings of malpractice?

A That's correct.

Q Let me understand about the fee that you're getting paid today. Is that $9,000?

A I'm not aware of what fee is being paid for my appearance today.

Q You're not certain how much you're being compensated for your time in court today?

A I have no idea.

Q Let me give you a document that will refresh your recollection.

THE COURT: Did you ever know what your fee was?

THE WITNESS: Not to my recollection today. My understanding is it is based on time how much I'm here today.

THE COURT: You don't know what your hourly rate is?

THE WITNESS: It generally runs about $1,000 an hour.

BY MR. ISRAELYAN:

Q That is not what you charge actually; when you record, you charge for half a day in court; correct?

A My time outside the office. The schedule has to be made. It is made by the office. My understanding is they charge typically based upon half days. In my experience, I have never been gone for less than half a day.

Q For half a day, you charge $9,000?

A It is my understanding, it is somewhere in the range of about $1,000 an hour, which would be about half that amount.

Q Let me show you this document.

May I show this document to the witness, please?

Identification, 63.

THE COURT: What number is it?

MR. ISRAELYAN: 63 for identification.

THE COURT: Thank you.

Q This is a disclosure of the defendants' disclosure of you as their witness, expert witness.

MR. VITUCCI: Objection, your Honor.

THE COURT: Sustained. It is not in evidence.

Q That refreshes your recollection that you charge $9,000 for half a day?

THE COURT: Wait, wait, wait, wait, wait. The way to ask the question is to say: Have you seen this document before? Does it refresh your recollection? Not to say what is in the document that is not in evidence.

Q Have you seen that document before, Doctor?

A No, I have not.

Q Didn't I show that document to you during your deposition?

MR. VITUCCI: Objection.

THE COURT: Overruled.

Q Didn't I show you that document during your deposition?

A I do not recall.

Q Look at the front page of that document. It has a deposition exhibit number on it.

I deposed you during this case; didn't I?

A Yes, you did.

Q It was a document marked during your deposition.

A I do not recall seeing this document in my deposition.

Q In addition to charging for your time in court, you also charged for examining plaintiff on behalf of the defendant; correct?

A The office charges for all of the time I spend in examination and creating the report.

Q You charge $3,000 per examination; correct?

A The charge is based upon the number of body parts involved, the number of records that are a part of the case, how many images are sent for review. So my understanding is they apply a fee schedule. It is variable depending on the quantity of work that's performed.

Q You testify regularly on behalf of defendants; correct?

A Yes.

Q You do this type of examination on behalf of defendants on

a regular basis, also?

A I think that was the question I just answered.

Q You have done significant amount of work for this firm that represents the defendants here?

A I have worked for this firm before. I don't know what the threshold of significant is.

Q When was the last time you worked for this firm?

A The last time, to my recollection, I believe was maybe in this courtroom a few years ago.

Q In that case -- correct me if I'm wrong -- your testimony was almost similar to what you testified here today?

MR. VITUCCI: Objection, your Honor.

THE COURT: Overruled.

Q Tell me if I'm wrong.

A My testimony regarding what?

Q What was the name of the injured plaintiff in that case?

A I do not recall the injured plaintiff's name.

Q You testified for this attorney, Mr. Vitucci; correct?

A Correct.

Q And you testified in that case like you testified in this case; that the treatment -- that there was no permanent or significant injury?

MR. VITUCCI: Objection.

THE COURT: Overruled.

THE WITNESS: Yes, I did.

Q In that case, that fellow also had an automobile accident and had a spinal surgery?

MR. VITUCCI: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

Q And the time before that that you worked for Mr. Vitucci and his firm, you testified in a similar manner; didn't you?

A I'm not aware of that case.

Q And the reason that Mr. Vitucci hired you is because that's how you testify when you testify --

MR. VITUCCI: Objection. Argumentative.

THE COURT: Overruled.

THE WITNESS: No, that's not true. I have found in prior cases where I have been examining for the defense, I've found disc herniations, I've found a variety of injuries, shoulder injuries that required surgery, knee injuries that required surgery --

Q Let's talk about the spine.

A Broken --

MR. VITUCCI: Your Honor, he is in the middle of an answer.

THE COURT: Let him finish.

THE WITNESS: Fractures that have required surgery. So I have found, in more than a few of these cases where I have been examining for defense, injuries such as this causally

related to the accident, requiring surgery and permanent disabilities as a result.

Q You did find that Mr. Manlapig had a herniation in his lumbar spine; correct?

A That was my opinion on review of the MRI, yes.

Q In that document that you have in front of you, there's testimonial history, your testimonial history. Do you see that?

MR. VITUCCI: Objection.

MR. ISRAELYAN: Exhibit C.

THE COURT: Wait.

THE WITNESS: Can you refer me to --

MR. ISRAELYAN: Exhibit C.

THE COURT: Overruled.

Wait a minute. Which document is this? Plaintiffs' exhibit what?

MR. ISRAELYAN: Plaintiffs' Exhibit 63, Exhibit C.

THE COURT: The one that is not in evidence?

MR. ISRAELYAN: Yes. I'm just pointing out --

THE COURT: No, he hasn't said he doesn't recall something.

BY MR. ISRAELYAN:

Q Doctor, in the past year, have you testified more than 10 times?

A No.

Q How many times did you testify in 2014?

A So this is an accounting --

THE COURT: No. Sorry. You can't talk about what's in the document. The question is: How many times did you testify in 2014? If you don't remember, you may look at the document to refresh your recollection.

THE WITNESS: I gave sworn testimony 11 times.

Q And how many times on the average did you testify in the years before? Would that be approximately 10 times a year?

A This includes all sworn testimony, and it would be variable from year to year but somewhere in that range.

Q Exhibit C does contain your testimonial history; correct?

THE COURT: Wait. It is not in evidence.

MR. VITUCCI: Objection.

THE COURT: Please stop referring to the document.

Q You testify in almost every state court in this area; correct? You testify in Bronx?

A I have.

Q You testify in Queens?

A I have.

Q You testify in Manhattan Supreme Court?

A Yes.

Q In Staten Island?

A Yes.

Q In Brooklyn?

A Yes.

Q You've testified in state and federal courts?

A Yes.

Q You do this regularly?

A Yes.

Q Tell us how much of your income comes from this type of work that you do on behalf of the defendants?

A I don't know how much percentage-wise. It would relate to my income. The practice is a large practice. There's many different parts to it. So I would have to do an accounting examination to know that.

Q Doctor, you're a professional testifier; correct?

MR. VITUCCI: Objection.

THE COURT: Overruled.

THE WITNESS: I am compensated for giving testimony and my opinions, yes.

Q You're not a spinal surgeon?

A I am not.

Q The last time you did a spine, you were in any way remotely involved in a spinal surgery before you even got your license in 1999; correct?

A Yes.

Q That was during your residency in 1996?

A Yes.

Q In this case, you suggested in your report that the

defendant perform independent radiological review of the MRI films?

A Yes.

Q True?

You did that two times?

A Yes.

Q And did you look at the independent radiological films that the defendants did?

MR. VITUCCI: Objection, your Honor.

MR. ISRAELYAN: Let me rephrase that.

Q Do you know if they even did an independent radiological review of the films?

A No.

Q And you're not a radiologist; are you?

A No.

Q Mr. Manlapig didn't seek you out for the purposes of getting treatment from you?

A No.

Q And the only reason he came to you, because if he didn't come to you at the request of the defendants, he will forfeit his right to seek a recovery in this case?

MR. VITUCCI: Objection, your Honor. It is not a question.

THE COURT: It is a question.

Q True?

THE COURT: You can answer.

A I don't know.

Q You did not speak to any of his treating doctors?

A No.

Q Indeed, you formed your opinions at the initial evaluation?

A I did form opinions at the initial valuation, yes.

Q When you did form your opinions at the initial evaluation, you didn't have a single radiological study to look at; correct?

A I did not.

Q You didn't look at the X ray films from the hospital?

A Correct.

Q You have never looked at those films; true?

A True.

Q You didn't look at the MRI films?

A At that time, no.

Q You didn't look at the CT scan films?

A No.

Q You never looked at the CT scan films?

A Correct.

Q And correct me if I'm wrong -- I'm reading from your report, your report --

MR. VITUCCI: Objection, your Honor.

MR. ISRAELYAN: Okay. I will not read from the report.

Q Correct me if I'm wrong, your opinion was that Mr. Manlapig did not sustain a permanent injury to his lumbar spine; correct?

A Yes.

Q You have never said in your report that he didn't sustain an injury to his lumbar spine; true?

MR. VITUCCI: Objection, your Honor. Objection.

THE COURT: Stop referring to the report. Ask him about his opinions.

MR. ISRAELYAN: His opinions are laid out in his report.

THE COURT: But his report is not in evidence. Just ask him about his opinions.

Q You didn't state in any of your opinions that Mr. Manlapig did not sustain any injury to his lumbar spine; true?

MR. VITUCCI: Objection.

THE COURT: Overruled.

THE WITNESS: I would have to --

THE COURT: In stating your opinion today, did you say that Mr. Manlapig did not sustain any injury to his lumbar spine?

THE WITNESS: I did.

Q Did you say that when you formed your opinion in 2014?

A I believe so.

Q Okay. Where is it in your report? Let me give you a

highlighter, and highlight it for me.

THE COURT: His report is not in evidence.

Q I would like to know because it is not there.

MR. VITUCCI: Objection.

THE COURT: Wait, wait, wait. This is not a matter for cross-examination. This is a separate issue. If you're claiming non-disclosure of an opinion, the time to do that was when he was giving the opinion.

MR. VITUCCI: Your Honor, I have an objection.

THE COURT: Is it a proper application to hear now?

MR. VITUCCI: I would like a curative instruction.

MR. ISRAELYAN: I move to strike his entire opinion.

THE COURT: Objection overruled. I'm not striking his entire opinion. You may examine him about his opinion as it is stated today. You can ask him if it has changed since some prior time.

BY MR. ISRAELYAN:

Q Your opinion hasn't changed regardless of what you reviewed; correct?

A My opinion has not changed over the course of my examinations and over the course of my testimony today.

Q Is it also your opinion that Mr. Manlapig sustained that injury to his cervical spine?

A Yes.

Q And your opinion is that these injuries to his cervical

spine are not permanent; correct?

A Correct.

Q Nothing more, nothing less?

A Yes.

Q Okay. You did testify about prior medical records that you somehow subsequently reviewed; correct?

MR. VITUCCI: Objection.

Q Dr. Desai's records you have subsequently reviewed?

A I was made aware of Dr. Desai's records subsequently.

Q Have you actually reviewed them or someone just told you about them?

A I reviewed them but not all of the records.

Q Did you see any single notation in Dr. Desai's records going back into the decade, any notation that Mr. Manlapig ever complained of a condition to his neck?

A Not based on my review, no.

Q With respect to his lower back, you did mention that there was a prior NCV in 2006?

A Yes.

Q Did you look at that NCV?

A Yes.

Q That was a screening NCV; correct?

A Yes.

THE COURT: What is an NCV?

Q Nerve conduction study --

THE COURT: Let me ask the witness.

THE WITNESS: Nerve conduction velocity test.

Q The result of that NCV was negative?

A My review of the NCV's were that there were findings of carpal tunnel syndrome and cubital tunnel syndrome.

Q You said findings of the carpal tunnel syndrome. Carpal tunnel is at the wrist of a person; correct?

A Yes.

Q I was talking about the lumbar spine. Was there any NCV of the lumbar spine? The nerves that emanate from the lower back, they don't come to our wrists; do they?

MR. VITUCCI: Objection to the form, your Honor.

THE COURT: I will allow it.

THE WITNESS: No.

Q Okay. So I was talking about a NCV of the lower extremity. What does that have to do anything with the carpal tunnel?

A So, there were NCV's done of both the upper and lower extremities.

Q Okay.

A The NCV of the upper extremities predating the accident showed bilateral carpal tunnel syndrome and cubital tunnel syndrome, which is a condition of peripheral nerve compression, which is an indicator of repetitive stress phenomenon likely related to his occupation. Of the lower extremities, I reviewed a similar study that was done subsequent to the

accident, which was normal. There was no findings of lumbar root entrapment or compression.

Q Doctor, you are still not answering my question. I'm talking about the 2006 NCV. What was the finding of the 2006 NCV? Have you ever looked at that document?

A I did for the upper extremities.

Q There was no 2006 NCV of upper extremities. All right.

MR. VITUCCI: Objection to the comment from counsel.

THE COURT: Sustained.

Ladies and gentlemen, just a reminder that whatever counsel, either counsel, say is not evidence; only what the witness says or admits is evidence.

You may proceed.

Q Doctor, you never worked at New York Presbyterian Hospital's emergency room; correct?

A Correct.

Q You never worked at the New York Presbyterian Hospital at all; true?

A True.

Q You don't have, and you never had, privileges granted to you at the New York Presbyterian Hospital; true?

A True.

Q Have you spoken to the resident or the doctor that was at the hospital on the day Mr. Manlapig was there?

A No.

Q Do you know a lot of people that were walked in or were brought into the emergency room at the time Mr. Manlapig was seen at the hospital?

A No.

Q Let's talk about MRI films that you said you saw. You talked about a cervical spine MRI. You said you reviewed those films. Correct?

A Yes.

Q And you generated a report of that review?

A I did.

Q And in the cervical spine MRI, did you see any herniations?

A I did not.

Q Did you see a focal herniation in the cervical spine MRI?

A I did not.

Q You believe that all of the disc abnormalities that are there are bulges?

A Correct.

Q Do you agree with the defendants' neurosurgeon that disc bulge can arise from an automobile accident?

MR. VITUCCI: Objection to comment from counsel.

THE COURT: Sustained.

Q Is it your opinion that the disc bulge cannot be caused by trauma?

A It cannot be caused by a single event force application.

Q Now, you did the range of motion testing on Mr. Manlapig;

correct?

A Yes.

Q You did the range of motion testing by use of a goniometer?

A Correct.

Q You didn't use a two-level inclinometer; correct?

A I'm not sure what that is.

Q Okay. You had norms for range of motions?

A There is, yes.

Q And you listed them in your report.

A Correct.

Q You testified that this was an active range of motions?

A Yes.

Q An active, so we clarify it, it means when you tell the patient to move?

A Correct.

Q There is also what is known as a passive range of motion?

A Yes.

Q That's where you actually move, you, physician, move Mr. Manlapig or patient's neck --

A Yes.

Q -- or a body part?

In this case, you didn't perform passive range of motion; you performed active range of motion?

A I performed active range of motion.

Q And you even on that active range of motion, you noted

significant limitations; correct?

A Yes.

Q And you had a limitation at the 44 percent on the right rotation?

A Correct.

Q You had a limitation of 16 percent on the left rotation?

A Correct.

Q You had a limitation of 75 percent on the right bending?

A Yes.

Q You had a limitation of 62.5 percent on the left bending?

A Yes.

Q What we just talked about, it is in his cervical spine; isn't it?

A Correct.

Q You didn't do range of motion testing on Mr. Manlapig's spine when he came to you in 2015 at the request of the defendants; correct?

A I'm not sure I understand.

Q Look at it. You did another examination in 2015.

A You're referring to a subsequent? Yes, subsequent examination. Okay. I'm looking at that report.

Q Did you do range of motion testing on his neck at that time?

A I did not.

Q Let's go back to the first examination for lumbar spine.

You did find significant limitation on range of motion in the lumbar spine, as well; correct?

A Yes.

Q In an accident such as the one Mr. Manlapig was involved, the spine flexes forward and backwards and extends backwards?

A Yes.

Q There is a spectrum of injuries that can be caused from the mechanics of such an injury?

A Correct.

Q In those spectrum of spinal injuries, there falls disc herniations?

A Yes.

Q And disc protrusions?

A Yes.

Q And disc ruptures?

A Correct.

Q And it is also commonly known as a whiplash injury?

A Yes.

THE COURT: Commonly known as what?

MR. ISRAELYAN: Whiplash.

Q The mechanics of the spine on the frontal impact collision in the lumbar spine is the similar one as in the neck?

A Yes.

Q And a disc, human disc, between the spinal vertebrae, that is a structural component of the spine?

A Yes.

Q Mr. Manlapig's spine, indeed, did have a preexisting degeneration?

MR. VITUCCI: Objection to the comment.

THE COURT: You can ask a question.

Q I'm asking a question.

A Yes.

Q When there is a degeneration in the human spine, including the intervertebral discs, the discs themselves become much weaker; correct?

A Yes.

Q When there is a degeneration in the human spine and the discs become much weaker, they're more susceptible to an injury in a trauma?

A Yes.

Q And this is well-known to medicine?

A Yes.

Q Just because there is a degeneration in somebody's spine either at the disc or vertebral structures that day, that does not mean that there is a pain associated with it?

A That's correct.

Q It is also well-known to medicine the terminology that is called asymptomatic?

A Yes, sir.

Q Asymptomatic means that the conditions are there but there

is no pain or disability associated with it?

A Yes.

Q And a trauma such as a car accident or an automobile crash such that Mr. Manlapig was involved can turn an asymptomatic condition into symptomatic conditions; true?

A Yes.

Q Would you agree with me that a herniation of a disc is a permanent condition?

A Yes.

Q That means that the discs that came out of its contours will not go back on its own?

A Yes.

Q And short of a surgery, that disc cannot be repaired?

A Yes.

MR. ISRAELYAN: Thank you.

THE COURT: You may proceed.

REDIRECT EXAMINATION

BY MR. VITUCCI:

Q Doctor, counsel asked you a question, and he said you formed an opinion on your initial exam when you hadn't looked at the films; correct?

A Correct.

Q Your opinion was what, he had a sprain of his neck; right?

A Correct.

Q Your opinion was he didn't have any kind of appreciable

injury or permanent injury for his lumbosacral spine; is that correct?

A Correct.

Q After you performed this exam without looking at the films, did you get the films?

A I requested, and then I received them, yes.

Q Did you review them?

A I did.

Q Did your review of the films change your initial opinion?

A No.

Q You were also just asked, can an automobile crash make an asymptomatic condition symptomatic?

A Yes.

Q Do you remember that? It just happened.

A Correct.

Q Did you have any evidence that Mr. Manlapig had symptoms before the accident?

A Yes.

Q So before the accident, he was --

A Symptomatic.

MR. VITUCCI: Thank you.

I have no further questions, your Honor.

RECROSS EXAMINATION

BY MR. ISRAELYAN:

Q Let's talk about the cervical spine on Mr. Manlapig. Has

there been any X ray of cervical spine of Mr. Manlapig before the accident?

MR. VITUCCI: Objection. Asked and answered on cross.

THE COURT: Sustained.

BY MR. ISRAELYAN:

Q Where in the records is there a single evidence that Mr. Manlapig had been symptomatic before the accident in his neck?

MR. VITUCCI: Objection. Asked and answered on cross.

THE COURT: It is okay. You can answer it.

THE WITNESS: Can you repeat the question?

Q Yes. Is there any indication in the records whatsoever going back that Mr. Manlapig was symptomatic in his neck?

A The records that I'm referring to are the records from -- it was 2007 that nerve testing was done to look at the neck, and the findings were not of nerve compression in the neck but of peripheral nerve compression.

Q Okay. Let's clarify that. Let's clarify it.

Pull that report out.

THE COURT: Pardon?

Q Pull that report out. Okay. Do you do EMG testing?

A I don't do it myself.

Q Do you interpret EMG readings?

A No, I do not.

Q What test is that?

A This is a nerve conduction study or NCS test, and the date is December 18, 2007.

Q That is for his carpal tunnel?

A This was of the upper extremities, and it shows carpal tunnel and also shows ulnar neuropathy.

Q Where is the ulna?

A Ulna is the elbow.

Q So that is between his elbow and his wrist.

A The elbow and his wrist.

Q Yes.

A There is nothing reported in the neck.

Q That's only NCV, that's not an EMG?

A That is correct.

Q Just for the record, EMG tests the motor strengths of the nerves?

A Correct.

Q And would that indicate to you that the only complaint is of his wrist? If there was a neck complaint, wouldn't the doctor do an EMG in that case?

A Those tests can be done independently or together.

Q If there was a complaint of a neck, would they be doing X rays on Mr. Manlapig?

A Probably.

Q If there were complaints of the neck, would they be ordering an MRI for Mr. Manlapig?

A Possibly.

Q Did you even see any X rays or MRI of Mr. Manlapig's lower back before the accident?

A No.

Q Just because Mr. Manlapig had episodic pain in the past does not necessarily mean that he didn't sustain an injury to his lower back in the accident that we're talking about; correct?

A Correct.

Q Just because there is no fracture or dislocation seen on X rays at the hospital on the day of the accident, that does not mean Mr. Manlapig did not sustain a permanent injury in his neck?

MR. VITUCCI: Objection. Beyond the scope, your Honor.

THE COURT: Sustained.

MR. ISRAELYAN: Thank you. That's it.

MR. VITUCCI: Nothing further, your Honor.

THE COURT: Okay. You may be excused.

(Witness excused)

(Continued on next page)

(In open court; jury not present)

THE COURT: Could you just remind me what the schedule is for the rest of the day today and tomorrow.

MR. VITUCCI: I believe we're finishing with Mr. Anastasio now. We have an economist I believe scheduled for 12, Ms. Kucsma, and at 2:00 we will have Dr. Ziejewski.

THE COURT: Is that expected to take the remainder of the afternoon, or we can fill in with one of the plaintiffs?

MR. VITUCCI: I think we will probably be in a position to fill in.

THE COURT: Okay. Then tomorrow?

MR. ISRAELYAN: Tomorrow just whoever is left, your Honor.

THE COURT: So whoever is left are the plaintiffs --

MR. ISRAELYAN: Yes.

THE COURT: -- and that is it; right?

MR. VITUCCI: Yes.

MR. ISRAELYAN: Right.

THE COURT: Okay. About how long do you think the plaintiffs will be?

MR. ISRAELYAN: I don't expect them to be long. Mrs. Manlapig, probably 20 minutes; Mr. Manlapig, maybe half an hour to 40 minutes.

THE COURT: We will charge the jury for sure tomorrow, and if we finish --

MR. ISRAELYAN: Those are my examinations.

THE COURT: I understand. There will be cross-exam.

I'm anticipating your summations will be about 45 minutes each, and I will hold you to that. If it is shorter, that's fine. If there is time for the summations tomorrow, both summations, we'll do them; if not, we will do them on Wednesday. Okay?

MR. VITUCCI: Okay. Thank you.

MR. ISRAELYAN: Thank you.

(Recess)

THE COURT: Just a comment to both lawyers. You're both experienced trial lawyers, and you know what the rules are. If you continue to read from documents not in evidence, I will sanction you.

(Continued on next page)

(In open court; jury present)

MR. ISRAELYAN: Plaintiff recalls Mr. Anastasio, please.

Thank you.

THE COURT: Let me ask one question. I know we have a witness at noon. Do we need to interrupt this witness for that one?

MR. ISRAELYAN: No, let's start with Mr. Anastasio.

THE COURT: The noon witness is your witness?

MR. ISRAELYAN: Yes. It is my witness. If we have to bring her after lunch, that's fine.

THE COURT: Okay.

MR. ISRAELYAN: Can Mr. Anastasio have book number 1.

ANDY ANASTASIO,

called as a witness by the Plaintiffs, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION

BY MR. ISRAELYAN:

Q Mr. Anastasio, I will ask you to look at Plaintiffs' Exhibit 25, where we stopped.

Turn your attention to the second page of that document.

A Yes.

Q Again, I will ask you yes or no questions, to move this along. If you cannot answer, let me know, and I will be happy

to rephrase it. Is that fine?

A Yes.

Q This document is also an MVR report of Mr. Jupiter?

A Yes, it is.

Q On the second page of that document, it shows that Mr. Jupiter got caught speeding on June 10, 2008, in New Haven, while driving a commercial motor vehicle. Do you see that?

MR. VITUCCI: Objection, your Honor.

THE COURT: I will allow it.

MR. VITUCCI: It doesn't --

THE COURT: Okay.

MR. VITUCCI: -- say that. It says noncommercial vehicle.

Q Do you see that entry?

A I do see the entry.

Q Was he speeding while driving a commercial vehicle or private vehicle?

A On 6/10, it looks to be a private vehicle.

Q Where commercial vehicle says N, that means no?

A Yes.

Q Okay. And this was also a violation that he garnered on his record before his August 10, 2008 accident; correct?

A I am not sure. I would have to look at it.

Q Are you aware of Mr. Jupiter's August 10, 2008 motor vehicle accident?

A Yes, I am.

Q So this violation occurred before that date?

A Yes.

MR. VITUCCI: Objection, your Honor. It says the same date. That's the same violation, 8/10.

MR. ISRAELYAN: It is not. It is June 10.

THE COURT: Tell me exactly where we are. We're in Exhibit 25; is that right?

MR. ISRAELYAN: Yes, Exhibit 25, page 2.

THE COURT: Page 2. Where is it?

MR. ISRAELYAN: On the second page, in the middle.

THE COURT: Okay.

MR. ISRAELYAN: Do you believe that it says August 10, 2008? What is the date?

THE COURT: There is a June 10 in the middle.

MR. VITUCCI: It looks like an 8 to me, your Honor. It is not a very good copy.

THE COURT: You're right, it is hard to tell.

BY MR. ISRAELYAN:

Q Did you get a copy of this violation from Jupiter?

A I'm not sure.

Q Did you disclose a copy of this violation in this case?

A If I did, it would be in the records.

Q If it is not in the records, you did not disclose it; is that correct?

A Yes.

Q Now, indeed, you keep the violations that your drivers get in separate folders from their employment and qualification folders?

A No. The motor vehicle report are his violations, that would be kept in the DQ file.

THE COURT: In the what file?

THE WITNESS: In the driver qualification file.

Q When your driver gets a violation or citation from violation from a police officer, there is actually a citation or violation given to the drivers; correct?

A Yes.

Q And the drivers are obligated, whether it is a private vehicle or whether it is an Anastasio truck, to give a copy of that violation to Anastasio?

A Yes.

Q Actual copies of those violations. What do you do with them? Do you destroy them?

A No. They're paid and put in a paid file, or they're shown evidence that they were paid.

Q But you do not keep them in the actual driver qualification file? You keep them separately?

A No, it is not required. Just the MVRs.

Q There are actually times when a driver can get a violation and citation for a violation but it does not appear on the MVR;

correct?

A No, anything would show up on a MVR.

Q Not all the states -- these MVRs are pulled from Connecticut DMV; correct?

A Yes.

Q Not all the states have reciprocity with Connecticut DMV for their violations in their states to appear on a Connecticut MVR?

A No, that is incorrect. The new CDL that came out about 15, 20 years ago, all states must report on their CDL.

Q You believe that this is a complete copy of Mr. Jupiter's driving violation record?

A As far as I know, yes.

Q And the driving violation records are important for the driver qualifications?

A We keep a copy of it in there, and we do annual updates, yes.

Q If the driver gets in an accident, those are important for the driver's qualifications, as well?

A Separately, but we do keep a copy if it is DOT reportable --

THE COURT: The question is, is it important for the driver's qualification, not whether you keep a copy.

Q Is it important that the driver gets in an accident for the driver's qualification to drive a motor vehicle for you? Yes

or no?

MR. VITUCCI: Objection. Asked and answered.

THE COURT: I will allow it.

THE WITNESS: We do track any accidents or incidents.

Q But you do not keep the accident reports in the driver's qualification files, you segregate them?

A Accident reports --

MR. VITUCCI: Asked and answered, your Honor.

THE COURT: Sustained.

Q Let's move on. Then, Mr. Jupiter gets involved in this August 10, 2008 motorcycle accident?

A Yes.

Q And do you have a copy of that accident report in your file?

A Not the motorcycle accident report, no.

Q Did you request Jupiter to give you a copy of the motorcycle accident report?

A I don't recall if it was given to the safety person at the time after he recovered.

Q Did you disclose that accident report for his motorcycle in this case?

MR. VITUCCI: Objection, your Honor.

THE COURT: Sustained.

MR. ISRAELYAN: What is the basis of the objection?

THE COURT: No, just sustained. Ask if he has a copy.

BY MR. ISRAELYAN:

Q Do you have a copy of that accident report from August 10, 2008?

A I may, but I don't have it with this file.

Q Okay. Did you disclose it in this case? Did you give it to your attorneys?

MR. VITUCCI: Objection. Asked and answered.

THE COURT: Sustained.

MR. ISRAELYAN: Okay. I will move on.

THE COURT: Okay.

Q After Jupiter gets into that accident, thereafter he gets disqualified on January 14, 2009, that's the entry above on the same page. Do you see that?

A Yes.

(Continued on next page)

Q. CDL gets disqualified.

A. Yes.

Q. Did he continue working for you -- strike that.

Then Jupiter came back to you with the SPE certificate.

A. Yes.

Q. And that's a year later.

A. Yes.

Q. In October of 2009.

A. Yes.

Q. Between August 10, 2008 and October 6 of 2009, in that time period, did he continue working for you?

A. No.

Q. Did you give him a truck or any kind of vehicle to operate?

A. No, I don't believe so.

Q. Did you give him any kind of work to do in that time period?

A. No. We kept in close contact, but I don't recall him working, doing anything.

Q. All right. You have in your office records of the attendance records or payroll records of the employees, correct?

A. We would have them somewhere, yes.

Q. Did you disclose the records showing as to what time periods Jupiter did not work for you?

A. The only thing we had was logs, and you're only required to keep logs for six months.

THE COURT: Would you have a log if he wasn't working for you? Would he appear on a log?

THE WITNESS: They would be put on an off duty log for the period of time that they were off. But again, they're just kept for six months, DOT regulations.

Q. Do you have payroll records indicating that Mr. Jupiter worked from this day to that day?

A. I don't know. I'd have to -- that's quite a ways to go back.

Q. Okay. Did you disclose these records here in this case?

MR. VITUCCI: Objection, your Honor.

THE COURT: Sustained.

Q. Let me take your attention then for a minute to Plaintiff's Exhibit 21. 21. Are you there, Mr. Anastasio?

A. Yes.

Q. This is his SPE, which is skill performance evaluation certificate, correct?

A. Yes.

Q. This is when he gets permission from the United States Department of Transportation to operate a motor vehicle.

A. Yes.

Q. And he gave a copy of this SPE certificate to you.

A. To my office, yes.

Q. Yes. This SPE certificate has specific conditions on it.

A. Yes.

Q. Those specific conditions apply to you, Anastasio Trucking. Let me read this for you if you cannot locate it.

A. Yes.

Q. "Conditions. As a condition of this certificate, reports of all accidents, arrests, suspensions, revocations, withdrawal of drive licenses or permits, and convictions involving the above-named driver shall be reported in writing to the issuing agency by the employing motor carrier within 30 days after the occurrence." Do you see that?

A. Yes.

Q. Employing motor carrier was you.

A. Yes.

Q. After Jupiter came back to you, according to you -- when did he come back to work for you?

A. I don't recall the date.

Q. Would it be after October 6, 2009?

A. Yes.

Q. And after he came back to you, you allowed him to go back on the road and drive a vehicle for you.

A. Yes.

Q. Okay. You did some testing, some agility and some paperwork before you let him go.

A. Yes.

Q. But that time when he came back to you, did you request his MVR report before you requalified him to be back on the road?

A. Yes. Our normal protocol would be MVR and new drug test.

Q. Where is the MVR from October of 2009? Did you disclose the MVR from October of 2009?

MR. VITUCCI: Objection, your Honor.

MR. ISRAELYAN: So we won't waste time --

THE COURT: Okay.

BY MR. ISRAELYAN:

Q. -- there's no MVR from October of 2009 that has been disclosed or in any way in the records, but what did the MVR of October of 2009 show? You wouldn't know here?

MR. VITUCCI: Objection, your Honor.

THE COURT: Wait. Wait. Just ask the question.

Q. Do you know what the MVR of October of 2009 would show?

A. I couldn't recall from back then.

Q. All right. Then after Jupiter comes back to you to drive, he continues to get more violations on his record, correct? Do you have a recollection of that?

A. Of the violation --

Q. After he comes back and you send him back to drive your trucks.

A. I would have to look to recollect.

Q. Let me take you back to Plaintiff's Exhibit 25. Second page. June 30th, 2010. That's a violation for operating

unregistered motor vehicle. Do you see that?

A. Yes.

Q. Did you get a copy of that violation?

THE COURT: I'm sorry. Maybe I just can't read --

MR. ISRAELYAN: Second page, second to top entry.

THE COURT: Second to top entry.

MR. ISRAELYAN: Page 2.

THE COURT: I see the first full entry on page 2.

MR. ISRAELYAN: Right.

THE COURT: Thank you.

Q. On the same day, he also got another violation, if you go back to the page 1, for improper care or maintenance of a license, registration, certificate, or registration plans. Do you see that?

A. Yes.

Q. Did he give a copy of these violations to you?

A. In Connecticut, they would be the same, just calling it two different things. And it's a non-moving violation, so I don't recall if he did or not. But I'm just giving explanation.

Q. Then he gets another violation on April 21st, 2011. That's on the first page.

A. Yes.

Q. What's that violation for?

A. It says, "Failure to obey traffic sign in a noncommercial vehicle."

Q. Did he give a copy of that violation to you?

A. I don't recall as I sit here today.

Q. When Mr. Jupiter came back to work for you in October of 2009, if you look at it before that date, you used to do twice a year safety reviews with Mr. Jupiter, correct?

A. Yes.

Q. But when Mr. Jupiter came back to you to work, and this time he didn't have any leg below his right knee, did you do any safety review with him in the entire year of 2010?

A. The requirement is only for actually one annual review, and we do all the drivers at the same time. That's why sometimes you get multiple in the same year. Because if a new safety person is coming on and they want to hit them all, they do them at the same time. We order MVRs for everybody at the same time.

Q. That's fine. But the last time you did a review on Mr. Jupiter was in the year 2008, right?

A. Okay, yes.

Q. Okay. When he came back to work for you in October of 2009, I understand you maybe didn't do it in November, December of 2009, but entire year of 2010, did you do a safety review on Jupiter?

A. I'm sure we would have because we do them altogether.

Q. Show me where it is, because we don't have it.

A. If it's not here, then I don't know where the record is,

but I know we do them altogether.

Q. The first safety review after he comes back to you is dated -- is Plaintiff's Exhibit 26.

A. I see it.

Q. That's your signature?

A. It is.

Q. You saw the driving violations on what we previously discussed?

A. Yes.

Q. And you checked your driver meets minimum requirements?

A. Yes.

Q. And you send him back on the road to work.

A. Yes.

Q. Was Jupiter one of your best drivers?

A. We have other good drivers, but he's a very good driver, yes.

Q. Do you believe Jupiter was properly -- was a well-trained driver?

A. Yes.

Q. Then Jupiter gets involved in the July 14, 2011 accident. Let me take your attention to Plaintiff's Exhibit 28.

A. I don't have anything in my 28.

Q. Okay. May I?

A. Thank you.

Q. When Jupiter got involved in the July 14, 2011 accident,

did you destroy that accident report that he prepared?

A. No.

Q. Okay. Did you keep that accident report?

A. I remember giving some testimony on this last week.

Q. Last week?

A. Friday.

Q. Okay.

A. Non-DOT recordable accidents do not have to be kept. So as these two were very minor in nature, we start a file, look at whatever it is, deal with it, and then they get filed away. And after so many years, we just purge the files.

Q. How many years before you purge the files?

A. Could be two, three years.

Q. Two, three years from July, 2011? Okay.

This accident report that your driver gets involved in, do you keep a copy of that accident report in the driver's file?

A. No.

Q. You separate them out?

A. Yeah.

Q. So if I didn't have this document, we would have never known that Mr. Jupiter was involved on July 14, 2011 accident?

MR. VITUCCI: Objection.

THE COURT: Overruled.

Q. That's correct?

A. If you didn't have it -- right, because it's not a DOT

recordable accident, it's more of an incident, so minor in nature.

Q. That's what you're saying, but we don't have a record of it.

MR. VITUCCI: Objection, your Honor.

THE COURT: Sustained.

Q. Then according to the special skill certification report, you were supposed to report all accidents to the United States Department of Transportation. Did you report the July 14, 2011 accident to the United States Department of Transportation?

MR. VITUCCI: Objection.

THE COURT: Overruled.

THE WITNESS: In the DOT realm, when they talk about accidents, they're talking about recordable accidents. These both were not recordable accidents.

Q. There's nothing on the special skill certification telling you DOT reportable accident, is there?

A. But it's a well-known industry standard. When they come in, they check for recordable only.

Q. When they're talking about reportable accidents, you're talking about accidents that are commercial motor vehicle drivers that do not have the special disability, true?

A. No, commercial -- if you have a CDL, you're held under one standard. It's relative to all the states. That's why they made a CDL, so it's uniform.

Q. Let's clarify this for a minute. DOT reportable accident applies to all drivers?

A. All CDL drivers.

Q. That applies to people who do not have a loss of a limb, true?

A. No. Recordable accident is a recordable accident under CDL standards.

Q. But in this case, you had a special skill evaluation certificate for a person who has a loss of a limb.

A. Correct.

Q. He had a special disability.

A. Yes.

Q. On its face, the document ask you to report all accidents, yes?

A. The DOT requesting that, that would be all DOT recordable accidents. I can't answer it any other way. I'm sorry.

Q. My question is, did you report this accident to the DOT?

A. No. It wasn't required to be.

MR. VITUCCI: Objection, your Honor.

THE COURT: Overruled.

Q. Did you call the DOT to inquire whether you're required or you're not required to submit this accident to the DOT?

MR. VITUCCI: Objection.

THE COURT: Overruled.

THE WITNESS: No. Again, because it's a DOT

non-recordable accident, so, I mean, it's a given. It's --

Q. How many drivers do you employ that have a loss of a limb?

A. I've had two in the history of our company.

Q. Okay. And when they get into an accident, you do not report the accident to the DOT?

MR. VITUCCI: I'm sorry. Your Honor, can we have the question repeated? I --

THE COURT: When they get into an accident, meaning employees who have had loss of a limb, you don't have to report the accident to the DOT?

THE WITNESS: If it's a recordable accident, it gets reported and recorded.

Q. Now, then two months later, on September 16, 2011, Mr. Jupiter gets involved into another accident.

A. Yes.

Q. Do you see that?

A. Yes.

Q. You had Mr. Jupiter prepare a report for that accident?

A. I would have, yes.

Q. And he gave it to the company.

A. Yes.

Q. And as you testified, the company kept those records for two to three years?

A. Give or take, yes.

Q. Okay. And did you report that accident of September 16,

2011 to the United States Department of Transportation?

A. Again, no, because it was minor in nature. Jeremy actually testified himself that they were minor scratches.

Q. Okay. So did you or did you not report this September 16, 2011 accident to the United States DOT?

A. I would believe not, no.

Q. Do you have the accident report of Mr. Jupiter --

A. Which --

Q. -- for September 16, 2011?

MR. VITUCCI: Objection, your Honor, asked and answered.

THE COURT: Yes. We've been over this.

MR. ISRAELYAN: No, I think we ask for July 14. This is the September 16.

THE COURT: This is September 11th -- okay.

Q. September 16, 2011. Do you have that accident report?

A. Again, the same thing. Because it was minor, it would have been put in a file. Once it's closed out, it would have been discarded at some point.

Q. Are you familiar with the high cube containers?

A. Yes.

Q. And what is a high cube container?

A. It's a container of a height of 9 foot 6 inches.

Q. Jupiter was involved in an accident on July 17, 2012 while transporting a high cube container for your company.

A. Yes, he was.

Q. Was he issued any violations or citations or summons for arrests?

A. In that accident?

Q. In the accident, yes.

A. Yes, over height.

Q. How many summons for arrests or summons for violations was he issued?

A. At the time of the accident?

Q. Yes.

A. Over height for striking the overpass, and unregistered trailer, and towing an unregistered trailer, which are the same, they just write it two separate ways.

Q. So there was three violations were issued.

A. Yes.

Q. Did he give a copy of these violations to you?

A. Yes, he did.

Q. Did you have them?

A. Did I have copies of the tickets?

Q. Yes.

A. I believe so, yes.

Q. Did you disclose them?

MR. VITUCCI: Objection, your Honor.

THE COURT: Do you have them still?

THE WITNESS: I may.

Q. Did you give them to your attorneys?

MR. VITUCCI: Objection. Same objection.

THE COURT: I'll allow it.

MR. VITUCCI: And relevance, your Honor.

Q. Did you give them to your attorneys?

A. I don't -- I don't recall if -- I -- I gave them what I had at the time.

Q. Jupiter's accident report for the date of the accident, did you give them to your attorneys?

A. The accident report?

Q. Yes, that Jupiter filled out.

MR. VITUCCI: Objection, your Honor.

THE COURT: Overruled.

THE WITNESS: I believe so, yes.

Q. You gave them to your attorneys. Okay.

MR. ISRAELYAN: That's it. Thank you very much.

THE COURT: All right.

CROSS EXAMINATION

BY MR. VITUCCI:

Q. Good morning, Mr. Anastasio. How are you?

A. Good morning.

Q. Can you tell the jury a little bit about yourself?

A. Sure. I'm 56 years old. I live by myself. My wife's passed about eight years ago from lung cancer. I've been involved in the transportation business my entire life. My dad

was actually a truck driver and taught me how to drive at a very young age.

And I went to parochial school for elementary and high school, and one year of college for business at University of New Haven up in West Haven, Connecticut.

Bought a truck and started trucking, but it was always the family, my mom, my dad, my brother, and myself, and then my wife came into it, and now my nieces.

I've been involved, like I say, with trucking my whole life, and I still hold a valid CDL with all the endorsements. I've been involved in the Connecticut Truck Association. I was actually a former chairman. I've been down to Washington to meet with the senators and representatives for trucking causes.

I actually was asked to put together a course on logistics and trucking at the Gateway Community College. And when I did, they asked me to teach, and I taught some classes. And they wanted me to do it on a regular basis. Unfortunately, with all my other obligations, I couldn't. I'm very involved with my church and my local community, always trying to help out and do different stuff.

Q. What kind of things do you do for your church and local community?

A. We helped build a community parish so they could have cataclysm. You know, through our businesses we donate a lot of goods and stuff. And I'm just there all the time. Collect

basket every week at church.

Q. Do you do -- do you sit on any boards, sir?

A. I do. Still on the Motor Transport Association. I'm actually a permanent director, secretary. While my chairmanship of the Motor Transport Association, I'm proud to say I brought to the association an organization named TAT, it's Truckers Against Trafficking. Since then, I've been also been on a committee for the State. It's trafficking, it's trafficking people, trafficking young girls and boys in the sex trades, as well as, you know, other abuses, labor abuses. I was proud to bring that the trucking association and get people involved. It's a national association.

In addition, I'm on other boards with the East Haven Trolley Museum, and the foreman the Port Authority in Connecticut.

Q. You mentioned before that you started this company quite some time ago; is that right?

A. Yes.

Q. When did you start the company, the Anastasio & Son Trucking Company?

A. With one truck in 1977.

Q. So you were a teenager then.

A. I was 17.

Q. And whose truck was it? Was it yours?

A. It was the family's. They bought it.

Q. Where did you start the company? Where did you work out of?

A. Out of my parents' house.

Q. Eventually, you left your parents' house, right?

A. Yes.

Q. You mentioned you were a truck driver. Are you a truck driver?

A. I still consider myself a truck driver.

Q. Do you have a CDL license?

A. I still have a CDL and I do get in it from time to time.

Q. Now, over time, I take it that after you left your parents' house, you moved to your present location at some point.

A. Yes.

Q. The company grew to some particular size, right?

A. Thank God, yes.

Q. Describe the trucking operation that we're here about. What kind of trucks do you run and why? Give us the particulars.

A. Predominantly, flatbeds on the tractor trailer. And we haul lumber, steel, and utility poles throughout the Northeast. We bring in steel and lumber by rail, and then we transfer it onto -- railroad, and then we transfer it to trucks and deliver it in the Northeast area. Pretty much a day operation, back at the yard every night. The guys get back every night.

Q. And you mentioned flatbed trucks. What size are your

flatbed trucks? And let's talk about -- it's a truck. It's got a flatbed on it. How high is that bed from the ground on your trucks?

A. Most of the trailers are -- the standard trailers are 48-foot long. They're about four and a half feet high from the ground to the deck of the trailer. And you'll get different variations, depending on tire size, although most of ours are uniform, and when they're loaded and not because they're airbags and they'll come down a little bit. And they're 102 inches wide.

Q. How high off the ground did you say the bed is?

A. About four and a half feet. Four and a half to five feet.

Q. By the way, you have a number of employees with the company. What do you consider your company employees?

A. They're like family.

Q. Are they sort of like your family?

A. They really are. We're very close. You know. As I think you see with Jeremy and everybody, we know everybody individually, we see them every day. It's a lot of direct contact and concern about their families.

Q. What's the number one concern of Anastasio & Son Trucking Company?

A. Safety. That's our family name on the door. That's our reputation. It's the livelihood of everybody that works there. And safety or nonsafety, not having safe people, can be a deal

breaker in the business.

Q. All right. As part of your company's business, do you transport steel containers? We're here about a particular steel container. Does your company transport steel containers?

A. We do, yes.

Q. How long has your company been doing that?

A. Probably almost, in total, the life of the company. We did locally in the early years, and then probably the last 30 years we'll bring steel or lumber down into New York or New Jersey. And then we'll bring these containers that our two customers up in the New Haven area of Connecticut buy and refurbish, and we'll bring them back up from the ports in New Jersey.

Q. You mentioned you had two container companies that you transport for in Connecticut?

A. Just two, yes.

Q. What are their names?

A. Eagle Leasing and Supreme Trailer.

Q. And how long have they been your clients or your customers?

A. Eagle Leasing was one of my first customers. It goes back to '77. Supreme, probably for about 25, 30 years.

Q. What kind of containers did you pick up and drop off for them?

A. 20 or 40-foot containers.

Q. And did those 20 or 40-foot containers have a particular height?

A. Yes. They're all standard.

Q. When you say "standard", what do you mean by "standard"?

A. 8 foot 6 inch.

Q. Was that well-known to your company?

A. Absolutely.

Q. To your customer, excuse me.

A. Because we only have flatbeds, we can't accommodate anything else.

Q. Tell us. What are we talking about here? Does the flatbed you have accommodate a particular size container? Describe that for us.

A. Just so you know, the flatbed, as counsel asked me to describe, is from the headboard, which is the very front of it, to the back end of the trailer, it's all one length. And it's about 4 and a half to 5 feet high. They have what you call drop decks, which you may see on the highway, which from the headboard back about 10 feet is about that 4 and a half, 5 foot. Then it'll drop down to approximately a 36-inch 3-foot, 3 and a half foot height, the remaining 42 to 38-foot of the trailer, which can accommodate higher loads.

There's also -- what a lot of people haul containers on are container chasses. And there's one chassis that's specific for the regular containers, and then there's another one for the high cube that gives you a lower trailer height.

Q. Was the fact that you could only transport standard size

containers known to your two customers?

A. Absolutely. We've done thousands and thousands of containers.

Q. That's my next question. Over the years and decades that you've been doing this, transporting these containers, how many standard size containers did your company ship or transport?

A. Thousands.

Q. You say thousands. 1,000, 2,000, 10,000? How would you describe it?

A. Over 40 years, I would have to really think about it, but I would say well in excess of 10,000.

Q. Over those 40 years, did you ever transport a high cube container?

A. The one and only time.

Q. The one and only time was the date of this accident?

A. The date of the accident, yes.

Q. On any of those 10,000 occasions, did any of your drivers ever hit an underpass with a container on one of your flatbeds?

A. Thank God, no, never.

Q. Was this the first and only occasion?

A. Yes, it was.

Q. Are you aware of the height of the underpasses in the City of New York, particularly the George Washington Bridge?

A. Yes. The standard legal height on any highway is -- you can't have a vehicle greater than 13'6".

Q. Now, you mentioned before, safety is a number one concern for Anastasio & Sons.

A. Yes.

Q. How do you implement that? For instance, how did you hire a driver? What do you do when you hire somebody?

A. The first thing we do is look at their application, look at the type of person they are, you know, where they worked before, what kind of experience they have.

Q. Do you look at whether they went to driving school?

A. Certainly. If they went to driving school, experience, experience after driving school.

Q. Is that something you're looking at to see if somebody's an experienced driver?

A. That definitely helps, absolutely.

Q. Is it the practice of Anastasio & Son Trucking to hire experienced drivers?

A. Yes.

Q. And people who went to driving school?

A. Yes. It's ideal.

Q. Did there come a time that you got an application from Jeremy Jupiter, that gentleman who was here last week?

A. Yes.

Q. And when you got his application, what kind of things did you look for in the application?

A. Looked at his experience. Again, this is just looking at

paper now.

Q. Okay. And did you see whether he had gone to a driving school?

A. He did.

Q. Did you know the driving school?

A. I did. I know of it, and it's a driving school that's -- there are just regular driving schools where you go and you get your license. This was a driving school owned by a trucking company and run by a trucking company, wherein once you get your license through this driving school, and they have a very intricate set of standards to train the driver, they automatically offer you a job with that company. So that immediately says they don't want a problem person, so they're going to train them to the nines.

And then after that, they put him with one of their drivers for -- and sometimes these companies will actually run them for up to three months, really getting good experience on them, cross-country type trucking, putting a lot of miles on, a lot of different things coming up, different experience in different terrain and weather conditions because you're cross-country.

Q. Did you look at the application that came in for Mr. Jupiter?

A. Yes. All the applications, generally I have a look at them before we commit to the next level.

Q. Was there a motor vehicle report run?

A. Yes. We run a motor vehicle report and we get a drug test. But I'm kind of getting a little ahead of myself.

Q. That's fine. Did you do a drug test on Mr. Jupiter?

A. Yes.

Q. Did he pass?

A. Yes.

Q. When you looked at his motor vehicle record, did anything jump out at you? Was there any red flags raised?

A. No. But I want to compound that with something else.

Q. Please, go ahead.

A. As part of the how we kind of really make a decision with a driver, and I was brought up old school in the business, and I call it having boots on the ground. I look at -- and we took the driver out for a road test.

Q. We'll get to the road test in a minute.

A. And that's what really tells -- a good example. I've seen drivers who have driven for 30 years and I don't consider them a good driver, and then I'll find somebody that's driven for five years who just has a natural knack and has all the necessary safety patterns. So now I'm looking at the driver, I'm looking at his application, and I'm looking at his MVR. And the minor things -- and, you know, Jeremy explained some of them away, as most drivers will, as to what they are, and if they're minor in nature, if they're old, and when they were

younger and such.

Q. Did you see anything in the motor vehicle record of Mr. Jupiter that disqualified him as an unsafe driver such that you shouldn't hire him?

A. No.

MR. ISRAELYAN: Can you be -- objection. Can he make a reference to a specific motor vehicle report? Because none exists.

THE COURT: Overruled.

MR. VITUCCI: Objection.

THE COURT: Overruled. And please, no commentary. You may cross examine on that, to the extent you haven't already asked about it, which you have at length.

BY MR. VITUCCI:

Q. When you went over his record, did you see that he had some tickets?

A. Yes.

Q. Such as, he didn't park his truck correctly? Did you see that?

A. Yeah.

Q. He didn't have a child seat?

A. I believe so, yes.

Q. Did you see he didn't have his registration card or insurance card? Did you see that?

A. Yes.

Q. He did apparently roll through a stop sign. You saw that?
A. Yes, I believe so.
Q. And he had a speeding ticket at one point, right?
A. Yes.
Q. And about a total of four points on his license. Do you see that?
A. I believe so, yes.
Q. Was there anything in there that disqualified him from being a driver for your company?
A. No. Average truck driver runs 2 to 3,000 miles a week, depending on where he's running. If he's working 50 plus weeks a year, that's a lot of miles. You're in a big rig, you've got a lot of visibility, and you're under a lot of scrutiny. So different things, some in personal vehicles, some in a truck, you've got to take some of that into consideration.
Q. Did he have a valid commercial driver's license when he was hired by your company?
A. Absolutely. Absolutely.
Q. Now, you mentioned that there was a driving test given to Mr. Jupiter; is that right?
A. Yes.
Q. Is that an Anastasio & Son requirement, or is that a CDL requirement, or a government requirement? Tell us.
A. It's an Anastasio requirement. It was a CDL requirement, but since they have the CDL and, you know, it's kind of -- in

the industry, we laugh at it because now, the state says, by virtue of a CDL license, federal CDL license, that you're authorized to drive a tractor trailer which -- tractor trailer being a Class A. Your certification. Then they go further to give you different endorsements. If you have air brakes, if you have hazardous materials, tanker endorsement, and so on. So they kind of did away with it. We still do it because we want to know what the driver's like, even though he has a valid license. And he did -- in fact, the driver that took him out is one of our old timers, and still with us. Guy by the name of Larry Bell.

Q. What did Larry Bell have to say about Mr. Jupiter and his driving?

A. Excellent. Excellent driver. Had it down right away. Was very, very pleased with him.

Q. After you hired Mr. Jupiter -- well, you did hire him, right?

A. Yes, I did.

Q. After you hired him, did you put him on any particular routes?

A. Yeah. Jeremy kind of right away got into coming down here into the City and into Jersey delivering loads down and picking loads up. He had a real knack for it. As he explained, we haul a lot of very long steel that goes into the building of a lot of buildings. So you come down into Manhattan a lot of

times, Queens, Brooklyn, and into parts of Jersey with sometimes 70 and 80-foot beams. So you got a trailer that's 48-foot long already, and it actually opens up the bed, it's threaded, there's like a frame within a frame and it opens up at 5-foot increments, and you open it up to 60, 65, 70 feet long, and then you still have an overhang. And then you come down and navigate your way through the streets and find where the job site is.

Then generally you've got to get underneath the crane to get unloaded, so a lot of times you're backing into a place. And sometimes you're lucky enough to have a little extra room, sometimes it's extremely tight. Sometimes you have to do what they call back on the blind, which means, as a trailer driver, you always want to back on the driver's side so you got your good visibility and you can look out your window. If you can't, and you're coming down the street, and you have to back in on the right because there's no other way, either one-way street, or traffic, or parking, or whatever, then you're what you call backing on the blind.

And what happens is, once that trailer starts to tilt on an angle, you lose visibility, you lose the back of your trailer, so you've got to have a real knack. We do have remote control mirrors, especially the passenger's side, where you can follow it to a certain degree, but it takes a certain skill to back that on the blind, and that's what blindside backing is.

And he did great. A lot of the jobs down here, they used to request him, because he got in and got out fast. You know. Sometimes the other drivers would get down, and they'd have to take three, four, five shots, and you're tying up traffic and holding up a crane. So they would --

Q. Did you find he was able to safely deliver his loads?

A. Yeah. Yeah. In all the years, this was the one incident, and a couple minor, minor, minor scrapes.

Q. You mentioned the prior minor scrapes. I think you said they're not DOT reportable; is that right?

A. Yes.

Q. What are DOT reportable accidents?

A. DOT recordable accident is if there's, God forbid, a death or injury, or there is -- a vehicle has to be towed from the scene with disabling damages that can't be repaired on the scene.

As an example, if you got into a minor scrape and you cut a tire and you can just change the tire right there, then you're okay. But anything beyond that, any kind of serious -- well, disabling damages. Which it doesn't necessarily have to be a lot. It's disabling damages or anybody hurt, then it's a DOT recordable.

Q. Is a DOT recordable accident defined in the Federal Motor Carrier Safety Regulations, particularly at Section 390.5?

A. Yes, it is.

Q. Are you familiar with that definition?
A. Yes.
Q. And is it in accord with what you just said, sir?
A. Yes.
Q. Those two minor incidents that we heard about that you testified about, you didn't report them, right?
A. No.
Q. Why?
A. There was no reason to.
Q. Now, we had some testimony the other day about what's on these containers. Do you know what conspicuity tape is?
A. Yes.
Q. Can you tell us what conspicuity tape is and what it's put on in your business?
A. Yes. A number of years ago the federal government passed a law that all trucks and trailers have to have conspicuity tape.
Q. You have trouble with that word, too?
A. I didn't, and then you got me -- but what it is is a reflectorized colored tape, a red and a white, sometimes it can be yellow and black, number of different colors. The most recognized is a red and white. And it goes all around the perimeter of a truck or trailer. Sometimes it's put vertically and on the bottom, as well as the top. And it's really a great thing, because when you come up on it at night, and especially a trailer being so long, what was happening is on a dark road,

it would be coming across an intersection, and if the lighting wasn't good, cars can run into the side of a truck or trailer, because it's so long, and there was nothing lit. You had one marker light that was lit halfway down the trailer. That's what the DOT requires. And if something happened or it was a scrape and it was out, you had nothing. So now you have this reflectorized tape that your eye catches right away.

And it's also good if a trailer is parked on the side of the road. Sometimes a guy pulls over to go to sleep or breaks down or whatever, you have that immediately reflectorized tape.

Q. Now, you've seen, correct me if I'm wrong, conspicuity tape on the containers that you ship; is that right?

A. Yes.

Q. On the standard sized containers?

A. Yes.

Q. Do you guys put the conspicuity tape on or is that done by somebody else?

A. No, it's done by whoever --

Q. Is it taped generally up at the top on all the containers that --

THE COURT: Let him finish his answer. What was the answer? It's done by somebody else?

THE WITNESS: It's done by somebody else. We've put them on our own vehicles and our own truck and trailers.

Q. On the containers, have you seen the conspicuity tape on

the top of the standard size containers?

A. Everybody puts it someplace different. Some people put it, some people don't. You know what I mean? It's just one of these things. But yes, I've seen them all over the place.

Q. Now, there's been testimony in the courtroom, you would hear from Mr. Jupiter who told you about the tragedy he underwent, he lost his leg?

A. Yes.

Q. After that happened, did he come back to work for you?

A. He did.

Q. Did you take him back?

A. We were very happy to have him back.

Q. Why?

A. Two things. One, he was a great driver. Going back to what I said before, I consider everybody that works for us as part of the family. Jeremy went through a very, very tough time. He's a proud guy, and he went through a very bad accident. And I think that, you know, he -- from day one, he wanted to get back. He really wanted to get back. He loved driving. And he stood in contact with us, and we were happy to be able to bring him back.

Q. Sir, when you brought him back, was it your understanding that he had to get some sort of certificate from the National Department of Transportation?

A. Yes.

Q. Why?

A. Certain circumstances you need to get a waiver from -- the medical waiver from the DOT.

Q. Would one of those circumstances be driving with a prosthetic leg?

A. Yes.

Q. And did he present a certification that he had?

A. He did.

Q. To your understanding, did he have to do a road test to obtain that certification?

A. He did.

Q. To your understanding, did he have to do a full physical examination or submit to a full physical exemption to get that certification?

A. He did.

Q. And he presented that all to you?

A. Yes.

Q. Did you road test him again?

A. Yes.

Q. Why?

A. Just for standards because we were kind of rehiring him. But he did great.

Q. Did you do it or did somebody else do it?

A. I was actually present. You know. I kind of feel awkward saying it, even though he did a great job, but there was

something physically different about him, and I wanted to make sure -- even though I wanted to give him the chance, I wanted to make sure that he was comfortable and he could handle it, and I was comfortable with him handling it.

Q. So tell us a little bit about what you're talking about there. Did you want to see himself, if he demonstrated a physical capacity to be able to do this?

A. Yes. And, you know, flatbed, if I may, counselor, is a lot more exertion than a box trailer. A box trailer is closed in, something like this container, but it's part of a trailer. And what a guy does is he backs up to a dock, opens the doors, and a forklift will unload or somebody hand unloads it.

On a flatbed, you are up and down off of that flatbed, you're chaining, you're strapping, you're tarping lumber tarps, they can weigh a couple hundred pounds, and you're rastling with them on top of a load, they could be as high as 12 or 13 feet, dropping them down the sides, climbing down the sides, and then bungeeing them with rubber bungees to hold it affixed to the load. Being a former athlete that he was, he did it tremendously. He really, really was good on the agility and the driving.

Q. How did he do on the driving?

A. Same old Jeremy.

Q. Good?

A. Excellent.

Q. Now, at some point that certification lapsed; is that right?

A. Yes.

Q. Did you know about it?

A. There was a misunderstanding. Typically, once you get a waiver, his -- two things. Every driver has to get a DOT physical, which a doctor has to go -- no, actually, a DOT certified doctor gives you a complete physical, tests for everything physically, as well as checks for diabetes and that type of thing.

Typically, once you get that, and then you go for your physical and you maintain your physical, which has to be done every two years, that overrides it. So the assumption was that, because he had gotten a more recent and valid DOT physical, as well as his CDL license -- in fact, a month after that federal waiver expired, he got a new CDL license. So if there was something wrong, it would have immediately triggered and stopped the CDL license coming in. So I'll call --

Q. Did you receive any kind of notification that there was anything the matter with the CDL license?

A. No. Just assumed that the DOT medical that he got and the valid license, that it just rolled right into that.

Q. Mr. Anastasio, just wait until I'm done with my question because she's can't --

A. I'm sorry.

Q. -- she's making faces at you, and they're mean.

Sir, you never received any notification from any source that there was anything amiss with Mr. Jupiter's driving privileges; is that right?

A. No, sir.

Q. At some point, Mr. Jupiter did have a suspension; is that correct?

A. Yes, prior.

Q. Did he ever drive for you while he was on a suspension?

A. Absolutely not, no.

Q. Sir, did this accident have anything to do with Mr. Jupiter's driving abilities?

A. Absolutely not.

Q. In other words, his leg didn't fall off and that caused him to hit a bridge; is that right?

A. No, no.

Q. Sir, how did this container -- how did this high cube container get on the flatbed on July 17th of 2012? Do you know?

A. It is one of those --

Q. Let me withdraw the question.

Sir, could this have been a simple mistake that this container ended up on your flatbed?

A. That's exactly where I was going to go. The freakish of incidences.

Q. Did you have any notice or knowledge that Mr. Jupiter was transporting a high cube container on July 17, 2012?

A. Absolutely -- he wouldn't have hauled it, and I wouldn't have allowed it.

Q. And again, that never happened before, did it?

A. Never, and never happened since, thank God.

Q. Never happened since?

A. Never. Still hauling a lot of containers.

MR. VITUCCI: I have no further questions, your Honor. Thank you.

Thank you, sir.

THE COURT: Any redirect?

MR. ISRAELYAN: Yes, briefly.

REDIRECT EXAMINATION

BY MR. ISRAELYAN:

Q. Mr. Anastasio, you were making reference to MVR report that you looked at it before you hired Mr. Jupiter. Where is that MVR report?

MR. VITUCCI: Objection, asked and answered on direct, your Honor.

THE COURT: You can ask it.

Q. Did you give a copy of that MVR report to your attorneys?

MR. VITUCCI: Objection, asked and answered.

THE COURT: Sustained. So the MVR report that you looked at, did you keep a copy of it?

THE WITNESS: I didn't have it to turn in. The problem with it has been, since the accident and the history, remember Jeremy started 2005, and people transitioned out, and then when this accident happened, the file got moved in several places, that there's parts of it that we don't have. I can assure, though, however, that there was an MVR, because no driver is even given a driving test until we have a chance to see if he has an MVR and he has a valid license. So that's how sure I am in knowing it. And I generally get the review of that before he gets into a truck.

Q. How many accidents did Jupiter have before you hired him?

MR. VITUCCI: Objection, asked and answered on direct.

THE COURT: Sustained.

Q. You were talking about a driving record of Mr. Jupiter on the cross examination. The driving record of Mr. Jupiter that you have, is that normal for your drivers to have a driving record like that?

MR. VITUCCI: Objection, your Honor.

THE COURT: I'll allow it.

THE WITNESS: Each driver varies. You know. As I said, with the amount of miles put on and the history of their driving, there's different situations, and we take each one and look at it and review it, and make a decision from there.

Q. Do you have drivers on the roads now that have the driving record similar to Jupiter?

MR. VITUCCI: Objection.

THE COURT: Just wait. I'll allow it.

THE WITNESS: I wouldn't know what similar is. I don't know what you're --

Q. Do you have drivers on the road that have more violations on their driving record than Jupiter had?

MR. VITUCCI: Objection, relevance.

THE COURT: I'll allow it.

THE WITNESS: I would say we look at each driver, and we review his record, and there are some drivers that we have that are spotless, there are others that may have a few infractions. There's certainly no driver that's out there that has crazy stuff, DUI, stuff like that. So we take it under consideration, and we look at the driver, and his driving ability, and what each infraction is.

Q. The SPE certificate that you were talking about on the cross examination, did your company apply for the renewal of that certificate?

A. It wouldn't be ours to apply for, it would be Jeremy's.

Q. Are you familiar with the procedures for application for renewal?

MR. VITUCCI: Objection, beyond the scope, your Honor.

THE COURT: Sustained.

Q. The original certificate that was obtained by Jupiter, that was a single application, correct, that was not a joint with

your company?

MR. VITUCCI: Objection, beyond the scope, your Honor.

THE COURT: Just wait. I'll allow it.

Q. I ask you to look at Plaintiff's Exhibit 21. Did you apply for original special skill performance evaluation certificate jointly with Jupiter?

A. No, I don't recall. I believe he came to us with it.

Q. All right. Now, tell me, how many accidents did Jupiter have before July 17, 2012?

MR. VITUCCI: Objection, beyond the scope.

MR. ISRAELYAN: Well, they were talking about accident on cross.

THE COURT: Hang on. Before July 17, 2012, how many accidents had he had?

MR. ISRAELYAN: Yes. How many accidents did Jupiter have?

THE COURT: That is beyond the scope.

MR. ISRAELYAN: I'm sorry?

THE COURT: That is beyond the scope, and I thought you covered that thoroughly on direct.

MR. ISRAELYAN: Well, he ask about accidents.

THE COURT: Why don't you just move on.

MR. ISRAELYAN: Okay.

Q. The number of accidents that Jupiter had before July 17, 2012, is that normal for the drivers in your company?

MR. VITUCCI: Objection, beyond the scope, your Honor.

THE COURT: I'll allow it.

THE WITNESS: What Jeremy had prior, to my recollection, were the two, and we call them incidents because they were so minor in nature. I think that any trucking company over a span of that long would be proud to have a driver that only had two incidents that minor in nature.

Q. Answer my question if you can. The number of accidents that Jupiter had before July 17, 2012 accident, in your opinion, that is normal for drivers of your company to have?

MR. VITUCCI: Objection, asked and answered.

Q. Yes or no, if you can answer.

THE COURT: You can answer it if you know what it means.

THE WITNESS: Unless it's different, your Honor, from the answer I just answered, answering the question I just answered, I don't know what else to say.

THE COURT: He wants a yes or no answer. If you can't answer it yes or no, you can just say that.

THE WITNESS: I can't elaborate any more than I just did. I'm sorry.

MR. ISRAELYAN: All right. That's it.

THE COURT: Okay. Anything else?

MR. VITUCCI: No, your Honor.

THE COURT: Okay. You may take your seat.

THE WITNESS: Thank you.

THE COURT: Ladies and gentlemen, we're going to break for lunch now. If you could be back here at 1:45, that would be good. That's about an hour and 15 minutes. Remember not to talk about the case. Thank you.

(Jury not present)

THE COURT: Mr. Street, do you want to give them their times?

THE DEPUTY CLERK: Sure. Plaintiff has 102 minutes.

THE COURT: Left?

THE DEPUTY CLERK: Yes. Defendant has 275 minutes, which is roughly 4 hours and some change. No, I'm wrong. Yes, roughly 4 hours and some change. Yes.

THE COURT: Okay. I just want to caution everyone to just be conscious of your time. So don't ask questions you've already asked, just to conserve your time. We'll see you after the break.

(Lunch recess)

(Continued on next page)

AFTERNOON SESSION

(1:50 p.m.)

(In open court; jury not present)

THE COURT: Mr. Israelyan, the there are four witnesses left -- the economist, defense expert and the two plaintiffs -- what I would like you to do is tell me how you've allocated your time amongst them.

MR. ISRAELYAN: Your Honor, I respectfully request a little bit more time be extended to plaintiffs to complete their case. I will try to do my best to complete it, but if I run out five, ten minutes, I don't want to be --

THE COURT: What I want to know is how you've allocated it amongst the four. That's the better way to control it.

MR. ISRAELYAN: I do not expect to be more than 20 minutes with Ms. Kucsma.

THE COURT: Okay.

MR. VITUCCI: Probably about 20 minutes on cross-examination of the defendants' biomechanical engineer. That leaves me another 60 minutes with --

THE COURT: How much time did plaintiffs have left?

MR. ISRAELYAN: 102.

THE COURT: That is an hour and 40 minutes. You have an hour left for the two plaintiffs, is that the way --

MR. ISRAELYAN: Yes. Approximately 20, 25 minutes

with Maristella Manlapig, 35 to 40 minutes with Mr. Manlapig.

THE COURT: Okay, so 20 for Kucsma, 20 for the biomechanical expert, 25 for Ms. Manlapig, 35 minutes for Mr. Manlapig, and that is all of your questioning, direct and redirect.

MR. ISRAELYAN: I understand.

THE COURT: Cross and recross.

I will hold you to that. It is a little bit more time than you were allocated. That's fine. If you're getting close, Mr. Street will give you a five-minute warning or he will give me to give you a five-minute warning, so you know.

As I said, you do have a tendency to ask the same question over and over again. You'll, obviously, have the opportunity when you sum up to make your argument. All you need to do is get it into evidence.

MR. ISRAELYAN: Your Honor, you asked me if there's any documentation about future medical costs. I just would like to hand up plaintiffs' response to interrogatories, the physicians services of approximately $1,250,000 for past and future medical expenses, including future surgeries, radiological and diagnostic studies, follow-up with neurosurgeon --

THE COURT: I'm going to interrupt you. I'm happy to take a look at it. We can discuss it during the charging conference.

MR. VITUCCI: Our dispute earlier was about what the chiropractor had to say.

THE COURT: If it was fairly encompassed within their response, but I will look at it more closely. We'll talk about it later.

MR. ISRAELYAN: Okay.

(Continued on next page)

THE COURT: Welcome back. Hope you enjoyed lunch.

Okay. You may proceed, Mr. Israelyan.

MR. ISRAELYAN: Thank you. I would like to call Kristin Kucsma to the stand.

KRISTIN KUCSMA,

called as a witness by the Plaintiffs,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ISRAELYAN:

Q Good afternoon, Ms. Kucsma.

A Good afternoon.

Q Would you please tell the Court and the jury about your educational background.

A Sure. I have a Bachelor of Arts degree in economics that I received from Seton Hall University, where I was graduated with highest honors. I also have a Master of Arts degree in economics that I received from Rutgers University. I also did some additional course work above and beyond the Master of Arts degree.

Q Tell us about your practice.

A I am the managing director and senior economist of the Sobel Tinari Economics Group. We are a team of economists and analysts.

Most of the work that we currently do involves working on litigated matters, some of which are very complex matters

involving commercial damages, major pharmaceutical companies, industry research. And other matters are a bit smaller in nature and involve me working on employment-related matters, wrongful death matters, personal injury matters, and assessing the economic losses that have resulted in those types of situations.

Q Have you been published in the field of economics?

A Yes, I have.

Q Have you been awarded any awards in your field of expertise?

A Yes, I have.

Q Have you held teaching positions?

A Yes, I have.

Q And have you been retained by my office to perform an economic assessment of household services in this matter?

A Yes, I have.

Q Tell the Court and jury what are the household services from an economic standpoint?

A Yes, absolutely. Economics is what we call a social science, and it is a social science that studies how individuals use resources to produce goods and provide services.

And I have, as an economist, studied this for a couple of decades now, and one of my areas of expertise is American economic history. One of the reasons I was drawn to that is

because I wanted to examine very closely the transition from really household production into more market-oriented economies. And the reason that's important for my discussion today is because one, two hundred years ago, most goods, most services were produced within households by family members for other family members. Now, over time, of course, the factory system developed, the plantation system, and agriculture developed. We went through the industrial revolution. And one of the things we saw happening during this time was we saw a lot of goods that used to be produced exclusively in the household suddenly were being mass produced and sold in markets. During this transition, there was sort of a focus in our society. The focus became on those types of goods and services that were actually traded in markets. And the focus came off of some of the very important goods and services that continue to be provided in the household sector. In other words, we sort of forgot about what was going on in the household sector. From an economics standpoint, though, it is not only the services that are provided in markets that have real economic value, but there is a tremendous amount of legitimate productive economic activity that to this very day continues to take place in households. The reason that many people overlook it is because most of these household services -- doing the laundry, shopping, preparing meals, taking care of the yard, doing minor repairs -- most of these

things that we all think of as household services are typically done by one family member for another family member and family members typically don't charge one another for their services. Most moms, for example, don't put a bill on the table after they prepare a meal for their family, but that doesn't change the fact that that represents legitimate productive economic activity.

In fact, back in the 1930s the there was a Nobel prize-winning economist, Simon Kuznets, and he ultimately was awarded the Nobel Prize for several things, but one of the things that he did was he was one of the founding fathers of something called the national income accounting system. And that was a system that was ultimately developed and used, not only in the United States, but by countries all over the world to measure economic activity. So if you've ever heard the term gross domestic product or you hear them talking on the news about economic indicators, all of those statistics come out of the national income accounting system.

Back in the 1930s, when Simon Kuznets and other economists were discussing the development of this system, they had a concern because they realized that if they were going to calculate and add up all of the productive activity in the United States, they were going to have to focus exclusively on things that were being bought and sold in markets. They would have no way of measuring what was going on in households. They

considered this a serious shortcoming. They were very concerned about it because they acknowledged the fact that there was going to be a lot of economic activity still taking place that they were not going to pick up in these things like gross domestic product and so on. In fact, many economists since then, Milton Friedman, Alan Greenspan and others have expressed this concern.

Q I'm sorry. Let me stop you there for a minute.

In this case -- and you may explain it in the context of the work that you did in this case -- in order to assess the economic value of the household services, can you explain to the jury what did you do?

A Sure. In this case, in order for me to calculate the economic value of these services, I used a very common method that economists use and one that is being put into practice by the United Nations, and that is I considered the services that Mr. Manlapig was providing for the benefit of everyone in the household, either for the benefit exclusively of his wife and son or for the benefit of the entire household including him.

The first thing I needed to do in order to calculate the economic value of all of these household services was make sure that I had a very good understanding of what types of things Mr. Manlapig was doing in and around the house, how much time he was devoting to these services. That was my starting point for ultimately calculating the monetary or economic value of

those services.

In order for me to determine on average how much time Mr. Manlapig was spending on household services, what types of things he was doing, I visited the Manlapig home, and I interviewed Mr. and Mrs. Manlapig at length. In fact, I toured the property, I toured the house, I toured the basement. And while I was walking around the property with the Manlapigs, they gave me a very good detailed description of all the types of things that Rene used to do before he was injured.

Q Can you tell us what it is that you learned during your investigation and evaluation.

A Sure. I learned that Rene was the one that was primarily responsible for most of the household chores and the maintenance of the home. In the home, Rene was the one that primarily did most of the cooking. He was home typically about maybe 3:00, 4:00 from work. His wife typically didn't return home until about 7:00 p.m. He prepared the meals. He did most of the shopping. He did most of the laundry, most of the cleaning. He, in fact, was the only one that cleaned the bathroom. He installed cabinets in their kitchen. He did some limited tiling work. When there were minor plumbing and electrical repairs, he was responsible for that. Rene also maintained and took care of everybody's cars. He also maintained the outside of the home. That included a lot of landscaping responsibilities, mulching, power-washing the deck,

power-washing the home. In fact, Rene built the deck. They had a small shed in the backyard. They had a play set for the grandchildren. Rene's job was to maintain all of that. Those were just some of the examples of the work that Rene did both inside and outside the home.

Q Can you explain to us, understanding what Rene used to do, how do you come to an economic value based on the household activities that he was engaged in before the accident?

A Well, ironically, the development of markets took our focus off of the household sector, but at the same time, the development of the markets provided me, as an economist, with exactly what I needed to calculate the economic value of household services. The reason I say that is because in order for me to calculate the value of the household services Rene was providing to his family, I simply looked at the market, and I took into account the fact that every single day in this country people go to work and they perform household services. People drive children to and from school. People go to work every day and cook meals for other people. There are people who go to work every day and clean homes, clean pools, install decks, power-wash people's houses. So what I was able to do is simply look at data that is published by the U.S. Department of Labor, and I was able to look very specifically at the average hourly wage rate that people are paid, people that go to work every day, providing all the types of services for -- as their

job -- the types of services that Rene was providing for free so to speak for his family. Once I had those two pieces, once I determined on average how many hours each week Rene was spending on these activities and the average hourly wage rate that people in the marketplace were being paid to provide these services, I was then in a position to calculate the economic value of all of the household chores and maintenance that Rene was providing.

Q What did you determine to be average weekly hours that Rene spent on the household activities?

A Based on my review of U.S. Department of Labor data, very specifically something called the occupational employment statistics, I calculated the average hourly rate in 2012 at $13.60. This is based on actual data, data that reflect what people earned in 2012, specifically people that went to work each day providing household services and home maintenance occupations.

Q Did you reduce your analysis into a chart so it would be easy for the Court and the jury to understand?

A Yes, I did.

Q Allow me just to show you the charts. I have big posters here. But they're also contained in the Plaintiffs' Exhibit 56. Do you have a copy with them?

A I do, yes. Thank you.

Q If you can possibly explain as to what they're looking at

and how did you come up with those calculations.

A Sure, absolutely. If we look at the chart that is up there, what you will see is, in column 1, the years. I started with the year in which Rene was injured. He was injured in July of 2012, so I'm only going to look at the last 46 percent of 2012. We see the years continuing up through the present time, 2016.

What you will see in column three are those hourly rates I just mentioned. You see the average hourly rates that people were earning, for example, in 2012, the figure of $13.60 I mentioned. And again, these figures are a reflection of, on average, how much individuals were in fact earning, specifically individuals that went to work each day performing household services and home maintenance as their primary occupation.

Q This is the past pecuniary, which means economic, losses for household services?

A Yes.

Q From the date of the accident until the present time?

A That's correct.

Q Did you also do a similar analysis for future economic losses?

A I did, yes.

Q That is also contained in Plaintiffs' Exhibit 56. Could you explain to us what we're seeing here today?

A Sure. There are a couple of things I'll probably need to explain, but first and foremost, in order for me to calculate the economic value of the household services that Rene would have continued to perform if he hadn't been injured, I needed to start by determining how far into the future Rene would have continued to perform these household services. In order for me to determine that, I needed to consider Rene's statistical life expectancy.

Q What is Rene's statistical life expectancy?

A Based on my review of the national vital statistics reports, I determined that Rene's statistical life expectancy is through June 10, 2036. In fact, you will see that that is where the calculations here on this chart end.

The other thing I should point out is, if you look at column four, in addition to determining on average how much Rene's services were worth per hour, I need to determine on average how much time he was spending each week to the provision of household services. Based on my interview of Mr. and Mrs. Manlapig, based on my review of their property and their home, I ultimately determined that, on average, Rene was spending 30 hours per week on household chores and home maintenance or 1,560 hours per year. That's where we get the figure.

Q Let me ask you another question. Why is it that we see the number of hours are going down as Rene is getting older?

A That is a very good question. In order for me to calculate the losses in this case, I had to take into account that even if Rene had not been injured in July of 2012, something would have happened to him probably that probably will happen to most of us; and that is, as Rene got older, he would probably reach a point where he didn't do quite as much around the house and the yard as he once did. So, certainly, when he was age 65, statistically speaking, he probably wouldn't be doing quite as much as he was doing when he was age 50, for example. What you see at the year 2020 and again at the year 2030, I have made a downward adjustment to the number of hours Rene would have spent on household services to take into account the fact that when he turned 65 and again when he turned 75, he would probably experience a reduction in his functionality. The reason I say that is because I have reviewed U.S. government data, very specifically U.S. government data about the functionality of males and females as they age, and that was how I was able to determine the appropriate downward or the appropriate reduction in the number of hours that Rene would experience as he aged.

THE COURT: Five minutes.

Q Up here it says 3.9 percent. What is the significance of that?

A I had to take into account that the wage rate for individuals providing household services in the market has been

increasing each year over time and is expected to continue increasing each year in the future. Based on my review of U.S. Department of Labor data, as well as the annual report of the Board of Trustees of the Social Security Administration, I was able to determine that wage rates for these occupations will increase, on average, by 3.9 percent each year going forward; some years, more some years less.

Q Ms. Kucsma, did you sum up your findings in the summary chart?

A Yes, I did.

Q I'm showing you page 3 of the Plaintiffs' Exhibit 56. Could you just tell us what we're looking at?

A Sure. In this case, I have provided my calculations of the economic loss assuming that Rene is capable of doing only 10 percent, 20 percent or 30 percent of what he could do prior to his injury. So, for example, if Rene is still capable of performing about 30 percent of the household services he could do before his injury, he would be entitled to a 70 percent loss, and I have calculated the loss of household services by simply taking the figures you see in the far left column.

MR. VITUCCI: Your Honor, I have an application that needs to be heard.

THE COURT: You want to make an application right now?

MR. VITUCCI: Yes.

THE COURT: You want a side bar to do it?

MR. VITUCCI: Yes.

THE COURT: I'm going to let this witness finish her direct first, and then we can have a side bar.

THE WITNESS: I calculate the economic value of the lost household services by simply taking the figures in the far left-hand column and multiplying them by .7. Alternatively, if Rene were capable of performing only 10 percent of his preinjury level, he would be entitled to a 90 percent loss. I took the figures in the far left column and multiplied them by .9.

In fact, what I have done here is provided a framework that can be used by the trier of facts and adjusted so that ultimately when the trier of facts determines what the appropriate reduction in household services is, they will be able to use those figures on the far left column, multiply them by the appropriate loss figure, and determine what the appropriate economic damages would be in this case.

Q What is the present value of this --

THE COURT: No.

MR. ISRAELYAN: Okay. All right.

Q The opinions that you rendered today, were they rendered within a reasonable degree of economic certainty?

A Yes, they were.

MR. ISRAELYAN: Thank you very much.

THE WITNESS: Thank you.

THE COURT: I don't normally take side bars, but since this is the first request, I will.

(Continued on next page)

(At side bar)

THE COURT: Mr. Vitucci.

MR. VITUCCI: My objection was a little untimely, but I assumed that the chart that was going to go up was going to be the one that was exchanged before we got to the courtroom, and that provides a growth rate of 3.7 percent. The witness has testified to a chart of 3.9. I got no exchange about this. I'm severely handicapped in cross-examining her. This was never amended. It was never brought to our attention. I had no idea what was on this chart until I stood up to look at it.

THE COURT: Mr. Israelyan.

MR. ISRAELYAN: This is very simple. These documents were given to him with the books before the trial. The second thing, this is the same documentation, same information. She just updated them.

THE COURT: The only thing he is protesting about is the 3.7 percent versus 3.9 percent on page 2.

MR. ISRAELYAN: I think that is fertile ground for cross-examination.

MR. FRAGGETTA: It is 3.7 on yours.

MR. ISRAELYAN: That is the old one.

MR. VITUCCI: The one he exchanged in the expert exchange says 3.7. I assumed that was going to be what the testimony would be in accord with what has been exchanged. This is the only expert exchange we've had.

MR. ISRAELYAN: If you want, you can cross-examine her. It is a good ground of cross-examination.

THE COURT: What relief do you want?

MR. VITUCCI: I would like the testimony stricken.

THE COURT: I'm not going to strike her testimony, but I can have her assume it is 3.7, which is what she did before.

MR. VITUCCI: Yes.

THE COURT: Okay. I will do that.

MR. ISRAELYAN: What are we doing? I'm sorry?

THE COURT: I'm going to instruct her and the jury that they should assume the growth rate for wages is 3.7 percent and not 3.9 percent because that is what was previously disclosed and that's what the cross-examination would be based on.

MR. ISRAELYAN: Let me clarify that.

MR. VITUCCI: May I use the doctor's report, her report to cross?

THE COURT: No. He is going to clarify it. We will see how it is, and then we'll go from there.

(Continued on next page)

(In open court; jury present)

MR. ISRAELYAN: May I.

THE COURT: You may.

BY MR. ISRAELYAN:

Q Ms. Kucsma, when you originally did this evaluation, when was that evaluation performed?

A My original report was dated July 20, 2015.

Q And for the purposes of this trial, did you just update the records to bring them up-to-date?

A Yes, I did.

Q There's something that was brought to my attention, and I would like you to explain it to us, because in the original report the growth rate was noted --

THE COURT: Actually, let me do it. In the original report, the original growth rate for the wage rate was 3.7 percent, and in this document, it is 3.9 percent. Because of the rules of the court, we adhere to what was disclosed to the other side. The jury has heard testimony about what was disclosed, what was not disclosed. And generally speaking, the parties must disclose what they're going to do because we don't believe in trial by ambush. The lawyers don't, the courts don't.

Since it was 3.7, I'm going to ask you to assume for purposes of your cross-examination that it is 3.7.

THE WITNESS: Okay.

THE COURT: All right.

THE WITNESS: Yes, your Honor.

BY MR. ISRAELYAN:

Q Would you please explain to us, if the growth rate was 3.7, what difference would it make on the numbers that you have in front of you?

A In this case --

Q Let's go over to your 2014 evaluation and just look at those numbers for the future.

A Sure.

Q They're not in front of the jury. If the growth rate is 3.7, what is the number for the future?

A I made two updates, your Honor. Not only did I update the growth rate, but the future in my original report began in 2015 because I prepared my original report in 2015. The future figures during today's testimony, of course, begin in 2016.

THE COURT: The past goes through 2016.

THE WITNESS: That's correct.

THE COURT: Is there some way you can just give us the totals that we should be using based on your prior report?

THE WITNESS: Absolutely.

In my prior report, when I calculated the value of household services in past years, that was through October 1, 2015, I calculated the economic value of the household services at $69,390.

THE COURT: Now we're on page 3 of this exhibit under past years. The number that is $86,000 and change should be what?

THE WITNESS: It should now be $69,390, with the understanding that goes only through September 30th of 2015.

THE COURT: Okay.

THE WITNESS: And then the figures on the next page for the pecuniary value of future services, in my original report, those calculations started October 1, 2015, and I calculated the economic value of household services in future years in my original report at $600,768.

THE COURT: That reflects two changes. One is that past services conclude October 1, 2013 and the future services begin that date, and it also assumes an increase in the wages at a rate of 3.7 percent rather than 3.9 percent. Is that right?

THE WITNESS: Yes, your Honor.

THE COURT: Thank you.

Mr. Israelyan, you may be seated.

MR. ISRAELYAN: Thank you very much.

CROSS-EXAMINATION

BY MR. VITUCCI:

Q Good afternoon, Ms. Kucsma. How are you doing?

A I'm doing well. How are you?

Q I'm doing well.

Did I pronounce your name right?

A You did. Thank you for asking.

Q We haven't met before; have we?

A No, we have not.

Q It is a pleasure to make your acquaintance.

A Same here.

Q Now, you're just here to give us a projection as to the loss of household services; correct?

A Yes.

Q Lost wages, not a part of your calculation?

A That is correct.

Q Future health care costs, not a part of your calculation?

A That's correct.

Q Now, you have issued certain charges for your services to date; is that correct?

A My firm has been paid for my work to date, that is correct.

Q About $8,000; is that correct?

A Yes.

Q Is it more now?

A We, I believe, billed about $8,000 for the research and the preparation of the report, and we also billed $4,100 for my time here today.

Q That's at a rate of $345 an hour for you, or am I wrong with that?

A Our fee for half day trial appearance is simply for a half

day trial appearance. It is not based on an hourly rate.

Q Before you came here today, was it $345 an hour?

A It was $345 for the actual research that I did. It was $470 per hour for any sort of in-person research I did, which involved of course my interview of Mr. and Mrs. Manlapig as well as my review of their property.

Q Now, Ms. Kucsma, you were retained by plaintiffs' counsel in this case; correct?

A Yes.

Q Has he retained you before?

A I believe -- he certainly has retained me once before and possibly two or three times.

Q That was a matter you testified in; right?

A The one time I'm thinking of, yes, it was.

Q The Batista case?

A Yes, it was.

Q Were you retained on any other occasions?

A I don't believe so, but we work with thousands of attorneys and hundreds of cases each year, so it is possible I worked on other cases with him, but the Batista one is the only one I recall.

Q Now, you did an in-person consultation with Mr. Manlapig; correct?

A Yes.

Q Him and his wife?

A That's correct.

Q I believe that's $470 an hour, the in-person consultation?

A That is my firm's fee, yes.

Q And you drove from -- where did you come in from to see him?

A That day I came from my headquarters, which is in Livingston, New Jersey.

Q You drove to where?

A I drove to the Manlapig's property, which was --

Q It's on Long Island; right?

A Yes, it's on Long Island. I don't have the address.

Q Where on Long Island?

A Bay Shore, perhaps. I don't recall the specific address as I sit here today.

Q You met with them at their house?

A Yes, I did.

Q You walked around and looked at it?

A Yes, I did.

Q How long did you meet with them?

A I don't recall specifically, but I was there, I believe, for a couple of hours.

Q What time of day?

A Afternoon.

Q Okay. You testify quite a bit; correct?

A Yes, I do.

Q How often do you testify?

A I would estimate that I testify in court approximately 30 to 35 times each year.

Q Now, in connection with your being retained, you also prepared a report; correct?

A Yes, I did.

Q It is about nine pages long?

A Let's see. Without the exhibits, it is 10 pages long.

Q Okay. I misspoke.

A But very close.

Q All right. A lot of it is boilerplate; is that correct?

A No, actually most of this report is not boilerplate. Much of this report contains information that was based on my interview of the Manlapigs as well as my review of the property.

Q Did you prepare the report?

A Most of it, yes.

Q Who else prepared the report?

A I did have the assistance of one of my senior analysts.

Q So most of the information you put in the report?

A Yes.

Q How long did it take you to prepare this report?

A That I don't recall.

Q Well, is there anything atypical about the report in front of you?

A There is nothing atypical other than the in-person review of the property. That's not something that I necessarily do in every case, but in this case I had a plaintiff who had reported to me that he was performing above average, sort of more than average household services, and I felt it was appropriate and necessary for me to go and interview him in person.

Q In the actual preparation of the report, the 10 pages, have you prepared a 10-page report before?

A Yes.

Q How long does it take you, the actual preparation of the report?

A It could be anywhere from 8 or 9 hours to 20 hours. It really depends on the type of research necessary to actually prepare the report.

Q After you prepare it, I take it you proof it; correct?

A Yes.

Q You go over it and make sure it is correct?

A Yes, I do.

Q Make sure all your numbers are accurate?

A That's correct.

Q You make sure your growth rates are accurate?

A That's correct.

Q You make sure all your figures have been added up correctly?

A That's correct.

Q Did you do that in this case?
A Yes.
Q How long did you go over your report to make sure everything was correct?
A I have no idea.
Q Before you came into court, did you prepare for court?
A I did. I reviewed my file, and I updated my calculations.
Q How long did it take you to go over your file and update your calculations?
A I would estimate that it took, at most, an hour to update the calculations, and it probably took an hour or two for me to review my file.
Q You wanted to go over your figures to make sure everything is accurate; right?
A That's correct.
Q If your figures are wrong, it is a bad thing for an economist to have the wrong numbers; right?
A Probably, yes.
Q That is your job.
A That's right.
Q We don't have any other economists coming in, just you.
A That's good, I guess.
Q You would not come before this jury and come forward with anything that was incorrect in terms of your numbers; right?
A That's correct.

Q Okay. Now, ma'am, when you did these projections, you told us about your hourly rate, you came out with -- what was the hourly rate?

A The hourly wage rates in the past were $13.60 in 2012, $13.74 in 2013, $13.92 in 2014, $14.09 in 2015, and then I projected the hourly wage rate in 2016 at $14.25.

Q You used a different growth rate than we went over with the Court just a moment ago. 3.9 percent was the growth rate. You originally projected 3.7. Is that correct?

A That's correct.

Q When you got to the 3.7, I believe you did the first couple of years at a lower growth rate before you got to 2016; am I correct?

A No, you're actually not correct, but I know why you asked that question.

Q Okay.

A If you look at the footnote on page 7 of my report, you'll see that we note that the yearly increase -- basically, what we did was we calculated the average annual increase for each year in the future, and we did assume for purposes of calculating that average that the growth rate from 2015 through '17 would be 1.2 percent. After that, according to the annual report of the Board of Trustees of the Social Security Administration, the annual growth rate in 2018, 2019, '20 was in excess of 4 percent, close to 5 percent in some years. So we considered

1.2 percent in those first couple of years and then took the actual projections from the Board of Trustees of the Social Security Administration and took an average of all of those. We didn't specifically use 1.2 percent to calculate the wage rate in '15, '16, '17, but it is part of our average, which is why I ended up with an average of only 3.7 percent, which is lower than many of the projections in the Board of Trustees report.

Q You mentioned before your initial report and you did a table in there; correct?

A Yes.

Q Okay. And those first years, 2015, 2016, and 2017, you had certain numbers; correct?

A That's correct.

Q You said you multiplied by 1. --

A .37.

Q Why didn't you use 1.02, like you just said?

A If I had used 1.2 percent for years '16 and '17, I then would have used growth rates in excess of 4 percent in subsequent years. What I did and what I felt was more appropriate, since I was considering two different data sources, U.S. Department of Labor data and Social Security Administration data, was I simply took an average of those growth rates, 1.2 percent in some of the earlier years, in excess of 4 percent in later years, which gave me an average

annual increase of 3.7 percent.

Q If you said initially that you multiplied by 1.02, those numbers are incorrect in your table?

A I didn't say that. I do apologize if the footnote is a little confusing, but that's not what we did. As I said in this case, we say the yearly increase is an overall compound growth rate that encompasses two assumptions. It is a singular compound growth rate. That's what that footnote says. And it says, in order to get that singular compound growth rate over the entire period, I did assume, number one, that wage growth from 15 to 17 would be 1.2 percent, and I then used after 2017 the wage rate projections found in the Board of Trustees report. That is very clearly what that footnote states.

Q Now, you went over your education before. You were educated at Rutgers; is that correct?

A Yes, I was.

Q I'm correct in saying Rutgers has a bachelor's program; correct?

A Yes, they do.

Q And Rutgers has an MBA program; right?

A I believe they do, yes.

Q There's a master's program, they also have a doctorate program?

A They do.

Q You list after your name at least in your promotional

research ABD. That means all but dissertation; is that correct?

A That is correct, yes.

Q There is no such degree as an ABD; is there?

A No, that's correct. It simply stands for "all but dissertation." That's correct.

Q And you never did your dissertation?

A I did not finish it, no.

Q Is that because you're busy doing this?

A No, it is actually because I had family emergencies, and I felt I really needed to put my family first at the time.

Q You got your degree 23 years ago; right?

A That is correct, yes.

Q Now, just to go over, you gave us a range here between two figures, 469 and 603 as a total, at least originally, your original projection before your update?

A That is correct, yes.

Q This range of loss assumes a degree of impairment; correct?

A Yes, it does.

Q You left that for the jury to decide?

A Absolutely, yes.

Q But you did give two estimates, 70 to 90 percent impairment; is that correct?

A I technically gave three, really for illustrative purposes. I wanted to make sure that it was very clear to the reader how

they could use my framework to determine the appropriate economic losses in this matter.

Q You're not suggesting to this jury, then, a 70 to 90 percent impairment figure; are you?

A No, I am not.

Q Your figure is just a total figure, and they're to plug in what they feel the degree of impairment is?

A It could be 95 percent, it could be 52 percent. That's correct.

Q It could be zero percent?

A I suppose it could be, yes.

Q It could be 20 percent. Anything they decide; is that correct?

A Absolutely, yes.

Q Ma'am, don't you normally when you do a projection rely on other experts to give you a basis?

A For what?

Q For instance, let's say someone is injured and you're calculating their future lost wages, and they formerly had a job that paid them 100,000, but after the accident, they can only make $50,000. Have you had situations like that?

A Sure.

Q That's an analogy.

A Sure.

Q And that expert would be called a vocational rehab expert;

correct?

MR. ISRAELYAN: Objection, your Honor.

THE COURT: Overruled.

THE WITNESS: Not always. In some cases that you just described, the person may have in fact returned to work and been earning that $50,000. In some cases, though, I certainly have reviewed reports of other experts.

Q We don't have any such expert here.

A Most of the reports that I prepare that involve the loss of household services do not have an accompanying report, other expert report that goes with them. My standard practice, since it is ultimately up to the jury to determine the appropriate loss, is to do what I have done here: Provide a framework they can use, demonstrate how to use that framework, and then leave the ultimate determination of loss up to them.

Q Now, so your methodology here, you basically calculated the entire loss. You're going to leave for the jury to determine the degree of impairment. You list on the things in the report about his employment, his hiring an additional employee. They have nothing to do with your projection regarding household services. Is that correct?

A That is correct, yes.

Q Any reason why you listed those things?

A Sure. When I prepare my reports, I will provide some background information simply because it is important to me

that the reader of my report, be it plaintiff's counsel, defense attorney, or anyone else, is able to put my calculations into the context in which the overall case is going to be argued.

Q Now, you listed a number of things, gave a whole laundry list of things he can't do. I believe you testified about some of them. He can't do mulch, he can't do topsoil. He can't blow snow. He can't maintain a shed, his deck, a playground. Things like that.

A That's correct.

Q And he can't put sand in a sandbox.

A Correct, in the child's play area. The grandchild. Excuse me. The play area.

Q And he can't maintain the house or his cars?

A That's correct.

Q And he can't power-wash his house?

A That's correct.

Q And he used to shop, and he can't shop, and he can't vacuum anymore?

A That's correct.

Q As part of this, you're evaluating the numbers of hours, you also said he used to install kitchen cabinets.

A That was one of the projects that he worked on in the house.

Q So that is not an everyday household service. That is sort

of a one and done kind of thing. Right?

A Possibly more than once, but you're correct. It is certainly not something that one would do on a weekly or monthly basis.

Q By the same token, you also listed masonry work, that's doing work on a wall or something.

A That's correct.

Q That's not an everyday household function; correct?

A That's correct.

Q When you were there, did you ask him how often he did these kind of things?

A I did ask him about most of these things, certainly the projects; the paneling in the basement, the limited masonry work, building the deck, the kitchen cabinets. Those, obviously, were projects that were perhaps one-time projects. But the reason those projects were significant to me is because what they indicated to me and what Mr. and Mrs. Manlapig reported to me was it was those types of projects, any sort of house construction, home maintenance, basic repairs, that when those things became necessary, Rene was the one that used to do them.

Q You also said he couldn't do long drives; is that right?

A Yes.

Q That's not a household service, going for a long drive to visit somebody, that's not household service; is it?

A Well, yes and no. I say that only because, technically speaking, the driving services that a spouse provides for another spouse or that a mom provides for her children, those are considered part of household services. In this case, it was reported to me that Mrs. Manlapig does not like to drive often, and then as a result, one of the services that her husband did provide for her and the household unit was to take over most of the driving.

Q Most of household services, though, you would agree don't involve long drives; correct?

A Again, I wouldn't agree with that. The service of driving someone can be considered a household service. That is a service that family members will provide for one another.

Q You didn't write down here anywhere that he can't drive at all; did you?

A No. I believe I noted in my report what he had reported to me, and that was that he could not drive for distances, or for time periods I should say, of over an hour.

Q But to do functions of the household -- I mean he lives on Long Island, there is a store every 5 feet. He didn't need to make a long drive to do his household functions; right?

MR. ISRAELYAN: Objection.

THE COURT: Overruled.

THE WITNESS: I don't know if there is a store every 5 feet, but that is correct. In this case, though, my

calculations of household services, though, were really not based on Mr. Manlapig driving his wife around, even though he was the one that drove to family functions and so on. My calculation of household services is based on the list of the chores, the repairs, the maintenance, and so on that Mr. Manlapig did.

Q For that, you calculated 30 hours a week?

A Yes.

Q And as part of your calculations, you included things like masonry and upkeep of the shed, changing the sandbox, things like that?

A Projects like that, absolutely, yes.

Q That's 30 hours a week. That's almost a full-time job. 30 hours a week around the home.

A The 30 hours a week, of course, was based on primarily the average of four hours per day while Mr. Manlapig was working, and that was because he, as I mentioned in my direct testimony, was the one that primarily took care of the house. He got home and 3:00 or 4:00 in the afternoon, his wife didn't get home until 7:00. he shopped, he cleaned, he cooked, and so on.

Q When you saw Mr. Manlapig, tell us, he was working; right?

A I don't recall specifically whether he was working at that time or not.

Q What did he tell you? Did you write it down?

A Let's see, what I wrote down was that he cannot run his

business any longer. He had to hire additional drivers.

Q Again, hiring additional drivers has nothing to do with household services; right?

A That's correct. But you asked if I had jotted down about his employment, and that is what I jotted down.

Q His wife worked 12 hours a day; right?

A Yes.

Q She's gone from 7:00 to 7:00?

A That was my understanding, yes.

Q Now, Mr. Manlapig wasn't sitting in a chair all day waiting for her to come home; was he?

A My understanding was that Mr. Manlapig, as I mentioned before, had assumed the lead responsibility of the household services, maintenance, and so on.

Q We know that. But after this accident happened, you don't know if he is working or not, but let's assume he wasn't working. What was he doing all day while his wife was at work? That's 12 hours.

A Certainly, some of that time, as I indicated already, was time that for purposes of my calculation he had been devoting to other things, but I don't recall specifically. There were times when he did spend most of the day in the house, is my recollection, because he was simply in too much pain to go out and do anything else. There were other times when, perhaps, he did go outside. I believe he continued to spend time with his

grandchild after he was injured. Those were some of the examples of things that he was still doing after he was injured.

Q You're not saying he couldn't feed himself if he is sitting there 12 hours a day while his wife is at work; are you?

A No. My numbers would be much, much higher if I had included things like that in my analysis, but there was no evidence to me that Mr. Manlapig was not able to, for example, feed himself.

Q If he's feeding himself and he spilled some mayonnaise on his shirt, he would be able to take his shirt and put it in the laundry; right?

A I really don't know.

Q You don't?

A No.

Q What if he had something smelly in the garbage; would he be able to take the garbage out? Do you know that?

A I don't know that specifically. Keep in mind, again, I am not here to offer any opinion about what Mr. Manlapig may or may not be able to do.

Q Well, you kind of are. You gave a list of stuff he can do. I'm trying to see if this is on your list for household services.

A The list that I provided was necessary because I needed to calculate the economic value of all of the things that

Mr. Manlapig was doing before he was injured. Ultimately, then, the jury can take my framework, and once they decide what he can and cannot do any longer, they can take my framework and adjust it accordingly.

Q That's what I'm doing now, trying to ask you about the framework.

A I'm not on the jury, so it would not be appropriate for me to have an opinion about what Mr. Manlapig may or may not be able to do.

Q I'm asking you what he told you.

A As I mentioned before --

Q Specifically with regard to household services.

THE COURT: Let her finish her answer.

THE WITNESS: As I mentioned before, it was my understanding he did continue to see his grandchild on occasion. He went out --

Q Do you know where his grandchild lives, by the way?

MR. ISRAELYAN: Objection. Can she finish answering the question?

THE COURT: Let her finish.

THE WITNESS: I don't recall specifically. I don't recall as I sit here today.

Q The grandchild lives in Port Chester.

A That's right, yes.

Q That's quite a distance from Bay Shore, Long Island; isn't

it?

A I believe it is, yes.

Q Now, but you have all these things you've listed as part of the 30 hours a week.

A Yes.

Q Okay. Do you know how much time he devoted of that 30 hours a week to putting sand in the sandbox for his granddaughter from Port Chester?

A Not specifically, no.

Q Do you know how much time of the 30 hours a week he spent babysitting his granddaughter from Port Chester?

A No. I didn't ask Mr. Manlapig for a specific time for each individual item. What I did, instead, was ask him for an estimate of, on average, how much time he spent each day on these types of services when he was working and how much time he spent, on average, on his days off.

Q What did he tell you about the average daily time for tiling and painting his house? Those are things he listed.

A Right. Again, I didn't ask him very specifically how much time each project took him.

Q Now, if we were to do 30 hours a week times -- I believe you calculated it out at 52 weeks -- that is 1,560 hours a year that he did work around the house.

A That's correct.

Q That is almost 75 percent of a full-time job.

A That is correct. Many homemakers would consider it a full-time job.

Q Does the government have an agency that produces statistics regarding household services?

A Sure. They have the American Time Use Survey, which I reviewed when I prepared my report in this case.

Q And the U.S. Bureau of Labor Statistics has that kind of data?

A The U.S. Department of Labor has wage data. It is the American Time Use Survey that economists typically rely upon for the number of hours people devote to various activities.

Q The American Time Use Survey, that comes out in June; doesn't it?

A I believe so, yes.

Q Like you said, that lists what Americans spend their time on, all kinds of primary activities; right?

A That's correct.

Q You just said you relied on it. It is authoritative; correct?

A I would actually not agree with that. Just to be very clear for the record, I didn't rely upon it in this case. Certainly, my responsibility as an economist, in order to offer an opinion to a reasonable degree of economic certainty, is to consider benchmark statistical data. In this case, I did consider that date. One of the main reasons why I felt it was

very important that I interview Mr. and Mrs. Manlapig is because in this particular case I had a situation where I had a husband who was taking care of most of the home making and home maintenance responsibilities. That is not a category that is well reflected, if you will, in the statistical data. So I thought it was very important for me to interview him to determine what would be appropriate for this case.

(Continued on next page)

Q. The time diary analysis, is that a document called The Value of the day, 2011 Dollar Valuation?

A. There's a more up-to-date version of that publication, but yes, that is a summary document of the American Time Use Survey data.

Q. That is relied on by economists. Whether you relied on it here, is that authoritative?

A. I don't really consider anything to be authoritative. It really depends on the facts of the case. But this is a publication I have in my office, and I absolutely do review it as benchmark statistical data for most of the cases I work on.

Q. It lists things for even how often people watch TV a day, right?

A. That's correct.

Q. For instance, it sets forth here, almost two hours a day people without a job watch TV, and almost three if they don't have a job, right?

A. I wouldn't agree with that statement simply because this data is published in that very document according to household composition. I would need to look at males, I would need to look at males that have a wife who works full time, I would need to look at the very specific table that fits this case.

Q. It's in there, isn't it?

A. It is.

MR. VITUCCI: Your Honor, could we take judicial

notice of the Dollar Value of the Daytime Diary Analysis that is the witness is testifying about?

MR. ISRAELYAN: Objection, your Honor. I don't even know what that is.

THE COURT: Is this the type of document that you normally consult when you are formulating your opinions?

THE WITNESS: I do regularly review this document, yes. Sometimes I do use data directly from this document, but in many cases, I don't. When I value household services, that data shows me on average how much, in this case say, a male spends on household services, but this is a unique situation. I have a male who is the primary homemaker, whose wife worked 12-hour days. It did not surprise me at all that the Manlapigs reported to me that Rene spent above-average hours on household services, which, again, is why I wanted to interview him.

THE COURT: Objection overruled. Do you want to mark it? Just so it's clear, we understand it's not the basis for your opinion here, you interviewed Mr. Manlapig. But in some cases, you do rely on it, and you did look at it here.

THE WITNESS: That's correct, your Honor.

THE COURT: Okay.

THE WITNESS: Thank you.

MR. VITUCCI: And I believe this is part of it, too. Could we have this marked for identification?

THE DEPUTY CLERK: Is this the same thing?

MR. VITUCCI: Yes.

THE DEPUTY CLERK: Should they be together?

MR. VITUCCI: Yes.

THE WITNESS: Thank you.

BY MR. VITUCCI:

Q. Ms. Kucsma, the documents you have in front of you, can you tell us what they are generally? Are those the things we were just talking about?

A. There is a single page from the Dollar Value of a Day.

Q. Okay. And the other document?

A. The other document appears to be a very super, in my opinion, much too general document from the American Time Use Survey.

Q. Would I be generally correct in saying that that document has tables in it that list a breakdown for people like a male with no children under the age of 18 in the home?

A. Which document are you talking about?

Q. The second one, the multipage document with stickies on it.

A. Looks like the first document is for everyone 18 years and over. It does have a breakdown of males and females, yes.

Q. Would I be correct in saying that the government data that's compiled therein shows that the average male fitting that category spends 1.24 hours of the day on the home for a total of 452 hours a year?

A. Let's see. I don't know which figure you're looking at.

It's not clear to me which figure you're looking at. There are many different columns here for --

MR. VITUCCI: Can I approach, your Honor?

THE COURT: Give it to Mr. Street.

(Pause)

Q. Well, it has two tables, one for --

A. Thank you.

Q. -- one for employed and one for unemployed; is that correct?

A. That's correct.

Q. Okay. And do not -- do those tables list the average amount of time a male of a certain age without children in the home spends around the home?

A. These do -- let's see. Males, no children, under age 18, yes.

Q. Okay. And tell us what that is.

A. I think it's 1.5 hours per day, according to this table.

Q. All right. And isn't that what economists typically rely on, averages that a person spends around the home? In other words, you rely on government data?

A. We rely on two things. Every analysis that I prepare, I rely on two sources of data. I certainly consider benchmark statistical data, but it is absolutely imperative that I also consider unique facts of each case. In this case, these figures are averages. There certainly are some men in the

population that don't spend that much time on household services, and there are some men that spend more than this number of hours.

THE COURT: Excuse me. In that document, does it give a number for women and how many hours a working woman, on average, spends in a day?

THE WITNESS: Let's see. We have employed household activities for women. This has 1.73 hours per day.

THE COURT: Thank you.

THE WITNESS: Sure.

Q. So yes or no? An economist, would you agree, normally uses a projection based on government data; yes or no?

A. Actually, no, most of the time, we don't. That would be --

Q. Okay. So let me ask you this then. If I'm correct, and those tables are correct that signify the government data, you have given him double the amount of hours around the home.

A. In this case, based on my interview with the Manlapigs, I determined that Mr. Manlapig did spend above average hours on household services.

Q. And you're just basing that on what he told you, correct?

A. That's correct.

Q. You have no idea whether he put in the cabinets, do you?

A. That, I suppose, is true, yes.

Q. You don't know what he did with the wall, do you?

A. That's correct.

Q. You don't know if he built anything around the home for a fact, you're just going on what he said.

A. That is correct. He and Mrs. Manlapig, that's correct.

Q. And by the way, you were at the house, right?

A. I was.

Q. And was it choked with weeds? Was there grass grown up over your head?

A. There was not grass growing up over my head, but I know the shed was in disrepair, the deck needed repair, there were a bunch of limbs and trees and bushes that at least looked to me as if they needed to be repaired. The fence needed to be repaired.

Q. How about the garbage? Did the garbage need to be taken out?

A. You know, I don't recall.

Q. Did it look -- withdrawn.

You're not saying that no one has not taken out the garbage in the fours years since this accident, are you?

A. No, and that's really not relevant for my analysis.

Q. And no one failed to clean or cut the lawn or anything like that, right?

A. Well, again, as I said, the grass was not over my head. That is a true statement.

Q. Ma'am, shouldn't you normally, at least for the past, look at replacement costs for things that were done? In other

words, if Mr. Manlapig hired a landscaper, you would look at that individual task and say the jury should replace that, right? If it was done and somebody paid for it, they should pay for it, right?

A. There are at least two reasons why that would not be appropriate, in my opinion. For one thing, I actually did have a conversation with the Manlapigs about having a homemaker come in and so on, and one of the things they reported to me was they simply couldn't afford to have somebody come in on a regular basis.

Secondly, using replacement costs like that -- since you used landscaping as an example, I'll just use that as an example -- the costs that we usually pay to a landscaper are not only the cost of labor, we're also paying for capital, we're paying for grass seed, we're paying for fertilizer, whatever else may go into that project. For me here, it's very important that I consider only the wages, the economic value of the labor that Mr. Manlapig was devoting to these projects.

Q. Did you look at the surveillance of Mr. Manlapig?

A. I actually didn't. I was provided with the disk. I didn't look at it because it's not relevant for my analysis.

Q. You made age adjustments for the future, and you said that Mr. Manlapig -- you were going to reduce the numbers, I believe, by 7.5 percent?

A. At age 65, that's correct.

Q. And there is government data about what happens to people when they get older, correct?

A. That's what I relied upon for those adjustments, that's correct.

Q. And as we get even older, more things happen to us, correct?

A. That's correct.

Q. For instance --

A. Most of us, yes.

Q. -- past age 75, people become disabled, correct?

A. That, I couldn't comment on. I'm not a medical doctor. But I certainly made a second downward adjustment in this case at Rene's age 75 to take into account a continued reduction in functionality.

Q. Don't the tables list about a 50 percent reduction in functionality as one gets older?

A. No, not the tables I relied upon.

Q. Don't the tables reflect that people over age 75 are often severely disabled?

A. No. And, in fact, if you looked at this publication, the Dollar Value of a Day, and you looked at the number of hours reported by people over 65 and 75 to the provision of household services, you would see that they typically rise as people get older.

Q. So when Mr. Manlapig is 80 years old, you'll find he would

typically do more around the home?

A. No, that's not what I did. That's not what I said. But your quoting of the statistics here is not quite an appropriate interpretation of the statistics. Clearly, from my calculations, I have reduced the number of hours that Mr. Manlapig would have devoted, because based on my review of the U.S. Government data, and very specifically the, looking here, U.S. Department of Commerce current population reports, Americans with disabilities from 2010, based on that study, I was able to calculation the appropriate reductions in Mr. Manlapig's functionality.

MR. VITUCCI: Your Honor, I have no further questions.

THE COURT: Thank you.

MR. ISRAELYAN: I'm out of time. Just one question or -- if I'm out of time. I'm --

THE COURT: I'll just explain to the jury. I've given both sides the same amount of time to do this so that we would not be here forever. And as we get farther into the trial, I've imposed limits on particular witnesses and that's what the lawyers are adhering to.

If you have one or two questions that are critical, I'll allow one or two questions. But if not, then we can leave it as it is.

MR. ISRAELYAN: No, it's not critical. Thank you, Judge.

THE COURT: Thank you very much.

THE WITNESS: Thank you, your Honor.

THE COURT: You're excused.

I believe the next witness is a defense witness; is that right?

MR. VITUCCI: That's correct, your Honor.

THE COURT: Do you want to call that witness? Well, maybe we should -- it's 3:00.

MR. VITUCCI: If we could take a one-minute break to get things together.

THE COURT: Do you want to take a break now and sit through the whole next witness or take a one-minute break now? Who votes for one minute? Who votes for a longer break?

Very decisive. We have a hung jury. Let's compromise. Let's take a five-minute break.

(Jury not present)

THE COURT: Let's try to keep this one to five minutes.

(Recess)

(Jury present)

THE COURT: We can all sit down. You may proceed, Mr. Vitucci.

MARIUSZ ZIEJEWSKI, PH.D.,

called as a witness by the Defendant,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your first and last name into the microphone, spelling both.

THE WITNESS: My name is Mariusz Ziejewski. My first name M-a-r-i-u-s-z, my last name Z-i-e-j-e-w-s-k-i.

DIRECT EXAMINATION

BY MR. VITUCCI:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Can you tell us your profession?

A. I am full-time University professor. I have dual appointment; one appointment at North Dakota State University, the College of Engineering where I am Director of Impact Biomechanics Laboratory, and Director of Automotive Systems Laboratory. I am also clinical faculty member at School of Medicine University of North Dakota.

Q. What do you do in the medical school and what do you do in the regular university, if I could say that?

A. Both are regular universities, but in medicine -- I am an engineer, I am not a physician. I don't diagnosis or treat injuries. What I do, my professional life, is determine how the injury occur, how much force it takes, what are the conditions that make us more susceptible for the injuries and so on. So my role in school of medicine is to teach medical students how the injury occur. Essentially, apply physics.

Obviously, in research work with the medical doctors from

school of medicine, I do also engineering component of the analysis. Everything starts with trauma. Everything starts with a force.

Now, in the engineering school, that's obvious, right? Teaching mechanical engineering students, teaching different aspects related to dynamics of the vehicles -- in other words, how the vehicle move and the forces associated with it -- and teach impact biomechanics which relates to how forces affect the human body.

In the engineering college, obviously, we are much more mathematically oriented. In the school of medicine, the presentation is different.

Q. Now, Doctor, are you a biomechanical engineer?

A. Yes, I am.

Q. Do you testify in court on occasion?

A. Yes, I do.

Q. Have we met before?

A. Yes, we have.

Q. And the first time we met, what side were we on, each other?

A. On opposite side.

Q. In other words, you were testifying for the plaintiff and I was representing a defendant?

A. That's correct.

Q. And I thereafter hired you, did I not?

A. Yes, you did.

Q. Did we then work on the same side?

A. Yes, we did.

Q. How many times have you testified, if you know, on cases where I represented the defendant and you were testifying for the defendant?

A. One other time.

Q. Okay. Now, Doctor, if you could, could you tell us and summarize for the jury your background in engineering with reference to human anatomy and human physiology?

A. I was born and raised in Poland. I finish my undergraduate degrees in Poland. Actually, I have two undergraduate degrees; one in mechanical engineering, and the other one which is equivalent to pre-med program. At North Dakota State University we have a pre-med program in zoology department. It was similar setup 40 years ago, four decades back, in Poland.

After I finish both degrees -- and by the way, I am diplomat engineer from Europe. Essentially, that's the same standing as PE, or professional engineer, in this country. I had opportunity to join -- to work on my master's of science degree and became assistant professor at the Mechanical Engineering Department. I was working on my doctorate degree, applied for -- by the way, for one year I was in military assignments. That's mandatory military assignments back then in Poland. And the reason I mention that, because it was with

heavy trucks and tanks division. And essentially, what I was doing, in addition to some military training, was doing engineering, vehicle dynamics analysis for military vehicles. Those are a little bit heavier vehicles, built differently and so on.

After I came back to the University, I apply for the research exchange program between professors from Poland and United States. It was back in 1977, still before solidarity, before political system change.

After I qualify for this program, actually took couple years of professional exams and interviews, I have to win University level competition, I had to win state level competition, and members of Polish Academy of Science elected 12 of us to be eligible for this kind of exchange program, and two were in the engineering. Obviously, I was one of them. I was very fortunate to be invited by Dean of college of engineering at North Dakota State University, to Fargo, North Dakota. I am still there. And this was for one year.

After one year, I decided to stay in this country, and I was working my doctorate degree in Poland, decided to quit that and started from scratch at North Dakota State University. Graduated 1985.

Then I was offered lecture position for one year, then I was tenure track faculty, assistant associate, full professor, and I'm there.

Talking about the engineering, obviously, clearly, you see the path about the anatomy/physiology. The second undergraduate major in life sciences is the initial background that I receive in anatomy/physiology.

When I came to this country, I was doing research for National Highway Traffic Safety Administration, and I had to review many medical records that were in English, so I decided to take anatomy and physiology course, again, from the pre-med program from NDSU, but also, I took medical school class in medical neuroscience. It's a class, actually, that I teach right now. I don't teach the class by myself, it's team taught. Number of faculty that teach the class, I just teach a small portion. And in addition to the former academic background, anatomy, physiology, I am certified in abbreviated injury scale, AIS scale.

Q. What is that and what is the significance for the jury?

A. It is a trauma scale that relates medical outcome to engineering aspects. In other words, if I know that it takes 1,000 pounds to break the skull, the medical outcome is linear fracture of the skull, the engineering information is 1,000 pounds. This particular example has assigned A as Level 2.

So as you see, looking at the medical outcome through the scale, you can determine what were the forces, accelerations, the engineering side of the trauma. The significance of it is

that you, U.S. Government, civilian like National Highway Traffic Safety Administration, and military defense use this scale for looking at the injuries. All my work with Department of Defense requires me to use that scale that relates medical and engineering aspects.

Q. Doctor, you just touched on this. Do you have any grants from the United States government to study things?

A. I do.

Q. And can you tell us a little bit about that, whom you have grants from, and the amounts, and what you're doing with them?

A. Well, let me just mention that for the last 25 years, I have been doing a lot of research work in area of biomechanics for United States Air Force, Army. Since 2007, Department of Defense was the part of government that was distributing -- or had a lot -- over $100 million research money to study mild traumatic brain injury to our soldiers that are returning from Iraq and Afghanistan. And I'm part of this group.

So from very beginning, I receive grants from military to study different aspects of body motion, was involved in development of the ejection seats for the male and female pilots in early '90s. Since 2007, working with helmet redesign and mild to moderate brain injury to our soldiers.

Currently, I have a million dollar research grant that deals with aspects of head/neck trauma and redesigning of the military helmets.

Q. You also mentioned the National Highway Transportation Safety Administration. Do you do any work for them?

A. Yes, I have.

Q. Okay. What kind of work have you done for them?

A. The first type of work I have done for them was in early '90s. I was invited to be involved in mathematical modeling of human brain. NHTSA, which is part of U.S. government, is part of United States Department of Transportation. Their mission is to ensure our safety. So if you go to the sporting goods store, you look at the helmets, you'll find some regulations, some standards from NHTSA.

I was invited to do the mathematical modeling of human brain, that is, create mathematical model of human brain and neck, how the head/neck complex respond to sudden motion, whether this is inertia loading or direct head impact. It started in early '90s and continue.

Q. Doctor, have you been published in the field of biomechanical engineering, and can you tell us a little bit about that?

A. Yes, I have. Being at the University, you have to do it; otherwise, your tenure is very short. I have over 100 peer-review publications.

Q. Can you tell us what a peer-reviewed publication is, Doctor?

A. If I want to present part of my research, I will write a

publication, and I know where is a good fit for that particular work, and I send the publication over there.

The chief editor selects between three to five reviewers, peer reviewers, meaning people probably I know that because how long I have been in this area, but people who understand that subject of science.

By the way, the review is blind review. If I'm reviewer, I don't know who those people are per name. I might figure out what institution it's coming from knowing the history of research, but it could be different individuals writing the proposal.

So there's three to five reviewers, experts in the field, review the publication for number of different -- from number of different perspective. First of all, has to be correct. Scientifically correct. It has to add to science. In other words, you will not find peer-review publication that talk about the same thing over and over and over, just simply somebody else saying the same thing. There always have to be new component in the peer-review publication.

In addition to correctness and contribution to the science, obviously, we very carefully look at the conclusions, that the conclusions are not overstated. Conclusions have to match the conditions of the analysis that was done. If everything is acceptable, then it would be okay. If not, there can be corrections done. And sometimes publications are rejected.

Q. Doctor, what percentage of your publications deal with movement of the human body?

A. I would say majority, probably 80 percent of my publications deal with movement of the human body. The other 20 percent deals with impact analysis to structures.

Q. Have you written any book chapters?

A. Yes.

Q. In what subjects?

A. Head/neck trauma that deals with the motion and what's happening to the head and the neck.

Q. Are these chapters in textbooks for teaching students?

A. Yes, they are.

Q. And you wrote them?

A. Yes.

Q. Now, are you certified in accident reconstruction?

A. Yes, I am.

Q. Is there a designation called ACTAR?

A. Yes, it is.

Q. What does that mean, Doctor?

A. ACTAR is accreditation group that was formed quite a while ago, and their mission is to assure that people with accreditations do the thing the right way. In other words, you have to pass exams, the two-day exams, theoretical and practical, and if you do that, you get accreditation.

Q. Okay. Would I be correct in saying you have to take a test

and sort of reconstruct an accident?

A. That's the test what we have. The practical aspect is the real life event and reconstructing that, the theoretical part, obviously, can deal with the individual details of vehicle dynamics.

Q. Doctor, you mentioned publications. Obviously, you're a teacher. Book chapters. Do you also lecture on any of these topics?

A. I do.

Q. Who do you lecture to?

A. Well, I lecture to peers, engineers, biomechanical scientists like myself. I lecture quite a bit to medical side, physicians, nurses, people in the ER. Because of my involvement in body trauma and, obviously, important aspect of what I do in medical school in terms of teaching, the presentation they give is in conjunction with, for instance, North American Brain Society. NABIS.

North American Brain Injury Society is largest multidisciplinary brain injury society in North America, and for the last three years I have been chair elect, and my tenure will last another two years. That's a group that I not only do administrative work, but give a presentations.

Other groups like International Brain Injury Society, I am Board member of this group, and so on.

Q. Doctor, if you weren't here today in this courtroom, where

would you be?

A. In Fargo, North Dakota, enjoy 70-degree weather, and finals week. So there's no classes anymore, just finals.

Q. And you're being compensated for your time in court today?

A. Yes.

Q. What is your rate of compensation?

A. I charge $375 an hour.

Q. Now, Doctor, did there come a time that my office retained you to perform an analysis here about this case?

A. It was sometime in April. April 19, 2014.

Q. And what were you called upon to do in this particular case that you're here about?

A. I was asked to analyze the vehicle dynamics or perform accident reconstruction. A component of the accident reconstruction. Also, look at the biomechanical aspects of the whole event. So analyze the event from vehicle perspective, which is very important to biomechanics because vehicle analysis give us the driving force to the body. Because really, if I am interested what happening to the body in the seat, I need to understand what's happening to the seat first. Get this information when we analyze vehicles.

Q. Now, in connection with your assignment by my office, were you provided with any materials for your file?

A. Yes.

Q. And what kind of things were you provided with and did you

review them?

A. Well, traffic collision report, different documents from different groups, ambulance, medical records, photographs, deposition of the driver -- the Freightliner.

Q. Now, in connection with the assignment, did you undertake anything further following a review of those materials in terms of your coming to certain conclusions?

A. Yes. That's my entire analysis. That involves, well, gathering the necessary information for me to do the physics analysis of the vehicles, like position, velocities, get information about the objects that collided. What are the masses? What are the weights of those two objects?

THE COURT: I'm going to ask you, if you don't mind, to try to keep your answers a little bit shorter, and if there are followup questions, Mr. Vitucci will ask them.

THE WITNESS: Okay.

Q. Doctor, following your review of the materials and any kind of other data that you compiled or looked at, did you come to an opinion or opinions?

A. Yes, I have.

Q. And did you bring anything with you today, namely a PowerPoint, to help illustrate your opinions?

A. Yes.

MR. VITUCCI: And with the Court's permission, I'd like you to go ahead and show that for the jury and discuss it

with us.

THE COURT: Yes.

THE WITNESS: Okay.

MR. VITUCCI: Your Honor, can we dim the lights?

THE COURT: If you need to stand up, that would be fine.

THE WITNESS: If I could be by the screen, that would be the easiest.

THE COURT: Just be very careful as you walk because there are wires all around.

Q. Go ahead, Doctor.

A. First of all --

MR. ISRAELYAN: May I stand up here, your Honor?

THE COURT: You may.

THE WITNESS: -- as I started describing, I am interested in distances, and I want to know anything about velocities, I want to know anything about the masses, the weights, and later on I will also look at the time duration of the impact phase.

So when I started my analysis, obviously, I looked first at what we have in this particular case. And this is one of the photo that was provided to me. You see, that's a picture from behind. It's a container. And I circle couple items. I circle, I call it reference point A and reference point B.

If you go to the next slide, you find the same items, reference A and reference B, on this Google image that was -- it was taken on the March 10, 2012. And obviously, the incident is a different decade, so I could already know where I am at in terms of the city orientation and the geometry.

If you go to the next slide. Now, this is a view in a north direction. So before we are looking in this direction, east, now we are looking north. And again, you see the container over here, and here are my reference points. I look at this one, and over here.

Now let's go to the Google Earth again. And I look at the same bridge, same road, and I identify those two items. And if I look at this picture and previous one, I see that beginning of this white strip is essentially where the container end up, and also notice that the Google Earth have a scale on it. It's like a map. So you can take the scale and you can measure any distances that you want.

Let's go to the next one. For verification purposes, I also look at the picture that give me couple other items, obviously, you need know that maybe the speed limit, but the orientation of those two plaques.

And if you go to the next slide. My, again, Google image, you see them, as well. So I'm very confident in selection or identifying where the collision occurred.

Let's go to the next slide. So now I know that the

collision occurred over here, over here, and this is a top view. And the reason I like the top view, because I can measure easily on the top view. How do I do it? I take the scale and I measure with whatever you want to measure.

If you go to the next slide, you're going to see -- zoom in so you don't see the scale anymore, but this is about 57 feet. 57 feet. We know that the container end up covering this white line, so let's go to the next slide.

And now I'm showing you a distance between the middle of the bridge to the white line. 57 feet. Now, this is important to us, and this is one of the distance that I use in my analysis, because reading the position of the driver of the Freightliner, I notice his testimony regarding where the impact occurred. The impact occur when he was under the bridge.

THE COURT: Could I just interrupt for one second? The Freightliner is which truck? The one in the back?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: Very good. In other words, the truck in the front that lost the container, from engineering perspective, is of -- I didn't do an analysis with that. The container is off, so the truck is gone. I am analyzing the container and the Freightliner that collided with the container. And my objective is to analyze what kind of affect that collision would have on the driver of the truck that hit

the container.

All right. So 57 feet is very important to me because it appears that this would be a reasonable number for beginning of the analysis. But every time when engineer talks about "appears" or "somewhere around there", you probably notice that they kind of feel uncomfortable, because we want to be precise, so we have to find the ways to verify the correctness of whatever we are doing.

And there are a couple items very important that needs to be considered. One is the amount of force that you would anticipate to see in a collision between the truck and the container. Let me give an example. You have seen on TV, at 30 miles an hour, vehicle impact with a concrete wall. At 30 miles an hour, collision with a concrete wall, that gives you more than a foot, foot, foot and a half, and some vehicles 2 feet of the entire front deformation, foot buckle, airbag deployed, engineer on the ground, and so on, it will give us impact force of about 100,000 pounds. 100,000 pounds.

So I use that information to verify whether or not the results from my analysis is consistent with that force and what I see on the photographs in terms of the damage. That's one component of my verification.

Well, in science, we like to say we formulate hypothesis, that's education, educated, not guess but educated assessment of certain things, but then you have to do rigorous

calculations and test or challenge the hypothesis.

So looking at the forces, to me, would be I am challenging the results from whatever I assume or I accept. I'm not assuming 57, I accept as a reasonable assessment. How reasonable it was? Well, later on I'm going to see by challenging that.

Another component that is available to me is the speed of the Freightliner. We have some information about the velocity from the driver. The couple analysis where you use that velocity in my analysis, then I cannot use the velocity of the Freightliner to verify how accurate the analysis is, but the 100,000 pounds of force always is, to me, is a main comparison item. All right.

Let's go to the next slide. So now I am looking at the vehicle that's the Freightliner that hit the container. Not the best picture, but you can see the bumper, you can see some damage over here, you can see the light missing, on the left-hand side is there.

Let's go to the next one. Now, remember we said the distances and velocity, and we talk a little bit distances and velocity. Now what are the items that collided? One is a Freightliner, and there's the information out there that is available to me, it's available to you, about the engineering characteristics of different vehicles. And in this case, we are dealing 2000 Freightliner. And I call it Vehicle No. 1.

We have a curb weight over here, and this is a VIN decoder. So I have the technical information for this vehicle.

Let's go to the next slide. I wanted to look at the Freightliner that is on them, which is available to me for testing, and I do the examination of the exemplar -- exemplar Freightliner for two different reasons. One, well, observe the general geometry of the Freightliner. Two, remember my ultimate issue is what is the affect of the collision on the driver? So I'm thinking about inside the cab, and we'll be talking about it in a minute, but this is the Freightliner -- exemplar Freightliner.

If you go to next slide. If you decode the VIN, if you take the vehicle identification number, that's number every vehicle has, if you type it in, you get information what vehicle it is, and this is 2000 Freightliner.

Let's go to next picture. If you look at the plaque for the Freightliner, you would notice that it was manufactured October, '99. In other words, vehicles are built in the fall or winter, but they are next year models. So if you decode the VIN, it is 2000, like the subject one. On the VIN plate, is manufacturing date is in the fall year before.

Okay. Let's go to the next one. Now let's look at the container that's the container -- actually, I had to rearrange couple pictures to get this composite.

Let's go to next one. Now I put the three-dimensional

mesh on the container and put the mesh of the Freightliner. In other words, picture is two-dimensional. In reality, we are dealing with a three-dimensional space. So how can we visualize that? Well, the way we do it in engineering, we can get models of different objects that have -- we can rotate on a computer, we can see 3D model, all of it, and you can superimpose on the picture, and you see suddenly is a three-dimensional model. You can measure distances and so on.

What is important to me is the maximum depth when the door is pushed in is somewhere around 11 inches. And the reason it was important to me, because if I calculate velocity, I have to understand time duration, how quickly the impact -- how brief the impact was, and with close to a foot of indentation, this is just narrow indentation, wedge type of indentation, 100 milliseconds of time duration is a reasonable number.

Let's go to the next. And here are the 3D models as they were -- as a purchase. So you see full 3D model of the Freightliner and the container. Very good.

Next slide. Now we are talking about surrogate. Surrogate is the person that has approximately the same height and weight. And I -- not I, but everybody in type of work that we do use the surrogates to study or appreciate the relation between the body and the inside of the vehicle. All of us are built differently, all of us sit differently, but we are

dealing with one particular vehicle. All of us fit differently to the seat and seat belt in particular vehicles.

So what I did, I found a surrogate. His name is Larry. And this is the driver of the Freightliner, this is my surrogate. Notice that I have comparison to Hybrid 3, 5th percentile female, 50th percentile male, and 95th percentile male because those are crash dummies that are out there. Those are the different tests with different size of the crash dummies.

So I have a comparison with everybody. I am very much interested in the differences. So if I compare my surrogate, and seated height is the most important to the driver of Freightliner. You see that the seated height of the surrogate is .32 inches shorter; pretty good comparison.

As far as the weight is concerned, 7 pounds lighter. Is important to me because when I ask the surrogate to sit in a vehicle, he put the seat belt on, I look at the fit of the seatbelt, I look at the geometry of the seat and the steering wheel, I know that the driver of the Freightliner didn't hit anything. So based on that set of information, I concluded nothing is unusual about that particular vehicle in terms of the geometry.

Also, I did the stiffness characteristics measurements, and I said there's nothing unusual about the seat. Now, that's important. I do a lot of work, I mention to

you, for pilots with ejection seats. Different story. The geometry is different, the stiffness is different. It's much more stiff. It's not as comfortable, but safer. The belts are different. And those things have to be included in analysis.

So after doing this surrogate fit, I concluded that this is a typical automotive seat-seatbelt structure. Therefore, all the information, science information out there that have been published, I can use, I can compare to what happened in this case.

And the results, as far as the analysis are concerned -- maybe show one more slide, go to next slide.

Oh, by the way, those are the weights for the two vehicles. I call Vehicle 1 is the Freightliner. And you see information about the weight. I have a curb weight, I have a weight of the driver, I add another 50 pounds, and that's the weight. Vehicle 2, to me, is the 40-foot box container, because those are the two masses that collided, and I have a weight of 8,600. There's actually photo of the back of the container and tells us what the weight of it is.

If you go to the next one, it's way too small to see it, and I'm not going to go through every step of the analysis, but wanted to show you the type of analysis I have done.

I look at the general kinematics and use sliding distance of 57 feet, and some analysis and some other analysis -- can you go back to the slide where I have the 57

just kind of shifted? A few back. Next one. In some analysis I did 57 plus another half. So I assume sliding distance from here all the way here. I also did one analysis that assume sliding distance the bridge and the length of the container. So I did number of different analyses to kind of give the feel for the whole matter.

So go back to the calculations. Go on. Right. So what I did, I calculated, for that particular 57-foot distance, the velocity. The container had to have to travel that distance. Remember, container is some kind of steel, and this is a concrete surface. In the engineering, we study the friction coefficient, so like tires on the road. We study that. So we know the what the friction coefficient is, we know the distance, we can calculate velocity.

In other words, what this number means, that my container has to have 26.1 miles-per-hour velocity to slide 57 feet, so somehow I have to give the container that velocity to slide the distance. What could be the source? Well, maybe already the container had the tire velocity. I mean, the semi was moving, the container hit the bridge, the container fell, the container probably had some velocity. Right? So the container could have some velocity, 57 feet before the final rest.

But there's another event that contributed the impact. So we could have two components that influence the motion of

the container; impact and prior velocity. So there's no way for me to tell you right now whether or not the container was stationary at time of impact or was moving at what velocity. So I start doing analysis, assuming, if you read the title, container stopped at impact, sliding 57 feet, and the number that I got, changing the velocity for the Freightliner, is 24.7 miles per hour change in the velocity. That's a sudden jolt.

So now the question is, let's stop and think how good the number is. Let's compare this number to whatever we talk about before, the 100,000 pounds of the impact force. If you get the weight of the Freightliner and you use 15, 15, 15 miles per hour, you get 120,000 pounds of impact force. So anything, even 15 miles an hour change in velocity for the Freightliner didn't happen.

Normal vehicles have foot, foot and a half, in some cases 2 feet of the entire front deformation. That's not the damage that I see on the photographs. So any analysis that gives me the change in the velocity greater than 15, even 15,

I'll reject as they don't have -- same like you -- someone will be telling me there's eyes in the back been sitting for the last three days outside. I say I don't think so. I check the physics book, 32 degrees is when freezes. I look at my phone, I know the temperatures outside. This really how you end up with the conclusion, there's water in the

bucket, there's no ice in the bucket.

Here, I say, this could not have happened. All right. And a number of different analyses that I have done, and I went through five different analyses, and the ultimate result was that the change in the velocity had to be less than 15 miles per hour.

Now, the ultimate question is, so what? You are the driver, you hit something, and you suddenly slow down by 15 miles an hour. How bad is it? Let me give you one example.

The compliance test, the compliance test is a test that is written to the law. Motor Vehicle Safety Standard 208 demands from automobile industry to build in safety devices in their vehicles, seatbelts, padding, that at 30 miles an hour changes the velocity, that would be AIS Level 1, minor, or AIS Level 2, moderate injury.

So there are regulations in terms of how -- what's the affect of the change in the velocity on the occupants inside the vehicle?

(Continued on next page)

THE WITNESS: (Continued) And how I approach this analysis, I look at it from two different perspectives. First of all --

MR. ISRAELYAN: I object, your Honor.

MR. VITUCCI: Your Honor, can we have the testimony without interruption, please?

THE COURT: I will allow it.

THE WITNESS: So what I am looking at, different aspects that were studied for decades in automobile industry and certain decisions have been made. For instance, at what point the airbags should deploy in our vehicles. I'm not talking about trucks. I'm talking about passenger vehicles that we drive. They may deploy somewhere around 12, 15 miles an hour, must deploy at 19 miles an hour. So in this range is the gray zone.

By the way, the airbags are additional safety system. In other words, if the seat belt cannot give you good protection, then the airbag is supposed to deploy and provide some help.

We're at 15 miles an hour, less than 15. So looking at that fact alone, you will conclude that the effect on the occupant who was aware of the event probably is not that bad. Awareness of the event very important. When you have a frontal impact -- and the driver of the Freightliner testified he was aware that this was coming, so obviously he was bracing. He

was positioning his body for the collision. Based on this fact alone, my initial hypothesis formulation was it is probably not that bad. But I wanted to find a better way to compare, and one way that I feel is a very good illustration is to compare the front to the rear impact. The reason that I like this comparison, because there is so much work done for the rear-end impact because people do get injured in a rear-end impact. Really, not that much in the frontal unless it is very high severity.

One thing about the human anatomy, and what we do in biomechanics, we try to understand how much strength, how much ability to control the force we have. In general, we can handle three times more in flexion than in extension. So when I have my pilots and I have ejection, if they don't stay perfectly vertical, I want to design the seat that will push them in flexion, not in extension. That's anatomy. That's how we are built.

So if this is a factor of 3, 15 miles an hour, less than 15, corresponds to 5-miles-an-hour rear-end impact. There are studies that at 5 miles an hour -- not to say that there are no injuries at 5 miles per hour. But essentially, our conclusion can be made that 5 miles an hour is not really an injurious change in the velocity. And our bumpers -- in other words, you can have a 5-mile-an-hour impact and no damage to your bumper whatsoever. If you ask me for illustration, this

is the illustration that I can give you; that severity, what the driver of the Freightliner observed, would be consistent with rear-end impact and really no damage to the bumper.

Now, as far as the low back injury, I had to look at the statistics, and there are statistics that is based on the actual data out there, and there are thousands of data points, and the statistics indicates that for that change in velocity, 15 miles per hour, is less than 1 percent of likelihood of injury at AIS level 2.

BY MR. VITUCCI:

Q Doctor, following your review and analysis of the materials and your explaining it for us, do you have an opinion within a reasonable degree of engineering certainty as to the AIS level of this particular contact, and if you can explain that for us?

A The AIS level, again, on more-likely-than-not basis, we have to talk about AIS level 1, which is called minor.

Q And, Doctor, following your review of the materials and your explaining it for us, do you have an opinion within a reasonable degree of engineering certainty as to the likelihood of Mr. Manlapig having sustained a herniated lumbar disc from this collision?

MR. ISRAELYAN: Objection. Unqualified.

THE COURT: Overruled.

THE WITNESS: Based on the statistical data that exists out there, the herniated disc, which is AIS level 2 or

higher, the likelihood is 0.12 percent.

Q Essentially, one-tenth of one percent?

A Yes.

Q Doctor, when you mentioned before this change in velocity, does that also have another name in engineering?

A We call it delta V. The word "delta" in engineering is used to describe change; change in temperature, change in time, change in velocity.

Q When you were mentioning before about the sliding, just so the jury is clear, when the container came off the lead truck, which way is it sliding?

A It is sliding in the direction with the Freightliner. In other words, the container will not go back.

THE COURT: So I don't understand. Is it sliding in the direction towards the truck behind it --

THE WITNESS: No.

THE COURT: -- or is it sliding in the direction of the truck that it came off?

THE WITNESS: It goes with the flow of the traffic. It goes in the same direction it initially was.

Q Is that pursuant to any rule or something in physics or nature?

A It does. In other words, I assume in my calculations always that scenario. If you assume alternative scenario, the change in velocity will double. It would not occur. In order

for it to occur, the Freightliner will have to be going twice the speed that he testified, and the damage to the container would be tremendous. In other words, doing the numbers, calculating the numbers clearly shows it was moving in the direction of the initial motion, getting knocked off and continuing in that direction.

Q In other words, the flatbed truck was moving forward at X, Y, Z speed, whatever it is, the container is still moving forward?

A Yes.

Q Is it your testimony, therefore, in regards to your calculations that the Freightliner driven by the plaintiff hit a moving object?

A It did because actually what you have on the screen right now is the scenario where the container fell off and was stationary, not going against Freightliner but stationary. In the beginning, I could not tell you whether or not the container was stationary or moved in the same direction it came. And this particular analysis show us delta V of 24.7 miles per hour, and I mentioned to you that 15, about half of that, is already 120,000 pounds of impact force. So this didn't happen. It was not stationary, meaning, that it had to have some initial velocity, then got hit. The change in the velocity was less than 24.7. It was somewhere -- less than 15, and then end up in the final spot.

Q Now, Doctor, you mentioned before a comparison -- this was a frontal impact; right?

A Yes, it was.

Q You made a comparison with a rear impact. Do you remember that testimony?

A Yes, I did.

Q Is it your testimony, Doctor, that this was the equivalent of a 5-mile-an-hour impact to the rear?

A Yes, less than 5.

Q You mentioned something about airbags. Did the vehicle that Mr. Manlapig was driving have an airbag?

A No.

Q Did it have a seat belt?

A Yes.

Q Would a seat belt provide, if it was worn, adequate protection to the body in the equivalent of a 5-mile-an-hour impact?

MR. ISRAELYAN: Objection to the form.

THE COURT: Overruled.

THE WITNESS: Yes, the seat belt would provide the protection.

Q Would there have been movement of the body, particularly the lower back into the seat as a result of the collision that you're here describing?

A Not in the seat. It would be motion in the forward

direction. Everything in the truck is moving in a forward direction. The seat belt is managing the energy. The seat belt is loading the -- the seat belt. There will be some rebound at the very end.

Q Doctor, you mentioned before an AIS level 1 injury was the likelihood from what happened here; correct?

A Correct.

Q Can you give us an example of an AIS 1 injury?

A Particular example is strain, although pain, subjective pain, can be AIS level 1. But strain is the typical diagnosis that you see in medical records that is recorded that way, that is coded that way in the manual.

MR. VITUCCI: Thank you very much, Doctor.

Your Honor, no further questions.

THE COURT: Cross.

MR. ISRAELYAN: Yes.

CROSS-EXAMINATION

BY MR. ISRAELYAN:

Q Good afternoon.

You're not a medical doctor, right? We're referring to you as a doctor, but you're not a medical doctor?

A Correct.

Q Let me just go back to your analysis. You said a vehicle at the 30-miles-per-hour hitting a wall, what would be the delta V of that?

A 30 miles an hour, maybe a little bit extra, 32, 33.
Q Okay. If a vehicle hits a wall at the 15 miles per hour, what is the Delta V of that?
A 15, maybe extra mile or two on the rebound.
Q Vehicle at 13 and 15 miles an hour to a wall, you're not saying that it will not cause a serious or severe injury; correct?
A There is no "yes" or "no" answer because I could answer this question two different ways. One way is based on the statistics. Based on the statistics, you have a minor, less than 1 percent injury. At the same time, if somebody is very vulnerable, the injury can happen at any time.
Q Right. All right. Doctor, you do not examine, evaluate, treat, or diagnose any of the patients; correct?
A Correct. That's not what I do.
Q You're not here to testify one way or another about a causation of any of the injuries here to the accident; correct?
A Not specific causation. Some describe biomechanical analysis general causation; here is the event, how this event relates to this kind of outcome.
Q You're not talking about this particular case, you're talking about in generalities. Am I understanding you correctly?
A Well, with all the specifics that we discussed, like the masses, velocities, and so on, the seat, seat belt, so that's

specifics. But I'm not talking about specific patient because we are all different. But if you look at it statistically, this is how it happened.

Q I deposed you in this case.

A You deposed me, yes.

Q I flew to your town in North Dakota to have your deposition done.

A Yes you did.

Q I asked you this question, page 38, line 8:

"Q So do I understand it correctly that your testimony is not about medical causation" --

MR. VITUCCI: Objection. One second. He moved awful quick. I don't have page and line.

MR. ISRAELYAN: 38, line 8.

THE COURT: Is this a prior inconsistent statement?

MR. ISRAELYAN: Yes.

THE COURT: Okay. You may proceed.

"Q So do I understand it correctly that your testimony is not about medical causation?

"A It is not. I'm not a physician. That's not my area."

Did I ask you this question, and did you give me this answer?

MR. VITUCCI: Your Honor, it is an improper use of the deposition. It is not a prior inconsistent statement.

THE COURT: You may answer.

THE WITNESS: In terms of the human body, it's correct --

Q Sir, did you not understand the question I posed to you?

THE COURT: Let him answer.

Q The question was: Did I ask you this question, and did you answer this way at the deposition? Can you answer that question?

A Two different questions. In the deposition, you asked me about patient. I cannot tell you what is the individual tolerance for the patient. Nobody really can. We might have some vulnerability that nobody even know.

But the question today, how I understood --

Q Let me interrupt you.

MR. VITUCCI: Your Honor, he is in the middle of an answer.

THE COURT: But he is not answering the question. Listen to the question and answer, and just answer that question. And if Mr. Vitucci wants to elicit something else, he can do that.

Q Let me read it again:

"Q So do I understand it correctly that your testimony is not about medical causation?

"A It is not. I'm not a physician. That's not my area."

Q Did I ask you that question, and did you give me that answer in your sworn testimony?

A Yes. And today I said the same thing.
Q All right. Indeed, you have never examined or seen Mr. Manlapig until today; true?
A I don't do it. I'm not physician. I don't examine patients. That's true. I don't do that.
Q You're not qualified to read any of his radiological studies, too; correct?
A Correct.
Q Okay. And you're not here to opine one way or the other of what injuries Mr. Manlapig sustained?
A Correct. Him specifically, no.
Q Yes. That's who we're talking about here today. We're not talking about someone -- you're not here in any shape or form to say what injuries -- you're actually not denying that he sustained injuries in this case; correct?
A That's correct.
Q But you're not in any way qualified nor do you attempt to render an opinion as to what are the injuries that Mr. Manlapig sustained; correct?
MR. VITUCCI: Objection. Asked and answered.
THE COURT: Overruled.
THE WITNESS: Yeah, that's a medical issue, not my issue.
Q You said that there could be a vulnerability that a person or occupant is predisposed to?

A Sure.

Q And that is an important consideration in assessing whether a person sustained an injury, serious injury, severe injury, or catastrophic injury; correct?

MR. VITUCCI: Objection. He is not a medical expert.

THE COURT: Overruled.

THE WITNESS: You used descriptors that you have to define for me to agree or disagree. Catastrophic, we, in engineering --

Q Let me rephrase it so it will be clear for you.

Do you know what degeneration means in the spine?

A I do.

Q It's important to understand whether a person had a degeneration in the spine to understand whether that particular person had sustained an injury and what type of injury in an automobile crash; correct?

A Talk to the medical doctors. From a biomechanical perspective, I cannot quantify the level of loading due to degeneration.

Q In order for your analysis to be accurate, the data upon which it is formed must be accurate?

A Sure.

Q In this case, you did not inspect Mr. Manlapig's truck; true?

A No.

Q You have never seen Mr. Manlapig's truck?
A Just the pictures I showed you.
Q You have never looked at it inside, you never had any photographs of Mr. Manlapig's truck other than that picture that you showed us?
A There are other pictures of similar nature. So the answer is no, I don't have a detailed examination of the interior of the truck.
Q All right. And you didn't even inspect the container?
A No, I did not.
Q You're not familiar with the strength of the steel of the container with which Mr. Manlapig's truck came in contact with?
A Not impact analysis, the strength, no, I am not.
Q And you're not familiar with Mr. Manlapig's conditions of the spine prior to the injury?
A That's a medical issue. That's not part of biomechanics.
Q Delta V is just, to understand it correctly, mass times acceleration?
A No.
Q It is not?
A No, it's not.
Q Let me read it from your deposition transcript, then.
A Okay.
Q I'm reading from page 74, line 5.
A Hold on. (Pause) Okay.

"Q And tell us again, tell us what is the formula, what is -- is there a formula, mathematical or engineering, in which that is calculated?"

There's an objection. "What's calculated?"

"Q The force of collision.

"A Well, it is Newton's second law, force equals mass times acceleration."

MR. VITUCCI: Objection, your Honor. He prefaced the question by saying that he's testifying about delta V. That is not in the question.

Q You're not talking about delta V there?

THE COURT: The question is overruled, but please let the witness explain the difference between the testimony then and his testimony now.

Q Yes. Please explain the testimony and the delta V?

A The question is about delta V. What we are talking about in my deposition Newton's second law that says the force -- not delta -- force is equal to mass times acceleration. Delta V is part of the acceleration. It's different equations.

Q In order for your calculations to be accurate, you have to have an accurate assessment of the mass; correct?

A Yes, that's part of it.

Q You have to have an accurate assessment of the acceleration?

A That's correct.

Q You also testified that there was a sliding -- the container, once it came off the truck, it started sliding following the truck from which it came off?

A Yes.

Q Why did the container come off?

A It came in contact with the bridge.

Q When the container came in contact with the bridge, which direction did that force the container to?

A It slows down the container, and whatever is under the container keeps on going the original speed, and the container is simply going slower and falls off.

Q When the container hit the top of the bridge or bottom of the bridge, did the container bounce off of the bridge? Do you know that?

A I do understand engineering materials. This is what my profession is.

At the very top of the container, probably some part of the grille material, concrete chipped off. And I'm not talking about the velocity of the container at that moment. The Freightliner did not hit the container at the time when the container hit the edge of the bridge. This would be different analysis. The Freightliner hit the container when the container was on the ground. So now the question is: Was the container stationary or moving where it initially was, or if you want to hypothetically assume going backwards, you

certainly can do that, and you end up with a change in the velocity that you need to overcome the container going against you and end up where it did. Incredible, completely not consistent with extent of damage and forces.

Q You don't even know the thickness of the steel of the container; true?

A Not the container but Newton's --

Q Do you know the force of the steel of the container?

A No.

Q Tell me something: Isn't it true that it is well-known that even minor accidents with a very minor damage to the vehicles, often no damage, can cause very serious injuries to occupants?

A How do you define very serious? I have to define things in terms of biomechanical factors.

Q Well, you're talking about even serious injuries, disc herniation, deformity of the thecal sac --

MR. VITUCCI: Objection, your Honor.

THE COURT: Sustained. But you may rephrase it.

BY MR. ISRAELYAN:

Q What do you define -- are you saying that you cannot answer the question I posed to you?

MR. VITUCCI: Objection, your Honor.

THE COURT: Sustained.

Q Isn't there a body of literature in the biomechanical field

that a minor accident that have a small, light property damage can cause serious injuries to occupants? Yes or no?

MR. VITUCCI: Objection.

THE COURT: You may answer.

THE WITNESS: It can cause injury. The word serious is well-defined in biomechanics AIS scale. AIS level 1, minor. AIS level 2, disc herniations, moderate. Serious is AIS level 3. The likelihood of fatality is about 18 percent. That's serious. Then, there is severe and catastrophic.

So when I answer the question, I'm listening to the words that are being used, and in biomechanics, we have certain definitions. So for me listening to the word catastrophic, I really don't know how to answer the question.

Q Okay. What you're talking about, from a biomechanical standpoint, serious, that does not mean it is serious -- minor, or moderate -- that does not mean it is not serious or severe to the patient or occupant; correct?

A Absolutely. We have a mild traumatic brain injury. Is any brain injury of minor effect? To the patient, it is serious. But today on the stand, on the record, I am scientist, have to be precise in my responses and use the terminology that we have defined in biomechanics. So I have to be careful with that. That's why I'm interrupting or commenting on that.

THE COURT: Five minutes.

Q That's fine. Open your deposition to page 104.

THE COURT: Line number?

MR. ISRAELYAN: Line number 5.

"Q I'm saying in the field of biomechanics there's literature supporting the position that minor forces, delta V forces, applying upon the vehicles can cause serious injuries to humans?

"A What does it mean minor?

"Q When there is no damage or there is a minor damage to the vehicles, for example.

"A Yes.

"Q Okay. And that is also common sense, one would say. Would you agree with me?

"A Sure."

BY MR. ISRAELYAN:

Q Did I ask you these questions and did you give me these answers at the deposition?

A Sure. Yes.

Q And in this kind of case, you know the forces that apply to Mr. Manlapig's spine; correct?

A Yes.

Q The forces that apply on Mr. Manlapig's spine are flexion, that is, moves forward, as well as an extension on the rebound; is that correct?

A That's correct.

Q Frontal collision accident such as this, there are also

forces that apply on Mr. Manlapig's spine from side to side?

A Not in this collision because so much aligned. But we have forces in three direction: Up and down, forward/backward, and side to side. The primary forces would be the bending. Very minor. Other components.

Q Okay. All right. Now let's talk about that you cited one particular article about the proposition that this type of forces can only cause -- there is a small percentage that they cause serious injuries; correct?

A Correct.

Q Okay. Correct me if I'm wrong: That article is written by an engineering firm that does a lot of litigation work?

A They do.

Q Okay. And correct me if I'm wrong that you do not know how many of this sample that was taken were involving trucks?

A Correct. To me, it doesn't matter because automotive seat belts.

Q Correct me if I'm wrong: You do not know age of any occupants, you do not know if this was young people, in their mid ages or in their advance ages?

A Don't know.

Q You do not know a single element about these injuries, these occupants, about the conditions in their spine or other body parts before the impact?

A Not the condition, no.

Q Okay. And indeed if this single article upon which you rely, if we read it, if the delta forces were 50 to 60 miles per hour, tell me what is the chances of person being injured?

A It depends --

Q Look at the article upon which you cited.

MR. VITUCCI: Objection, your Honor.

THE COURT: Overruled.

Q Let's go step by step.

A Okay.

Q Are you there on that page?

A I am on page 132.

Q You're saying you calculated this delta V to be what? Little over 15 miles per hour?

A Under 15. Less than 15.

Q If it is zero to 20 miles an hour, you said the chance is what?

A .12 percent for lumbar or thoracic injury for belted occupant.

Q Okay. Just to be clear, none of this involves anything about a cervical spine or neck injuries; correct?

A This is the other aspects. This is lumbar. Not the cervical.

Q Now, if the collision was between 20 to 30 miles per hour, which is hitting the wall at what? Give us a comparison, so we can understand. A car hitting a wall at 20 to 30 miles per

hour, what's the injury chances, according to your analysis, chance of someone being injured?

A Not my analysis. This particular paper.

Q That's what you rely on, this is the sole source of your --

THE COURT: Just ask him the question. What is the answer?

Q What is the answer? What is the percentage?

A But when I hear "my analysis," I think about my research.

THE COURT: I understand that. We know it is not your analysis. We know it is an article.

THE WITNESS: It is .12 percent between 20 and 30.

Q So if somebody hits the wall at 20 to 30 miles per hour --

A By the way --

Q If we follow what is here, what is in the pages of your analysis, it will be point -- what did you say, .12 percent?

A Right.

Q Now, I will clarify that. Let's go back talking about, if it is at 30 to 40 miles an hour, the car, an occupant, hits the wall at 30, 45 miles an hour, according to this paper that you brought in and relied upon, what is the chances of person being injured?

A By the way, this is kilometers per hour, not miles per hour.

Q I'm sorry. I took your word because you said it is in miles per hour.

THE COURT: Wait, wait, wait. This isn't a question. Just ask.

Q 30 to 40 kilometers per hour, what is the chances of somebody being injured?

A 40 kilometers per hour is 27 miles per hour, the chances are .25 percent. That is the lumbar and thoracic with seat belts.

Q Right. You're saying at the 27 miles per hour -- you consider this article upon which you relied reliable?

A For lumbar.

Q You know what, let's move on. Let's go 40 to 50 kilometers per hour. What is the chances of somebody being injured?

A 50 kilometers per hour is 34 miles per hour. .54 lumbar and thoracic injury at AIS 2 plus.

THE COURT: So lumbar is lower back, thoracic is middle back?

THE WITNESS: Correct. AIS level 2 plus.

Q According to you, what are the chances for somebody to be injured?

A Or end up with a disc herniation. Because injury could be strain.

THE COURT: Let me ask one question. This article doesn't talk about cervical injuries at all; does it?

THE WITNESS: Correct.

THE COURT: Do you have any more questions?

MR. ISRAELYAN: No, that's it. Thank you.

No, let me ask one more.

Q Doctor, isn't it true that there is no true correlation between the delta V forces and a real live accident? Let me rephrase it.

Isn't it true that there is no true correlation as to what is the injuries occupants in a motor vehicle will sustain as compared to delta V.

A Not for specific patient. Statistically, yes, it is. If you look at specific patient, you have to look from medical perspective, the vulnerability factors. Maybe there is some degenerative condition. Maybe other issues. So from --

THE COURT: Okay. I think you have answered the question. Thank you.

Redirect.

REDIRECT EXAMINATION

BY MR. VITUCCI:

Q Doctor, you were being asked about this set of data here a minute ago, and you said you wanted to clarify something. What did you want to say?

A I don't remember anymore. Essentially, a couple of things we have to remember. We are talking about serious injury, serious injury.

MR. ISRAELYAN: Objection. He is not answering the question.

THE COURT: Overruled.

THE WITNESS: So one thing we are talking about, serious injury, disc herniations, fractures and so on, that's the percentage for those kind of injuries. The reason I look at those injuries because we're talking about disc herniation. So I look at the AIS level 2. Not to say that you cannot have AIS level 1 injury, not to say that nobody ever will sustain disc herniation at this level. That's why you don't have a zero. You don't have a 0.0. I would not accept this kind of data. So it is very small, but it is not zero.

Q Doctor, on cross-examination, counsel brought out that you didn't examine Mr. Manlapig's truck, his actual truck.

A Correct.

Q You didn't exam the actual container.

A Correct.

Q Does it make a difference?

A No, it doesn't.

Q Why?

A Container doesn't really matter to me in terms of the strength. What mattered to be that there was a deformation about 11 inches. So the time duration for the collision, I accept 100 milliseconds. Typical collision. The truck is the real source -- well, it's the better source of data. Look at the damage to the truck, how much damage you see there. And compare to what we know for heavy pickups and trucks, the

impacts. Again, the best example that anybody can relate are the modern passenger vehicles, all of the pickups. Foot, foot and a half, 2 feet of the entire front per 100,000 pounds. And the damage doesn't exist here. So I did not have to examine the truck.

As far as the interior is concerned, what really matters here is the seat and the seat belt. The seat belts have one particular anchor point. It is set. If you have a person of correct size, you put the person in, you ask them to sit in normal way, you can appreciate what is the level of protection or whether or not this structure is so-called typical automotive structure or something completely unusual.

Q Did your analysis of the photographs of the vehicle damage of plaintiffs' vehicle and the photographs of the damage to the container, together with the photographs of the roadway, did they give you an adequate basis to establish for the jury with any certainty as to the nature of the forces involved in this collision?

A Absolutely. Otherwise, I wouldn't be here reporting to you that information.

MR. VITUCCI: Thank you very much.

THE COURT: Okay. Thank you very much.

(Witness excused)

THE COURT: Ladies and gentlemen, I said we would be likely starting late tomorrow. We will. We're going to start

at 2:00 tomorrow. So if you could be here at quarter of 2. Apologize, I apologize for the change in time, but it is unavoidable. We will start at quarter of 2 tomorrow.

What remains is the testimony of Mr. Manlapig and Mrs. Manlapig, and that's it, plus my charge to you. What I would like to do is finish all of that, and if somehow we still have an hour and a half left, we would do summations, but if not, we would not. So let me think a second. I would like to go from 2 to 6, ideally. If we're done by 4:30 with the witnesses, I would like to go forward with the summations; but if not, we would do that on Wednesday. So there is a possibility that we will stay until 6, but it might be less than that.

Is there anybody who absolutely cannot do that?

All right. So hopefully, this will all work out. We will see you tomorrow at 1:45.

Please don't talk about the case.

You will definitely have the case for deliberations by Thursday. Okay.

Thank you.

(In open court; jury not present)

THE COURT: This is off the record.

(Discussion off the record)

(Recess)

(In open court; jury not present)

THE COURT: We're here for a charging conference. I had distributed a draft jury charge and verdict sheet Thursday evening and asked the parties to submit comments to me on Friday. I received a letter from both the plaintiffs and from the defendant. The plaintiff had requested several additions, and my conclusions are reflected in the draft that I circulated yesterday, Sunday.

The first was race, religion, and national origin charge, to which no party objected. I have included the substance of this charge in the instruction on impartiality.

There was also a request to charge on parties' failure to produce evidence, to which no party objected. We talked about a lot of documents that plaintiff alleges were not maintained and not produced in this action. There are really two kinds of documents we're talking about here. To give this kind of charge, there must have been a duty to preserve. In the case of a statutory duty to preserve, that that duty is unquestionable. There is also a duty to preserve in anticipation of known and expected litigation. But if that is the basis for the instruction, there has to be a showing of a culpable state of mind.

The modern federal jury instructions by Judge Sand recommend that no instructions be given if the reasons for non-production indisputably do not demonstrate bad face. I

haven't heard anything in the evidence that suggest to me a demonstration of bad faith. So I will give the charge provided there are the statutory duty to maintain documents.

I heard today about a reference from defendants -- was that right? Well, in any event, I heard today about a statutory duty to maintain an accident register for three years after the date of each accident, but it's limited just to what is defined statute in the regulations as "accident".

That's a long way of saying that I will give the charge that I've included in the proposed document as long as there is a statutory basis. I know that the plaintiff wanted me to include this, and so my question is, what would the statutory basis be as to which I would instruct the jury there was a duty? And if you tell me that, I will include it.

MR. ISRAELYAN: Your Honor, can I have until the end of today to submit that to the Court? Can I have until the end of today to submit that in the letter format? I don't have it with me.

THE COURT: When is the end of today?

MR. ISRAELYAN: Until the midnight. Until I get to the --

THE COURT: I'm just wondering, when am I supposed to review it and incorporate it?

MR. ISRAELYAN: As soon as I get to the office I will submit it.

THE COURT: If I could just have it as soon as possible.

MR. ISRAELYAN: Right.

MR. VITUCCI: Judge, if I could be heard on the subject?

THE COURT: Yes, you may.

MR. VITUCCI: The section is the Federal Motor Carrier Safety Act at Section 390.15 which requires that an accident register be kept for three years, but only as to reportable accidents.

THE COURT: And I have the language, and I'm prepared to instruct on that, but I haven't reached that one yet.

MR. VITUCCI: Okay. And then I would then refer the Court, as well, to Section 390.5 of the same act defining reportable accidents.

THE COURT: Right.

MR. VITUCCI: Just so the record is clear, the defendants maintain that the charge should not be given because there is no statutory basis for this charge.

THE COURT: Okay. Well, another question I had then for the plaintiff is, I understood you to be complaining, not only that there was no log, but in the -- I forget if it was called the skill evaluation certification or something like that, there is a blank where you're supposed to fill in accidents. And so a question that occurred to me is whether

accident there means accident the way it's defined. I mean, the regulations make it seem as though that is the case. So unless there's any law you have to suggest that "accident" is used on the form means something different from "accident" as used in the regulations, then it seems to me that it's not required to be on that form. So that may be something you want to address in your letter to me, if you understand my question.

MR. ISRAELYAN: I do understand your question, and that's my understanding. But I will look into it if there is something specific. Because typically, if it's an accident, it will be referenced as a reportable accident. But under these circumstances, I believe it clearly states all accidents.

THE COURT: Well, the defined term is "accident", it's not "reportable accident", and so that's why I raise the question. But anyway, if you could address that.

MR. ISRAELYAN: Okay.

THE COURT: And then, increase susceptibility to injury, I have included that charge because there is a factual basis for charging on it.

Motor Vehicle Safety Regulations. I've modified the charge and included it. The defendant did not object to the introduction of the evidence. In any event, it's relevant to the issue of punitive damages, and I would prefer, on legal questions, that the jury hear the law from me.

Plaintiff pointed out an error in question 11, which

is essentially a typo with the language was "willful and wanton", it should be "wanton and reckless", so I've made that change.

An issue that the plaintiff raised is whether, if the jury fails to find a serious injury, their deliberations are over or whether they should be directed to the question of future damages. I summarized this morning what my view was, but I can tell you now what the cases are.

The New York cases have squarely addressed this issue and the ones that do require this result. And I'm citing Barnes versus Kociscewski, 771 NY Sub2d. 429 Fourth Department 2004, and Tortorello V Landi, 523 N.Y.S.2d 165 Second Department 1988. See also Montgomery versus Daniels, 38 N.Y. 2d 41 1975.

The cases that defendant cites are not directly on point because they simply stand for the proposition that plaintiff must establish a prima facie case of serious injury before the case can be sent to the jury. Once the case goes to the jury, the cases say that the jury may then award future damages, even if they don't find serious injury. And so all of these cases together, both plaintiffs and defendants, the principle I extract from it is that the case can be dismissed by the Court. If there's no prima facie case of serious injury, the case is over. But if there is a prima facie case and the jury decides that there's no serious injury, the

plaintiff still can recover future damages above the no-fault recovery.

That leaves just one issue that I wanted to address, and it's not really an issue. What I may do, depending on what I get from the plaintiff, is charge the jury on the need to maintain an accident register for three years, and then include regulatory definition of "accident", because we've had various witnesses trying to instruct the jury on the law, and it seems to me that the jury ought to hear it from the Court, and so I would instruct the jury on the meaning of "accident", and you can then make your arguments around that instruction.

I think the last thing that I wanted to address is special damages. What I was pointed to was the interrogatory by plaintiffs that identifies for "physician's services, approximately $1,250,000 for past and future medical expenses, including, but not limited to," and there is a list of various things. Future surgeries, radiological and diagnostic studies, followups with neurosurgeons, spinal surgeons, and psychiatrists, physical therapy, assistive medical devices, medications, injections, rehabilitative services, and transportation.

Has there been any other disclosure of anticipated damages in the case, Mr. Israelyan?

MR. ISRAELYAN: With respect to --

THE COURT: Just in general regarding future medical

expenses.

MR. ISRAELYAN: Yes. Dr. Radna's expert exchange as specifically provided that the defendants deposed Dr. Radna about that. In fact, the defendants were going to, and I believe they issued the subpoena -- and if I'm incorrect, they can correct me on that -- they issued a subpoena for Dr. Cullin to testify, too, but then they decided not to depose him. All of these things could have easily been fleshed out in deposition, but they chose not to. They were clearly on notice that plaintiffs were seeking future medical expenses for rehabilitative care, which is basically what Dr. Cullin testified about.

THE COURT: Your basis for saying they were on notice for medical expenses of rehabilitative care is the interrogatory you just provided me?

MR. ISRAELYAN: That's correct, your Honor.

THE COURT: Mr. Vitucci, do you want to be heard on this?

MR. VITUCCI: Yes, I agree. We had an objection, and the objection was about Dr. Cullin and his testimony about future chiropractic care. We received no exchange whatsoever concerning future chiropractic care, and that was the basis for objection. We did receive a disclosure from Dr. Radna, or about Dr. Radna, but not Dr. Cullin.

THE COURT: The disclosure was in his report, or in

what form was the disclosure?

MR. VITUCCI: The disclosure was on the stand, so --

THE COURT: You mean when he was deposed?

MR. VITUCCI: No, when he testified here in the courtroom. He wasn't deposed, Dr. Cullin.

THE COURT: I'm sorry. I'm talking about Dr. Radna?

MR. VITUCCI: Dr. Radna's exchange came before his deposition.

THE COURT: You mean his report, or what was it?

MR. VITUCCI: It was in the expert exchange.

THE COURT: What does that look like?

MR. VITUCCI: It was expert exchange by Dr. Radna. It disclosed his medical records. So it contains his medical records and his fee schedule and a list of his cases. But in there he said -- there was a disclosure by counsel that future medical care would be $1 million. We never received anything about Dr. Cullin and chiropractic care.

THE COURT: So I'm going to tell the jury not to consider the testimony from Dr. Cullin about the amount of future chiropractic care on the ground that it was not disclosed in contrast to the disclosure made for medical expenses in connection with Dr. Radna. You may, of course, argue that, if you want, that you're seeking approximately $1,250,000 for past and future medical expenses, including Dr. Radna and all of these other things, including chiropractic

care.

I think we're done, subject to my getting a letter from Mr. Israelyan tonight. I'd appreciate it as soon as possible, just because I need to consider it and make the change duplicated and all of that.

MR. ISRAELYAN: Your Honor, if you remember, this morning I ask if you also will give me permission to also submit a proposed proximate cause charge, couple of sentences.

THE COURT: Yes. Please submit that, as well, at the same time.

MR. ISRAELYAN: Thank you.

THE COURT: Would you like to be heard on the proximate cause issue, Mr. Vitucci? I know you haven't seen it.

MR. VITUCCI: I was asleep at the switch. Proximate cause with respect to?

THE COURT: All I know is plaintiff would like to submit additional language concerning causation. I know that the element here is proximate cause, and that's what I've charged on. And I don't know the nature of -- do you want to just tell me, Mr. Israelyan, what it is you're thinking about?

MR. ISRAELYAN: Sure. Absolutely, your Honor. Two type of cause is, as we remember from law school, there is a cause in fact and there is legal cause, or direct cause and proximate cause.

The charge only includes a language about a proximate cause. I would like to simply add that it could be both direct and proximate. If on the issue of proximate, whatever the language is, I just want one or two sentences about what the direct cause is.

THE COURT: You and I took different tort classes, I think. But the charge says that there has to be proximate cause, which seems to me a more lenient standard than a direct cause. And it basically says that anything that is a substantial factor in bringing about the injury satisfies the causation requirement. So what more would you add?

MR. ISRAELYAN: I believe if the jury hears that there is an issue of the charge of causation, it could be both direct cause as well as the proximate cause, I believe that will be better encompassing the law that they should consider.

THE COURT: Okay. So submit language to me and give me a citation, preferably to the New York pattern jury instructions -- I guess that's where it would come from, if there is such a thing -- and I'll look at it tonight.

MR. ISRAELYAN: Okay. Thank you very much.

MR. VITUCCI: Judge, just a couple other things.

THE COURT: Yes.

MR. VITUCCI: We had the issue about Dr. Radna's records, and there was a question, at least from the Court, as to whether I asked the jury to -- or offered the entire chart

of Dr. Radna. And the answer is at page 249 of the record where the Court said, and I quote, "Would it be possible for us to borrow that page when we take a break and make a copy so that we can give it to the jury, or do you have an extra copy of that page?" That was directed to the witness, Dr. Radna.

He said, "Yes."

The Court said, "Thank you very much." And then, "We're going to mark that as an Exhibit 124. Is there any objection to its admission?" And the answer was, "Absolutely not, your Honor," from Mr. Israelyan. "I was offering the one page."

THE COURT: And so what is the dispute here?

MR. VITUCCI: The dispute is, we have an objection, and a continuing objection, as to the photographs and slides depicting the body parts being operated on.

THE COURT: But those are already in evidence as a plaintiff's exhibit. If you want to -- right? That's why they're in the notebook.

MR. VITUCCI: I'm not offering it because it's already been offered.

THE COURT: No. No. Well, go ahead.

MR. VITUCCI: I didn't not want to offer the whole chart.

THE COURT: You don't have to offer the whole chart, you can put in the one page, because the whole chart's already

in evidence as a plaintiff's exhibit. Right? It's in my notebook.

MR. VITUCCI: It shouldn't have been. I thought there was an issue of the jury seeing --

THE COURT: Wasn't it 42?

MR. VITUCCI: -- the various slides and photographs.

THE COURT: Do you remember, Mr. Israelyan, what --

MR. ISRAELYAN: Sure. Give me a moment. Dr. Radna's records are number 52, your Honor in the big exhibit.

THE COURT: Okay. Got it. It's already in evidence, in my recollection, Mr. Vitucci. And you asked the jury to look at 52, and it had all these photographs in it. The jury already looked at it. We had that little exchange about the horse is out of the barn.

MR. VITUCCI: I thought we were referring specifically to the one page we were looking at instead of this.

THE COURT: 52 went in evidence on the first day, so that is a moot application. If you would like to put in the single page in addition as a defense exhibit, you may do that.

And the notebooks, as you know, as Mr. Street, I'm sure, told you, need to be up to date with an up-to-date index in the front of them.

MR. VITUCCI: We also ask for a limiting instruction as to the punitive damages, and I think we were waiting for the Court's ruling on that one.

THE COURT: Remind me what that was. Not in your letter, right?

MR. FRAGGETTI: This was something discussed during the pretrial conference. Objections to the exhibit pursuant to Rule 105, that these exhibits are being admitted solely for the purpose of being related to punitive damages or wanting a limiting instruction. There was no objection from plaintiff's counsel. Your instruction was for us to come up with some language, which we've come up with.

Basically, Exhibits 1 through 41 and 108 through 120 of this case have no bearing on compensatory damages, or injury, or anything other than the punitive damage aspect of this case. And we think there should be a limiting instruction as previously discussed during the pretrial conference without objection.

THE COURT: Okay. Mr. Israelyan?

MR. ISRAELYAN: Yes. I said we will agree to the language, but however, what the Mr. Fraggetti fails to mention, that we discussed this and we couldn't agree on the language, because I believe that the language they propose was extremely limiting, and the language that I proposed was -- and I've sent it to them -- the Exhibits 1 through 41, Plaintiff's Exhibit Book 1, and Exhibits 108 through 120 in defendant's exhibits are in evidence, and you may consider them on the issue of punitive damages only. That was my suggestion to them.

THE COURT: And what's the difference? Well, okay. So why don't you give me both versions, your proposed language and defendant's proposed language, and I will include a limiting instruction in the jury charge.

MR. ISRAELYAN: Okay.

MR. VITUCCI: Judge, one last item. Can we put in anything further on the issue of the verdict sheet? I believe putting the question --

THE COURT: If you can find a case on point that goes a different way and is higher or better authority or more persuasive than the Fourth Department case and the Second Department case, I will certainly read it. But if it's just another case that says you have to make a prima facie case of serious injury before it goes to the jury, otherwise nothing else happens, you've already given me several of those, and I've looked at all of them, and they basically say the same thing.

MR. VITUCCI: I'm just saying, if the jury is determining that Mr. Manlapig didn't sustain a serious injury, you cannot ask the jury then to issue an award of money damages for treatment for those injuries that, ergo, therefore, did not come from this accident and cannot be compensated by the jury. It's an inherently contradictory result.

THE COURT: Except that the problem is that the definition of "serious injury" assumes that anything that fits

within the statutory definition would satisfy the $50,000 threshold but is not defined that way. So there's a gap. Like I said, if you can find a case that says -- that's on point that contradicts the Fourth Department and Second Department case, and you put it in a letter to me by a reasonable hour this evening, I will read it. Okay?

All right. We're adjourned.

MR. FRAGGETTI: Your Honor, one more quick thing. With respect to Dr. Radna's records, there was reference, when Mr. Vitucci was putting in Exhibit 124 and discussing with the witness, that's the one page from his records that was discussed earlier.

THE COURT: Is this the page with the whited out part?

MR. FRAGGETTI: Exactly. There was a comment made, and correct me if I'm wrong, that that page that was in our exhibit book, and several other pages related to that questionnaire, were not in the exhibit books provided for the jury. We would ask that all these questionnaire pages be included in the exhibits and provided to the jury, since they're all in evidence.

THE COURT: My recollection is that you offered the page that had the writing on it, and that it was entered in evidence.

MR. FRAGGETTI: Right.

THE COURT: If you would like to offer -- you know, if

you want to put in -- well, actually, it's in evidence, so the only question is, what goes in the binders?

MR. FRAGGETTI: Just to be included in the book.

THE COURT: Just if you will make the pages and give it to Mr. Street to include in the binders.

MR. ISRAELYAN: Your Honor, it's in the binders, the big binder, the three binders.

THE COURT: No. In the jury's personal binders. We'll add to the personal binder the questionnaire.

MR. ISRAELYAN: That's it? Okay. Fine. So I have to do anything about it?

THE COURT: No, because they'll make the copies. Is that clear then? Anything you want to be in the binders that's in evidence you make the copies of, and the same goes for the defense.

MR. ISRAELYAN: Right.

THE COURT: Okay. Thank you. See you tomorrow.

THE DEPUTY CLERK: If I could have them by noon tomorrow, that would be great, because then I can put them in the binder before we start. Otherwise, we won't have it.

(Adjourned to May 10, 2016, at 2:00 p.m.)

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