SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY : CIVIL TERM : PART IA-10
----------x
WILLIAM BURNS and KAREN BURNS,

Plaintiff(s), INDEX NO. 305430-2008

-against-

1 BRYANT PARK, LLC, DURST DEVELOPMENT LLC, TISHMAN CONSTRUCTION CORPORATION and REGIONAL SCAFFOLDING & HOISTING CO, INC.,

Defendant(s). Trial
----------x

June 16, 2016

851 Grand Concourse
Bronx, New York 10451

B E F O R E:

THE HONORABLE LIZBETH GONZALEZ,

JUSTICE.

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

SACKS and SACKS, LLP
Attorneys for the Plaintiffs
150 Broadway
New York, New York 10038
BY: JAMES J. McCRORIE, ESQ.
DEVON REIFF, ESQ.
EDWIN ACOSTA-DIAZ, ESQ.

LEWIS, BRISBOIS, BISGAARD & SMITH, LLP
Attorneys for the Defendants
77 Water Street - 21st Floor
New York, New York 10005
BY: ALAN KAMINSKY, ESQ.
JASEN G. ABRAHAMSEN, Paralegal

Catherine Mercorella
Senior Court Reporter

THE COURT: Good morning. Have a seat. Bring in the jury.

What we're doing with Dr. Merola is finishing him up, right?

MR. McCRORIE: Yes.

THE COURT: So, where are we with him?

MR. KAMINSKY: I just started cross-examination.

THE COURT: Are you going to finish by 4:30?

MR. KAMINSKY: I promised Jim I would be leaving plenty of time for him to do his redirect and also as a courtesy to Dr. Merola, because I know he's got some issues that we can keep private.

MR. McCRORIE: And I'm not long on redirect ever. Direct, different story.

THE COURT: I'd like to finish him today with no fanfare, please. So, let me just remind you, once again, we are on a timeline. You have to, have to, have to wrap this up before the 23rd so that we can do summations and I can charge the jury; otherwise, we have major problems.

I think I've said it to you so many times it's probably indelibly imprinted on your foreheads, but I have to remind you of this.

What we'll do when we finish this morning is we'll review the verdict sheet.

Off the record.

(Discussion off the record.)

THE COURT OFFICER: All rise. Jurors entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: We don't have any witnesses this morning due to an unanticipated turn of events, but we do have a witness at 2:00 o'clock. Dr. Merola is returning for cross-examination, and that will be it for today and then we're down tomorrow and we're back next week.

Like I said, I absolutely anticipate giving the case to you on the 23rd. So, let me tell you about the things that you can do in the neighborhood while you're waiting for the case to be called.

Do you know where Hostos Community College is on 149th and Grand Concourse? They have a gallery that's called the Longwood Gallery that's very nice. That's one.

There is a mall called the Gateway Mall.

THE JUROR: We went shopping there.

THE COURT: You went shopping already.

So, the Gateway Mall, if you go along the train, Jerome, but you go south, away from Yankees Stadium, then there is a decent mall over there where you can go shopping.

And up at 165th Street on the Concourse is the Bronx Museum of the Arts, and they're good also.

So, those are three different things you can do.

Yankees Stadium has a museum that's cool, it's like seriously cool, and they have a tour. I don't know when the tour is, but I have toured Yankees Stadium and I will tell you that it's remarkable. It's really nice.

They have this thing. I don't know the name of the guy who did this pitch. How do you call it? He pitched a game and no hits, no hitter, I think, in the World Series, something like that. He's very famous. I don't know his name.

MR. KAMINSKY: Don Larsen.

THE COURT: Yes, this is a really remarkable thing where they have him like this and they show the trajectory of the ball with, like, steel or metal or something so you get to see how the ball actually moved. And they've got all these old uniforms. It's a great museum.

So, those are things you can do to enjoy the distinctive pleasures of the Bronx, and those are nearby and they're either free or on the cheapy, cheapy side so you don't have to worry about spending too much money.

I'm sorry. This was unanticipated, certainly. But we will see you at 2:00. Okay?

Any of you guys have questions before I let you go until then? All right. We're starting at 2:00 on the nose.

I'm going to be meeting with the attorneys to do

the prep. We have to do a lot of preparation in anticipation of your deliberations, the verdict sheet, the charges that I'm going to read to you. There is a lot of stuff we have to do, so we're going to take advantage of the time this morning, but we are starting at 2:00 on the nose.

THE JUROR: What time do you want us back here?

THE COURT: So, if you're here by a quarter of 2:00, it's more than great. That will work. That will not be a problem.

If you decide to go up -- I'm going to say the last thing -- by the Bronx Museum of the Arts, there's not really anyplace to eat, but you can go up there and then come back. It's a nice walk. It's a very pleasant walk.

Anything else, jurors?

Okay, guys, so I'll see you later. I'm sorry. This was not anticipated, but this is life. See you soon.

THE COURT OFFICER: All rise. Jurors exiting.

(Whereupon, the jury exits the courtroom.)

MR. McCRORIE: Judge, can we just make a quick record? Plaintiff would like marked as a Court Exhibit, I think we're up to Court Exhibit VII, the deposition transcript of Kirk J. Carney. We did the deposition yesterday around 3:30 in the afternoon.

This was the witness the defendants hadn't given

us notice. We got an e-mail last night after the deposition they do not want to call the witness, but we would like it marked as a Court Exhibit as having been done during the trial.

Secondly, we'd just like to make a record that the unanticipated delay this morning is that the defendants had a witness here in court and set up the video and they had the video investigator who owns the company, Mr. Lasky was here, and they decided not to call him this morning.

MR. KAMINSKY: I don't know why a record needs to be made of that.

MR. McCRORIE: I just wanted the record to be made of that.

THE COURT: You're not going to make reference to that during summation.

MR. McCRORIE: Judge, I made reference to it in the opening. I'm not asking for a missing witness.

THE COURT: I don't know that the jurors remember all the many, many things that you said during your opening statement, so I wouldn't worry about that.

MR. KAMINSKY: Judge, I would ask that counsel be instructed not to make any reference to the videographer during his closing argument. There's no missing witness charge. There's no basis for him to do that.

THE COURT: Yes, I would agree.

MR. McCRORIE: Understood.

THE COURT: Thank you.

Anything else for the record?

We'll work on the verdict sheet and the jury charges. I don't know that we have that much more to go, but we do have some rewrites to consider.

MR. McCRORIE: Isn't it all still held in abeyance, the causation question, we're objecting to it, and the susceptibility question?

THE COURT: I have to see what you have to offer me first. I'm not making a ruling now.

(Whereupon, a recess was taken.)

(Continued on the next page.)

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SACKS AND SACKS, LLP
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150 Broadway
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DEBBIE KLINE,
Senior Court Reporter

THE COURT OFFICER: All rise. Jurors entering.

(Whereupon, the sworn jurors enter the courtroom and take their respective seats.)

THE COURT: Jurors, did you explore a little bit? No? Yes? Maybe? I don't know. Well, you look awake and that's what counts to me. Have a seat. Thank you. I just realized today is 6/16/16, which is kind of interesting.

Jurors, you will remember that Dr. Merola was on the stand previously and that we got as far as his cross-examination, but that cross-examination was not concluded. So we're going to continue with the examination of this witness. All right.

Doctor, you've already been sworn.

Mr. Kaminsky, you may continue your cross-examination.

MR. KAMINSKY: Thank you.

CROSS EXAMINATION (CONT'D.)

BY MR. KAMINSKY:

Q. Welcome back, Doctor.

A. Thank you.

Q. It's good to see you.

A. Thank you.

Q. I represented to the Court and to Mr. McCrorie, and I'll represent to you, that we are going to finish your testimony today, okay?

A. Thank you.

Q. And I certainly will leave enough time for Mr. McCrorie to do his redirect. And what I would ask of you in that regard, to the extent possible, if you could answer my questions yes, no, or I can not answer them yes or no where applicable, okay?

A. Yes.

Q. Now, Doctor, I briefly started my cross-examination a week or so ago. I think we established over the course of your career, you've generated income of over $2 million working on cases involving the plaintiffs' law firm, correct?

MR. McCRORIE: Objection. That was Dr. Missun, the economist.

THE COURT: I don't believe that's the correct characterization.

MR. KAMINSKY: I'm all confused. Wrong witness. Let's start over, okay? That was a test. That was a test.

Q. Okay. Doctor, that's right I really haven't begun my cross-examination of you, so let's do this. Is it fair to say, of me to say that you've worked on -- you've been involved in many cases with the plaintiffs' law firm, true?

A. I have been involved in cases that have also involved the plaintiffs' law firm, yes.

Q. Would it be dozens?

A. It's hard to put a number on it and I wouldn't want to

guess at the number, but I do know that I have been involved in cases that the patient's law firm has also been involved with, yes.

Q. Would it be upwards of 100?

A. I don't know if its that many but once again I wouldn't hazard a guess.

Q. And you receive compensation for coming to court?

A. Yes.

Q. What is the compensation you receive on a daily basis?

A. $650 per hour for time away from the office.

Q. Okay. And so over the course of your career you've received, I'll use the word "significant," we won't put a number, you've received significant compensation from the plaintiffs' law firm, correct?

MR. McCRORIE: Objection.

A. Yes.

THE COURT: I'll allow it.

A. Compensation for time away from the office, yes.

Q. Okay. Do you --

THE COURT: I know you're going to speak louder.

MR. KAMINSKY: I'm sorry, Judge.

THE COURT: Maybe you want to move the podium up a little bit?

MR. KAMINSKY: I will.

Q. When you come to court, do you regard yourself as an

advocate on behalf of a plaintiff or are you just here to tell the facts?

A. I'm just here to give facts.

Q. Okay. And would you agree with me, that I've cross-examined you in other cases where the issue in those cases, just like it is in this case, the issue in those cases is whether or not something was caused by trauma or something was degenerative?

A. Yes.

Q. Okay. Would you agree with me that in those cases you've testified in sum and substance, that the single most important factor in determining if something was caused by trauma, was whether or not that person had prior complaints of pain to that part of his or her body?

MR. McCRORIE: Objection.

THE COURT: I'll allow the doctor to answer if he can answer it.

Q. Yes, or no, or you can't say yes or no?

A. I can't say yes or no completely.

Q. All right. Have you ever testified that in determining something was caused by trauma, you relied on the fact that that person never had prior complaints of pain to that part of their body?

A. I think the word "never" is an over-qualifier of the statement.

Q. Okay. Can we agree in this case, that Mr. Burns has an extensive prior history of issues with his neck?

A. There is a prior history of a neck problem, yes.

Q. Can we agree in this case --

THE COURT: Excuse me.

Doctor, you're leaning forward. A lot are you able to hear Mr. Kaminsky?

THE WITNESS: I can.

THE COURT: Because I'm straining to hear him. You appear to be physically straining to hear him.

THE WITNESS: I'm doing it more because my back hurts.

THE COURT: All right.

Q. Okay. So, Doctor --

THE COURT: Use your big people voice.

MR. KAMINSKY: Okay.

Q. All right, Doctor. Can we agree in this case, Mr. Burns has extensive preexisting problems with his back?

A. I would say he does have preexisting problems to the lower back, yes.

Q. And can we agree that he also had preexisting headaches?

A. And that there was some evidence of preexisting headache, yes.

Q. And can we agree that in this case, not only are the

preexisting problems to his neck, he actually had films that were taken of his neck long ago, correct?

A. Yes.

Q. And those films actually showed a herniated disc in his neck, true?

MR. McCRORIE: Objection to the films. It's reports. The films are not in existence.

THE COURT: So --

MR. KAMINSKY: I'll clarify.

Q. The films are so old we don't have the actual films. What we have are the radiologist's interpretations of those films, true?

A. Yes.

Q. And you've read them, true?

A. Yes.

Q. Can we agree that according to the radiologist who interpreted the films, that Mr. Burns had herniations in his neck back in the 1990's?

A. Yes.

Q. Can we agree that he had complaints of pain to his neck as far as back as the 1990's?

A. On that one occasion as far as I'm aware of, yes.

Q. Can we agree that there were films taken of his back?

A. Yes.

Q. And can we agree that just like the films taken of his

neck showed a herniation in his neck, can we agree the films taken of his back showed a herniation in his back? The films of his back were in 2003.

A. Yes.

Q. So the answer is we can agree on that, true?

A. Yes.

Q. And can we agree that Mr. Burns began having issues with his neck when he was a relatively young man?

A. It was quite sometime ago, so I guess the term "relatively young," is relative to our ages, but I guess we could agree that it was.

Q. I think I got you by a few years.

A. Probably not. I may be older.

Q. I feel like I got you by a lot of years, but we'll leave that aside.

A. But, yes, I understand what you're saying though.

Q. So can we agree that those problems go to way back to when Mr. Burns was a relatively young man, in his neck?

A. They were older problems, yes.

Q. And can we agree similarly, that the problems with his back go back a long time as well?

A. They go back aways, yes.

Q. Can we also agree that not only did he have problems to his back, but he complained of numbness and tingling radiating down to his legs long before this incident ever

happened, true?

A. Yes.

Q. And can we agree that you have testified in other cases that when a person has a herniation that causes radiculopathy, radiating pain, that that gets worse over time?

A. Under the circumstances that it's not treated.

Q. Can we agree that you've testified that those conditions worsen over time?

A. In specific patient's depending upon the clinical condition.

Q. Okay. Let's talk about Mr. Burns.

A. Yes.

Q. He had complaints of pain radiating down to his leg long before this incident happened, true?

A. Yes.

Q. And he complained of these pains to a doctor, true?

A. Yes.

Q. Do you know what caused the onset of these problems?

A. From the review of the medical reports, he had had a prior low back herniation that was then subsequently treated.

Q. Do you know what caused the onset of that condition?

A. The low back condition?

Q. Yes. Do you know?

A. From the review of the medical records it was part of Mr. Burns', what we would call, constitution, yes.

Q. In other words, it was his physical makeup?
A. Of his lower back, yes.
Q. And are you aware that the complaints of pain to his back went back to 1980?
A. Yes.
Q. And are you aware that Mr. Burns had a fairly -- withdrawn.
That Mr. Burns had a fall from a 7-foot ladder landing on his back and his head?
A. Yes.
Q. And are you aware that that was in 1986 I believe? '89?
A. Yes.
Q. Okay. And he was involved in a lawsuit from that, true?
MR. McCRORIE: Objection.
THE COURT: Sustained.
Jurors, you're going to disregard that.
MR. KAMINSKY: Judge, can we approach on that?
THE COURT: Sure.
You changed your mind?
MR. KAMINSKY: There's been a stipulation. There's no dispute about a prior lawsuit.
THE COURT: Okay.
MR. McCRORIE: The objection is he's a medical

doctor.

THE COURT: Yes. Okay.

MR. KAMINSKY: Okay. With that stipulation, I'll move on.

Q. Would you agree that back in the 1980's Mr. Burns had issues with his nerve roots causing the radiation?

A. Yes.

Q. And have you testified in cases --

THE COURT: I'm sorry. Nerve roots causing the radiation?

MR. KAMINSKY: The radiculopathy. The radiation.

THE COURT: All right.

Q. And have you testified that nerve roots that are not functioning properly with evidence of nerve root irritation and compression, can get significantly worse as time goes on?

A. They can, yes.

Q. And would you expect that when someone has an extensive history of complaints with pain to their back with a confirmed disc herniation, would you agree that that can get worse over time, yes or no, or you can't answer it yes or no?

A. I can --

Q. Yes or no?

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

Q. Okay. That's fine.

Now, when a nerve root causes irritation and pressure,

that's a herniation that could be causing the problem, true?

A. Herniation can cause that problem, yes.

Q. And would you agree, that once a disc is herniated it is referred to as a progressive injury?

A. No, not necessarily.

Q. Okay. Have you ever testified in a prior case word for word, "that once a disc is herniated, then it's referred to as a progressive injury? Yes, no, or I don't recall that testimony?

A. Only if untreated. So I can't answer that completely, entirely yes or no.

Q. Okay. Now, after Mr. Burns had the herniation that was causing all the pain to his back, did he undergo any surgery to alleviate the problem at that time, yes or no?

THE COURT: No, Counsel. You're talking about the '80's, the '90's? When?

Q. In the 1980's when this problem become evident, did Mr. Burns undergo any surgery for his problem?

A. No.

Q. So without the surgery at that time, would you agree that the condition would worsen or could worsen over time, yes or no?

A. No.

Q. Okay. Now, degeneration means worsening over time, correct?

A. Degeneration means progressive breakdown over time.

Q. Right. And a review of the plaintiff's records going as far back as the 1980's, shows continually, a problem with the plaintiff's back, true?

A. Yes.

Q. Okay. So based upon what you just told us, a review of the records shows continuing degeneration over time, true?

A. Yes.

Q. Okay. Now, the pain was such that we know it was radiating down to his legs, true?

MR. McCRORIE: Just when?

Q. Back in the 1980's, okay?

A. Yes.

Q. And in rendering an opinion in the case as to whether or not something is trauma related or something is degenerative, it is important to review the prior medical records, correct?

A. Yes.

Q. And you just told us that you have reviewed some of the plaintiff's prior medical records, true?

A. Yes.

Q. Now, can we also agree, that we do not have available all of the plaintiff's prior medical records?

A. Yes.

Q. For instance, we do have the records from when he saw a chiropractor back in the 1980's, correct?

A. Yes.

Q. And in those records he said, I've been having this problem for six years going back to 1980, okay? In other words, the records from 1986 are the first records we have. Can we agree that in those records there's an indication from Mr. Burns that he's had these problems with his back going back six years?

A. Yes.

Q. So we know he's had problems with his back since 1980, correct?

A. Yes.

Q. But we don't even have those records, true?

A. Yes.

Q. So we have some of his records, but we know we don't have all of his records, true?

A. Yes.

Q. But just from the records you've seen, you've acknowledged --

THE COURT: You've what?

MR. KAMINSKY: Acknowledged.

Q. -- that he has a long standing degenerative condition in his back, correct?

A. Yes.

Q. And you've told us as you've testified to in other cases, that in making the determination if something is due to trauma or something is due to other causes, you want to see

those prior records, correct?

MR. McCRORIE: Objection.

Q. You would like to see if there are any prior medical records -- withdrawn. Of the plaintiff, correct?

A. Yes.

Q. And in this cause you've seen them?

A. Yes.

Q. And in this case it confirms a degeneration, true?

A. It shows degeneration, yes.

THE COURT: Counsel, please let move on.

Q. Now, there's also a dispute in this case as to whether or not Mr. Burns was symptomatic or asymptomatic for different periods of time before this incident occurred, correct?

A. Yes.

Q. And that's important, correct?

A. Yes.

Q. And can we agree that throughout the history --

THE COURT: Excuse me, counsel. Step up. Step up.

(Whereupon, an off the record discussion took place at the bench among the plaintiffs' attorneys, the defense counsel and the Court.)

(Back in open court.)

THE COURT: Can we have a clarification, Counsel, given our discussion at the bench.

MR. KAMINSKY: Yes.

Q. You're aware in this case one of the issues is the periods of time Mr. Burns was symptomatic or asymptomatic, correct?

A. Yes.

Q. And as someone testifying in this case you want to know the times he was symptomatic and the times he was asymptomatic, correct?

A. Yes.

Q. Okay. And can we agree, that there's a pattern, if we were to make a chart there is a pattern of times that he complained of pains to his back and there's a pattern of times where he didn't complain about his back, true?

A. Yes.

Q. Same for the neck, true?

A. Yes.

Q. Now, you referred Mr. Burns to Dr. Hausknecht, correct?

A. Yes.

Q. And in your file -- I apologize. Do you have your file with you?

A. No.

Q. I believe you did leave your file here when you left. I'd like you to have the benefit of having your file in front of you.

THE COURT: Jurors, you can stand and stretch.

(Brief pause in the proceedings.)

Q. Okay. Plaintiff's 7 in evidence. When you referred --

THE COURT: Which is what?

MR. KAMINSKY: Complete care.

THE COURT: Sorry?

MR. KAMINSKY: Complete care. These are the records of Dr. Hausknecht.

THE COURT: All right.

Q. You referred Mr. Burns to Dr. Hausknecht, correct?

A. Yes.

Q. I assume you've read Dr. Hausknecht's reports and his findings, true?

A. Yes.

Q. Is it correct of me to say, that on the issue of asymptomatic versus symptomatic, Dr. Hausknecht concluded that Mr. Burns had residual symptomology before the incident?

A. Yes, I believe he did say that in a portion of his note --

Q. So did he say that --

THE COURT: Hold on. Please don't cut him off.

MR. KAMINSKY: I'm sorry.

THE COURT: He doesn't have the note in front of him. You do. So you have to let him answer the whole

question.

Doctor, finish saying what you were saying, please.

A. Yeah, I recall reading that in Dr. Hausknecht's note.

Q. Okay. Just yes or no, okay?

THE COURT: Hold on.

So is your answer yes, you read the note, or yes, with respect to what counsel asked you about the note?

THE WITNESS: Yes, I read the note and I would like to look at the note just to refresh my recollection.

THE COURT: Yes. Let's do that please, Mr. Kaminsky.

MR. KAMINSKY: Sure. May I approach?

THE COURT: Yes, you may.

(Whereupon, the documents were handed to the witness.)

Q. If you could just read this sentence here.

THE COURT: You want him to read it out loud?

Q. You can read it to yourself for now.

THE COURT: And the term you used was residual symptomology.

Q. Just yes or no, did Dr. Hausknecht use that term?

A. Yes.

Q. Okay. And residual symptomology is -- obviously, it speaks for itself. It does not mean asymptomatic, true?

A. Yes.

Q. Okay. So according to Dr. Hausknecht, who you referred the plaintiff to, Mr. Burns was not asymptomatic before this incident occurred, true?

MR. McCRORIE: Objection.

THE COURT: Sustained. We don't have a timeline, counsel.

MR. KAMINSKY: Okay.

Q. This record is -- what is the date that you have in front of you? What is the date of his report?

A. June 19th, 2008.

Q. Okay.

THE COURT: Sorry. June 19th, what?

THE WITNESS: 2008.

THE COURT: So both of you have to use your big people's voices, please. I can't hear you and you're right next to me, and he can't hear you and you're not so far away.

MR. KAMINSKY: Okay.

Q. So, Dr. Merola, just true or false if you could, or yes, or no, or I can't answer yes or no, Dr. Hausknecht as of June 2008, says that before the incident in question happened, Mr. Burns was experiencing residual symptomology, true?

MR. McCRORIE: Objection.

THE COURT: Sustained. You have to rephrase

that.

Q. Okay. Residual symptomology is an indication of pain or symptoms, correct?

A. Yes.

Q. And so according to Dr. Hausknecht, Mr. Burns was experiencing pain or symptoms before the accident, true?

THE COURT: Step up, please. Step up.

(Whereupon, an off the record discussion took place at the bench among the assistant district attorney, the defense counsel and the Court.)

(Back in open court.)

Q. In talking about the issues with Mr. Burns' neck, okay, can we agree that the area where he had the herniation and the area that degenerated, is the area where you ultimately performed surgery?

MR. McCRORIE: Objection.

Q. Yes or no?

THE COURT: Step up.

(Whereupon, an off the record discussion took place at the bench among the plaintiffs' attorneys, the defense counsel and the Court.)

(Back in open court.)

THE COURT: The objection is sustained.

Q. You've used this model during direct examination, correct?

A. Yes.
Q. And you explained to the jury the different discs.
THE COURT: Excuse me.
Jurors, can you see that?
SWORN JUROR: No.
(Brief pause in the proceedings.)
Q. You explained to the jury the anatomy of the spine, correct?
A. Yes.
Q. And you explained how the discs are numbered, correct?
A. Yes.
Q. Can we agree, that the film that was taken of the plaintiff's neck showed a herniation at the level cervical C4-C5?
A. I'd have to look at that report one more time if I could.
Q. It's been stipulated to.
MR. McCRORIE: Just to save time.
A. Okay, fine.
Q. So as far as the preexisting problems to the plaintiff's neck, it's been stipulated to that the films that were taken showed a herniation at C4-C5, correct?
A. Yes.
Q. And can we agree that that's the area that you ultimately performed surgery on?

A. Yes.

Q. Okay. As far as Mr. Burns' back is concerned, you also showed us the levels of the lumbar region of the spine, correct?

A. Yes.

Q. "L" for lumbar, correct?

A. Yes.

Q. And you told us, or I'll ask for a stipulation, that the plaintiff, Mr. Burns, had according to the films that were taken long before this incident happened, he had herniations in his lumbar spine at L4-L5, L5-S1, correct?

A. Yes.

Q. And can we agree that's the very area where you ultimately performed the surgery, correct?

A. Yes.

MR. KAMINSKY: Okay. Thank you for the use of that, Mr. McCrorie.

Q. Now, in-between your testimony there has been testimony from Dr. Mandelbaum. Do you know who Dr. Mandelbaum is?

A. Yes.

Q. And have you been provided with a copy of his testimony?

A. No.

Q. I want you to assume that I asked Dr. Mandelbaum the

following question --

MR. McCRORIE: Can we have a page number?

MR. KAMINSKY: Yes.

THE COURT: Would you kindly?

MR. KAMINSKY: This is on Page 515.

THE COURT: Could you identify Dr. Mandelbaum's speciality?

MR. KAMINSKY: Yes. The pain management expert.

THE COURT: That's the pain management doctor who testified previously?

MR. KAMINSKY: Yes, Judge.

Q. I'm going to read to you a question that I asked Dr. Mandelbaum, okay? "My question to you is with a reasonable degree of medical certainty, take this incident from 2008 out of the picture, okay? Given what we know of the plaintiff's intermittent problems with his neck, can you tell us, would the plaintiff's condition to his neck have continued to have gotten worse as he aged; yes, no or I can't answer that question simply as a yes or no"?

THE COURT: Do you have a question for his witness based on what you just read?

MR. KAMINSKY: I'm looking for something else.

THE COURT: But you can't join two different things together, counsel. That's one. If you read that, then you have to have a question that follows it.

Otherwise, I'm going to tell the jury to disregard what you just said.

MR. KAMINSKY: Okay.

Q. I want you to assume -- let's talk about the plaintiff's back, okay. I want you to --

THE COURT: No, counsel. You just read something about a neck, but you read it with this witness on the stand. So do you have a question with respect to what Dr. Mandelbaum was asked about the neck and you're saying if you put an answer, it would be yes or no.

MR. KAMINSKY: Yes.

Q. I want you to assume that I asked Dr. Mandelbaum if he had an opinion with a reasonable degree of medical certainty, that if you took this incident out of the equation, whether or not Mr. Burns would have nonetheless, still needed surgery, okay?

MR. McCRORIE: Objection. He was asked about the spinal cord stimulator, not the surgery.

THE COURT: We're talking about the neck.

MR. McCRORIE: We're talking about Dr. Mandelbaum, only what he did.

MR. KAMINSKY: Judge, I'm going to start over.

THE COURT: Okay. So, jurors, like a windshield wiper, take it out of your mind. Thank you.

Q. All right. You just told us that you performed

surgery at the -- start with the neck. You just told us that you performed surgery at the very level where he had the preexisting herniation, true?

A. Yes.

Q. Okay. Now, I want you to assume as far as the neck, that he had in fact the prior herniation which we've just discussed. I want you to assume that that condition degenerated over the course of time, okay? I want you to assume all the things you know about his past medical records, the concussion, the complaints of headaches, complaints of pain to his neck, the intermittent complaints, the periods of time where he had complaints of pain, periods of time where he didn't have complaints of pain. If this incident never happened, isn't it true that given everything in Mr. Burns' past medical history, that he may have needed this surgery at some time nonetheless?

MR. McCRORIE: Objection to "may have".

THE COURT: Objection to what?

MR. McCRORIE: "May have." Reasonable certainty or --

MR. KAMINSKY: I said with a reasonable degree of medical certainty he may have needed this surgery at some time in his life.

MR. McCRORIE: Objection.

THE COURT: You mean that he would have some.

MR. KAMINSKY: I'm sorry?

THE COURT: You mean that he would have needed the surgery. Not "may". Would have.

MR. McCRORIE: He's saying "may".

Q. That he would have; yes, no, or you can't answer that yes or no?

A. No.

Q. Okay. Let's talk about his back. Everything we know about his back, isn't it true that if you take this incident out of the equation, given what we know about his past herniations, given what we know about his past complaints of radiculopathy, given what you've testified to in other cases, given what we know about his past medical treatment --

MR. McCRORIE: Objection to what he's testified to in other cases.

THE COURT: I have mumbles.

MR. McCRORIE: Objection as to what he's testified to in other cases as part of a hypothetical.

THE COURT: Yes.

MR. McCRORIE: Okay. I'll take that part out of it.

THE COURT: Clean it up.

Q. Isn't it true that with a reasonable degree of medical certainty, that Mr. Burns arguably would have needed this surgery even without this incident?

MR. McCRORIE: Objection.

THE COURT: Sustained. That's not a hypothetical, Counselor.

Jurors, disregard it.

Q. All right. The incident that happened in 1989 where he hurt his back, he went to the emergency room, true?

A. Yes.

Q. The incident that happened here in this case, he did not go to the emergency room, true?

A. Not a specific emergency room, no.

Q. The incident that happened here, he returned to work, true?

A. Yes.

Q. The incident that happened here, he returned to work for almost a year, correct?

A. Yes.

Q. So as far as this incident is concerned, clearly, it did not prevent him from working for close to a year, correct?

MR. McCRORIE: Objection.

THE COURT: Sustained. Counsel, come up. Everybody come up.

Jurors, we're going to take five.

THE COURT OFFICER: All rise. Jurors exiting.

(Whereupon, the jury exited the courtroom and the following occurred:)

(Whereupon, a brief recess was taken.)

(After the recess the following occurred:)

(Whereupon, the witness resumed the witness stand.)

THE COURT: We're ready.

THE COURT OFFICER: All rise. Jurors entering.

(Whereupon, the sworn jurors enter the courtroom and take their respective seats.)

THE COURT: Thank you. Everyone please be seated.

You may continue, Counselor.

MR. KAMINSKY: Thank you.

Q. Doctor, I've been warned about beating a dead horse, so we're not going to ask you any questions about his past medical history anymore, okay? But can we agree, that once a disk is herniated, that is the type of condition that progresses over time?

MR. McCRORIE: Objection. Asked and answered.

THE COURT: Do you understand his question?

THE WITNESS: Yes.

THE COURT: Then I'll allow him to answer.

A. Okay.

Q. Just yes or no. If you can't --

THE COURT: Counsel, that's not a yes or no question.

Q. Okay.

THE COURT: It's really not.

Q. Once a disk is herniated, is that the type of injury that can get progressively worse?

MR. McCRORIE: Objection.

THE COURT: Didn't you ask that already a long time ago?

Q. Okay. When a person has problems with nerve root and irritation, nerves don't regenerate, correct?

MR. McCRORIE: Objection.

THE COURT: Are those two questions?

Is that a question you can answer, Doctor?

THE WITNESS: Not yes or no.

Q. Okay.

THE COURT: Do you want to rephrase?

MR. KAMINSKY: Sure. Well, I said I wasn't going to go back to his past medical history.

THE COURT: No. You asked a general question about medicine. So why don't you use rephrase it and then we can move on.

Q. Tell the jury what is nerve root irritation?

A. Nerve root irritation refers to pain in the distribution of a nerve root that is happening because that particular root is being irritated.

Q. And would you agree that once a person has that condition, that condition does not resolve by itself?

MR. McCRORIE: Objection.
THE COURT: Can you answer that question?
THE WITNESS: Yes.
THE COURT: Okay.
THE WITNESS: Answer?
THE COURT: Please. Yes.
A. No.
Q. One of the ways to resolve that condition is through surgery, correct?
A. Yes.
Q. And can we agree that Mr. Burns had that condition long before this incident happened?
A. Had some nerve irritation prior to the incident, yes.
Q. Okay. And just from a chronological prospective, the first time you saw Mr. Burns was approximately, three weeks after the incident, true?
A. Yes.
Q. And then the next time you saw him wasn't until seven months later in February of '09, correct?
A. Yes.
Q. Okay. And when you saw him in February of '09, you noted that he was still working, true?
A. Yes.
Q. So --
THE COURT: Still what?

MR. KAMINSKY: Still working.

THE COURT: Thank you.

Q. And so can we agree that whatever happened in this incident, he was able to go back to work through the winter and --

THE COURT: Counsel, you already asked that question before.

Q. Okay. In February, when you saw him in February of '09, you wrote down that he had a moderate partial overall disability, correct?

A. Yes.

Q. Okay. And, in fact, you were concerned about his knee, correct?

A. Yes.

Q. And you sent him to a doctor for his knee, correct?

A. Yes.

THE COURT: I'm sorry. The moderate partial disability refers to the knee?

MR. KAMINSKY: No. I'll rephrase.

Q. In your report you wrote down in February of '09 that Mr. Burns in your opinion, has a moderate partial disability?

A. Yes.

Q. Also at that time, you sent him to a doctor for problems with his knee, correct?

A. Yes.

Q. Now, a person can have a longstanding condition necessitating surgery, that has nothing to do with an accident, true?

A. Yes.

Q. In this case -- withdrawn.

You testified that Mr. Burns should have films performed every other year for the rest of his life, correct?

A. Or so, yes.

Q. And the reason for that is to observe the condition of his spine to see if things change, correct?

A. Yes.

Q. Now, we know he had the films done prior to the accident during the time period we're aware of, true?

A. Yes.

Q. Can you tell us if you had the benefits of the films to Mr. Burns' back taken a week before this incident had occurred, can you tell us with a reasonable degree of medical certainty, as to whether or not films two weeks before this incident occurred, would have shown a condition necessitating surgery?

MR. McCRORIE: Objection.

THE COURT: Sustained.

Q. We don't have the benefit of the films from a period of time shortly before this occurrence, correct?

A. Yes.

Q. We only have from the time periods that we know of and the ones that were taken after, true?

A. Yes.

Q. Now, can the position of a herniation change over time?

A. In general.

THE COURT: Excuse me. Can we have a clarification for the record of what "position" means? You're asking about the position of a herniation?

MR. KAMINSKY: Yes.

Q. When a person has a herniation in their, let's say -- let's start with the neck. A person has a herniation in their neck. Can that change over time?

A. Yes.

Q. Same for the back I assume, true?

A. Yes.

THE COURT: Anything else, counsel?

MR. KAMINSKY: I'll change topics. Move it along because I promised I would.

THE COURT: Very well.

MR. KAMINSKY: Thank you for prompting me, Judge.

Q. Would you agree as a general rule, that it is a good idea to try to wean someone off painkillers?

A. In general when possible, yes.

Q. And would you agree that the governmental studies show

that it's dangerous to keep someone on pain killers for a long period of time?

MR. McCRORIE: Objection. This was gone over with the pain management.

THE COURT: Rephrase, please.

Q. Would you agree that in Mr. Burns's case ideally, you would want to wean him off pain medication, true?

MR. McCRORIE: Objection.

THE COURT: I'll allow it.

A. It's a goal of treatment, yes.

Q. And in fact --

THE COURT: I'm sorry, what did you say?

THE WITNESS: That it would be a goal of treatment.

THE COURT: Thank you.

Q. And, in fact, Mr. Burns has told you, has he not, that he doesn't like taking pain medication?

A. Yes.

Q. Very briefly on the Medcor report. And you reviewed that, correct?

A. Yes.

Q. Because you want to know what was said and what Mr. Burns felt at or around the time of the incident, true?

A. Yes.

Q. Would you agree that when he went back three days

later he denied dizziness?

A. Yes.

Q. He denied nauseousness?

A. Yes.

Q. And he complained of a minor headache, correct?

A. Yes.

Q. And he said the only reason he was there was to report an accident and that he did want any medical treatment?

MR. McCRORIE: Objection, your Honor. This was three days later.

MR. KAMINSKY: Yes, I said --

MR. McCRORIE: It had already been reported three days before.

THE COURT: Why are we testifying and speaking from the counsel table?

MR. McCRORIE: Three days later.

THE COURT: Why don't we not make speaking objections.

MR. McCRORIE: I object, your Honor. It says three days later.

THE COURT: You object when you come up to the bench, right?

MR. McCRORIE: Yes.

THE COURT: So come up to the bench.

MR. KAMINSKY: Judge, it's in evidence. I'm

going to read it.

THE COURT: You're going to read something?

MR. KAMINSKY: Yes.

THE COURT: All right.

Q. "Patient is here for reporting purposes only and does not want any attention." You saw that, correct?

A. Yes.

Q. So --

THE COURT: Excuse me. Are we speaking on the day of the accident?

MR. KAMINSKY: No, three days later. Three days later.

Q. So as far as the extent of this accident, would you agree it was not sufficient enough to send him to the emergency room?

MR. McCRORIE: Objection.

THE COURT: Sustained.

Q. Would you agree that he obviously from what I just read to you, three days later he didn't request any medical assistance?

A. Yes.

Q. And can we agree that he didn't even come to see you until after speaking with an attorney and coming to you three weeks later?

MR. McCRORIE: Objection.

THE COURT: Sustained.

Q. Can we agree the first time you saw him was approximately three weeks after the incident?

A. Yes.

Q. Now, when you performed your surgery you alleviated -- you decompressed the pressure on his spine, correct?

A. Yes, on the cord.

Q. And did you remove a part of the disc?

A. Yes.

Q. Now, when you do that, you have to send a disc out for a pathology report, correct?

A. Yes.

Q. And isn't it true if that the pathology report indicates -- or do you know if the pathology -- withdrawn.

Do you know if the pathology report indicates disc desiccation?

A. I believe the word they use is degeneration.

Q. Okay. So according to the pathologist who actually examined the part of the disc that you removed from Mr. Burns' back, the pathologist who did the testing and sent the report back to you, the pathologist told you that it was degeneration and not trauma, correct?

MR. McCRORIE: Objection.

THE COURT: Sustained. Asked and answered.

(Continued on next page...)

THE COURT: Come up.

(Whereupon, a discussion takes place off the record, at the sidebar, among the Court and counsel:)

(Whereupon, the following proceedings take place on the record, in open court, in the hearing and presence of the jury:)

Q Okay. Doctor, thank you.

A Thank you.

THE COURT: Okay, counsel.

McCrorie, do you have any redirect?

MR. MCCRORIE: I do, Your Honor. Very briefly.

REDIRECT EXAMINATION

BY MR. MCCRORIE:

Q Doctor Merola, can you tell the jury, with regard to the operations you performed, that are emergent, meaning happens within twenty-four hours of the accident, how many times does the pathologist say the disk in a fifty year old man has is degenerated?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q Is that normal--

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q Is that usual and customary?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q Did you need the pathologist to tell you Mr. Burns' disk was degenerated?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

MR. KAMINSKY: Objection.

THE COURT: You only to say it once.

MR. KAMINSKY: He doesn't listen--

MR. MCCRORIE: Judge, this was brought up on cross.

THE COURT: That's not nice, don't say that.

MR. KAMINSKY: I apologize.

THE COURT: You can ask questions specific to this case.

Q So in this case did you need the pathologist to tell you whether or not Mr. Burns' disk was degenerated?

MR. KAMINSKY: Objection.

THE COURT: Would you like to rephrase that so that it's an open-ended question?

Q Was Mr. Burns' disk degenerated before you even went and operated on it?

A Yes.

Q And does everyone in this room have degenerated disks?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q Is degeneration normal in the course of aging?

MR. KAMINSKY: Objection.

THE COURT: Beyond the scope of cross, counsel.

Q Was that an expected finding--

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q What is the significance of the pathologist telling you it was degenerative disks that you removed?

MR. KAMINSKY: Objection.

THE COURT: That I will allow. If any.

MR. MCCRORIE: If any, yes.

A It just confirms what we already know about the disk pathology in a patient of Mr. Burns' age.

Q Did the pathologist's findings, which you already knew, change your opinion that it was the elevator hoist accident that caused the necessity--

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q For the neck surgery.

MR. KAMINSKY: Objection.

THE COURT: Sustained.

THE COURT: Actually, no. I'll allow it. That's a fair question. You may answer it.

A No, it does not change my opinion.

Q Mr. Kaminsky asked you those questions about both the

neck and the back. He said knowing everything you know, would you believe that Mr. Burns would need a surgery had this accident not occurred and you said no to both the neck and the back.

Do you remember that?

MR. KAMINSKY: I object. I didn't ask that.

Could we approach?

MR. MCCRORIE: Which one did you ask about?

MR. KAMINSKY: Could we approach?

(Whereupon, a discussion takes place off the record, at the sidebar, among the Court and counsel:)

(Whereupon, the following proceedings take place on the record, in open court, in the hearing and presence of the jury:)

THE COURT: You can stand and stretch, jurors.

Do you wish to withdraw your objection, counsel?

MR. KAMINSKY: Yes.

MR. MCCRORIE: May I just reask it?

THE COURT: Do you remember the question?

THE WITNESS: No.

THE COURT: You don't. You may ask the question again.

Q Mr. Kaminsky had asked you a question stating if the elevator hoist accident didn't occur, did you believe that Mr. Burns would have needed both the neck and back surgery and

you said no.

Can you tell the jury why?

A Sure. So from everything I know about my patient and having treated him and reviewed the previous medical records and also knowing what we call the natural history of his particular problem prior to the accident--

Q Just a little louder too.

A Those particular issues, particularly when treated which the patient did have, he had treatment which included chiropractic management and epidural steroid injections, and indeed those treatments were very effective in terms of shrinking herniations and decreasing pain and pressure on those nerves to a point where he could get back to a highly functional status and go back to work.

Under those circumstances, in the absence of trauma, those patients that have those problems, the vast majority--

MR. KAMINSKY: Objection.

THE COURT: Yes. Thank you.

Q Focus on Mr. Burns when you give your answers, please.

A Yes.

Q If you could please just focus it on Mr. Burns.

A So I would say specifically--

THE COURT: I'm sorry. You said effective in decreasing herniation and you said something else?

THE WITNESS: In getting pressure off the nerves and relieving the symptoms within those nerves.

THE COURT: Thank you.

A Mr. Burns, as a patient, would not have required surgery.

MR. KAMINSKY: I'm going to object. Move to strike that.

THE COURT: I will allow it.

Q Does the word degeneration, is that synonymous or equal herniation?

A No.

Q And does degeneration mean there will be symptoms?

A No.

Q Does the fact that there's a herniation mean there will be symptoms?

A No.

Q And can a herniation be rendered asymptomatic through treatment?

A Yes.

Q Can a herniation, that's asymptomatic, be rendered resymptomatic through trauma?

A Yes.

Q And you were asked about positioning change.

Can a herniation that is existing since 1991, for instance, can a herniation that has a trauma in 2008 actually

get larger?

MR. KAMINSKY: Objection.

THE COURT: Sustained. You're beyond the scope of cross.

Q Well, can the position change to cause symptoms through trauma?

MR. KAMINSKY: Objection.

THE COURT: Sustained. Beyond the scope of cross.

MR. MCCRORIE: The position, Judge.

THE COURT: Say it again?

MR. MCCRORIE: He asked if the position of a herniation can change.

MR. KAMINSKY: Objection.

MR. MCCRORIE: Over time.

THE COURT: I believe the testimony was that herniations can change over time.

MR. MCCRORIE: The position he said specifically. Can the position of the herniation change.

THE COURT: I actually don't have it in my notes.

MR. MCCRORIE: Allen, did you ask that?

MR. KAMINSKY: I honestly don't remember.

MR. MCCRORIE: Okay. That's fine.

THE COURT: Do you want a read back?

MR. MCCRORIE: I really don't think so. I'm really positive that that was the question.

THE COURT: I know.

MR. MCCRORIE: I'll try to move on and see if we can come back.

Q You were asked about 1991, if I could just maybe ask--

MR. KAMINSKY: I don't know if I did. If it's important to you, you can ask it.

MR. MCCRORIE: That's fine.

Q I'm just going to open it to the page.

MR. MCCRORIE: Plaintiff's 21. The herniated disk in 1991. At the C4-C5 level.

Q Can you tell the position of that herniated disk by looking at just the report?

Why don't you read what the finding says?

A The report says that there is a mild central posterior disk herniation at the C4-C5 level.

Q And what, if anything, does that report say about cords, spinal cord involvement?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

This is from 1991?

MR. MCCRORIE: 1991.

Q You were asked about that on direct and you were asked about positioning. Looking at what you told the jury on 14A--

MR. KAMINSKY: Judge, way beyond.

THE COURT: Objection sustained.

Q Can a preexisting-- can a disk that's not on the cord--

MR. KAMINSKY: Objection to the leading.

MR. MCCRORIE: For twenty years--

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q You--

MR. MCCRORIE: You said I'm allowed to ask a position question.

Correct?

MR. KAMINSKY: Go ahead.

Q So by Mr. -- Mr. Kaminsky asked if the position of a herniation can change over time. Correct?

A Yes.

Q Can the position of a herniation be changed or moved through trauma?

A Yes.

Q Can it be pushed onto the spinal cord?

MR. KAMINSKY: Objection.

MR. MCCRORIE: Your Honor, I don't know if you heard, there's an objection.

THE COURT: I did. I was finishing a sentence and thinking while I was writing.

MR. MCCRORIE: Of course. Take your time. I don't want to rush you.

THE COURT: Yes, the objection is sustained.

Anything else, counsel?

Q If the position of a herniation changed over time, since 1991 to the neck, the neck only, would you have expected any treatment?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q Up until-- any treatment up until the date of this accident--

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q What, if anything, do we know about the change of position to the cervical herniated disk from the 1991 MRI to the August 2008 MRI that you've gone over with the jury?

A August 2008 shows cord compression.

Q Is that a change of position from the September 12th, 2008-- I'm sorry.

Does the September 12th, 2008 show cord compression?

A Yes.

Q Can that occur from trauma?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q Did it with reasonable--

MR. MCCRORIE: Withdrawn. It's already done anyway.

Q This note that Mr. Kaminsky said you sent Mr. Burns to get his knee checked out. That was not done. Correct, he didn't go get his knee checked out?

A Correct.

Q When you indicated on that note about the partial disability that had he, what parts of his body did he have the partial disability to?

THE COURT: Before you continue, I just want to make sure we have a time frame, please.

MR. MCCRORIE: February 2009.

Q When he returned, Mr. Kaminsky read to you the moderate partial disability.

A Yes.

Q What parts of his body were you referring to?

A Neck and back.

THE COURT: Stand and stretch, jurors. I'm sorry to have interrupted, counsel.

Q Doctor, any of the questions that you were asked about other patients or cases, do you treat even patient and their case and physical condition separately from any other patient?

MR. KAMINSKY: Objection.

THE COURT: Why don't you rephrase it.

Q Is each patient you treat, is their medical condition considered separately and apart from anyone else's medical condition?

MR. KAMINSKY: Objection.

THE COURT: You're asking a leading question.

Q When you testify about a patient, as you did in this case, do you testify about only that patient?

MR. KAMINSKY: Objection.

THE COURT: Let's try again.

Q What are the differences between patients that you treat?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q What, if any, are there differences between patients that you treat?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

MR. MCCRORIE: I'll leave it as the obvious, Judge, and move on. I'm almost done.

Q Just so we can clear up this Medcor. You had said that Mr. Burns didn't seek traditional emergency care.

What is your understanding of Medcor?

MR. KAMINSKY: Objection.

MR. MCCRORIE: We can do the stipulation.

THE COURT: Can we stipulate to that instead, please?

MR. KAMINSKY: Yeah.

THE COURT: Come up here one minute.

So, jurors, there is a question posed as to what Medcor does and I'm reading from a Medcor document with the consent of the attorneys. All right.

So-- excuse me.

Counsels, this is not in evidence?

MR. KAMINSKY: Correct.

THE COURT: But you stipulate to my reading this. Is that correct?

MR. KAMINSKY: Yes, Your Honor.

MR. MCCRORIE: Yes, Your Honor.

THE COURT: So it says Medcor Services. So it says core services on-site treatment, appropriate off-site referrals, emergency response, return to work support, safety support, and then it says reporting and then under that it says first reports of injury (federal and state), injury trend analyses, OSHA loss, drug tests status, surveillance status, workers comp claims. Okay.

Were you all able to hear me?

THE JURY: Yes.

Q Very briefly.

You were asked about what he said on the 23rd. Were you also aware he was there the day of the incident within a half hour?

A Yes, sir.

Q And that he complained of back pain--

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q The reporting that he--

You were asked the question about on the 23rd of 2008, what was your understanding of what that recording was? It's fact that an accident occurred or that he still had an injury?

A The fact that he had had an injury.

MR. MCCRORIE: Nothing further.

THE COURT: Thank you.

RECROSS-EXAMINATION

BY MR. KAMINSKY:

Q Doctor, he went to Medcor after he had lunch to report an incident. True?

MR. MCCRORIE: Objection.

THE COURT: I couldn't hear him.

Q He went to Medcor after he had lunch to report an incident. True?

MR. MCCRORIE: Objection.

THE COURT: Sustained.

Q He went back to work that day. True?

MR. MCCRORIE: Objection.

THE COURT: Sustained.

Q And he continued to work for--

MR. MCCRORIE: Objection.

THE COURT: Sustained.

Jurors, you're not hearing this. Disregard, please.

Q Nine months--

MR. MCCRORIE: Objection--

Q After the incident occurred--

MR. MCCRORIE: Objection--

THE COURT: Counsel, counsel, you have to stay within the very narrow--

MR. KAMINSKY: Yes.

THE COURT: Parameters--

MR. KAMINSKY: Of redirect.

THE COURT: Of redirect.

MR. KAMINSKY: I will.

THE COURT: You are going far afield.

MR. KAMINSKY: I believe this--

MR. MCCRORIE: Objection. It can't be--

THE COURT: You have to let the words come out of his mouth, please.

MR. MCCRORIE: Yes, Your Honor.

THE COURT: Thank you.

Q Nine months after the incident happened, you said he had a moderate partial disability.

Correct?

MR. MCCRORIE: Objection.

THE COURT: I'll allow that.

A Yes.

Q Mr. McCrorie asked you about symptoms. Okay.

He had episodes of pain in his neck and his back on and off--

MR. MCCRORIE: Objection.

Q For twenty years--

THE COURT: Are we really going to testify through our questioning. No, we are not.

Jurors, disregard.

Q You were asked if the position of a disk can be moved by trauma. Can the position of a disk be moved by causes other than trauma?

MR. MCCRORIE: Objection. Asked and answered.

MR. KAMINSKY: No.

THE COURT: What is your question, counsel?

Q Can--

Mr. McCrorie asked you if the position of a disk can be moved by trauma. I'm asking you can the position of a disk be effected by strenuous daily activities?

MR. MCCRORIE: Objection.

THE COURT: I don't think you can ask that question, counsel. You're going beyond the scope of redirect.

Q Can the position of a disk be effected when someone

such as Mr. Burns lifts something heavy and feels a pop in his back?

MR. MCCRORIE: Objection. That's from 1989.

THE COURT: Sustained.

Disregard, jurors.

MR. KAMINSKY: Okay. Thank you, doctor. I appreciate you coming back today.

THE COURT: Thank you.

MR. MCCRORIE: Nothing, Your Honor.

THE COURT: Thank you, doctor. Good day.

MR. MCCRORIE: Move to strike those portions?

THE COURT: I beg your pardon?

MR. MCCRORIE: I move to strike from the record.

MR. KAMINSKY: There's nothing to strike. Your objection was sustained.

MR. MCCRORIE: Understood.

THE COURT: Okay.

Counsel, step up, please.

(Whereupon, a discussion takes place off the record, at the sidebar, among the Court and counsel:)

(Whereupon, the following proceedings take place on the record, in open court, in the hearing and presence of the jury:)

THE COURT: Okay. Jurors, so, yes, we're going to go over our schedule. So tomorrow I will not be here, as you

know. We're off tomorrow. Tomorrow's a down day and tomorrow's Friday. Monday we're down but we will see each other Tuesday, Wednesday, Thursday and expect to get the case Thursday and we will see where we go.

So there's an interval of several days until we meet again. You know the drill. Do not discuss this case with anybody. Don't even think of it. Okay. The thought crosses your mind, cast it out because we have to have only the testimony that's here. That's the only stuff that we can consider including depositions, as you know. All right.

So have a wonderful, wonderful weekend one day ahead of time and we will see you on Tuesday. We expect to start at 10. So we'll see you at quarter of. Thank you everyone.

(Whereupon, the jury exited the courtroom.)

(Whereupon, the following proceedings take place on the record, in open court, out of the hearing and presence of the jury:)

THE COURT: Counsel, do we have anything else to put on the record?

MR. MCCRORIE: I don't think so, Your Honor.

(Whereupon, the trial is adjourned until 6/21/16.)

$

$2 (1)
730:10
$650 (1)
731:10

A

abeyance (1)
727:8
able (3)
733:7;758:4;777:18
absence (1)
769:15
absolutely (1)
723:9
accident (11)
747:6;759:2,13;
762:8;763:10,13;
765:16;767:15;768:3,
24;778:6
accident- (2)
769:6;774:8
according (5)
734:16;746:2;
747:5;749:9;764:18
acknowledged (2)
741:17,19
activities (1)
780:20
actual (1)
734:10
actually (7)
724:14;734:1,4;
764:18;767:22;
770:25;771:19
adjourned (1)
782:22
advantage (1)
725:4
advocate (1)
732:1
afield (1)
779:15
afternoon (1)
725:24
again (6)
722:16;731:5;
768:22;771:10;776:6;
782:6
age (1)
767:13
aged (1)
750:18
ages (1)
735:10
aging (1)
767:1
ago (4)
730:9;734:2;735:9;
756:6
agree (45)
726:25;732:4,10;
733:1,4,17,21,25;
734:16,20,23,25;
735:1,5,7,11,17,20,
23;736:3,7;738:5,19;
739:3,20;740:21;
741:5;742:17;743:10;
747:13;748:12,24;
749:13;755:14;
756:24;757:11;758:3;
760:22,25;761:6,25;
763:14,18,22;764:2
ahead (2)
773:10;782:12
Allen (1)
771:20
alleviate (1)
739:14
alleviated (1)
764:5
allow (8)
731:17;732:16;
755:20;761:9;767:10,
22;770:8;780:1
allowed (1)
773:7
almost (2)
754:14;776:16
along (2)
723:19;760:18
among (6)
742:21;747:9,20;
765:3;768:11;781:20
analyses (1)
777:16
anatomy (1)
748:7
answered (3)
755:17;764:24;
780:14
anticipate (1)
723:9
anticipated (1)
725:17
anticipation (1)
725:2
anymore (1)
755:14
anyplace (1)
725:13
apart (1)
775:24
apologize (2)
743:20;766:12
appear (1)
733:10
applicable (1)
730:6
appreciate (1)
781:7
approach (4)
737:19;745:13;
768:7,9
appropriate (1)
777:12
approximately (2)
757:15;764:3
area (5)
747:13,14,14;
748:24;749:13
arguably (1)
753:23
argument (1)
726:23
around (2)
725:24;761:23
Arts (2)
723:24;725:12
aside (1)
735:15
ask- (1)
772:4
assistance (1)
763:20
assistant (1)
747:9
assume (8)
744:13;749:25;
751:4,12;752:5,7,8;
760:15
asymptomatic (8)
742:12;743:3,8;
744:17;745:25;746:3;
770:17,20
attention (1)
763:6
attorney (2)
747:10;763:23
attorneys (4)
724:25;742:21;
747:20;777:3
August (2)
774:13,14
available (1)
740:21
awake (1)
729:5
aware (7)
734:22;737:3,6,11;
743:2;759:13;777:22
away (4)
723:20;731:10,18;
746:18
aways (1)
735:22

B

back (66)
723:8;725:7,14;
729:19;733:11,18,20;
734:18,21,23;735:2,2,
3,17,21,21,22,24;
736:20,22;737:2,4,4,
9;738:5,18;739:13;
740:3,4,12,25;741:3,
6,6,8,21;742:23;
743:12,13;747:11,22;
749:2;751:5;753:7,8;
754:5;756:16;758:4;
759:16;760:15;
761:25;764:20,21;
768:1,4,25;769:13,14;
771:23;772:3;775:15;
777:25;778:21;780:4;
781:2,7
ball (2)
724:13,14
based (2)
740:6;750:21
basis (2)
726:24;731:9
be- (1)
779:17
beating (1)
755:12
become (1)
739:17
beg (1)
781:12
began (1)
735:7
begun (1)
730:18
behalf (1)
732:1
bench (6)
742:21,25;747:9,
20;762:22,24
benefit (2)
743:24;759:23
benefits (1)
759:15
Beyond (5)
767:3;771:3,8;
772:24;780:23
big (2)
733:15;746:15
bit (2)
729:4;731:23
body (4)
732:14,23;775:6,14
both (4)
746:15;767:25;
768:3,25
breakdown (1)
740:1
Brief (3)
744:2;748:6;754:25
briefly (4)
730:8;761:19;
765:11;777:20
Bring (1)
722:1
Bronx (3)
723:24;724:17;
725:12
brought (1)
766:9
Burns (37)
733:1,18;734:17;
735:7,18;736:11;
737:6,8;738:5;
739:12,18;741:5;
742:12;743:3,17;
744:11,18;746:3,23;
747:5;749:9;751:15;
753:23;757:11,15;
758:21;759:6;761:16,
23;768:2,25;769:20,
22;770:4;775:1;
776:18;781:1
Burns' (10)
736:25;747:12;
749:2;752:14;759:16;
764:19;766:2,16,20;
767:13
Burns's (1)
761:6

C

C4-C5 (4)
748:14,22;772:10,
15
call (5)
724:6;726:2,9;
736:25;769:5
called (3)
723:12,15,16
can (95)
722:12,18,19;
723:11,21,25;724:16;
725:13,20;730:5;
732:17;733:1,4,8,17,
21,25;734:16,20,23,
25;735:1,5,7,17,20,
23;736:3,7;737:19;
738:15,16,19,21;
739:2;740:21;741:4;
742:17,24;743:10;
744:1;745:19;747:13;
748:4,12,24;749:13;
750:2,16;755:14;
756:3,11,19;757:2,11;
758:3;759:1,15,17;
760:4,7,13;763:22;
764:2;765:14;766:13;
768:15;769:2;770:17,
20,24,25;771:5,12,16,
18;772:3,6,11;773:1,
1,12,14,17;774:20;
776:17,21,22;780:11,
12,19,19,22,25;782:9
Can- (1)
780:17
care (3)
744:6,8;776:18
career (2)
730:10;731:11
Carney (1)

725:23
case (22)
723:10,12;732:6;
733:1,4,17,25;739:6;
740:14;742:8,11;
743:2,6;754:7;759:5;
761:6;766:14,15;
775:20;776:4;782:4,6
cases (15)
730:11,21,22;
731:2;732:5,6,6,10;
736:4;738:8;741:24;
753:11,14,17;775:19
cast (1)
782:8
causation (1)
727:8
cause (3)
739:2;742:6;771:5
caused (6)
732:7,12,21;
736:18,21;767:16
causes (4)
736:4;738:25;
741:25;780:12
causing (4)
738:6,9;739:1,13
central (1)
772:14
certainly (2)
724:20;730:2
certainty (6)
750:14;751:13;
752:18,21;753:23;
759:18
cervical (2)
748:13;774:12
change (14)
759:10;760:4,13,
18;767:15,24;770:23;
771:5,12,16,18;
773:12;774:11,15
changed (3)
737:21;773:14;
774:2
characterization (1)
730:15
charge (2)
722:19;726:24
charges (2)
725:3;727:5
chart (1)
743:11
cheapy (2)
724:18,18
checked (2)
775:2,3
chiropractic (1)
769:10
chiropractor (1)
740:25
chronological (1)
757:14
circumstances (2)
736:6;769:15
claims (1)
777:17
clarification (2)
742:24;760:8
clarify (1)
734:9
Clean (1)
753:21
clear (1)
776:17
clearly (1)
754:16
clinical (1)
736:9
close (1)
754:17
closing (1)
726:23
College (1)
723:13
coming (3)
731:7;763:23;781:7
Community (1)
723:13
comp (1)
777:17
company (1)
726:8
compensation (4)
731:7,9,13,18
complain (1)
743:13
complained (5)
735:24;736:16;
743:12;762:5;777:25
complaints (12)
732:13,22;734:20;
736:13;737:3;738:18;
752:10,10,11,12,13;
753:10
Complete (2)
744:6,8
completely (2)
732:19;739:10
compression (3)
738:15;774:14,18
concerned (3)
749:2;754:16;
758:12
concluded (2)
729:11;744:17
Concourse (2)
723:14,23
concussion (1)
752:9
condition (18)
736:10,21,22;
739:21;741:20;
750:17;752:7;755:15;
756:25,25;757:8,11;
759:1,9,19;775:20,23,
25
conditions (1)
736:8
confirmed (1)
738:19
confirms (2)
742:8;767:12
confused (1)
730:16
consent (1)
777:3
consider (2)
727:6;782:10
considered (1)
775:24
constitution (1)
736:25
CONT'D (1)
729:17
continually (1)
740:3
continue (4)
729:11,14;755:10;
775:8
Continued (4)
727:13;750:17;
764:25;778:24
continuing (1)
740:7
cool (2)
724:1,2
copy (1)
749:22
cord (6)
751:18;764:7;
772:17;773:17;
774:14,17
cord- (1)
773:1
cords (1)
772:17
core (1)
777:12
counsel (31)
726:21;739:15;
742:10,18,22,24;
745:8;746:7;747:10,
21;750:24;751:6;
754:19;755:23;758:6;
760:17;762:15;765:3,
9;767:3;768:11,16;
774:1;775:17;779:8,
8;780:16,23;781:18,
20;782:19
Counselor (2)
754:2;755:10
Counsels (1)
777:5
counts (1)
729:6
course (5)
730:9;731:11;
752:8;767:1;773:23
COURT (203)
722:1,6,8,15;723:2,
4,18;724:11;725:8,18,
21,22;726:3,7,14,18,
25;727:2,10;729:1,4,
23;730:14;731:7,17,
20,22,25;732:16;
733:5,9,13,15;734:8;
737:17,20,24;738:2,9,
12;739:15;741:18;
742:10,18,22,23,24;
744:1,5,7,10,22,24;
745:6,11,14,18,20;
746:6,13,15,25;747:7,
10,11,18,21,22,23;
748:3;750:4,6,9,20,
23;751:6,19,23;
752:17,24;753:1,15,
18,21;754:1,19,22;
755:4,5,8,18,20,23;
756:1,5,10,14,17;
757:2,4,6,25;758:2,6,
17;759:22;760:7,17,
20;761:5,9,12,15;
762:14,17,21,24;
763:2,4,9,17;764:1,
24;765:1,3,5,9,20,23;
766:1,5,7,11,13,18,
25;767:3,6,10,18,21,
22;768:11,13,15,19,
21;769:19,24;770:3,
8;771:3,8,10,15,19,
23;772:1,19,25;773:5,
21,25;774:6,10,22;
775:8,16,22;776:2,6,
10,14,22,25;777:7,11;
778:2,10,16,20,23;
779:1,8,11,13,15,18,
21;780:1,8,16,22;
781:4,8,10,12,17,20,
22,24;782:17,19
courtesy (1)
722:11
courtroom (6)
723:3;725:19;
729:2;754:23;755:6;
782:15
CROSS (5)
729:17;766:10;
767:3;771:4,8
crosses (1)
782:8
cross-examination (7)
722:7;723:7;
729:10,10,15;730:8,
19
cross-examined (1)
732:5
customary (1)
765:24
cut (1)
744:22

D

daily (2)
731:9;780:20
dangerous (1)
761:1
date (3)
746:9,10;774:7
day (6)
763:10;777:22;
778:21;781:10;782:1,
11
days (9)
761:25;762:10,13,
16,20;763:11,11,19;
782:5
dead (1)
755:12
decent (1)
723:21
decide (1)
725:11
decided (1)
726:9
decompressed (1)
764:6
decreasing (2)
769:12,25
defendants (2)
725:25;726:6
defense (3)
742:22;747:10,21
degenerated (7)
747:14;752:7;
765:18;766:3,16,20,
23
degeneration (10)
739:24;740:1,7;
742:8,9;764:17,21;
767:1;770:9,12
degenerative (4)
732:8;740:15;
741:20;767:8
degree (5)
750:14;751:13;
752:20;753:22;
759:17
delay (1)
726:6
deliberations (1)
725:2
denied (2)
762:1,3
depending (1)
736:9
deposition (3)
725:22,23;726:2
depositions (1)
782:10
desiccation (1)
764:16
determination (1)

741:24
determining (2)
732:12,21
differences (2)
776:7,11
different (5)
722:14;723:25;
742:12;748:2;750:23
Direct (3)
722:14;747:24;
772:22
disability (7)
758:10,18,21;
775:6,7,12;779:23
disc (8)
734:4;738:19;
739:3,7;764:8,10,15,
19
discs (2)
748:2,10
discuss (1)
782:6
discussed (1)
752:7
Discussion (8)
723:1;742:20,25;
747:8,19;765:2;
768:10;781:19
disk (17)
755:15;756:2;
765:17;766:3,16,20;
767:12;772:9,11,15;
773:1;774:12;780:11,
12,18,20,25
disks (2)
766:23;767:8
dispute (2)
737:23;742:11
disregard (6)
737:18;751:1;
754:3;779:2;780:10;
781:5
distinctive (1)
724:17
distribution (1)
756:22
district (1)
747:9
dizziness (1)
762:1
Doctor (22)
729:13,19;730:8,
18;732:16;733:6,14,
17;736:16;738:1;
745:2;750:9;755:12;
756:11;758:15,23;
765:7,14;775:18;
778:13;781:6,10
document (1)
777:2
documents (1)
745:15
Don (1)
724:10
done (5)
726:3;759:12;
774:24;775:2;776:16
down (8)
723:8;735:25;
736:13;740:10;758:9,
20;782:1,2
dozens (1)
730:24
Dr (24)
722:3,11;723:6;
729:8;730:12;743:17;
744:9,11,13,17;745:4,
22;746:2,20,21;
747:5;749:19,19,25;
750:6,12;751:8,12,20
drill (1)
782:6
drug (1)
777:16
due (3)
723:5;741:24,25
during (6)
726:4,15,19,23;
747:24;759:13

E

eat (1)
725:13
economist (1)
730:13
effected (2)
780:20,25
effective (2)
769:11,24
either (1)
724:18
elevator (2)
767:15;768:24
else (7)
725:15;727:3;
750:22;760:17;
769:25;774:1;782:19
else's (1)
775:24
e-mail (1)
726:1
emergency (6)
754:5,8,9;763:14;
776:18;777:13
emergent (1)
765:15
enjoy (1)
724:16
enough (2)
730:2;763:14
enter (2)
729:2;755:6
entering (3)
723:2;729:1;755:5
enters (1)
723:3
entirely (1)
739:11
epidural (1)
769:10
episodes (1)
780:4
equal (1)
770:9
equation (2)
751:14;753:9
established (1)
730:9
even (6)
741:11;753:24;
763:22;766:20;
775:19;782:7
events (1)
723:5
Everybody (1)
754:20
Everyone (3)
755:8;766:23;
782:14
evidence (5)
733:23;738:14;
744:3;762:25;777:5
evident (1)
739:17
examination (4)
729:11,17;747:24;
765:12
examined (1)
764:19
Excuse (6)
733:5;742:18;
748:3;760:7;763:9;
777:4
Exhibit (3)
725:21,22;726:3
existence (1)
734:7
existing (1)
770:24
exited (2)
754:23;782:15
exiting (2)
725:18;754:22
exits (1)
725:19
expect (3)
738:17;782:3,12
expected (2)
767:4;774:3
experiencing (2)
746:23;747:6
expert (1)
750:8
explained (3)
748:2,7,10
explore (1)
729:4
extensive (3)
733:2,18;738:18
extent (2)
730:4;763:13

F

fact (8)
732:22;752:6;
758:12;761:11,16;
770:14;778:6,8
factor (1)
732:12
facts (2)
732:2,3
fair (2)
730:19;767:23
fairly (1)
737:6
fall (1)
737:8
false (1)
746:20
famous (1)
724:8
fanfare (1)
722:16
far (11)
729:9;734:21,22;
740:3;746:17;748:20;
749:2;752:5;754:16;
763:13;779:15
February (6)
757:19,21;758:8,8,
20;775:10
federal (1)
777:15
feel (1)
735:14
feels (1)
781:1
felt (1)
761:23
few (1)
735:12
fifty (1)
765:17
file (4)
743:20,21,23,24
film (1)
748:12
films (19)
734:1,4,6,7,10,10,
12,17,23,25;735:1,2;
748:21;749:9;759:6,
12,15,18,23
finding (1)
772:13
finding- (1)
767:4
findings (2)
744:14;767:14
fine (4)
738:24;748:19;
771:22;772:7
finish (5)
722:8,15,23;
729:24;745:2
finishing (2)
722:3;773:21
firm (5)
730:11,21,23;
731:2,14
first (5)
727:11;741:4;
757:15;764:2;777:15
five (1)
754:21
Focus (2)
769:20,22
following (7)
750:1;754:24;
755:1;765:4;768:12;
781:21;782:16
follows (1)
750:25
for- (1)
778:24
foreheads (1)
722:21
forward (1)
733:6
frame (1)
775:9
free (1)
724:18
Friday (1)
782:2
front (3)
743:24;744:24;
746:10
functional (1)
769:13
functioning (1)
738:14
further (1)
778:9

G

gallery (2)
723:14,15
game (1)
724:7
Gateway (2)
723:16,19
general (4)
756:17;760:6,22,24
generated (1)
730:10
gets (1)
736:5
given (8)
725:25;742:25;
750:15;752:14;753:9,
10,11,11
giving (1)

723:9
goal (2)
761:10,13
goes (1)
738:15
Good (5)
722:1;723:24;
729:21;760:22;
781:10
governmental (1)
760:25
Grand (1)
723:14
great (2)
724:15;725:9
guess (4)
731:1,6;735:9,10
guy (1)
724:6
guys (2)
724:22;725:16

H

half (1)
777:23
handed (1)
745:15
happened (12)
736:1,14;746:22;
749:10;752:13;754:4,
7,10,13;757:12;
758:3;779:22
happening (1)
756:22
happens (1)
765:15
hard (1)
730:25
Hausknecht (8)
743:17;744:9,11,
17;745:22;746:2,21;
747:5
Hausknecht's (2)
744:13;745:4
hazard (1)
731:6
he- (1)
778:3
head (1)
737:9
headache (2)
733:24;762:5
headaches (2)
733:22;752:10
hear (7)
733:7,9,10;746:16,
17;777:18;778:16
heard (1)
773:20
hearing (5)
765:5;768:13;
779:2;781:22;782:17
heavy (1)
781:1
held (1)
727:7
herniated (8)
734:4;739:3,7;
755:15;756:2;772:9,
11;774:12
herniation (30)
735:1,2;736:4,20;
738:19;739:1,2,12;
747:13;748:13,22;
752:3,6;760:4,9,11,
12;769:25;770:10,14,
17,20,24,25;771:12,
18;772:15;773:12,14;
774:2
herniations (5)
734:17;749:10;
753:9;769:12;771:16
highly (1)
769:13
history (8)
733:2,3;738:18;
742:17;752:14;
755:14;756:16;769:5
hits (1)
724:7
hitter (1)
724:7
hoist (2)
767:15;768:24
Hold (2)
744:22;745:6
honestly (1)
771:21
Honor (9)
762:9,19;765:11;
773:19;777:9,10;
779:20;781:9;782:21
horse (1)
755:12
Hostos (1)
723:13
hour (2)
731:10;777:23
hours (1)
765:16
hurt (1)
754:5
hurts (1)
733:12
hypothetical (2)
753:17;754:2

I

idea (1)
760:23
ideally (1)
761:6
identify (1)
750:6
important (4)
732:12;740:16;
742:15;772:6
imprinted (1)
722:21
in-between (1)
749:18
incident (30)
735:25;736:14;
742:13;744:18;746:4,
22;749:10;750:14;
751:14;752:13;753:8,
24;754:4,7,10,13,16;
757:12,13,16;758:4;
759:16,19;761:23;
764:3;777:22;778:14,
18;779:6,22
included (1)
769:9
including (1)
782:10
income (1)
730:10
indeed (1)
769:11
indelibly (1)
722:21
indicated (1)
775:5
indicates (2)
764:14,15
indication (2)
741:5;747:2
injections (1)
769:10
injury (7)
739:4,8;756:2;
777:15,16;778:7,8
instance (2)
740:24;770:25
instead (1)
776:22
instructed (1)
726:22
interesting (1)
729:7
intermittent (2)
750:16;752:11
interpretations (1)
734:11
interpreted (1)
734:17
interrupted (1)
775:17
interval (1)
782:5
investigator (1)
726:8
involved (6)
730:20,22,22;
731:1,2;737:14
involvement (1)
772:17
involving (1)
730:11
irritated (1)
756:23
irritation (6)
738:14,25;756:8,
20,21;757:13
issue (3)
732:5,6;744:16
issues (7)
722:11;733:2;
735:7;738:6;743:2;
747:12;769:8

J

Jerome (1)
723:20
Jim (1)
722:9
join (1)
750:23
Judge (13)
725:20;726:16,21;
731:21;737:19;
750:11;751:22;
760:21;762:25;766:9;
771:9;772:24;776:16
June (3)
746:11,13,22
JUROR (3)
723:17;725:7;748:5
Jurors (24)
723:2;725:15,18;
726:18;729:1,2,4,8;
737:18;744:1;748:4;
751:23;754:3,21,22;
755:5,6;768:15;
775:16;777:1;779:2;
780:10;781:5,24
jury (20)
722:2,19;723:3;
725:19;727:4;748:2,
7;751:1;754:23;
756:20;765:6,14;
768:14;769:2;772:23;
774:13;777:19;
781:23;782:15,18

K

KAMINSKY (105)
722:7,9;724:10;
726:10,21;729:14,16,
18;730:16;731:21,24;
733:7,16;734:9;
737:19,22;738:3,11;
741:19;743:1;744:6,
8,23;745:12,13;746:8,
19;749:16;750:3,5,8,
11,22;751:3,11,22;
752:20,25;755:11;
756:15;758:1,19;
760:10,18,21;762:11,
25;763:3,11;765:19,
22,25;766:4,6,8,12,
17,24;767:2,5,9,17,
20,25;768:6,9,17,23;
769:18;770:6;771:2,
7,13,21;772:5,18,24;
773:2,4,10,11,18;
774:5,9,21;775:1,11,
21;776:1,5,9,13,20,
24;777:6,9;778:1,12;
779:10,12,14,16;
780:15;781:6,14
keep (2)
722:12;761:1
killers (1)
761:1
kind (1)
729:7
kindly (1)
750:4
Kirk (1)
725:23
knee (6)
758:13,15,18,24;
775:2,3
knew (1)
767:14
knowing (2)
768:1;769:5

L

L4-L5 (1)
749:11
L5-S1 (1)
749:11
ladder (1)
737:8
landing (1)
737:8
larger (1)
771:1
Larsen (1)
724:10
Lasky (1)
726:8
last (2)
725:12;726:1
later (10)
725:16;757:19;
762:1,10,16,20;
763:11,12,19,24
law (5)
730:11,21,23;
731:2,14
lawsuit (2)
737:14,23
leading (2)
773:2;776:2
leaning (1)
733:6
leave (4)

730:2;735:15;
743:23;776:15
leaving (1)
722:9
left (1)
743:23
leg (1)
736:13
legs (2)
735:25;740:10
level (4)
748:13;752:2;
772:10,15
levels (1)
749:3
life (3)
725:17;752:22;
759:7
lifts (1)
781:1
listen- (1)
766:8
little (3)
729:4;731:23;769:7
long (10)
722:13;734:2;
735:21,25;736:14;
741:20;749:10;756:5;
757:12;761:1
longstanding (1)
759:1
Longwood (1)
723:15
look (3)
729:5;745:10;
748:15
looking (3)
750:22;772:12,23
loss (1)
777:16
lot (4)
725:1,3;733:6;
735:14
loud (1)
745:18
louder (2)
731:20;769:7
low (2)
736:20,22
lower (2)
733:20;737:2
lumbar (3)
749:3,6,11
lunch (2)
778:13,17

M

major (1)
722:19
majority- (1)
769:17
makeup (1)
737:1
making (2)
727:11;741:24
mall (4)
723:16,16,19,21
man (3)
735:8,18;765:17
management (4)
750:8,9;761:4;
769:10
Mandelbaum (7)
749:19,19,25;
750:13;751:9,12,21
Mandelbaum's (1)
750:6
many (6)
722:20;726:19,19;
730:21;731:5;765:16
marked (2)
725:21;726:3
may (14)
729:14;735:13;
745:13,14;752:15,16,
18,21;753:2,3;
755:10;767:23;
768:18,21
Maybe (3)
729:5;731:22;772:4
McCRORIE (97)
722:5,13;725:20;
726:12,16;727:1,7;
729:23;730:3,12;
731:15;732:15;734:6;
737:16,25;740:11;
742:2;746:5,24;
747:16;748:18;
749:17;750:2;751:17,
20;752:16,18,23;
753:3,13,16,19,25;
754:18;755:17;756:4,
9;757:1;759:21;
761:3,8;762:9,12,16,
19,23;763:16,25;
764:23;765:10,11,13;
766:9;767:11;768:8,
18;771:9,11,14,17,20,
22,24;772:2,7,9,21;
773:3,7,19,23;774:24;
775:10;776:15,21;
777:10;778:9,15,19,
22,25;779:5,7,17,20,
25;780:3,6,14,18,21;
781:3,9,11,13,16;
782:21
mean (5)
745:25;752:24;
753:1;770:12,14
meaning (1)
765:15
means (3)
739:24;740:1;760:8
Medcor (8)
761:19;776:17,19;
777:2,2,11;778:13,17
medical (22)
736:19,24;737:25;
740:16,19,22;742:3;
750:14;751:13;752:9,
14,21;753:12,22;
755:14;756:16;
759:17;762:8;763:19;
769:4;775:23,24
medication (2)
761:7,17
medicine (1)
756:18
meet (1)
782:6
meeting (1)
724:25
Merola (6)
722:3,11;723:6;
729:8;746:20;765:14
metal (1)
724:13
mild (1)
772:14
million (1)
730:10
mind (3)
737:21;751:24;
782:8
minor (1)
762:5
minute (1)
776:25
missing (2)
726:17,23
Missun (1)
730:12
model (1)
747:24
moderate (5)
758:9,17,21;
775:11;779:23
Monday (1)
782:2
money (1)
724:19
months (2)
757:19;779:22
months- (1)
779:4
more (4)
725:9;727:5;
733:11;748:15
morning (6)
722:1,23;723:5;
725:5;726:6,9
most (1)
732:11
mouth (1)
779:19
move (10)
731:22;738:4;
742:10;756:19;
760:18;770:6;772:2;
776:16;781:11,13
moved (5)
724:14;773:14;
780:11,12,19
MRI (2)
774:12,13
much (2)
724:19;727:5
mumbles (1)
753:15
Museum (4)
723:24;724:1,15;
725:12

N

name (2)
724:5,9
narrow- (1)
779:9
natural (1)
769:5
nauseousness (1)
762:3
nearby (1)
724:17
necessarily (1)
739:5
necessitating (2)
759:2,19
necessity- (1)
767:16
neck (33)
733:2,3;734:1,2,5,
18,21;735:1,1,8,18;
743:15;747:12;
748:13,21;750:16,17;
751:7,9,19;752:1,5,
10;760:12,13;767:19;
768:1,3,25;774:3,3;
775:15;780:4
need (3)
766:2,15;768:2
needed (6)
751:15;752:15,21;
753:1,23;768:25
needs (1)
726:10
neighborhood (1)
723:11
nerve (10)
738:6,9,13,14,25;
756:7,20,21,22;
757:13
nerves (4)
756:8;769:13;
770:1,2
next (5)
723:8;727:13;
746:17;757:18;
764:25
nice (4)
723:15;724:4;
725:14;766:11
night (1)
726:1
Nine (2)
779:4,22
nonetheless (2)
751:15;752:15
normal (1)
767:1
normal- (1)
765:21
nose (2)
724:24;725:6
note (9)
744:20,24;745:4,7,
8,9,10;775:1,5
noted (1)
757:22
notes (1)
771:19
notice (1)
726:1
number (4)
730:25;731:1,13;
750:2
numbered (1)
748:10
numbness (1)
735:24

O

object (4)
762:19,21;768:6;
770:6
objecting (1)
727:8
Objection (75)
730:12;731:15;
732:15;734:6;737:16,
25;742:2;746:5,24;
747:16,23;751:17;
752:16,17,23;753:13,
16,25;754:18;755:17;
756:4,9;757:1;
759:21;761:3,8;
762:9;763:16,25;
764:23;765:19,22,25;
766:4,6,17,24;767:2,
5,9,17,20;768:16;
769:18;771:2,7,13;
772:18,25;773:2,4,18,
20,25;774:5,9,21;
775:21;776:1,5,9,13,
20;778:1,15,19,22,25;
779:17,25;780:6,14,
21;781:3,15
Objection- (2)
779:5,7
objections (1)
762:18
observe (1)

759:9
obvious (1)
776:15
obviously (2)
745:24;763:18
occasion (1)
734:22
occur (2)
768:24;774:20
occurred (8)
742:13;746:4;
754:24;755:1;759:17,
19;768:3;778:6
occurred- (1)
779:6
occurrence (1)
759:24
o'clock (1)
723:6
Off (13)
722:25;723:1;
742:20;744:22;747:8,
19;760:23;761:7;
765:2;768:10;770:1;
781:19;782:1
off- (1)
780:5
offer (1)
727:10
office (2)
731:10,18
OFFICER (5)
723:2;725:18;
729:1;754:22;755:5
off-site (1)
777:12
old (3)
724:15;734:10;
765:17
older (2)
735:13,19
once (8)
722:16;731:5;
739:3,7;755:14;
756:2,24;766:7
one (9)
723:15;734:22;
743:2;748:15;750:24;
757:8;768:8;776:25;
782:11
ones (1)
760:2
only (12)
733:25;735:23;
739:10;751:21;760:1;
762:7;763:5;766:7;
774:3;776:4;782:8,9
onset (2)
736:18,21
on-site (1)
777:12
onto (1)
773:17
open (8)
742:23;747:11,22;
765:5;768:13;772:8;
781:22;782:17
open-ended (1)
766:19
opening (2)
726:17,19
operated (1)
766:21
operations (1)
765:15
opinion (5)
740:14;751:13;
758:21;767:15,24
OSHA (1)
777:16
otherwise (2)
722:19;751:1
out (12)
745:18;750:14;
751:14,24;753:8,19;
764:10;775:2,3;
779:18;782:8,17
over (24)
723:21;730:9,10,
17;731:11;736:5,8;
738:20;739:21,24;
740:1,7;751:22;
752:8;755:16;760:4,
13;761:3;771:14,16;
773:12;774:2,13;
781:25
overall (1)
758:9
over-qualifier (1)
732:24
owns (1)
726:8

P

page (5)
727:13;750:2,5;
764:25;772:8
pain (23)
732:14,22;734:20;
736:5,13;737:3;
738:18;739:13;740:9;
747:2,6;750:8,9;
752:10,12,13;756:21;
761:1,4,7,17;769:12;
780:4
pain- (1)
777:25
painkillers (1)
760:23
pains (2)
736:16;743:12
Parameters- (1)
779:11
pardon (1)
781:12
part (7)
732:14,23;736:24;
753:17,19;764:8,19
partial (7)
758:9,17,21;775:5,
7,12;779:23
particular (3)
756:23;769:5,8
particularly (1)
769:8
parts (2)
775:6,14
past (7)
752:9,14;753:9,10,
12;755:13;756:16
pathologist (7)
764:18,20,21;
765:17;766:2,15;
767:7
pathologist's (1)
767:14
pathology (5)
764:11,13,14,15;
767:13
Patient (10)
763:5;767:13;
769:3,9;770:4;
775:19,20,23;776:3,4
patients (4)
769:16;775:19;
776:7,11
patient's (2)
731:2;736:9
pattern (3)
743:10,11,12
pause (2)
744:2;748:6
people (1)
733:15
people's (1)
746:16
per (1)
731:10
performed (8)
747:15;748:25;
749:14;751:25;752:2;
759:7;764:5;765:15
period (3)
759:13,23;761:2
periods (5)
742:13;743:3;
752:11,12;760:1
person (8)
732:13,22;736:4;
756:7,24;759:1;
760:11,12
physical (2)
737:1;775:20
physically (1)
733:10
picture (1)
750:15
pitch (1)
724:6
pitched (1)
724:7
place (10)
742:21;747:9,20;
765:2,4;768:10,12;
781:19,21;782:16
Plaintiff (5)
725:21;732:1;
742:4;746:3;749:9
plaintiffs' (6)
730:11,21,23;
731:14;742:21;
747:20
plaintiff's (11)
740:2,4,19,22;
744:3;748:13,21;
750:15,17;751:5;
772:9
pleasant (1)
725:14
please (17)
722:16;742:10;
744:22;745:3,11;
746:16;747:7;755:8;
757:6;761:5;769:20,
22;775:9;776:23;
779:3,19;781:18
pleasures (1)
724:17
plenty (1)
722:10
podium (1)
731:22
point (1)
769:13
pop (1)
781:1
portion (1)
744:19
portions (1)
781:11
posed (1)
777:1
position (20)
760:4,8,9;771:5,9,
11,17,18;772:11;
773:8,11,14;774:2,12,
15;780:11,12,18,19,
25
positioning (2)
770:23;772:23
positive (1)
771:25
possible (2)
730:4;760:24
posterior (1)
772:14
preexisting (7)
733:18,19,21,23;
734:1;748:20;752:3
preexisting- (1)
773:1
prep (1)
725:1
preparation (1)
725:1
presence (4)
765:5;768:13;
781:22;782:18
pressure (4)
738:25;764:6;
769:12;770:1
prevent (1)
754:17
previous (1)
769:4
previously (2)
729:9;750:10
prior (16)
732:13,22;733:2,3;
736:20;737:23;739:6;
740:16,19,22;742:1,3;
752:6;757:13;759:12;
769:6
private (1)
722:12
probably (2)
722:21;735:13
problem (10)
725:10;733:3;
739:1,2,14,17,18;
740:3;741:3;769:6
problems (16)
722:19;733:18,19;
734:1;735:17,19,20,
23;736:18;741:6,8;
748:20;750:16;756:7;
758:24;769:16
proceedings (6)
744:2;748:6;765:4;
768:12;781:21;
782:16
progresses (1)
755:15
progressive (3)
739:4,8;740:1
progressively (1)
756:3
promised (2)
722:9;760:19
prompting (1)
760:21
properly (1)
738:14
prospective (1)
757:14
provided (1)
749:22
purposes (1)
763:5
pushed (1)
773:17
put (4)
730:25;731:12;
751:10;782:20

Q

quarter (2)
725:8;782:13
quick (1)
725:20
quite (1)
735:9

R

radiating (4)
735:25;736:5,13;
740:10
radiation (3)
738:6,10,11
radiculopathy (3)
736:5;738:11;
753:10
radiologist (1)
734:16
radiologist's (1)
734:11
read (19)
725:3;734:14;
744:13;745:7,9,17,18,
19;750:12,21,24;
751:6,7;763:1,2,19;
771:23;772:13;
775:11
reading (3)
745:4;777:2,7
ready (1)
755:4
realized (1)
729:7
really (8)
724:4,11;725:13;
730:18;756:1;771:24,
24;780:8
reask (1)
768:18
reason (2)
759:9;762:7
reasonable (6)
750:13;751:13;
752:18,20;753:22;
759:17
reasonable- (1)
774:23
recall (2)
739:8;745:4
receive (2)
731:7,9
received (2)
731:12,13
recess (3)
727:12;754:25;
755:1
recollection (1)
745:10
record (21)
722:25;723:1;
725:21;726:5,10,12;
727:3;742:20;746:9;
747:8,19;760:8;
765:3,5;768:11,13;
781:13,20,22;782:17,
20
recording (1)
778:5
records (20)
736:24;740:2,7,16,
19,22,24;741:2,4,4,5,
11,13,14,16;742:1,4;
744:9;752:9;769:4
RECROSS-EXAMINATION (1)
778:11
redirect (8)
722:10,13;730:3;
765:10,12;779:12,13;
780:24
reference (3)
726:14,16,22
referrals (1)
777:13
referred (6)
739:4,7;743:17;
744:4,11;746:3
referring (1)
775:14
refers (2)
756:21;758:18
refresh (1)
745:10
regard (3)
730:4;731:25;
765:14
regenerate (1)
756:8
region (1)
749:3
related (1)
740:15
relative (1)
735:10
relatively (3)
735:8,10,18
relied (1)
732:21
relieving (1)
770:2
remarkable (2)
724:4,11
remember (5)
726:18;729:8;
768:5,19;771:21
remind (2)
722:16,22
remove (1)
764:8
removed (2)
764:19;767:8
rendered (2)
770:17,20
rendering (1)
740:14
rephrase (7)
746:25;756:14,18;
758:19;761:5;766:18;
775:22
report (14)
746:10;748:15;
758:20;761:19;762:7;
764:11,13,15,20;
772:12,14,16;778:13,
17
reported (1)
762:12
reporting (3)
763:5;777:14;778:3
reports (4)
734:7;736:19;
744:13;777:15
represent (1)
729:24
represented (1)
729:23
request (1)
763:19
required (1)
770:4
residual (5)
744:18;745:20,24;
746:23;747:2
resolve (2)
756:25;757:8
respect (2)
745:8;751:8
respective (2)
729:3;755:7
response (1)
777:13
rest (1)
759:7
resumed (1)
755:2
resymptomatic (1)
770:21
return (1)
777:13
returned (3)
754:10,13;775:11
returning (1)
723:6
review (6)
722:24;736:19,24;
740:2,6,16
reviewed (3)
740:18;761:19;
769:4
rewrites (1)
727:6
right (17)
722:4;724:23;
729:12;730:18;
732:20;733:13,17;
738:12;740:2;744:10;
746:16;751:25;754:4;
762:22;763:4;777:3;
782:10
rise (5)
723:2;725:18;
729:1;754:22;755:5
room (5)
754:5,8,9;763:15;
766:23
root (7)
738:14,25;756:7,
20,21,22,23
roots (3)
738:6,9,13
rule (1)
760:22
ruling (1)
727:11
rush (1)
773:24

S

safety (1)
777:14
Same (2)
743:15;760:15
save (1)
748:18
saw (7)
740:24;757:15,18,
21;758:8;763:6;764:2
saying (5)
735:16;745:2,2;
751:9;753:3
schedule (1)
781:25
scope (4)
767:3;771:3,8;
780:23
seat (2)
722:1;729:6
seated (1)
755:9
seats (2)
729:3;755:7
Secondly (1)
726:5
seek (1)
776:18
send (2)
763:14;764:10
sent (4)
758:15,23;764:20;
775:1
sentence (2)
745:17;773:21
separately (2)
775:20,24
September (2)
774:15,17
Series (1)
724:8
seriously (1)
724:2
Services (2)
777:11,12
set (1)
726:7
seven (1)
757:18
several (1)
782:5
sheet (3)
722:24;725:2;727:4
shopping (3)
723:17,18,22
shortly (1)
759:24
show (3)
724:12;760:25;
774:17
showed (6)
734:4;735:1,2;
748:13,22;749:3
shown (1)
759:19
shows (4)
740:3,7;742:9;
774:14
shrinking (1)
769:12
side (1)
724:18
sidebar (3)
765:3;768:11;
781:20
significance (1)
767:7
significant (2)
731:12,13
significantly (1)
738:15
similarly (1)
735:20
simply (1)
750:18
single (1)
732:11
six (2)
741:3,6
So- (1)
777:4
someone (5)
738:17;743:6;
760:23;761:1;780:25
sometime (1)
735:9
soon (1)
725:17
sorry (13)
724:20;725:16;
731:21;738:9;744:7,
23;746:13;752:25;
758:17;761:12;
769:24;774:16;

775:16
south (1)
723:20
speak (1)
731:20
speaking (4)
762:14,17;763:9,23
speaks (1)
745:25
speciality (1)
750:7
specific (3)
736:9;754:9;766:13
specifically (1)
771:17
specifically- (1)
769:23
spending (1)
724:19
spinal (3)
751:18;772:17;
773:17
spine (5)
748:7;749:3,11;
759:10;764:6
Stadium (3)
723:20;724:1,3
stand (6)
729:9;744:1;751:8;
755:3;768:15;775:16
standing (1)
741:20
start (5)
730:17;751:22;
752:1;760:12;782:13
started (2)
722:7;730:8
starting (2)
724:23;725:5
state (1)
777:15
statement (2)
726:20;732:25
stating (1)
768:23
status (3)
769:14;777:16,17
stay (1)
779:8
steel (1)
724:13
Step (6)
742:18,18;747:7,7,
18;781:18
steroid (1)
769:10
still (6)
727:7;751:15;
757:22,25;758:1;
778:6
stimulator (1)
751:18
stipulate (2)
776:22;777:7
stipulated (2)
748:17,21
stipulation (4)
737:22;738:3;
749:8;776:21
story (1)
722:14
straining (2)
733:9,10
Street (1)
723:23
strenuous (1)
780:20
stretch (3)
744:1;768:15;
775:16
strike (4)
770:7;781:11,13,14
studies (1)
760:25
stuff (2)
725:4;782:9
subsequently (1)
736:20
substance (1)
732:11
sufficient (1)
763:14
sum (1)
732:11
summation (1)
726:15
summations (1)
722:18
support (2)
777:13,14
Sure (5)
737:20;745:13;
756:15;769:3;775:9
surgery (22)
739:13,18,20;
747:15;748:25;
749:14;751:15,18;
752:1,2,15,21;753:2,
24;757:9;759:2,20;
764:5;767:19;768:2,
25;770:5
surveillance (1)
777:17
susceptibility (1)
727:9
Sustained (35)
737:17;746:6,25;
747:23;754:1,19;
759:22;763:17;764:1,
24;765:20,23;766:1,5,
25;767:6,18,21;771:3,
8;772:19,25;773:5,
25;774:6,10,22;
776:10,14;778:2,20,
23;779:1;781:4,15
sworn (4)
729:2,13;748:5;
755:6
symptomatic (4)
742:12;743:3,7;
744:17
symptomology (5)
744:18;745:21,24;
746:23;747:2
symptoms (7)
747:3,6;770:2,12,
15;771:5;780:3
synonymous (1)
770:9

T

table (1)
762:15
talk (3)
736:11;751:4;753:7
talking (4)
739:15;747:12;
751:19,20
telling (1)
767:7
term (3)
735:9;745:20,22
terms (1)
769:11
test (2)
730:17,17
testified (13)
732:11,20;736:3,7;
738:8,13;739:6;
741:23;750:10;
753:11,13,17;759:6
testify (3)
776:3,4;780:8
testifying (2)
743:6;762:14
testimony (7)
729:25;739:9;
749:18,19,23;771:15;
782:9
testing (1)
764:20
tests (1)
777:16
thinking (1)
773:22
this- (1)
779:16
though (1)
735:16
thought (1)
782:7
three (12)
723:25;757:15;
761:25;762:10,12,16,
20;763:11,11,19,23;
764:3
throughout (1)
742:17
Thursday (2)
782:3,4
timeline (2)
722:17;746:6
times (6)
722:20;743:7,7,11,
12;765:16
tingling (1)
735:24
today (5)
722:15;723:7;
729:7,25;781:7
together (1)
750:24
told (9)
740:6,18;741:23;
749:8;751:25;752:1;
761:16;764:21;
772:23
tomorrow (3)
723:8;781:25;782:1
Tomorrow's (2)
782:1,2
took (4)
742:20;747:8,19;
751:14
topics (1)
760:18
tour (2)
724:2,3
toured (1)
724:3
traditional (1)
776:18
train (1)
723:19
trajectory (1)
724:12
transcript (1)
725:23
trauma (15)
732:7,13,21;
740:15;741:25;
764:22;769:16;
770:21,25;771:6;
773:15;774:20;
780:12,13,19
treat (4)
775:19,23;776:8,12
treated (4)
736:6,20;769:4,8
treatment (9)
753:12;761:10,14;
762:8;769:9;770:18;
774:4,7;777:12
treatments (1)
769:11
trend (1)
777:16
trial (2)
726:4;782:22
true (44)
730:21;734:5,12,
14;735:5;736:1,14,
16;737:15;739:1;
740:4,7,10,19;741:11,
14;742:8;743:13,15;
744:14;745:25;746:4,
20,23;747:6;752:3,
14;753:8,22;754:5,8,
11;757:16,22;759:3,
13;760:2,15;761:7,
23;764:13;778:14,18,
21
try (3)
760:23;772:2;776:6
Tuesday (2)
782:3,12
turn (1)
723:5
twenty (2)
773:3;780:7
twenty-four (1)
765:16
two (3)
750:23;756:10;
759:18
type (2)
755:15;756:2

U

ultimately (3)
747:14;748:25;
749:14
unanticipated (3)
723:5;724:20;726:6
Under (3)
736:6;769:15;
777:14
undergo (2)
739:13,18
Understood (2)
727:1;781:16
uniforms (1)
724:15
until- (1)
774:7
untreated (1)
739:10
up (25)
722:4,18;723:23;
725:11,13,22;726:7;
731:22;742:18,19;
747:7,7,18;753:21;
754:19,20;762:21,24;
765:1;766:9;774:7,7;
776:17,25;781:18
upon (2)
736:9;740:6
upwards (1)
731:4
use (7)
731:12;733:15;
745:22;746:15;
749:16;756:18;

764:17
used (2)
745:20;747:24
usual (1)
765:24

V

vast (1)
769:16
verdict (3)
722:24;725:2;727:4
versus (1)
744:17
video (2)
726:7,8
videographer (1)
726:22
VII (1)
725:22
voice (1)
733:15
voices (1)
746:16

W

waiting (1)
723:12
walk (2)
725:14,14
warned (1)
755:12
way (2)
735:17;772:24
ways (1)
757:8
wean (2)
760:23;761:7
Wednesday (1)
782:3
week (3)
723:8;730:9;759:16
weekend (1)
782:11
weeks (4)
757:15;759:18;
763:24;764:3
Welcome (1)
729:19
Whereupon (21)
723:3;725:19;
727:12;729:2;742:20;
745:15;747:8,19;
754:23,25;755:2,6;
765:2,4;768:10,12;
781:19,21;782:15,16,
22
whole (1)
744:25
windshield (1)
751:23
winter (1)
758:4
wiper (1)
751:24
wish (1)
768:16
withdraw (1)
768:16
withdrawn (5)
737:7;742:4;759:5;
764:14;774:24
within (4)
765:16;770:2;
777:22;779:9
without (2)
739:20;753:24
witness (24)
723:6;725:25;
726:2,7,17,23;729:12;
730:16;733:8,11;
745:9,16;746:14;
750:21;751:7;755:2,
2,19;756:12;757:3,5;
761:13;768:20;770:1
witnesses (1)
723:4
wonderful (2)
782:11,11
word (6)
731:12;732:24;
739:6,7;764:17;770:9
words (3)
737:1;741:3;779:18
work (9)
725:9;727:4;
754:10,13;758:4;
769:14;777:13;
778:21,24
worked (1)
730:20
workers (1)
777:17
working (4)
730:10;754:17;
757:22;758:1
World (1)
724:8
worry (2)
724:19;726:20
worse (5)
736:5;738:15,20;
750:18;756:3
worsen (3)
736:8;739:21,21
worsening (1)
739:24
wrap (1)
722:17
writing (1)
773:22
Wrong (1)
730:16
wrote (2)
758:9,20

Y

Yankees (3)
723:20;724:1,3
year (4)
754:14,17;759:7;
765:17
years (4)
735:12,14;741:3,6
years- (2)
773:3;780:7
yesterday (1)
725:24
You- (1)
773:6
young (3)
735:8,10,18

0

09 (4)
757:19,21;758:9,20

1

10 (1)
782:13
100 (1)
731:4
12th (2)
774:15,17
149th (1)
723:14
14A- (1)
772:23
165th (1)
723:23
1980 (3)
737:4;741:3,8
1980's (5)
738:5;739:17;
740:3,12,25
1986 (2)
737:11;741:4
1989 (2)
754:4;781:3
1990's (2)
734:18,21
1991 (7)
770:24;772:4,10,
20,21;774:3,12
19th (2)
746:11,13

2

2:00 (5)
723:6;724:21,23;
725:5,9
2003 (1)
735:3
2008 (9)
746:11,14,22;
750:14;770:25;
774:13,14,17;778:5
2008- (1)
774:16
2009 (1)
775:10
21 (1)
772:9
23rd (4)
722:18;723:10;
777:21;778:4

3

3:30 (1)
725:24

4

4:30 (1)
722:8

5

515 (1)
750:5

6

6/16/16 (1)
729:7
6/21/16 (1)
782:22

7

7 (1)
744:3
7-foot (1)
737:8

8

80's (1)
739:16
89 (1)
737:12

9

90's (1)
739:16