SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CIVIL TERM: IA-6

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FRANKLIN ABREU-DEPENA — Index No: 305352/2013

Plaintiff(s).

-against-

JAMES P. WEBER, TC HUDSON VALLEY AMBULANCE CORP. d/b/a TRANSCARE CORP. TC HUDSON VALLEY AMBULANCE CORP. and TRANSCARE CORPORATION

Defendant(s).

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WITNESS
THOMAS KOLB, MD

851 Grand Concourse
Bronx, New York 10451
February 7, 2019

B E F O R E: HONORABLE JAMES W. HUBERT,
J U S T I C E

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

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Rosemary Yancey, RPR, CSR
Senior Court Reporter

THE COURT: Bring in the jury.

COURT OFFICER: Jury entering.

(Whereupon the jury enters the courtroom.)

THE COURT: Please be seated. Good morning, ladies and gentlemen, you're back, we are going to continue with the presentation of evidence still on Plaintiff's case. Counsel.

MR. PFLUGER: Thank you, sir. Dr. Kolb, please.

COURT OFFICER: Please remain standing. Raise your right hand.

T H O M A S K O L B, having been first duly sworn by the court officer, testifies as follows:

THE WITNESS: I do.

COURT OFFICER: Be seated. In a nice, clear voice state your name for the record and give your business address.

THE WITNESS: Dr. Thomas Kolb, K-o-l-b, 307 East 60th Street, New York 10022. Sorry. My voice is a little down.

THE COURT: You need some water or something?

THE WITNESS: I may.

THE COURT: That might help. All right. Meanwhile while he is getting the water, Doctor, while you're giving your testimony, you will need to speak loudly because we don't have any microphones here, so the court reporter and

jury can hear you.

Also, you will need to speak slowly so that the report can accurately record your testimony, and you will need to wait until the question is fully asked before responding so that both question and answer can be recorded and fully understood by the jury.

Finally, if you do not understand, please so indicate I will have it read back. Counsel.

MR. PFLUGER: Thank you, sir.

DIRECT EXAMINATION

BY MR. PFLUGER:

Q Good morning, sir.

A Good morning.

Q Sir, what is your profession?

A I'm a diagnostic radiologist.

Q Okay. Can you give us a definition of what that is?

A A radiologist uses CAT scans, MRIs, X-rays, ultrasounds to look inside the body to see if there's a problem or not a problem in a patient that has a symptom or an issue, like pain, for example. These are very common tests that we use. That's what a diagnostic radiologist uses to look inside the body.

Q Okay. How about, giving us your educational background?

A I went to Queens College here CUNY University of New York, graduated a long time ago back in 1979. Then went to

medical school in Brooklyn, Downstate Medical Center, graduated in 1983. Then I became a pediatrician. I did three years of pediatrics at Albert Einstein College of Medicine at Jacobi Hospital and became board certified in pediatrics.

I then went back and did another four years of training as a diagnostic radiologist at Columbia Presbyterian Medical Center in Manhattan, became a board certified radiologist and I have been practicing radiology for the past 25 years.

Q Okay. Are you board certified?

A I am.

Q In what, sir?

A Sorry?

Q In what?

A I'm board certified in both pediatrics but also diagnostic radiologist.

Q Okay. Have you been published?

A I have been published. I did write papers to research, and written some significant papers.

Q Any teaching credentials?

A I taught for many years as an assistant clinical professor of radiology at Columbia University College of Physicians and Surgeons, Department of Radiology. I taught all over the world. Part of my practice is diagnosing breast cancer in young high-risk women who have dense breast, and I have written many papers on that. Won awards and so on, so.

So I deal with very high level breast surgeons, gynecologists, and I actively see almost every day many women to evaluate breast cancer. The other part of my practice is doing the CAT scans, and MRIs and X-rays on patients that complain of symptoms such as pain.

Q Okay. Why don't you explain those different types of tests, x-rays, CAT scans and MRIs, what, if any, difference are there?

A Well, an x-ray is the most simplest test. It's uses x-rays that were discovered over 100 years ago, but it's a very crude test. X-rays tell the difference between things that are hard and things that are soft.

So if you're looking for a break of a bone, for example, in any part of the body, you would do an x-ray because it sees bones that are very hard. But bones aren't the only part in the, for example, the shoulder, or the back, there are other things that are soft.

There is ligaments. There is tendons. There is discs. There is the labrum, there is the rotator cuff, tendons that you won't see on an x-ray. You will only see the bones basically. So that's what an x-ray is.

A CAT scan takes x-rays, and makes pictures of it very, very thin because we can take many, many, many, many pictures going through the shoulder or the back, for example, we can have more information.

But you still can't see as well things that are soft and usually hard. MRIs which are very common nowadays uses a magnetic waves and it tells the difference between everything that's soft. So in the shoulder, you can see the tendon, you can see the labrum, you can see the bone marrow. You can see all the different parts of the shoulder.

Same for the back. You can see the discs. You can see ligaments that you can't see on an x-ray. So it's a very different test. MRIs are a very powerful test. You can tell the difference between soft tissue injury, like the labrum, or a disc. So that's a very important test.

Q Well, back in 2013, where was your practice?

A In Manhattan, very close to where I am now.

Q Okay. What was the name of it?

A Precision Imagining of New York.

Q And did you have a partner?

A Yes, I did, Dr. Jacob Lichy, L-i-c-h-y.

Q When do patients come to you from another source?

A Well, patients can go to a doctor and complain of some problem, often pain, and the doctor would send them for a test, either do an x-ray or CAT scan or MRI, to find out the reason why the patient was having this pain.

Q Okay. Now, there did come a time that Mr. Abreu Depena came to see you, correct?

A Yes.

Q Okay. And how did he get there?
A Sorry.
Q How did he come to you?
A He was referred by a Dr. Cabutu on, the first date was October 30, 2013.
Q Okay. And what tests were requested?
A The first test was an MRI of the left shoulder. It was actually earlier, September 23, 2013, was an MRI of the left shoulder, September 23, 2013.
Q Okay. So what's the procedure in case no one's undergone an MRI before?
A Simple injection. Patient lies down on a table, and pushed into the MRI machine. The MRI machine is a very large, round machine because that's all a magnet. MRI stands for magnetic resonate imaging.

The magnetic waves are pumped into a patient. You have a computer that can take the results of those magnetic waves and create a picture which I'm going to show you. So that's the procedure. It's a very simple test.

Q Okay. Because we marked this in evidence your MRI tests that were performed on Mr. Depena, when you look at it as a diagnostic radiologist what, if any, document is created?
A On my report it's created. I was the treating radiologist, so when I saw the MRI in September 23, 2013, I created a report of the findings of the MRI.

Q Okay. That's part of your business practice to do that, correct?

A Yes, of course.

Q It's also part of your business practice to keep and maintain those records?

A Yes.

Q And that record is made on or about the time you reviewed the MRI films?

A Yes.

Q Okay. We already prepared this MRI, what is it and when was it done?

A Well, that MRI of the left shoulder, I would have to show you a little bit better, that's not the set up for you yet.

Q Okay.

A The date is 9/23/2013.

Q Okay. I want you to assume that Jacobi Hospital did an x-ray of the left shoulder and that x-ray came back negative, what significance, if any, does that have on your opinion as to whether the accident of July 27, 2013, was the competent producing cause of the injuries to the left shoulder?

THE COURT: Hold on. If he reviewed an x-ray? Did the witness review an x-ray?

MR. PFLUGER: No. Not Jacobi Hospital. I'm asking what significance does it have.

MS. WALTERS-HINDS: Objection.

THE COURT: You are asking him to comment on x-rays from Jacobi, that's what you are asking him?

MR. PFLUGER: Findings of Jacobi Hospital.

MS. WALTERS-HINDS: Judge, can we have a sidebar.

THE COURT: Okay. The objection is going to be sustained, though.

(Whereupon discussion off the record.)

(Whereupon back on the record.)

THE COURT: All right. Sustained as to the last question.

Q Sir, can you just tell us when that MRI was done, what images were created for the shoulder?

A Well, MRI means we take multiple pictures of the same shoulder at the same time. We take pictures from the front, from the side. We take pictures in the top to the bottom. I think my voice came back.

Q Okay.

A So because we take pictures in three dimensions, we can see the entire shoulder. You will see these pictures.

Q Okay. I forgot to ask you, are you licensed to practice in the state of New York?

A I have been licensed in the last 28 years, yes.

Q Any other states?

A No.

Q Okay. Can you come down and show us what your findings

were?

A Yes. Okay.

Q Okay.

THE COURT: Ladies and gentlemen, can you see, yes?

ALL JURORS: Yes.

THE COURT: Okay. Proceed.

MR. PFLUGER: Can you turn the light, is that all right, Judge?

THE COURT: I guess so. That's good.

THE WITNESS: So these are two pictures. We take many pictures, but I'm going to show you two picture on the MRI of the left shoulder on 9/23/2013.

First look at this picture here, you can get an idea of what the shoulder looks like. Right? There is a long bone, that's the arm bone. This bone right here, that's called the humerus, and it ends in a ball at the top you can feel it, it can rotate your arm around.

So this bone, the humerus, the top of it is connected to another bone inside here which is called the glenoid. I'm going to try not to use a lot of medical terms because it's not important. So there's the humerus, there's the glenoid. Those are the two bones.

Now, anywhere we talk about in the body where there are two bones that come together which means any joint, whether the joint is the shoulder or the neck or the back,

bone can't touch bone, else that would be a really, really bad thing.

So we are born with shock absorbers, or cartilage between the bones. You may have heard of cartilage injury. The cartilage is called different names, depending on what the joint is.

In the shoulder the cartilage, which is the shock absorbers, is called the labrum, and it's called the glenoid labrum because it's attached to the glenoid bone.

And when it's longer, this bone here, this long bone is the humerus. And this triangle right here, I will show you the triangle a little better, see this triangle right here? That's the glenoid. That's a bone, and this is the bone, that long one comes down.

Remember I can take, many, many thin pictures from the front going to the back. This is one picture, and only two millimeters behind that, is this, and then this, and then that and that, and that, and that. So I can scroll through the whole shoulder, front to back. I can also do top to bottom.

Q You mean like a secondhand on a clock?

A This will be like a secondhand on the clock. For example, let's say you had a long loaf of the bread, Italian or French bread, you can slice it long and you can open it up and make one, long sandwich.

But you can also take that loaf of bread, which is what we're doing here, one long view of this bone, humerus. What if I gave you the bread then you made slices? Just like a normal sandwich, you can make many slices. What shape would the slices be? Well, they'll either be round or kind of square.

This here is the humerus, this round bone is a picture going just like that to this bone. So I took a look at this shoulder all different ways to look for whether it's normal or not. So this is the humerus, this is the glenoid. This triangle right here is the glenoid.

And if you look closely, you'll see this glenoid is supposed to be the same color as the humerus. It's not the same color right there. It's white. The reason why it's white and the reason it's a line there, which it should look exactly like the top of the glenoid.

This is the top. This is the bottom. It's because it's a fracture here in the glenoid of some age. It didn't happen yesterday. But it's a fracture here, this line goes through it, and this is soft tissue swelling, a narrow swelling in the bone. So there's a fracture here in the glenoid. So let's stay on the topic of the bones.

This picture here is like he took a slice through here from the top here and going down, like that. And it's supposed to be completely round, but it's not. You will see that here on the bottom of this bone, it's flat.

It's supposed to come all the way out, just like the top does, that's because this part of the bone is pushed in. Why was it pushed in? It's a special type of fracture in the shoulder called a Hill-Sachs fracture. When you hit your shoulder and the humerus bangs into the glenoid, the back of the head here, here flattens out.

And we also know that there is definitely a significant trauma to this shoulder, not just the Hill-Sachs fracture and the glenoid fracture, but this bone is supposed to be perfectly aligned normally, this bone, the humerus with the glenoid.

Glenoid. Glenoid. Humerus. Humerus. Just looking at it instead from front to back, looking at it from top down like cutting a slice of bread. It's the slices, except the humerus looks round instead of long.

So we have Hill-Sachs fracture, fracture in glenoid. And I told you that in between the humerus and the glenoid, these two bones, there's the labrum, which is the shock absorber. The reason we have it is that bones don't touch. That would be very bad for bones to touch.

In this particular case there's a significant tear. Let me back up. I was just about to tell you that one of the reasons that you can tell it's a fracture, the bone, as I said to you, is supposed to line up perfectly normally with this triangle, but it hasn't. It's fallen back. It slipped out. This round bone should be right in here, but it's not.

You see how here it's a larger space than here? That's because this bone has subluxated or flipped out of its normal attachment to the glenoid. So that's called a subluxation. The bone is out, instead of being right inside the joint space, it shifted out. That's a bad thing also because in order for it to shift out, they must by definition be tears.

And these are the tears right here. There is a tear of the anterior labrum. There is a tear of the posterior labrum. This is supposed to be black, these two areas, but they're not because they're torn.

So this all makes sense. The patient had these two fractures. The bone slipped out of the socket. When it slipped out of the socket, it ripped the labrum, which is the cartilage, which is the shock absorber inside the shoulder.

Q Can I ask a question. I want you to assume that on July 27, 2013, that Mr. Depena was driving on East Fordham Road in the right lane when there was an impact with a 10,000 pound ambulance, the right corner of the bumper, into the rear portion of the driver side door back to the rear of the door, and that his shoulder hit that left door, is that consistent with your findings?

A Yeah. A trauma to the shoulder like that could dislocate or sublux the shoulder and cause fractures.

Q Okay.

A So, in order for this to be pulled out, I misstated

before, the main injury is the tear of the anterior labrum here. So that's a very important finding. There's also a partial rotated cuff, but it's much less of an important finding. If you look here, you may have heard of rotated cuff tears in the shoulder.

Rotator cuff is made up of four tendons. They all have very fancy medical names, the point is that all of these muscles here and in the back are tendons that wrap around your shoulder, so that when you move your arm, the shoulder doesn't fly out.

These tendons called rotator cuff tendons are supposed to be completely black. But you can see right here, there's a partial tear. It may not have been important for surgery, but there's certainly a partial tear of the rotator cuff tendons as it asserts on the bone right there.

So the important finding is that there's a Hill-Sachs fracture deformity of the humeral head. There's a fracture of the glenoid. There's a tear of the labrum. And a lesser finding is partial rotator cuff here. Those are all the findings.

Q Okay. I want you to assume that Dr. Capiola described when he went in and saw the injury to the shoulder called it a an around the clock labral tear. Is that consistent with your findings?

A Well, there certainly is a large labral tear here. I'm not sure of the date of when the surgery was done, but if this

patient was moving around without surgery, this patient is more at risk of continuing to tear the labrum.

Q It was October 31st, till 2013 was the surgery?

A So five weeks later. So there is a large tear here now and it could have even been larger when Dr. Capiola operated.

Q Okay.

A And this fracture, the glenoid is two months old because the trauma was -- the end of July?

Q July 27th.

A Right. The fracture doesn't look like it happened yesterday, or the day before, there's some chronicity to the fracture, meaning that it could have happened in the July time frame which was about two months earlier.

Q Okay. So when you use the word chronic, I think you used that in your report?

A Yes. In fact, I specify what I meant by chronic. Look at the x-ray. I told the doctor, look at the x-rays that were done at the time of the injury, because you may see an abnormality there.

Now if you don't see it on the x-ray, it doesn't mean that it's not there, because the MRI is much more specific.

MS. WALTERS-HINDS: Objection.

THE COURT: Overruled. He testifying.

THE WITNESS: The MRI is much more specific than an x-ray. But what I meant by chronic in the report is to look

at the x-ray at the day of the injury, which is about two months earlier. So those are all my findings.

Q For the shoulder?

A Just of one shoulder.

Q Okay. Should we stay with the shoulder?

A Sure.

Q Can you tell us as of the September 23rd review of the MRI, what were your findings? It's in evidence, you can use the report.

A We went through the findings. There's a fracture, Hill-Sachs fracture. The name of the person that found the fracture a long time ago and named it after himself, Hill-Sachs fracture.

There is a fracture, glenoid. Two fractures. And there's most importantly a tear of the labrum, centered on the anterior labrum because the humeral head is pulled out of the joint because of the trauma.

Q Okay. What was the next examination of the shoulder?

A So the patient had surgery, and then...

Q I want you to assume October 31, 2013?

A And then patient had another MRI of the shoulder done, October 19, 2014, which is like eight or nine months later, and another MRI. So just to set it up the same way that you're used to looking at it here, because we are good at reading MRIs now. So this is after the surgery, and you will still, this is again

the humeral head, going all the way down the arm.

These are the rotator cuff tendons, it's still a small partial tear. And then the glenoid is still white, which means that it's swollen because of the fracture down at the bottom here.

Here you can see the fracture. Here you can see over time that the glenoid is starting to thin out because, likely because of inactivity. Patient was able to use their shoulder so the bones are starting to thin out here. It's still a fracture here in the glenoid and it's still abnormal signal in the labrum.

And the abnormal signal of the labrum could be because the surgeon was in there and fixed it, or it could be that after the patient had it fixed by the surgeon, constant use caused a retear.

Only the surgeon that's examining him can really tell that because it's all abnormal looking at it. So this MRI done eight months after the surgery is still extremely abnormal looking.

Q And what was your impression, you can use your report?

A The report was done by my partner, Dr. Lichy.

Q Okay.

A Who called the tear of the anterior superior labrum and also a partial rotator cuff tear, which are similar to what I showed you earlier.

Q Those films, did you see the glenoid fracture?

A Right. I still have to impress upon you, this is so abnormal that -- let me just explain one thing to you. It's very clear.

This bone here is the humerus, and it's supposed to look completely gray. There is some findings here at the top of the bone because the patient is not using their arm, but the glenoid, this bone here, should look exactly like this.

It should be the same color gray. It's markedly abnormal here, the glenoid. So, it's a very abnormal looking bone.

Q So can you look at that MRI, the one to your right, are you able to say where the force would be coming from to create that kind of injury?

A Well, you know, the fracture is still here. It's still pushed in. The Hill-Sachs fracture is still here. The fracture here attempted to heal and there is no subchondral inflammation.

All kinds of things are happening here for the body to try to heal it. And the surgeon was in right here trying to fix the labrum. But I can't tell you where the force was from based on looking at these two pictures.

Q Okay. So what's next?

A So that's the shoulder. The next is the cervical spine. So this is the patient's neck. Here's the patient's face. You can see the tongue here. The eyes are up.

Here is the patient's brain up here. And this gray structure coming down is the spinal cord, going down the back. So you are looking at the patient like this, from the side. The patient is looking here and we're looking at the neck over here.

In the neck, there are seven bones, whether you're male, female, tall or short, you have the same anatomy. You have seven bones. And you can count them. Each one of these squares is a bone. So 2, 3, 4, 5, 6, 7. So, these football shaped structures between the bone are the discs.

The reason we have discs in the neck, again, to be shock absorbers. So that when we jump up and down and move side to side, is so the bones don't touch each other. The bones have to be separate from the bone next to it by these discs.

And these discs are like jelly doughnuts. They have jelly in them. And that's what keeps them springy like a shock absorber. You jump up and down, your disc may compress a little bit, but it comes right back to the way it should be, keeping the bone apart.

And you can see that the discs are relatively well maintained here. Here's the discs. So, we're just going to talk about what a disc herniation is. So, these discs are meant to keep the bones apart.

So why don't they just spurt out when we move around? What holds the discs in place right there? Well, there are ligaments that hold the discs in place.

And they all have fancy names. There's a ligament that runs down the back of the spine. There's a ligament that runs around the disc called an annulus. And if there is a partial tear of the ligaments, there's the disc between two bones, bone, bone, disc.

If there is a partial tear, the disc will start pushing out. Now, the ligaments hold the discs very, very tightly to the margin of the bones. For example, take a normal disc here between the third bone, and fourth bone. See the disc comes to the edge. The disc comes to the edge of this bone and this bone it stops.

See this thin white line here? That's spinal fluid. The gray line is the spinal cord. But the disc stops. Look at this disc down here. Look at this disc here. Okay. You can see that's the difference in the ones above, and that's because the disc, the ligament has torn, and the disc now has pushed through.

When there is a partial tear of the ligament, the disc pushes through a little bit and pushes on the spinal fluid, or even goes through it sometimes. And if it's a complete tear, the disc will push through completely, and that's called a disc herniation. That's a herniated disc in your neck and your back.

You don't have to be really a radiologist to look at this. If you see disc material that punches out beyond the margin of the bone above it, and beyond it, you know that disc

is herniated.

So this particular case, there were to herniations. We can guess where they are. These two discs right here, you can see this area here and this area here, clearly are pushed through the ligament, and pushing on to this white line, this spinal fluid.

This disc here, the 5-6 pushes through a little bit but not completely. And this is a disc herniation between the 6-7, and the C6-7. This is a disc herniation between the C7 and C-1 at that level. And this is a disc bulge, a partial tear between 5 and 6.

So, I told you we can look at things from the side just like the shoulder. What about if I gave you a long loaf of bread, you made slices. Round slices of bread like you looked at before, it would look like that.

In fact, this long spinal cord right here, when I take pictures going from top to bottom, just like the loaf of bread, the spinal cord is round. You have to imagine the spinal cord is coming out that way, and behind the screen. We take these pictures so we can see the nerve roots.

Q Can you go to the level of herniations?

A Exactly.

THE COURT: You will have to speak up a little bit.

Q Can you go to the level of the herniations that you just told the jury?

A You can see the line coming down. That's disc herniation right here. First, let me show you a normal line. Here's the normal level. Here's a normal level. This level here between 2 and 3, the disc stops at the bone. It's normal. This is what normal should look like. The spinal cord is round. The spinal fluid goes around the spinal cord, but it's symmetric.

Q Where are the nerve roots?

A The nerve roots go out, but the neural foraminal is here. The gray line right there is a nerve root. As you could see the left side is C3 nerve root. The left side. You see here is the L. The right side nerve root goes here, the right.

So that's how the nerve comes out of the spinal cord and goes to your shoulder, goes to your arm, goes to your hand. They come out of this hole on the side of the spine. So that's normal.

Let's go to where there's a herniation. So you see here, and here's the spinal cord, but instead of having a nice, round light area, the herniation pushes down on the spinal canal. The fecal sac is narrow. It's this left side. The other side is normal. The left side is all narrow here.

And here, this nerve root is this thin black line inside the left-sided hole that comes out of the spine which is now impinged upon or compressed, or pushed on, by the herniation. So that's the herniation at the C7 level.

Q I want you to assume, sir, as I said there was a left-sided impact and his body was twisted to the left, is that finding on that MRI you just told us about consistent with that impact?

MS. WALTERS-HINDS: Objection.

THE COURT: Read back the question for me, please.

(Whereupon the question was repeated by the court reporter.)

THE COURT: Well, it's a little abbreviated. Why don't you rephrase it.

Q Sir, I want you to assume that on impact his body twisted to the left and his shoulder hit the door, and you said it was a left nerve root impingement, is that consistent with that kind of --

A Left neural foraminal.

Q I'm sorry?

A The left neural foraminal impingement, correct. It would be consistent with that impact, yes.

Q All right. Thank you.

A So, we just went up a level, and you can see how the left side, we went to the C6-7 here, and you can see the left side the neural foraminal is narrow compared to the right.

And if we go up another level where there is a disc bulge right there, you can see a thin narrowing of the sac, or the white line is all narrow because the bulge is pushing down.

The bulge is pushing this in. There were some findings on the MRI, the disc herniation of these two levels C6-C7 this level C7-T1 and a bulge at C5-6.

Q I'm going to ask this question. I want you to assume that -- you and I have the same kind of cold -- Mr. Depena, after that accident, had radiating pain down his left side of the neck, radiating down his arm, and also radiating down his left leg, is that numbness and tingling, is that consistent with your findings?

MS. WALTERS-HINDS: Objection.

THE COURT: Overruled.

THE WITNESS: It's consistent with the arm. We didn't get to the leg yet. The legs are a different nerve. Those are in the back, lower back, but radiating pain to the left shoulder, arm, going down even to the fingers, is consistent on the left side with the findings on the MRI. So the pictures do tell the correct story.

MR. PFLUGER: He's 39 years old. When you review all the MRIs, and we didn't get to view the back yet, tell us what you considered his spine generally a 39-year-old to be?

MS. WALTERS-HINDS: Objection.

THE COURT: Rephrase it. Generally what his spine is, he's just shown us, according to the witness, that there are injuries to the spine. What are you asking?

He's identified certain injuries. He hasn't identified injuries in other areas, but what is it you're asking?

MR. PFLUGER: Yes, sir.

Q Just other than the herniations and the injuries that you told us about, what is the condition of the spine generally?

A Otherwise it looks pretty good. I mean, there's nothing unusual going on besides the herniations and the disc bulge. I mean, there's no bone spurs. The discs are maintaining their height, normal height. There's no significant arthritis in the spine.

Q Okay. Also I want you to assume that before July 27, 2013, Mr. Abreu Depena never had a prior injury to his left shoulder, never saw a doctor for any complaints of pain to his left shoulder, and the first complaints of pain and limitation were after July 27, 2013?

THE COURT: That's too long. That's too long. You can ask him if he assumes that there had been a prior complaint by the plaintiff regarding pain, you can ask him that way.

MR. PFLUGER: Okay.

THE COURT: You know, you can ask him to -- what it is. What he looked at was the MRI of specific dates?

MR. PFLUGER: Yes, sir.

THE COURT: Post accident, preoperative, and those

occurred on specific dates. I'm not sure what you are asking him about at this point, because I don't believe there's been a radiological study prior to the date that you looked at.

MR. PFLUGER: Okay.

Q Sir, when patients come to your office, do you get a history or some information about them?

A Often we do.

Q Okay. And if a patient had no prior history of injury to a body part that you're examining through an MRI, x-ray, CAT scan, does that assist you in formulating an opinion as to the cause of the injury that you're now looking at through, MRI, x-ray, CT scan?

MS. WALTERS-HINDS: Objection.

THE COURT: I'm not sure I heard the full question, your voice keeps dropping, I'm a little further away than the witness. Can you reask the question.

MR. PFLUGER: Sure.

Q Sir, Mr. Depena had no history of any injury, and he's referred to you by doctor...

A Cabutu.

Q Cabutu. And you took MRIs of his body, what significance, if any, that there is no prior history of injury or MRIs?

THE COURT: Let's try it like this. When the

patient came to you, the plaintiff came to you, was any history taken or any documents regarding history delivered with him, do you understand what I mean?

THE WITNESS: Or I will ask the patient to describe what his problem is and write it down.

THE COURT: Okay. So, did that happen in this case?

THE WITNESS: In general, that's what happens. That's the usual procedure.

THE COURT: And is that reflected in your report anywhere at all about the history?

THE WITNESS: It says status post trauma. It doesn't have the date of the trauma, but it says the patient had a trauma.

THE COURT: Okay. So your evaluation was as to his status post trauma?

THE WITNESS: Right.

THE COURT: Did you do an evaluation of his status pre-trauma, or anything like that?

THE WITNESS: No. I did not see him pre-trauma.

THE COURT: Okay. Pick it up from there. He didn't review it.

MR. PFLUGER: That's fine.

THE COURT: If what you are asking him, if he reviewed certain records or things like that, or if he took

a history himself, that's fine.

MR. PFLUGER: Yes, sir.

Q So what's next, sir, what other tests were done?

A I did a lumbar spine. The patient had surgery. So the patient had surgery in the shoulder, and there was an MRI done after the shoulder, which we talked about.

Q Right.

A The patient had surgery at two levels in the cervical spine, but I was only asked to look at the one, first one, after the injury.

Then the patient had surgery on the lumbar spine, the lower back, and I actually did the MRI of the lumbar spine after the surgery. And that I have here.

Q Okay. And I want you to assume he had spinal surgery on April 22, 2015?

A Okay.

Q I mean May 23, 2015?

A May 23, 2015. So, two and a half years later, in December. December 21, 2018, I did an MRI of the lumbar spine, which is the lower back. Now, luckily the anatomy of the lumbar spine is very similar to the cervical spine, the upper neck. So we will be able to see this very nicely.

Again, you see these boxes here. I'll make it a little light for you if I can. So, one thing I want to point out is the patient had surgery.

Now, I'm going to show you now what the surgery looked like. The patient had rods, metal rods put into their lower back and screws.

MS. WALTERS-HINDS: Objection, Judge. Can we talk in the back?

THE COURT: All right. Let me see you in the back.

(Whereupon discussion off the record.)

(Whereupon back on the record.)

THE COURT: So, for the record, we are addressing the study done on December 21, 2015; is that correct?

THE WITNESS: December 21, 2018.

THE COURT: 2018, I'm sorry, which is an MRI study postoperative on the lumbar, okay.

MR. PFLUGER: Yes, sir.

THE COURT: Okay.

Q What level was the surgery?

A The surgery was on L4-5. Between the fourth bone and the fifth bone.

Q Is that in the film?

A Yeah. You can see it on the film.

Q Let the jury see the film?

A Yes. So, now we're taking a picture through the very center of the lumbar spine from the side. You see each one of these boxes. Here, each one of these boxes is a bone. This is the fifth bone. This is the fourth bone.

In between these two bones the patient had surgery. How do I know? Because if you go over to the side, you will see screws coming in, two screws, here and here is L4 and L5, screw, screw. And if you go to the other side of the patient, I'm going to the other side of the parent here, screw, screw.

So this patient had screws and rods put in to fix the L4-5 level. So after surgery we want to look at the level the patient had surgery. And look here, it looks pretty nice. It's not pushing out into the sac. There's no recurrent or residual disc herniation at L4-5.

But we do see something that is abnormal, look one level up. Remember I told you that a normal disc goes to the edge of the bone, and it stops. This is a beautifully normal disc. Normal disc. Pushing it out a little bit. Pushing it out a lot.

See this big large, round around here, that's a new disc herniation that occurred because 4-5, is now fixed by the surgeon. What does fixed mean? It doesn't mean that it was made better. Fixed means that it can't move anymore.

So when the patient bends down or bends back, that level, 4-5, cannot move. It's not mobile. So all of the forces, because that's been fixed, instead of being transmitted equally to the entire spine, it's transmitted to the one right above it. So there's an adjacent segment, adjacent disc, disc herniation, above the level of the fixation.

And we see that in patients that are fused L-4. Another word for fixation is fused. When they are fused, the level above it starts getting to be very abnormal.

And that's what is happening in this patient. This patient developed a disc herniation above the level of the surgery. That's the major finding.

Q Okay. So just so we're clear, do you have an opinion, with a reasonable degree of medical certainty that the fusion of May 23, 2015, was the result of the accident on July 27, 2013?

MS. WALTERS-HINDS: Objection.

THE COURT: What's the foundation for that?

MR. PFLUGER: Judge...

THE COURT: What's the foundation for his knowledge? Why would he have an opinion about that? It's the history he received, he doesn't know about it.

MR. PFLUGER: I'll do it this way, Judge.

THE COURT: Sure.

MR. PFLUGER: Do you have an opinion, with a reasonable degree of medical certainty, that the adjacent segment degeneration was the result of the fusion on May 23, 2015?

MS. WALTERS-HINDS: Objection.

THE COURT: That, he can answer that.

THE WITNESS: Yeah, if there was no herniation there prior to the surgery, and the patient had surgery, and

there is a herniation, we know that it was due to the fusion, the surgical fusion, that resulted in the herniation.

Q Okay. Do we need to see anything else?

A No. I don't think so.

Q The screws that you are talking about, is there a way to see them?

A We showed them on the side. But here are the screws also. Here's a screw here. Here's a screw here. Here's a screw here. And see that, that's the level that's in the surgery. You see how this is normal, and the disc stops at the edge of the bone. There's a nice, round sac containing nerve roots. Nerve roots coming out at L4-5. Normal. Normal.

Go to the level that's herniated, the one right above it, right there, and you will see that this disc is pushed down towards the patient's leg. And look at this herniation right there. See that right there?

Q What's the dots?

A No, not the dots. This entire black area. We're going through right here, that's the herniation. Here, we're cutting like the sandwich that makes it round. This round herniation is this herniation here. It's the same thing.

Q So, it's pushing into the...

A Fecal sac, which contains the nerve roots.

Q Okay. And give us a complete definition of what a

fecal sac is?

A The fecal sac, it surrounds the spine cord and all the nerve roots that come out of the brain, it contains the spinal fluid. When you do a spinal tap, or when someone does the spinal tap, they put a needle into the fecal sac, right here, this part right here, and because there's a lot of fluid here, and that's what the fecal sac is.

They pull out the spinal fluid. It contains all the nerve roots. All of these black lines coming down are nerve roots. Eventually the nerve roots will come out of the spine, into the buttocks, the thighs calfs, feet, lower extremity. Nerve roots go out to the left, go out to the right, just like the neck.

Q And the fecal sac is along the length of the spine?

A Everything from the top, where the spinal cord starts, all the way down to the bottom here is your tailbone.

Q So just looking at that level above the line on, go right above it...

A Yes.

Q ... what is that area to your right of your finger?

A This?

Q No. That area there?

A That's a disc bulge. See the difference between these two right here? Actually, hold on, let me look one second, I will tell you.

Q Sure.

A Yeah. It's also herniated. It's a smaller herniation. It's a herniation here of 3-4, which is larger than the herniation at 2-3. So, it's two herniations here. It's 2-3 and 3-4. And at this bulge, which is a partial tear all the way down here at 5-1. This is the level that had the surgery. So, there's a lot of stuff going on here.

Q Okay. All right. You pretty much done with the film?

A I think so.

MR. PFLUGER: I'm going to finish up with the witness on the stand, Judge.

THE COURT: Okay.

MR. PFLUGER: I don't know if you want the light on or off.

THE COURT: Sure. Can you fix the lights.

Q Sir, did you see any evidence on the shoulder of cartilage delamination?

A Well, the glenoid is torn and pulled off the bone. That's a word that can be used in the MRI. I didn't use that word. Surgeons will often use that word.

Q Okay. Do you agree or disagree with this opinion, MRI of the left shoulder demonstrates anatopic findings of subacromial impingement resulting in the supraspinatus tendonitis?

A No.

Q Do you agree with this opinion, chronic changes of the glenoid, in particular with the posterior glenoid adjacent capsule and labrum, suggesting underlying chronic internal impingement?

A Only if chronic means within two months. Not if chronic means more than that, because the shoulder is subluxed, unless this patient is walking around with a horrible shoulder before the accident and never complained to anyone, it makes no sense.

The patient had a trauma and started complaining of pain in the shoulder at that time, then all the findings that I described to you, glenoid labral tear, and fractures and subluxations, all due to the trauma, the word chronic has to be defined. Chronic two months, yes. Chronic longer than that, no.

Q But a shoulder in that condition before the surgery, Dr. Capiola did a range of motion, found 110 raising his arm, I think it was 130 forward, what's normal?

A I don't do those physical exams. I can't tell you what the numbers are.

Q Okay. Someone had the condition that you told us about, the subluxation to the shoulder that you saw, would you be able to have a full range of motion pain free?

MS. WALTERS-HINDS: Objection.

THE COURT: He didn't say he did the range of

motion. He's analyzing studies, not doing the range of motion tests.

MR. PFLUGER: Okay. That's fine. That's all I have. Oh, I'm sorry. A couple things.

Q This was a patient of yours, correct?

A Yes.

Q You were part of the treatment team?

A Yes.

Q Okay. How many times have you been in a courtroom?

A Testifying?

Q Yes.

A On the average five times per year, on the average.

Q How much?

A Five times per year.

Q Five times. Okay. And those five times, on behalf of what part?

A Well, since I do MRIs in patients that are in pain, usually on the side of the plaintiff if somebody has a lawsuit. I don't know if it's a lawsuit or not when I read a film.

In 2013, five years ago, I have no idea. Each patient could have trauma any which way, I don't know. So, now five years later I sit here. So the answer is most of the times is with people that are complaining about something.

Q Well, if I ask you in 25 years, how many shoulder MRIs have you examined?

A Oh. Many, many, many, many thousands.

Q Okay. Of those many, many, many, many thousands, how many shoulders have you seen in this condition?

A Well, I've seen shoulders that are really horrible and I've seen shoulders that are relatively normal. This is a range. Let me be reasonable about this. This is a shoulder that needed surgery.

The surgeon went in and found what he found. That's pretty straightforward. The MRI pictures matched pretty much, pretty much what the surgeon saw. This is not a shoulder that could have continued on without surgery.

Q Okay. And you are being compensated?

A I am.

Q How much?

A $8,500 for being out of my office.

MR. PFLUGER: Okay. Thank you, sir.

THE WITNESS: You're welcome.

THE COURT: Cross-examination -- well, before we do that, we will take a ten-minute recess. Don't discuss anything among yourselves or anyone else. We'll bring you right back here in ten minutes. Follow the directions of the court officer.

COURT OFFICER: Jurors exiting.

(Whereupon the jury exits the courtroom.)

THE COURT: You may step down.

THE WITNESS: Thank you.

(Witness steps down from the witness stand.)

(Whereupon a ten-minute recess is taken.)

(Whereupon back on the record.)

THE COURT: Bring them in.

COURT OFFICER: Jury entering.

(Whereupon the jury enters the courtroom.)

THE COURT: All right. Please be seated. We are resuming the examination of this witness, Dr. Kolb. Doctor, I remind you you're still under oath. This is cross-examination. Counsel, you may inquire.

MS. WALTERS-HINDS: Thank you, Judge.

CROSS-EXAMINATION

BY MS. WALTERS-HINDS:

Q Good morning, Doctor.

A Good morning, ma'am.

Q How are you?

A Thank you.

Q How are you?

A Getting there.

Q Dr. Kolb, you've been operating Kolb Radiology since 2015; is that correct?

A That is correct.

Q And that's been you on your own; is that correct?

A Correct.

Q And in 2013, you were operating out of Precision Imaging with Dr. Lichy; is that correct?

A Correct.

Q And Precision Imaging was officially in business for three years; is that correct?

A Correct.

Q And your partnership ended on October 31, 2015?

A Thereabouts.

Q Okay. So, it was running from about August, 2012, to October, 2015, correct?

A Correct.

Q Okay. And Precision Imaging officially dissolved in July of 2016?

A Correct.

Q And you haven't spoken to Dr. Lichy since 2015; is that correct?

A Dr. Lichy passed away.

Q Okay.

A That's why Precision Imaging dissolved and we left each other.

Q Okay. So you previously gave a deposition on April 17, 2017, do you remember that?

A No.

Q Do you remember a case called Joe Barker versus Greyhound Lines Inc., and Sabrina Anderson?

A No.

Q Okay. Let me just turn to a page and see if it refreshes your recollection. Page 16, lines 18 to 25. By the way, when did Dr. Lichy die?

A He was sick. I left in, as you say, October, 2015. He developed a very serious illness six months earlier than that, or eight months earlier than that and he died about a year and a half after that. So he died 2017, but you could confirm that.

Q Okay. Page 16, lines 18 to 25?

MR. PFLUGER: Sidebar, Judge, please.

THE COURT: Sure.

(Whereupon discussion off the record.)

(Whereupon back on the record.)

THE COURT: The objection is sustained as to that question. Next question.

MS. WALTERS-HINDS: Thank you, Judge. Dr. Kolb, do you know how Mr. Abreu Depena ended up coming to Precision Imaging?

THE COURT: Hold that thought for just a minute. I think I left my glasses.

(Whereupon off the record.)

(Whereupon back on the record.)

THE COURT: Sorry. You need the question read back?

THE WITNESS: No. I believe it's from Dr. Cabutu,

but my report to him would have the doctor's name on it who sent the patients to be scanned.

Q Okay. On your report it says Dr. David Capiola?

A I wrote a number of reports, so if you wish, I'll look at my report and tell you which doctor sent that patient to me.

Q Okay. I'm talking about the MRI from 9/23/2013?

A So, I would refer back to my reports that are there, and --

Q Okay. You can come down.

A -- I will tell you exactly.

Q Can you get them?

A Can I come down?

THE COURT: Why don't you stay there, my officer will bring them to you. Fern? These are the reports at the end of the table.

THE WITNESS: Okay. Yes, ma'am. Which report now?

Q September 23, 2013.

A Yes, that is correct. Dr. David Capiola.

Q Dr. David Capiola is partnered with Dr. Cabutu?

A I don't know their relationship. They work out of the same office.

Q Same office, okay. Do you know how many cases per year Dr. Capiola refers to you?

A No.

Q And Precision Imaging gets referrals from other

practicing physicians; is that correct?

A It did, when it existed.

Q Okay. And you're operating as Kolb Imaging?

A Kolb Radiology.

Q Kolb Radiology. Do you get referrals from other practicing physicians as well?

A Other than who?

Q How do you get your referrals?

A By referring physicians.

Q Okay. And do you know how many referrals you received from Dr. Capiola and Dr. Cabutu in 2013?

A No.

Q Do you keep a record of that?

A I don't.

Q Sir, you testified, you said previously that you testified about five times a year; is that correct?

A On the average. Sometimes four times. Sometimes six times, but as a reasonable guideline, five times per year.

Q Okay. And for how many years have you been testifying?

A For about 20 years I would say, I would guess.

Q How many times have you testified where Dr. Cabutu has been one of the physicians in the case?

A I have no idea.

Q How many times have you testified where Dr. Capiola has been in the case?

A I have no idea.
Q The MRI you saw of the lumbar spine in December of 2018, that was referred from Dr. Avanesov's office; is that correct?
A Correct.
Q How many cases have you testified in where Dr. Avanesov has been the spinal surgeon?
A I have no idea.
Q Is it more than five, less than five?
A I seriously have no idea. I couldn't tell you one way or the other.
Q Okay. Last year, let's say 2018, did you testify in any case where Dr. Avanesov was the surgeon?
A I might have, but I wouldn't know. I wouldn't remember what I testified to last year, the patient's name or doctor's.
Q Because you don't keep records?
A Well, they are these records if -- you're more than welcome to pull records out from different cases and show me and I'll tell you, Yeah, you're right, or, No, you're wrong. But I don't know.
Q You said you testified about five times a year. I'm just trying to get what your recollection is as to which, if any, doctors that you testified with?
A I don't testify with them. I have no idea who is coming in. If the surgeon comes in who did the shoulder

surgery, as I understand that was Dr. Capiola, but ordinarily, I won't know what doctors are being brought and what aren't.

My understanding is not every doctor who sends me a report where this case goes to trial, which would be a miniscule number, actually come and testifies. I certainly can't give you any numbers.

Q Sir, plaintiff's counsel asked you before and you said that you were part of the treating team for Mr. Abreu Depena, so has there been other cases where you've been part of the treating team where Dr. Avanesov and Dr. Capiola have also been doctors?

A Same answer that I explained before. Any doctor who sends me a case, I am part of that treating team by reading the MRI. They take my report. They put it together with the physical examination and decide what to do. But I have no idea -- I don't recollect how many times any particular doctor I'm part of that treating team.

Q Okay. The MRI that you did on September 23, 2013, for patient history it says status post trauma; is that correct?

A That's correct.

Q Okay. Did you get a letter from Dr. Capiola saying that the plaintiff had trauma?

A I don't know how it was transmitted to us. Sometimes the patients fill out sheets. Sometimes the doctors put it on the referral slip.

Q Do you have a referral slip in front of you, or do you have a sheet that the plaintiff filled out?

A No.

Q Do you have any information with you that the plaintiff filled out saying what his history is?

A No.

Q Do you have any letter or any correspondence from any doctor where it says what the patient's history is and it says trauma on it?

A No.

Q Now, you reviewed MRIs from 9/23/2013 and also a subsequent MRI of the shoulder; is that correct?

A No. My previous partner Dr. Lichy did the subsequent MRI of the shoulder on 8/19/2014.

Q And you looked at the MRI today; is that correct?

A That is correct.

Q The subsequent one?

A Yes.

Q And on the first one, you said you saw a Hill-Sachs fracture; is that correct 9/23/13?

A Yes.

Q And the one that you reviewed of the shoulder in 2014 you said you still saw the Hill-Sachs fracture?

A Yes.

Q When you worked with Dr. Lichy, did you both review the

MRI together, or did you split duties?

A We split duties. We did not read together.

Q So you wouldn't review the same MRI?

A Correct.

Q And in this case he's the one that wrote a report of what his findings were; is that correct?

A Correct.

Q Okay. And you looked at what his findings were?

A Yes.

Q Okay. At any time between 2014, until he died, did you ever discuss with him what his findings were?

A No.

Q And you agree 100 percent of what his findings were in 2014?

A No.

THE COURT: Sustained. That's not in evidence what his findings were, what the other person's findings were.

Q Now, sir, you mentioned that you thought that there was some chronic changes on the MRI from 9/23/2013; is that correct?

A Yes.

Q But you don't believe that any of the chronic changes were more than two months old; is that correct?

A Right. Which is basically what I stated in the impression of the report, that is correct.

Q Okay. What is chondromalacia?

A Softening of the cartilage. Damage to the cartilage.
Q Okay. And how long does it take for a grade 1 chondromalacia to happen?
A Depends on the cause.
Q Okay. What are the causes of chondromalacia?
A Trauma.
Q Is it only trauma, or does it also happen over time?
A Old age.
Q And when does chondromalacia usually start, is it 20, 30, 40, something else?
A It's totally variable and individual for each patient.
Q Okay. Can chondromalacia start with say, someone in their 20s or 30s?
A So the answer to your question is, the younger you are, the more unlikely for it to start or be there. And the older you are, it's more likely. So if you were to ask me, Would you be more likely to see chondromalacia in an 80-year-old than a 20-year-old, of course the answer is, yes.

If you're asking me is it possible hypothetically to see chondromalacia in a 20-year-old, or a 30-year-old, the answer would be, it's possible, but highly unlikely.

Q Okay. How long does it take chondromalacia, let's say a grade 2 to develop?
A Same answer.
Q In a 30-year-old?

A You are asking me a question that can't be answered, cause every patient is individual. The answer is exactly as I just told you.

Q Does it take months, does it take years, it depends on the person?

A That's correct.

Q And chondromalacia Level 3, is that usually only found from trauma or can it be found as a result of degeneration or wear and tear of a 30-year-old?

A Both.

Q So you agree with me that chondromalacia Level 3 can be as a result of degeneration or wear and tear in a 30-year-old?

MR. PFLUGER: Objection.

THE WITNESS: No. I didn't say that.

THE COURT: The answer is sustained.

MS. WALTERS-HINDS: Chondromalacia for a person that's in their 30s, is it possible for someone in their 30s to have chondromalacia Level 3, as a result of degeneration or wear and tear?

MR. PFLUGER: Objection. Anything's possible, Judge.

THE COURT: Overruled. Answer the question.

THE WITNESS: Yes, there's my answer. Anything's possible. It's highly unlikely for a 30-year-old to have chondromalacia grade 3 without a reason for it, other than

aging. In general, most 30-year-olds don't.

MS. WALTERS-HINDS: Okay. In your over 20 years experience, have you found chondromalacia in a 30-year-old where it's as a result of wear and tear or degeneration?

MR. PFLUGER: Objection.

THE COURT: You understand the question?

THE WITNESS: Yeah.

THE COURT: You can answer.

THE WITNESS: Same answer. Highly unlikely.

Q Okay. Have you found it possible, that's what --

A Well, anything's possible. You can always find a 20-year-old with chondromalacia with no known cause, although there would be a cause, but maybe the patient doesn't even know. But to answer your question, it is highly unlikely. Everything is possible, but it's highly unlikely.

Q Doctor, you testified that you've been doing MRIs for over 20 years. I'm just trying to find what your findings are, if you found that. If you haven't, you can say that you haven't, or you don't have any recollection of it.

A No, no. Your question can't be answered because my answer is, it's possible. It's highly unlikely. If you want me to say, is it seen in 30-year-olds, the answer is typically not. The answer is typically not.

Is it possible that one 30-year-old can have an MRI with chondromalacia? Sure. Anything's possible. That's not

the way we do medicine.

Q I was just talking about your specific recollection, not what's possible, what your experience has been like?

A My experience is exactly as I told you before, which is it's highly unlikely for a 30-year-old to have grade 3 chondromalacia. Grade 3 chondromalacia from aging alone. Highly, highly unlikely.

Q Is it highly unlikely as well for a grade 2 chondromalacia?

A Yes.

Q What is synovitis?

A It's an inflammation of the synovial lining of a joint.

Q Okay. What are the causes of synovitis?

A In general, synovitis is the inflammation, in general of either trauma or many other processes like arthritis can cause synovitis as well. There are multiple causes for synovitis.

Q Okay. You reviewed MRIs of the lumbar spine in December of 2018; is that correct?

A Yes.

Q And it was Dr. Avanesov who referred this MRI to you?

A Yes.

Q And on that MRI, you saw herniations that you believed were new; is that correct?

A That I believed were...

Q New?
A No. It doesn't say new, cause I didn't have anything else to compare it to.
Q Okay.
A I was handed an MRI report from 2014 from another facility that I didn't see before. So when I wrote this report I couldn't tell you whether it was new or wasn't new.
Q Okay. Only the MRI of the lumbar spine that you reviewed was December of 2018; is that correct?
A Correct.
Q You didn't review an MRI of the lumbar spine in 2013, correct?
A That is correct.
Q You didn't review an MRI of the lumbar spine in 2014, correct?
A Correct.
Q You didn't review an MRI of the lumbar spine presurgery; is that correct?
A Correct.
Q And you didn't review an MRI of the lumbar spine postsurgery, let's say in 2015, after he had the lumbar surgery?
A I did.
Q You reviewed it in 2018, correct?
A That's postsurgery.
Q Okay. I'm talking about, Doctor, in 2015, did you

review an MRI of the lumbar spine then?

A No. I'm not aware of the lumbar spine MRI.

Q Okay. And you didn't review an MRI of the lumbar spine, let's say on November 9, 2015, correct?

A Correct.

Q And you didn't review an MRI of the lumbar spine on August 22, 2013, you didn't review that one, correct?

A Correct.

Q And you didn't review, let's say a CT of the lumbar spine on February 22, 2014, correct?

A '14, I'm not aware of that date, no.

Q And you didn't review an x-ray of the cervical spine from August 1st, 2013, correct?

A Correct.

Q And regarding the cervical spine, you didn't review an MRI of the cervical spine from November 9, 2015, correct?

A That is correct.

Q You didn't review an MRI of the cervical spine on March 21, 2015, correct?

A Correct.

Q And you didn't review an MRI of the, you didn't review any MRIs in either 2016 or 2017; is that correct?

MR. PFLUGER: Objection.

THE COURT: Of the plaintiff?

MS. WALTERS-HINDS: Yes.

THE COURT: Are there separate MRIs taken on that day?

MS. WALTERS-HINDS: Judge, I'm just asking him regarding the different years. I asked him specifically --

THE COURT: I am asking you a question. Were there MRIs done on those specific days?

THE WITNESS: The specific dates I asked, yes, Judge.

THE COURT: The various dates that there were MRIs taken on those dates?

MS. WALTERS-HINDS: On those specific dates in 2015, '13 and '14, yes.

THE COURT: Okay. So, you're asking him if he reviewed those MRIs?

MS. WALTERS-HINDS: Yes.

THE COURT: All right. Objection noted.

MR. PFLUGER: Judge, she said '16 and '17.

THE COURT: Well, I heard a lot of different dates and that's why I'm asking, are there MRIs on those dates. You said that they were on some of those dates, but not all of those dates. Is that what I'm understanding?

MS. WALTERS-HINDS: Judge, I'm not aware --

THE COURT: Please, answer my question.

MS. WALTERS-HINDS: I'm not aware of any in 2016.

THE COURT: Stop, stop. If you're not aware, if

neither side is aware of any MRIs of the plaintiff on some date, asking him if he reviewed an MRI on this date, if nobody knows that an MRI was or wasn't taken, it's not relevant to what we're dealing with.

If there were actual MRIs taken on specific dates and we have them, and they are part of the conversation or evidence that we have here, then those are questions that can be asked.

But to ask a witness, Did you review an MRI of the plaintiff on a certain date, and there is no proof that an MRI was even taken on that date, it's not proper.

MS. WALTERS-HINDS: I asked him about the specific dates.

THE COURT: I'm sorry?

MS. WALTERS-HINDS: I asked him about the specific dates.

THE COURT: Okay.

MS. WALTERS-HINDS: So I'll move on. Thank you, Judge.

Q Doctor, do you have any understanding as to whether there was a disc bulge or herniation to his lumbar spine that started in 2015 or '16, or any other years?

A Did I have studies in '16?

Q Not in 2016, 2015. For example, are you aware of any new herniations or bulges that resulted in those years?

THE COURT: Can you make reference to a specific study? I mean, I think it's pretty clear that the witness has made certain reviews or interpretations of certain studies that if presented here, and I think that to appropriately put the question for an answer, it needs to be the study of X Y and Z date of whoever, did he review it, what did he see, or what didn't he see. You understand, that's what we need?

Q Sir, you testified that you did not see an MRI of the lumbar spine for November 9, 2015, correct?

A Yes. If there was one done at that date, I didn't see it.

Q So you don't know whether there were any new herniations or bulges that were shown as a result of that MRI on that date, correct?

A I can't answer that question. I can't say that anything is new if you're telling me one date, you have to compare it to another date. I can't answer your question.

Q But, sir, the only thing you have to compare it with is from December 31, 2018. You didn't compare any other MRIs, correct, you didn't compare the MRI from the November 9, 2015, March 2, 2015?

MR. PFLUGER: Objection. Asked and answered.

THE COURT: Stop.

Q August 22, 2013, or August 1st, 2013, correct?

A If those are the dates that the patient had MRIs, then I did not see them.

Q Okay. So there was nothing that you were able to compare your findings with, other than the one on December 31, 2018, that you saw, correct?

A Correct. That was the only lumbar spine MRI that I interpreted. That is correct.

Q All right. It is your understanding that this accident happened on July 22nd of 2013, correct?

A Correct.

Q Okay. So for the five years prior to December 31, 2018, you didn't see any MRIs of the lumbar spine, or of the cervical spine, correct, just "yes or no"?

MR. PFLUGER: Objection. This has been asked about five or six times now.

THE COURT: In cross-examination the questions often get asked more than once typically with some slight contextual changes, so that's not a basis for the objection.

What I want to make clear again is this, hypothetical MRIs, if nobody knows whether they happened or not, we are not going to talk about it.

If you want to understand if there was a comparison that was done, make reference to a specific MRI that was done on a specific date of a specific region of the body of the person whose MRI was taken, and then ask him if he saw

it or not.

And if he did, then you can ask him to talk about it. But if he didn't or never saw it, never saw it. Okay? That's all. And let me just see both sides for a minute.

(Whereupon discussion off the record.)

(Whereupon back on the record.)

THE COURT: Next question.

Q Sir, you don't know the condition of his lumbar spine prior to the surgery; is that correct?

A That is correct.

Q And you don't know the condition of his lumbar spine from 2013, correct?

A Same question. The answer is, yes.

Q All right. Because the only MRI that you saw was from December 31, 2018, correct?

A Of the lumbar spine?

Q Yes. The lumbar spine?

A Yes.

MS. WALTERS-HINDS: Thank you.

THE COURT: Redirect.

MR. PFLUGER: Yes, sir. There's been some question about trauma, do you have an opinion, with a reasonable degree of medical certainty, whether the injuries that you told this jury about are trauma related?

MS. WALTERS-HINDS: Objection.

THE COURT: You are going to have to narrow that down. He testified about a number of things.

MR. PFLUGER: Can you formulate an opinion, with a reasonable degree of medical certainty, whether the injury that you told the jury about in looking at the MRI of September 23, 2013, was trauma related?

MS. WALTERS-HINDS: Objection.

THE COURT: Overruled.

THE WITNESS: Yes. Fracture subluxation and the labral tears were due to the trauma.

REDIRECT EXAMINATION

BY MR. PFLUGER:

Q Okay. Do you have an opinion, within a reasonable degree of medical certainty, whether the injury to his neck was trauma related?

A Given, telling me that he didn't have effected pain before, he didn't see doctors, didn't go for MRIs, had no other treatment, now complains of pain after being injured, then the herniations would be related to trauma, correct.

Q Okay. And, sir, you mentioned the lumbar spine at L3-L4 level, right above the fusion?

A Correct.

Q You reviewed the December 21, 2018, postop MRI, that herniation that was shown, and you mentioned adjacent segment degeneration, was that a focal herniation or something else?

THE COURT: I only got the second word.

MR. PFLUGER: Okay. What type of herniation was that that we looked it?

THE WITNESS: It was a focal posterior central posterior herniation.

MR. PFLUGER: Thank you, sir.

THE COURT: That's it?

MR. PFLUGER: Yes, sir.

THE COURT: Recross.

MS. WALTERS-HINDS: Doctor, you saw an MRI of the lumbar spine five years after the accident, and you could tell that it's traumatic, that it's as a result of the accident?

MR. PFLUGER: Objection. I didn't ask that.

THE COURT: I'm going to allow the question.

THE WITNESS: I never said it was. I never saw the earlier MRI. I can't give you an answer for that.

MS. WALTERS-HINDS: So you can't tell whether the injuries to the lumbar spine are as a result of the accident on July 27, 2013, correct?

MR. PFLUGER: Object to form.

THE COURT: I'll allow it.

THE WITNESS: Correct. Based only on the 2018 that I looked it. I cannot tell you.

Dr. Kolb - Defendant - Recross

RECROSS-EXAMINATION

BY MS. WALTERS-HINDS:

Q The same would go for the cervical spine as well?

A No, that would be incorrect.

Q You could tell that it's trauma induced. When was the time that you reviewed the MRI to the cervical spine?

THE COURT: Wait. Wait. He said he can tell. Your question, Can he tell this was trauma induced.

What's your answer to that?

THE WITNESS: The answer was given. I'm just going to repeat what I said 30 seconds ago. Given the history that I was told, that the patient didn't have neck pain, didn't get previous MRIs prior to the trauma, wasn't treating for neck pain prior to the trauma, had a trauma and then got an MRI on 10/30/2013, maybe three months after the trauma that showed two herniations.

Based on that information I can tell you that within a reasonable degree of medical certainty, the herniations are related to the trauma.

Q The herniations to the neck, is that what you're saying?

A Correct. That's what you asked me.

Q Where is the piece of paper that shows that he gave you this history, is there something that counsel told you today or someone else told you, where is that information?

THE COURT: Sustained. Sustained.

MS. WALTERS-HINDS: Do you have any piece of paper showing what the medical history that he told you, other than what you're saying many years later?

THE COURT: Sustained.

MS. WALTERS-HINDS: Is there any piece of paper that has that information?

THE COURT: Sustained.

MS. WALTERS-HINDS: Any written document?

THE COURT: Counsel, it's sustained.

MS. WALTERS-HINDS: Withdrawn. Thank you, Judge.

THE COURT: You may step down.

THE WITNESS: Thank you very much.

THE COURT: Let me see the attorneys for a moment.

(Whereupon off the record.)

(Whereupon back on the record.)

THE COURT: We are going to break for the day, resume tomorrow, 9:30. During your intermission don't discuss this with anybody else, including your fellow jurors. Keep an open mind. Follow directions of the court officer, we will see you back tomorrow, 9:30.

COURT OFFICER: Jury exiting.

(Whereupon the jury exits the courtroom and court was adjourned for the day.)

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