

**In The Matter Of:**  
*SALVATORE GULINAZZO v.*  
*SEVENTH REGIMENT ARMORY*

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*DR. HAUSKNECHT and CONT'D S. GULINAZZO*  
*September 28, 2022*

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*NY County Supreme Court*

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK: CIVIL TERM: PART 10

3 SALVATORE GULINAZZO,

4 Plaintiff(s)

5 -against-

Index No.:

157975/2014

Jury Trial

6 SEVENTH REGIMENT ARMORY CONSERVANCY, INC.  
7 and ROBERT B SAMUELS, INC.,

8 Defendant(s).

9 60 Centre Street  
10 New York, New York  
11 September 28, 2022

12 B E F O R E:

13 HONORABLE ERIKA M. EDWARDS, J.S.C.,

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

15 SACKS AND SACKS, LLP  
16 Attorneys for Plaintiff  
17 150 Broadway  
18 New York, New York 10038  
19 BY: DANIEL WEIR, ESQ. (Via Microsoft Teams)  
20 WADE TURNBULL, ESQ.

21 PERRY, VAN ETTEN, ROZANSKI & KUTNER, LLP  
22 Attorneys for Defendant  
23 14 Wall Street - Suite 4D  
24 New York, New York 10005  
25 BY: JEFFREY VAN ETTEN, ESQ.

Reported by:  
Daisy Perez, SCR  
Rachel Simone, SCR

1 THE COURT: Case on trial continues. Mr. Turnbull,  
2 ready when you are.

3 MR. TURNBULL: Just have some exhibits to mark and  
4 to admit. So as Exhibit 44, we have an image of an x-ray of  
5 the lumbar spine taken at Lenox Hill Hospital on September  
6 25, 2013, the date of the accident.

7 THE COURT: Okay. Is there any objection to  
8 admitting that into evidence?

9 MR. VAN ETEN: No objection.

10 THE COURT: That's admitted into evidence as  
11 Plaintiff's Exhibit 44.

12 (Whereupon, the item previously referred to is  
13 received and marked Plaintiff's Exhibit Number 44 in  
14 evidence.)

15 MR. TURNBULL: As Exhibit 45A we have the actual  
16 films from Lenox Hill Hospital on September 25, 2013 -- 44A.

17 THE COURT: Okay. Any objection?

18 MR. VAN ETEN: No objection, your Honor.

19 THE COURT: That's admitted into evidence as  
20 Plaintiff's Exhibit 44A.

21 (Whereupon, the item previously referred to is  
22 received and marked Plaintiff's Exhibit Number 44A in  
23 evidence.)

24 MR. TURNBULL: And then as Exhibit 45 we have an  
25 image from a cervical spine x-ray taken at Mount Sinai

1 Hospital on October 10, 2008.

2 MR. VAN ETTEN: No objection.

3 THE COURT: Plaintiff's Exhibit 45 admitted into  
4 evidence.

5 (Whereupon, the item previously referred to is  
6 received and marked Plaintiff's Exhibit Number 45 in  
7 evidence.)

8 THE COURT: Where is it from?

9 MR. VAN ETTEN: Mount Sinai West Hospital.

10 MR. TURNBULL: As 45A we have the actual films from  
11 Mount Sinai West Hospital from October 10, 2008.

12 MR. VAN ETTEN: No objection.

13 THE COURT: This will be admitted into evidence as  
14 Plaintiffs's Exhibit 45A.

15 (Whereupon, the item previously referred to is  
16 received and marked Plaintiff's Exhibit Number 45A in  
17 evidence.)

18 MR. TURNBULL: As 46 we will mark Dr. Hausknecht's  
19 chart. Dr. Hausknecht is here, he is outside in the  
20 hallway.

21 THE COURT: Please go get them. Mr. Van Etten tell  
22 me when you're ready and if you have any objections.

23 MR. VAN ETTEN: No objection subject to redaction,  
24 your Honor. There's worker's compensation records within  
25 the records of Dr. Hausknecht which has awards and monetary

1 amounts.

2 THE COURT: Okay. This will be admitted into  
3 evidence as Plaintiff's Exhibit 46 subject to redaction.

4 (Whereupon, the item previously referred to is  
5 received and marked Plaintiff's Exhibit Number 46 in  
6 evidence.)

7 THE COURT: Do you have anything else, Mr.  
8 Turnbull?

9 MR. TURNBULL: No, your Honor.

10 THE COURT: Okay. Anybody need to put anything on  
11 the record?

12 MR. VAN ETEN: No, your Honor.

13 THE COURT: I just want the record to be clear that  
14 Mr. Weir is appearing virtually by Teams based on the e-mail  
15 conversation I had with the parties yesterday. Mr. Weir  
16 will be joining us in person when he's able to do so and  
17 virtually when he's able to do so. And based on the  
18 conversations off the record this morning, I will be  
19 instructing the jury, in substance, that Mr. Weir is joining  
20 us virtually and that they are not to infer as to the reason  
21 why and say something about COVID protocol. We'll see how  
22 it goes. All right.

23 COURT OFFICER: All rise. Jury entering.

24 (Whereupon, the jury enters the courtroom.)

25 THE COURT: Okay. Everybody please be seated.

1 Good morning, ladies and gentlemen. Hope everybody enjoyed  
2 their time off from us. We're ready to get back to work.

3 As you may see, Mr. Weir is appearing virtually via  
4 Microsoft Teams. We will do our best to make sure that he  
5 is remaining part of the proceedings. The Court ask that  
6 you don't speculate or hold it against either side because  
7 he's appearing virtually and not in person. There maybe  
8 days when Mr. Weir is able to appear virtually, there may be  
9 days that he will be able to appear in person. So please  
10 don't speculate as to the reasons why.

11 As you can see we have our next witness available.

12 MR. TURNBULL: Our next witness is Dr. Aric  
13 Hausknecht.

14 THE COURT: All right. Doctor, can you please  
15 follow the instructions of my clerk.

16 THE CLERK: Good morning, Doctor. Please rise and  
17 raise your right hand. Do you solemnly swear or affirm that  
18 the testimony you're about to give will be the truth, the  
19 whole truth, and nothing but the truth?

20 THE WITNESS: I do.

21 THE CLERK: Please state your full name and your  
22 office address.

23 THE WITNESS: My name is Aric Hausknecht. My place  
24 of business is 19 East 37th Street, New York, New York  
25 10016.

1                   THE COURT: And, Dr. Hausknecht, is it Eric with a  
2                   C or a K.

3                   THE WITNESS: A-R-I-C.

4                   THE COURT: Oh, A-R-I-C. Thank you. Doctor, I'm  
5                   going to ask that you keep your voice raised. Your  
6                   microphone is on, you don't need to get all close to it.  
7                   Just make yourself comfortable. If there's anything that  
8                   you are asked and you don't understand, you can't hear, let  
9                   us know and the attorneys will rephrase and repeat it if  
10                  necessary. And if you need to take a break at any time  
11                  please feel free to do so. Thank you, you may proceed.

12                  DIRECT EXAMINATION

13                  BY MR. TURNBULL:

14                  Q       Good morning, Dr. Hausknecht.

15                  A       Good morning.

16                  Q       How long have you been licensed to practice medicine in  
17                  the State of New York?

18                  A       I received my license to practice medicine and surgery  
19                  in New York State in 1992.

20                  Q       And could you briefly describe for the jury your  
21                  education training background with respect to your professional  
22                  license?

23                  A       Sure. I graduated from Duke University in 1987  
24                  majoring in physical anthropology. I graduated from Mount Sinai  
25                  Medical School in 1991 with a medical degree. I completed my

1 medical internship training program at Beth Israel Medical  
2 Center here in New York in 1992 and after completing that  
3 internship I received my license to practice.

4 I completed my neurology residency training program at  
5 New York Hospital Cornell Medical Center and Memorial Sloan  
6 Kettering Cancer Center in 1995 and I've basically been in  
7 private practice since 1995.

8 Q Do you have any hospital admissions, teaching  
9 positions?

10 A I do. I'm affiliated with several different hospitals  
11 including Beth Israel Mount Sinai and New York Presbyterian and  
12 Colombia. Part of my responsibilities there, in addition to  
13 seeing patients, is teaching other doctors and residents various  
14 topics in the field of neurology and pain management.

15 Q Doctor, you're a board certified neurologist, can you  
16 just briefly explain to the jury what the field of neurology  
17 what that speciality entails?

18 A Sure. Neurology is the field of medicine that deals  
19 with the treatment and evaluation of disorders of the nervous  
20 system. So the nervous system includes the brain, the spinal  
21 cord, and the peripheral nerves. So the typical problems that a  
22 neurologist see include headaches and dizziness, neck pain and  
23 back pain, numbness and weakness. It's my responsibility as a  
24 neurologist to determine what's causing that problem and how to  
25 best treat that problem and improve the quality of life of that



1 individual.

2 Q Doctor, you treat primarily conditions related to the  
3 brain and the spine?

4 A Yes, I treat adult patients primarily with head, neck,  
5 and back problems.

6 Q All right. Now, do you treat patients who are involved  
7 in work-related accidents?

8 A I do.

9 Q All right. You mentioned you have a private practice?

10 A Correct.

11 Q Are you on the plans of various New York construction  
12 trade unions?

13 A I am. I'm a union doctor on many different plans.

14 Q The name of your practice, what is the name of it?

15 A Complete Care.

16 Q How long have you been practicing at Complete Care?

17 A Since 2000.

18 Q When you have a client or a patient who has been  
19 involved in a work-related accident, do you sometimes come to  
20 court to testify on their behalf if they have a lawsuit?

21 A On occasion, yes.

22 Q And during the past 20 years or so have you come to  
23 court to testify on behalf of your patients who are represented  
24 by Sacks and Sacks?

25 A I have.

1 Q Approximately how many times?

2 A Over the past 20 years maybe a dozen times.

3 Q And when you come to testify in court, do you have to  
4 take time away from your practice?

5 A I do.

6 Q So when you come to testify do you charge a fee for  
7 appearing and testifying in court?

8 A I do. My fee for my time away from the office is  
9 \$1,000 per hour.

10 Q And do you know what your fee for testifying here today  
11 is?

12 A I closed my office for the day so it will be \$8,000.

13 Q Prior to testifying -- coming here to testify today,  
14 did you meet with Mr. Weir?

15 A I did.

16 Q When was that?

17 A Approximately two weeks ago.

18 Q What did you and Mr. Weir discuss?

19 A We went over some of the records. He brought me some  
20 of the MRI films to take a look at.

21 Q Did you bring Mr. Gulinazzo's chart with you today?

22 A I did.

23 Q Do you see Mr. Gulinazzo in the courtroom today?

24 A I do.

25 Q Is he a patient of yours?

1           A     Yes, he is.

2           Q     You have your chart, I would like you to feel free to  
3 refer to it at any point in time during your testimony to the  
4 extent you feel necessary to refresh your recollection?

5           A     Understood.

6           Q     When did Mr. Gulinazzo become a patient of yours?

7           A     It was in 2016 specifically July 19th.

8           Q     How did he become a patient of yours?

9           A     He had been injured on the job in 2013, had been  
10 treating with several of my associates, specifically Dr. Colon  
11 and Dr. Merola. Dr. Merola had done some spinal surgery. Dr.  
12 Colon had done some pain management and they requested that I do  
13 some neurologic consultation and some electrodiagnostic testing  
14 to determine if there was any nerve damage in the neck or back.

15          Q     And, Dr. Hausknecht, when you see a patient, a new  
16 patient for the first time, do you take a history of that  
17 patient?

18          A     I do.

19          Q     Can you just explain to the jury what a history is and  
20 the significance of the history you take?

21          A     History provides important information to a doctor in  
22 order to determine the nature of the condition. So, for  
23 example, in this case it was trauma. He was hit by a container  
24 and twisted and thereafter developed neck, back, and shoulder  
25 pain. So that history to me indicates that there was a

1 traumatic ideology to his condition.

2 The history also includes information about what type  
3 of treatment a person has received and their response to that  
4 treatment. So, for example, has the person taken different  
5 medications, have done physical therapy, have they done  
6 injections. All of that information is important to me in  
7 making the determination as to what type of treatment might be  
8 effective to go forward.

9 So the history contains subjective information, that's  
10 what the patient is feeling and saying and how they responded to  
11 treatment.

12 Q Did you take a history of Mr. Gulinazzo when you first  
13 saw him on July 19, 2016?

14 A I did.

15 Q Could you briefly tell the jury what that history was?

16 A He was in the course of employment on 9/25/13, he was  
17 struck by a container and twisted and knocked to the ground.  
18 Developed pain and went to Lenox Hill Hospital emergency room  
19 and thereafter saw some different doctors, had some physical  
20 therapy, had some injections, had a shoulder surgery, eventually  
21 seeing Dr. Merola where he had lower back surgery and Dr. Colon  
22 where he eventually had a spinal cord stimulator implantation.

23 Q Now, Dr. Hausknecht, did you review any of the records  
24 from Mr. Gulinazzo's prior treating physicians?

25 A I did.

1 Q Which doctors records did you review?

2 MR. VAN ETTEN: Objection. Can we get a timeframe  
3 as to when he reviewed the records? Foundation.

4 THE COURT: If you don't mind, Doctor, can you tell  
5 us when it was that you reviewed those records,  
6 approximately.

7 THE WITNESS: Some of them were reviewed in 2016  
8 and some thereafter.

9 THE COURT: Okay. Thank you. You may continue.

10 Q Which doctors records did you review?

11 A In the entirety of my treatment or in 2016?

12 Q Throughout the entirety of your treatment?

13 A Throughout the entirety, I had the emergency room  
14 records from Lenox Hill, I had the treatment records and  
15 surgical record from Dr. Dassa. I had some injection records  
16 and electrodiagnostic testing from Dr. Datta, D-A-T-T-A. I also  
17 had treatment records of Dr. Merola, Dr. Colon and his associate  
18 Dr. Perez as well as a number of different diagnostic tests,  
19 MRIs, x-rays, and NCV, EMG studies.

20 Q All right. Doctor, you explained for the jury just a  
21 moment ago your understanding about how Mr. Gulinazzo was  
22 injured in his workplace accident.

23 I'm going to read to you some testimony that Mr.  
24 Gulinazzo gave in this trial last week and ask you if that's  
25 consistent with your understanding of a mechanism of his injury?

1 MR. VAN ETTEN: Objection.

2 THE COURT: Overruled. I'll allow it. I'm sorry,  
3 you're reading the testimony?

4 MR. TURNBULL: From Mr. Gulinazzo.

5 THE COURT: Purpose?

6 MR. TURNBULL: If it's consistent with his  
7 understanding --

8 THE COURT: I will sustain the objection. Ask him  
9 not to answer that question not quite asked. That's what  
10 happens when you give us a preview. Sustained.

11 MR. TURNBULL: All right, your Honor.

12 Q Now, did you take -- as part of the history, did you  
13 take a history of any prior medical conditions Mr. Gulinazzo  
14 had?

15 A Yes.

16 Q What did you note in that respect?

17 A In relation to what I was treating him for, his neck  
18 and back, I asked him if he had any neck or back problems before  
19 this and he said in the remote past he had a problem with his  
20 lower back which he treated, got better, and he went back to  
21 work.

22 Q Did you do a physical examination, a neurological  
23 examination of Mr. Gulinazzo?

24 A I did.

25 Q Can you please explain to the jury what that

1 examination entailed and what your findings were?

2 A I performed a neurologic examination of his neck and  
3 back to determine if there was any weakness, numbness, loss of  
4 motion, spasm, or any particular movement that might cause him  
5 pain or discomfort. The findings of the physical exam, and I'm  
6 going to refer to my records for the sake of accuracy, on motor  
7 exam I found four plus weakness of the left shoulder abductor  
8 and atrophy of the left should.

9 The left shoulder abductor is the deltoid muscle. The  
10 motor strength is graded from zero to five with zero being  
11 paralysis, five being full strength. Five minus one grade below  
12 full strength, four plus two grades below full strength. So he  
13 had lost power in his shoulder and the muscle had also shrunk  
14 up.

15 Q What is the significance of that finding?

16 A Well, there's indication that there's been damage to  
17 the shoulder muscle or damage to the nerve that provides the  
18 innervation to the muscle itself.

19 Q Continue.

20 A There was four plus weakness of the left EHL or the  
21 extensor hallucis longus which is the muscle that pulls your big  
22 toe backwards. So once again this was a significant finding and  
23 that would indicate that there's been damage to the EHL muscle  
24 or to the nerve that innervates the EHL muscle.

25 There was also four plus weakness of the left ankle

1     extensors. The ankle extensors are the retinacula muscles in  
2     the back of your leg so the ability to push your foot down  
3     relies upon those muscles being attached -- relies upon the  
4     nerve going to those muscles fully innervating those muscles.

5           Q     Could you explain to the jury what you mean by  
6     innervator?

7           A     All of the muscles in the human body function based  
8     upon signal sent by the nervous system. So, for example, if the  
9     human being decides that they want to make a fist in their right  
10    hand, somewhere in the left side of the brain a nerve cell is  
11    activated, that activation releases a chemical known as a  
12    neurotransmitter which cause depolarization or a small  
13    electrical impulse to travel from one nerve cell to the next,  
14    down the spinal cord to the nerve roots that go into those  
15    muscles of the hand causing those muscles to contract and  
16    likewise causing the extensor muscles to relax and that happens  
17    in one or two tenths of a second.

18                So the innervation is the process of that nerve  
19    contacting the muscle and properly transmitting that information  
20    to contract or relax.

21           Q     All right. Doctor, please continue to explain what the  
22    examination that you did of Mr. Gulinazzo and your findings?

23           A     Okay. So there was motor weakness in the shoulder  
24    abductors and they're innervated by the C five six nerve roots.  
25    And there was weakness of the big toe extensor and the ankle



1 extensor and those are innovated by the L five and S one nerve  
2 roots. Based on that portion of the exam I was concerned that  
3 he had nerve damage in the neck at C five six and in the back.

4           When I checked his reflexes I found that the knees --  
5 the reflexes at the knees were increased, hyperreflective and  
6 the reflections at the ankles were hypoactive or decreased.  
7 This is an indication of spinal cord injury of the neck when  
8 there's a risk of reflexes and the diminished reflexes in the  
9 ankles is a sign of L five, S one nerve root. So as I continued  
10 my exam I found that there was objective evidence of damage to  
11 the cervical region as well as the lumbar region.

12           On century examination, when I was testing the various  
13 portions of the skin to determine his ability to appreciate  
14 different types of sensations like touch, vibration, I found  
15 that in the left L five, S one distribution he was feeling  
16 things less than he should have. There was a decreased  
17 sensitivity or hypoesthesia in the left L five, S one  
18 distribution. Once again a finding to me that was indicative of  
19 nerve damage coming from the lower back going down his left leg.

20           Q     What part of the lower back?

21           A     L five, S one. On the mechanical exam I found that  
22 there was tenderness in the cervical paravertebral region or the  
23 soft tissue, the muscles, the skin around the neck. And there  
24 was tenderness and spasm in the lumbosacral or lower back  
25 region.

1           The straight leg raise testing was positive bilaterally  
2 but it was worse on the left side. The straight leg raise test  
3 is performed by having a person sit on a table with their legs  
4 over slowly raising up a leg. If there is damage to a spine, to  
5 a slipped disc or a pinched nerve this will put pressure on that  
6 damaged area and if it reproduces the patient pain it's  
7 considered to be positive. In this case it was positive on both  
8 sides but definitely worse on the left.

9           Q     Just to be clear, Doctor, sometimes when we hear  
10 positive we think that's a good thing. Can you explain what  
11 positive means in this type of setting?

12          A     Positive means that it confirms that there is damage to  
13 the spine.

14          Q     You mentioned spasm a moment ago, how do you detect  
15 spasm.

16          A     Spasm is detecting by palpating the muscles. The  
17 muscles have a resting tone when they become tight that's  
18 considered to be spasm and that's a reaction to some type of  
19 underlying injury which is a stretch of the muscle or damage to  
20 the ligament or tendon or bone.

21          Q     Doctor, did you do any range of motion testing?

22          A     I did there but was one other pertinent finding. There  
23 was a positive Spurling maneuver on the left side. So the  
24 Spurling test is performed by taking a person's head in your  
25 hand, rotating it and putting pressure on top of it. Once again

1 if there is damage to the spine itself, that maneuver can  
2 simulate or create pressure on the nerve or damage part of the  
3 spine. In this case it was positive on the left. Positive  
4 meaning that it recreated that patient's shooting pain.

5 Q When you say the spine, are you speaking of the  
6 cervical spine?

7 A The Spurling maneuver is the cervical spine. The  
8 straight leg raise test is the lumbar spine. So these are  
9 similar tests but one's for the neck and one is for the back.

10 Q With respect to range of motion testing, describe for  
11 the jury what you did and what your findings were?

12 A So range of motion can be measured either actively or  
13 passively. Active range of motion depends on the activity of  
14 the patient. So if I say to the patient, bend your head to the  
15 left as far as it can go and I measure that angle with a special  
16 tool known as a goniometer, that will be active left lateral  
17 flexion.

18 Passive range of motion is performed manually by the  
19 examiner. So if I take a person's head in their hand and I push  
20 it as far as it can go and measure that angle, that would be  
21 passive range of motion. In this case both the active and  
22 passive measures that I took were pretty much the same. There  
23 was no discrepancy.

24 On the 7/19/16, once again I'm referring to my report  
25 for the sake of accuracy, his ability to bend his neck to the

1 left was limited to 30 out of the normal 50 degree. So it was  
2 missing 20 degrees or 40 percent of his ability to bend his head  
3 to the left. Right lateral flexion was limited to 35 out of 50,  
4 so he was missing 15 degrees or 30 percent of his ability to  
5 bend his head to the right. Left rotation was limited to 50 out  
6 of a normal 80. Right rotation was limited to 60 out of a  
7 normal 80.

8 Forward flexion, the ability to put your chin down, was  
9 relatively intact. Extension, the ability to bend upwards, was  
10 limited to 35 out of a normal 60. His lower back, the forward  
11 flexion, the ability to bend forward at the waist was quite  
12 limited. He can only get to about 30 degrees out of a normal  
13 90. So he was missing 60 degrees or 66 percent of his ability  
14 to bend forward at the waist. Extension was limited to 10 out  
15 of 25 was the ability to bend backwards, was quite limited.  
16 Left lateral flexion, bending to the left, limited to 10 out of  
17 25. Right lateral flexion, bending to the right was limited to  
18 10 out of 25.

19 Rotation on the left, so twisting towards the left  
20 side, was limited to 15 out of 30. And rotation towards the  
21 right, twisting to the right side, was limited to 10 out of 30.  
22 So there were a number of significant findings on the range of  
23 motion indicative of limitation.

24 Q All right. Doctor, I noticed from your notes you did a  
25 functional examination. Can you describe for the jury what that

1 is and what your findings were?

2 A Functional exam basically is observation of the person  
3 walking in and out of the room, sitting down in the chair,  
4 getting up, taking their clothes on and off, getting on and off  
5 the table. What I observed was that his gait was antalgic  
6 meaning that he was limping. He had difficulty dressing and  
7 undressing. He had difficulty getting on and off the exam  
8 table.

9 Q And, Doctor, did you also review diagnostic imagining  
10 test that Mr. Gulinazzo had done prior to seeing you?

11 A I did. He had a series of MRIs for his cervical,  
12 thoracic, and lumbar spine that had been performed and were  
13 available for my review in which I relied upon in part in  
14 establishing my diagnosis and making recommendations for him.

15 Q Doctor, is an MRI, an x-ray, imaging studies, are those  
16 typical tools of your profession and specialty in doing a  
17 diagnosis and assessment of a patient?

18 A Yes. MRI provides important information to a clinician  
19 in terms of structure. So it shows what's going on in black and  
20 white picture in the spine itself. Is there a slipped disc, is  
21 there a pinched nerve. So it's objective information as opposed  
22 to a subjective.

23 So, for example, if a patient comes into my office and  
24 they're complaining about a lower back pain, that's a subjective  
25 complaint. I'm not really sure how much further we can go with

1 that. It could be a sprained muscle. It could be a pulled  
2 tendon. It could be a slipped disc. It could be a pinched  
3 nerve. If I find out through an MRI and it shows there is a  
4 structural damage there, there's a slipped disc, that's  
5 objective. It doesn't matter what the patient is saying or  
6 doing, this is what it shows on the black or white picture.

7 (Whereupon, Senior Court Reporter Rachel Simone  
8 takes over as the official reporter.)  
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1 DIRECT EXAMINATION (CONTINUED)

2 BY MR. TURNBULL:

3 Q All right.

4 So, doctor, you understood that Mr. Gulinazzo had  
5 gone to the emergency room at Lenox Hill Hospital on the date of  
6 his accident, correct?

7 A Correct.

8 Q And you reviewed those records?

9 A I did.

10 Q Did you review an x-ray of his lower back that was  
11 taken on that date at Lenox Hill Hospital?

12 A Yes.

13 Q I am going to show you an image from an x-ray taken at  
14 Lenox Hill Hospital on September 25, 2013. This is in evidence  
15 as Exhibit 44. Let me just bring this closer.

16 THE COURT: Ladies and gentlemen, just so you  
17 know, we did pre-mark additional exhibits, including this  
18 one.

19 Q Doctor, feel free to step down, and I will ask you to  
20 explain to the jury what specific findings you find on this  
21 lumbar spine x-ray that was taken on the date of Mr. Gulinazzo's  
22 accident.

23 MR. VAN ETTEN: Note my objection.

24 THE COURT: Overruled.

25 You can step down, doctor. Watch your step,

1           please.

2                       THE WITNESS:   Thank you.

3           A     Can I use that spine over there?

4           Q     Sure.

5                       MR. TURNBULL:   For the record, the witness is  
6           using a spine model marked for identification as  
7           Exhibit 42.

8           A     Okay.   Basically, this is an x-ray of the lumbar spine.  
9           (Pointing) This is the top, this is the bottom, this is the  
10          front, this is the back.   You are looking at it from side to  
11          side, from left to right, or from right to left.   Down here is  
12          what is known as the sacrum and the coccyx, so that would be the  
13          tailbone.   Each one of these square shapes here is the vertebrae  
14          or the vertebral body seen in cross-section.   The spaces in  
15          between are where the disks would be.   These are the lamina  
16          processes or the bones along the spine.   The nerve roots would be  
17          coming straight out at each level.   The spinal cord would be  
18          going down straight through.

19                       This x-ray, to me, looks relatively normal.   There  
20          certainly are no fractures.   There are some mild degenerative  
21          changes or osteoarthritis, wear and tear primarily over here at  
22          L3 and L4.

23          Q     Okay.

24                       What evidence do you see of these degenerative  
25          changes, Dr. Hausknecht?   Specifically, what are the findings



1     that you relate to degeneration?

2           A     Degeneration is, basically, wear and tear.  So if you  
3     look at the surface specifically of this vertebrae to see how --  
4     you see how it is not quite as smooth as it would be in a young  
5     normal healthy person.  This is what the spine looks like in  
6     everybody as they start getting older into their 30s, 40s, 50s.

7           Q     All right, doctor.  You may resume your seat for now.

8           A     (Witness complies.)

9           Q     So, doctor, I believe you said that these types of  
10    degenerative changes are what you would expect to find in a  
11    person of a certain age?

12          A     Yes.

13          Q     Is there anything in that x-ray of Mr. Gulinazzo's  
14    lumbar spine taken on the date of the accident that you think is  
15    abnormal or atypical for a 42- or 43-year-old construction  
16    worker?

17                   MR. VAN ETTEN:  Objection.

18                   THE COURT:  Overruled.  I will allow it.

19          A     No.  I think there are some mild degenerative changes.  
20    That's what typically we see in a 40-year-old construction  
21    worker.

22          Q     What significance do you attach to the finding of  
23    degenerative changes in this x-ray --

24                   MR. VAN ETTEN:  Note my objection.

25          Q     -- if any?

1 THE COURT: Overruled.

2 A There are some mild degenerative changes. Degenerative  
3 joint disease is basically wear and tear on the spine. Over the  
4 course of time, the ligaments that normally hold the spine  
5 together and keep the disks in place can become weakened. That  
6 makes a person a little more vulnerable to trauma. So if there  
7 is a crush or fall, those ligaments aren't able to withstand  
8 those forces quite as well as a normal healthy spine.

9 Q I want you to just expand on that a little bit.

10 What is the effect of trauma superimposed on a  
11 degenerative condition?

12 MR. VAN ETTEN: Objection.

13 THE COURT: Overruled. You can answer.

14 A Degenerative joint disease will weaken the spine a  
15 little bit. Those ligaments aren't as flexible or as durable and  
16 strong as they normally should be. So if there is a force that  
17 comes to bear on the spine causing flexion, extension, rotation;  
18 and if those forces are great enough to tear or stretch those  
19 ligaments, it will result in the disk eventually slipping out of  
20 place.

21 Q Now, is there any way to tell from looking at that  
22 x-ray that you just looked at whether Mr. Gulinazzo was having  
23 symptoms from back pain or other symptoms related to those  
24 degenerative conditions?

25 A No. You can't look at an x-ray and know if a person is

1     having pain or not. Like I said, to me, that lumbar spine would  
2     be normal for a 40-year-old construction worker. So if I took  
3     somebody off the job without any lower back pain and did that  
4     x-ray, it would probably look something like that.

5           Q     Can a degenerative condition be asymptomatic?

6           A     Yes. "Asymptomatic" meaning that it is not causing  
7     problems; not causing pain, numbness, weakness. It is not  
8     impeding the person's ability to work or to engage in other  
9     activities.

10          Q     Could a person who has the type of degenerative  
11     conditions that you noted on Mr. Gulinazzo's x-ray of  
12     September 25, 2013 have those degenerative changes without  
13     knowing?

14                   MR. VAN ETTEN: Objection.

15                   THE COURT: Overruled. You can answer that.

16          A     Yes.

17          Q     Could a person have those types of degenerative  
18     conditions without having pain?

19          A     Yes.

20          Q     Could a person have those types of degenerative  
21     conditions without being limited as to what they could do  
22     physically?

23          A     Yes.

24          Q     Could a person have those types of degenerative  
25     conditions without requiring treatment?

1 A Yes.

2 Q Can a degenerative condition become symptomatic due to  
3 trauma?

4 A Yes.

5 Q Do you understand the meaning of the term  
6 "aggravation"?

7 A Yes.

8 Q Does that have a specific meaning in your profession?

9 A It does.

10 Q Could you explain what "aggravation" means?

11 A "Aggravation" would mean a worsening or an activation  
12 of a condition.

13 For example, if a person has underlying  
14 asymptomatic degenerative joint disease of the lumbar spine and  
15 there is a superimposed event such as trauma, that would  
16 aggravate or activate that underlying latent or silent condition.

17 Q Doctor, you mentioned a moment ago that a degenerative  
18 condition can make the disks more susceptible to injury?

19 A It renders the spine more susceptible to injury. One  
20 type of injury to the spine are disk herniations and disk bulges.

21 Q And if a person had a traumatic event and becomes  
22 symptomatic due to an aggravated degenerative condition, does  
23 that person then become more susceptible to an accelerated  
24 progression or progressive disk disease in the future?

25 MR. VAN ETTEN: Objection.

1                   THE COURT: Overruled. It is leading, but I will  
2                   let you answer.

3                   A       I am not sure that I understand.

4                   Q       Okay.

5                   Doctor, what affect, if any, does the aging  
6                   process have on a person who has a spine injury?

7                   A       Degenerative joint disease or osteoarthritis is a slow  
8                   progressive condition that occurs over time. And because it  
9                   occurs slowly, the human body has the ability to adapt and make  
10                  changes to protect itself against significant damage such as  
11                  spinal cord or nerve damage. Trauma, on the other hand, is an  
12                  acute event and because the body doesn't have time to adapt to  
13                  it, typically it causes significant damage such as pinched nerves  
14                  or spinal cord injury. Typically it is symptomatic, meaning that  
15                  it causes pain and discomfort for the patient. When there is a  
16                  trauma, there is an acute tearing and pulling and ripping of  
17                  otherwise healthy tissue. It aggravates pain receptors, releases  
18                  chemicals, causes an inflammatory process. This is a painful  
19                  experience. If it occurs slowly over the course of time,  
20                  generally those reactions where you have the inflammatory  
21                  chemicals released aren't there. They could be. Some people do  
22                  have symptomatic arthritis; but in general, because it is a slow  
23                  process, the body is better able to adapt to it.

24                  Q       Now, doctor, when you look at x-rays, do you sometimes  
25                  see evidence of acute trauma?

1           A     It's possible.

2           Q     What types of evidence of acute trauma might you see on  
3 an x-ray?

4           A     You might see --

5                     MR. VAN ETTEN: Note my objection.

6                     THE COURT: Overruled. You can answer.

7           A     As pertains to the spine, you might see a fracture.  
8 That would be the most common finding on x-ray.

9           Q     All right.

10                    You saw no findings in this x-ray of  
11 Mr. Gulinazzo's lumbar spine, correct?

12           A     I did not appreciate a fracture, no.

13           Q     Does that mean he did not have an acute injury to his  
14 lumbar spine?

15           A     No. The x-ray shows the bones. MRIs and CAT scans are  
16 much more sensitive for showing the disks.

17           Q     Okay. So you mentioned that you looked at some MRIs?

18           A     Correct.

19           Q     We are going to take a look at some of those MRIs.  
20 They have been marked into evidence. We will put them up on the  
21 easel here. And I will ask you to step down, doctor.

22           A     (Witness complies.)

23           Q     Doctor, this is an MRI taken on October 26, 2013 of  
24 Mr. Gulinazzo's lumbar spine. It is in evidence as Exhibit 30.

25                    Could you just explain to the jury what you see on

1       this MRI and what your findings are?

2           A       Sure. Can I also have the spine again, please?

3           Q       (Handing)

4           A       Thank you.

5                    So, this is an MRI which is different than an  
6       x-ray because it uses strong magnetic fields. It is able to  
7       image soft tissue structures such as the disks, the spinal cord  
8       and the nerve roots; whereas an x-ray, which uses gamma rays,  
9       really only shows you mineralized tissue, bones.

10                   The MRI is superior to x-rays in that a person can  
11       take slices to a particular region of the anatomy and can orient  
12       those slices in different ways. You can look at something from  
13       left to right, from top to bottom, from front to back. So a  
14       doctor can get a three-dimensional picture of what is going on at  
15       a particular point in the body.

16                   (Pointing) This is what is known as the sagittal  
17       image. It looks similar to that x-ray. If you take a person's  
18       spine and rotate it 90 degrees and take thin slices all the way  
19       across, this is one of those slices. Here is the bottom. You  
20       could see the coccyx or the tailbone. Here is the top, the  
21       front, the back. Each one of these squares is the vertebral body  
22       and cross-section. Here is the spinal cord coming down. These  
23       here are the disks between the bone, each one of these oblong  
24       shapes. What you don't see coming out at each level would be the  
25       nerve root. In the lower back, those nerve roots go down into

1 the legs and feet providing information to those muscles to  
2 contract or relax and information back to the spine and to the  
3 brain such as position, temperature, pain.

4 What you see here is that at several different  
5 levels -- L5-S1, L4-5, L3-4, L1-2 -- the disk itself is slipped  
6 backwards. These are what are known as disk herniations. All of  
7 this disk material right there that extends beyond the vertebral  
8 body is in a place where it doesn't belong, in the central canal  
9 where the spinal cord is and the neural foramen where the nerve  
10 roots are. And when the disk comes out of place and it's in that  
11 area, it causes inflammation, irritation, compression of the  
12 nerve tissue. If that irritation and inflammation and  
13 compression is severe enough, it will result in a radiculopathy  
14 or a pinched nerve in the lower back commonly called sciatica.

15 MR. TURNBULL: Your Honor, may I have the doctor  
16 mark on the exhibit where he notes the herniations?

17 THE COURT: Sure. Tell us the color. Is it a  
18 black marker?

19 MR. TURNBULL: It is.

20 Q Doctor, using this marker, could you circle the areas  
21 of the herniations?

22 A (Witness complies.)

23 Q Now, doctor, can you tell from this MRI whether there  
24 is any nerve root impingement?

25 A On this MRI I don't appreciate any nerve root



1     impingement. This one particular image would not be adequate to  
2     make that determination, but I have looked at all the images from  
3     this 2013 MRI and didn't appreciate any nerve impingement on that  
4     MRI in 2013.

5           Q     Can a patient have back pain without nerve root  
6     impingement?

7           A     Sure.

8           Q     Doctor, I will take this one down. I want to now show  
9     you an MRI taken on May 20, 2015. This is in evidence as  
10    Exhibit 32.

11                     Dr. Hausknecht, I would like you to compare this  
12    image with the image that was taken in October of 2013, and  
13    please note for the jury any significant findings, any  
14    progression of the findings, and what you found on this  
15    particular MRI.

16          A     Sure.

17                     Well, just for the sake of clarification, these  
18    exhibits are both the same orientation, that sagittal left to  
19    right. This one is a different magnetic field. This is what is  
20    known as T2. The bottom one is T1. That just refers to the  
21    strength of the magnet and how it images the different  
22    structures. On T2, anything that has a high fluid or water  
23    content is going to turn out very bright or white. So what you  
24    are seeing here is the thecal sac or the bag that surrounds the  
25    spinal cord and the nerve roots and contains the cerebral spinal

1 fluid or the CSF, which is a liquid. You see the spinal cord  
2 right here with the liquid around it. However, at several  
3 different levels, the same ones I circled on the one below --  
4 L5-S1, L4-5, L3-4, L1-2 -- you could see a big dent in that  
5 thecal sac. That's because the disk itself has slipped out of  
6 place and is putting pressure on that thecal sac pushing it  
7 backwards.

8 Q Again, doctor, using this black marker, could you  
9 circle the areas of the herniations you just described?

10 A (Witness complies.)

11 Q All right.

12 So, would you say that the lumbar disk disease had  
13 progressed from the date of the first MRI in October of 2013 to  
14 the date of the second MRI in May of 2015?

15 A I would say that the disk herniations on this second  
16 MRI in 2015 definitely look worse. They are larger, they are  
17 putting more pressure in the central canal and in the neural  
18 foramen, but they are on different machines. This one is also  
19 what is called a stand up so you are sitting down. And what an  
20 MRI looks like when there is pressure on the spine is more  
21 indicative of what your spine looks like in real life day to day.

22 So, you know, this MRI is lying flat on the table.  
23 This one here is more representative of what a person looks like  
24 when they're sitting down, moving around.

25 These are pretty significant disk herniations.

1 They are causing significant stenosis or narrowing of spinal  
2 canal and the neural foramen where the spinal cord and the nerve  
3 roots are. It definitely looks like it's progressed, gotten  
4 worse between these two MRIs.

5 Once again, when I looked at these films, I also  
6 saw that there was nerve root impingement or neural impingement.  
7 You can't see that on this particular image, but it was apparent  
8 to me when I looked at the MRI films.

9 Q Doctor, you mentioned the term "stenosis." Could you  
10 just describe for the jury what that means and what significance  
11 that has clinically?

12 A Sure.

13 "Stenosis" is, basically, just a narrowing. So,  
14 for example, this (pointing) is the neural foramen or the region  
15 that the nerve root exits the spinal cord. If there is something  
16 in that neural foramen such as a piece of disk, a disk  
17 herniation, it will cause a narrowing or stenosis. If that  
18 stenosis is significant enough, it causes pressure on the nerve  
19 and that will cause nerve damage.

20 Q And does that cause pain?

21 A Yeah, it does.

22 Q All right.

23 Doctor, you are aware this was taken on May 20,  
24 2015. You are aware because I think you said it was in your  
25 notes that Mr. Gulinazzo underwent lumbar fusion surgery;

1 correct?

2 A Correct.

3 Q That was about a week later?

4 A Correct.

5 Q In May of 2015?

6 A Yes.

7 Q Have you had an opportunity to review an MRI that was  
8 taken of his lumbar spine on April 14, 2016 after the lumbar  
9 fusion surgery?

10 A Yes.

11 Q Let me put that up.

12 Doctor, I am showing you an image, an MRI of the  
13 lumbar spine taken on April 14, 2016. Could you just --

14 THE COURT: What is the exhibit number? Is that  
15 Exhibit 34?

16 MR. TURNBULL: It is 34, your Honor.

17 MR. VAN ETTEN: Yes.

18 Q Doctor, could you just explain for the jury your  
19 findings from this MRI?

20 A Sure.

21 Once again, this is the T2 sagittal image. On  
22 MRIs you can't see metal. There has been surgery. This we know.  
23 This is called artifact here. So wherever there is metal, you  
24 are not seeing normal tissue. But what you appreciate is that at  
25 these levels here -- L5-S1, L4-5, L3-4 -- where there has been

1 surgery, you see a significant improvement in that disk  
2 herniation. There is no longer that large dent, that stenosis.  
3 So this is what is called a decompressive surgery. Basically it  
4 decompressed the foramen, decompressed the spinal canal so that  
5 there is more room now for the nerve roots and spinal cord.

6 Once again, that other herniation above at L1-2 is  
7 still there.

8 Q All right.

9 Doctor, with respect to that L1-2 that is still  
10 there, what would you expect in terms of the aging process --  
11 what affect would the aging process have on that particular  
12 herniation?

13 MR. VAN ETTEN: Objection.

14 THE COURT: I will allow it.

15 MR. VAN ETTEN: Cumulative.

16 THE COURT: I will allow it.

17 A When a disk is herniated, over the course of time it  
18 becomes desiccated or dried out and creates more friction at that  
19 level which results in advanced osteoarthritis. What you can see  
20 at that L1-2 level, if you compare what that disk looked like  
21 originally, and I am referring to Exhibit 30, you see the disk  
22 itself looks very similar to the ones above and below. It has a  
23 regular shape, it has a good height. Over the course of a couple  
24 of years, you can see how this disk has, sort of, flattened out  
25 and become desiccated. That's the arthritic or degenerative

1 process which has been accelerated because of the damage to the  
2 disk itself.

3 Q Did you also take a look at MRIs that had been done of  
4 the cervical spine?

5 A Yes.

6 Q I am going to show you an image from the cervical spine  
7 MRI done on May 31, 2014. This is Exhibit 31 in evidence. If  
8 you could, just use this and explain to the jury your findings  
9 from this MRI and their significance. And feel free to use this  
10 marker if you want to circle any particular areas of findings.

11 A Okay.

12 This is an MRI of the cervical spine. So,  
13 basically, if you take a person's spine and rotate it 90 degrees  
14 and take slices across from left to right, this would be one of  
15 those slices. This is the top, this is the bottom, this is the  
16 front, this is the back. This is the base of the brain or the  
17 cerebellum right here. Here is the midbrain, the brain stem  
18 coming down, and this is the spinal cord. Each one of these  
19 squares is the vertebral body and cross-section. In between each  
20 is a disk.

21 What this shows is that there is a little bit of  
22 degeneration in the cervical spine, but there are also several  
23 disks slipped out of place at C3-4, C4-5 and C5-6.

24 Q Are those herniations?

25 A I would call these two herniations. This one appears

1 more like a bulge at C3-4.

2 Q Briefly because the jury's heard testimony about the  
3 difference between herniations and bulges, but could you explain  
4 the difference between a bulge and herniation as you see on this  
5 MRI?

6 A Well, the spinal column is kept in place by a series of  
7 tough connected fibers known as ligaments. So the ligament  
8 connects one vertebrae to the next, and it keeps that disk in  
9 place. That ligament basically becomes contiguous or part of the  
10 disk itself. The outside of the disk is that tough fiber. The  
11 inside of the disk is a softer jelly-like substance. If that  
12 ligament becomes stretched, that soft inner nucleus pulposus will  
13 bulge out or push out that ligament. If that ligament becomes  
14 torn, then some of that soft center will squirt through,  
15 protrude, and that would be a disk herniation.

16 Q Thank you, doctor. You can take your seat.

17 A (Witness complies.)

18 Q Now, let me take you back to your chart and your notes  
19 and the examination you did of Mr. Gulinazzo.

20 You told the jury about the history you took, the  
21 examination you did, your objective findings, your rereview of  
22 the films. And you have a section entitled "impression." Could  
23 you explain to the jury what that is?

24 A "Impression" is basically the diagnosis, what I believe  
25 was the problem that was going on.

1           Q     And what was your impression?

2           A     That he had sustained a cervical derangement with C3-4,  
3     C4-5 and C5-6 disk herniations and a lumbosacral derangement  
4     requiring decompressive surgery at L3 through S1 with chronic  
5     pain requiring a spinal cord stimulator implantation.

6           Q     And did you come up with a treatment plan for  
7     Mr. Gulinazzo based on your findings and your impression?

8           A     I did.

9           Q     What was your plan?

10          A     I recommended that he attend physical therapy as best  
11     he could tolerate it. I recommended that he take his medications  
12     as prescribed. That he was having some issues with the  
13     medications he was on, so I discussed that with Dr. Colon in  
14     trying to change those medications around. I recommended that he  
15     continue with the spinal cord stimulator and continue to adjust  
16     the settings to achieve the best level of pain relief. I  
17     recommended that he undergo further diagnostic testing to  
18     determine if his pain was coming from nerve damage that had  
19     already been addressed and corrected by the surgery or if there  
20     was further nerve damage that required decompressive surgery.

21          Q     Doctor, based on your examination and your findings, do  
22     you have an opinion to a reasonable degree of medical certainty  
23     with respect to the cause of Mr. Gulinazzo's back symptoms that  
24     he presented on the date of that examination?

25                     MR. VAN ETTEN: Objection.



1 THE COURT: Overruled. I will allow it.

2 A I do.

3 Q What is your opinion?

4 A In my opinion it was the trauma that was sustained on  
5 9/25/13.

6 Q The same question with respect to his cervical spine  
7 symptoms. Do you have an opinion to a reasonable degree of  
8 medical certainty what the cause of those were?

9 A I do.

10 MR. VAN ETTEN: Objection. Same objection.

11 THE COURT: Overruled.

12 Q What is your opinion?

13 A Likewise, I believe that it was the trauma from  
14 9/25/13. He wasn't having any neck pain before this. He had  
15 this traumatic injury and started having neck pain. Eventually  
16 it showed the abnormal MRI and abnormal EMG. I don't think it's  
17 a coincidence. I think it was the jury in September 25, 2013  
18 that caused it.

19 Q Doctor, you mentioned a moment ago a number of doctors'  
20 records that you reviewed as part of your notes in making your  
21 diagnosis and treatment plan.

22 Did you ever receive or review any records from  
23 Concentra?

24 A No, that was not part of the records I reviewed.

25 Q All right.

1           I want you to assume that Mr. Gulinazzo went and  
2 saw a physician's assistant at Concentra Medical two days after  
3 the accident, all right, and that he reported -- well, strike  
4 that and go back.

5           You have the records from Lenox Hill Hospital  
6 emergency room, correct?

7           A     I do.

8           Q     And did you know whether Mr. Gulinazzo made any  
9 complaints of neck when he presented to the emergency room?

10          THE COURT: And, doctor, can you tell us what you  
11 are looking at to refresh your recollection?

12          THE WITNESS: I am just looking at my medical  
13 reports and the Lenox Hill Hospital records.

14          THE COURT: Thank you.

15          A     He didn't particularly mention his neck, no.

16          Q     I want you to assume, doctor -- and these records are  
17 in evidence -- that when he went to the emergency room on the  
18 date of his accident he complained of left shoulder pain and low  
19 back pain but not neck pain, all right? Then two days later he  
20 reported to Concentra, saw a physician's assistant and reported  
21 that he injured his left shoulder, neck, and back. He then went  
22 back to the same facility on October 15, 2013, this is Concentra,  
23 and he saw the same physician's assistant who noted: 43-year-old  
24 male reports for recheck for left-sided neck, shoulder, back pain  
25 of three weeks duration. And he returned to the same facility on

1     October 22, 2013 where he actually saw a medical doctor, not a  
2     physician's assistant, who reported that the pain is located on  
3     the neck and the pain radiated to the left arm and the hand; all  
4     right?

5                     Is any of that information inconsistent with your  
6     finding of causation for the neck related to this accident?

7                     MR. VAN ETTEN: Note my objection.

8                     THE COURT: Overruled.

9             A     I think that that history that was documented is  
10    consistent with a neck injury.

11            Q     Is it typical for a person with a shoulder injury to  
12    manifest symptoms related to the neck after the traumatic event?

13                    MR. VAN ETTEN: Objection.

14                    THE COURT: Overruled.

15            A     It is not unusual for a person that has multiple  
16    injuries that they may be focused on a different part of their  
17    body that may be the one that's hurting them the most. So if you  
18    have a neck and shoulder injury but the shoulder is feeling  
19    worse, that might be your complaint.

20                    Also, after an acute injury it may take 24 to 72  
21    hours before you really start feeling the pain once the  
22    irritation and inflammation starts to set in similar to, for  
23    example, spraining your ankle. It may hurt a little bit when you  
24    first do it, but the next day or the day after when it swells up  
25    and gets black and blue, that's when it really hurts more.

1                   So this history, in my opinion, is consistent with  
2                   a neck injury even though he didn't complain of neck pain  
3                   immediately in the hospital.

4           Q     Are you familiar with the term "masking"?

5           A     Yes.

6           Q     What is "masking"?

7           A     "Masking" is what I referred to before. If you have  
8               two injuries, especially if they are near each other like the  
9               neck and shoulder; if the shoulder is bothering you more, it may  
10              mask the pain you are having from your neck. You may not really  
11              appreciate it or report it.

12          Q     Doctor, I also want you to assume there has been  
13               testimony in this case, and the records are in evidence, that  
14               Mr. Gulinazzo was involved in a workplace accident on October 10,  
15               2008. He tripped and fell on his right side and was taken to the  
16               emergency room at Mount Sinai West, all right? He reported  
17               striking his right leg and arm. He had right low back pain  
18               tenderness and C2 tenderness. His neurological examination was  
19               normal, his neck was supple. There was a finding of mild  
20               tenderness in the C2 area, and there was an x-ray done of the  
21               pelvis and the cervical spine. He returned to work the following  
22               work day, full duty without restrictions, and he never saw  
23               another doctor for those injuries.

24                       Were you aware of that history when you saw  
25                       Mr. Gulinazzo?

1           A     Not initially. It is something I learned recently.

2           Q     Have you had an opportunity to review the cervical  
3 spine x-ray from that day?

4           A     I have.

5           Q     Doctor, I am showing you an image of the cervical spine  
6 x-ray that was taken on October 10, 2008. This is Plaintiff's  
7 Exhibit 45 in evidence.

8                     If you don't mind, could you just step down and  
9 explain to the jury your findings from this x-ray?

10          A     (Witness complies.)

11                     So, this is the lateral x-ray of the cervical  
12 spine. This is the top, this is the bottom, this is the back,  
13 this is the front. These are the teeth with fillings, the skull.  
14 Here is the vertebrae from the side view with the lamina process,  
15 you know, that spike in the back.

16                     The spine looks fine to me. A little bit of  
17 osteoarthritis, a little degeneration typical for his age. The  
18 bones look like they are in good shape, and the spaces between  
19 the bones look good.

20          Q     All right.

21                     So, doctor, the degenerative changes you note in  
22 this x-ray, are they typical for a person of Mr. Gulinazzo's age  
23 at the time?

24          A     Yeah. These are mild arthritic changes. It's, once  
25 again, what I would expect to see in an asymptomatic person of

1 his age and occupation.

2 (Continued on next page)

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1           Q     Doctor, at the time of your physical examination of Mr.  
2     Gulinazzo, did you perform any diagnostic testing on him?

3           A     I did.

4           Q     What did you do?

5           A     I performed what's called an NCV or a nerve conduction  
6     velocity, EMG, electromyography, and this is basically a test  
7     that checks the integrity of the nervous system from the brain  
8     down into the spinal cord into the nerve roots, into the  
9     neuromuscular junction and into the muscles itself.

10                So, for example, in this courtroom if there are ten  
11     recess lights and one of the lights is not working it means  
12     there's either a problem with the switch, the brain, the wiring,  
13     the spinal cord or the nerve root, the neuromuscular junction,  
14     the connection between the nerve and the muscle or the fixture  
15     of the bulb itself. So this test is performed by transmitting a  
16     small electrical impulse and using a computer to measure how  
17     quickly and how strongly the electricity travels down that  
18     nerve.

19                Can be also performed by placing a needle into various  
20     muscles that are innervated by different levels and measuring the  
21     electrical activities of those muscles. So this is an objective  
22     test that can determine if there is any nerve damage and in this  
23     case it shows that there was nerve damage in the neck at the C  
24     five six on the left side and the lower back at L five S one on  
25     the left side. And based upon those findings I explained to him

1     that he probably needed neck surgery at C five six to decompress  
2     that disc and I sent that information over to Dr. Merola.

3           Q     So, Doctor, you said the NCV/EMG is an objective test.  
4     Can a patient fake an EMG?

5           A     No. The results of the EMG are independent of what a  
6     person is saying or doing. It's based on the objective electro  
7     activity that's measured by the computer.

8           Q     Doctor, after that initial examination, when was the  
9     next time you saw Mr. Gulinazzo?

10          A     Well, he primarily treated with Dr. Merola and Dr.  
11     Colon and his associate, Dr. Perez, but he did return to my  
12     office on 4/20/21 for a consultation.

13          Q     And by that time he had the cervical fusion surgery;  
14     correct?

15          A     He did.

16          Q     And did you do an examination of Mr. Gulinazzo on that  
17     day?

18          A     I did.

19          Q     Can you just briefly explain and go over for the jury  
20     what that examination entailed and what your findings were?

21          A     Once again it was a motor exam, a reflex century  
22     examination. It revealed various abnormalities similar but not  
23     identical to the findings in the first exam. He still had some  
24     weakness in both of his arms and legs. The reflexes at his  
25     knees were now improved which I attributed to the decompression



1 of the spinal cord in the cervical region. His century exam was  
2 a little bit better.

3 His mechanical exam was still about the same. He had  
4 tenderness and spasm in the neck and back. Positive spurl  
5 maneuver, positive straight leg raise testing and he still had  
6 significant mobility in the neck and back although his motion in  
7 the lower back, specifically, was a little bit better.

8 Q Did you continue to follow up with Mr. Gulinazzo?

9 A I did. At that time I recommended that he tried to do  
10 some physical therapy. That he continue taking his medications.  
11 That he follow up with the spinal surgeon for periodic  
12 postoperative checks. That he continue to follow up with Dr.  
13 Perez for the management of his spinal cord stimulator. And I  
14 asked him to come back and see me in about six months. I did  
15 see him again on 3/8/22.

16 Q When you saw him on March 8, 2022, again, did you do a  
17 physical examination?

18 A I did.

19 Q Can you briefly explain to the jury what your  
20 examination entailed and what your findings were?

21 A Once again the exam findings were similar but not  
22 identical but there was weakness in the arms and legs. There  
23 was some diminished sensation on this date in his left arm.  
24 There was also diminished sensation in the left leg. There was  
25 tenderness and spasm in the cervical and lumbar spine. Positive

1 spurl maneuver. Positive straight leg raise testing. There was  
2 restricted lumbar and range of motion and his gait was antalgic.

3 Q All right. Doctor, I'm going to ask you to express an  
4 opinion and I'm going to ask you to assume certain things. All  
5 right. I'm going to start with the injury to the neck. And I  
6 want you to state opinions to a reasonable degree of medical  
7 certainty and if you can't just let us know. All right?

8 A Understood.

9 Q So with respect to Mr. Gulinazzo's neck, I want you to  
10 assume, as we discussed, that he had an incident in October of  
11 2008 where he tripped and fell at a job site, he was sent to the  
12 emergency room complaining of right arm pain, there was a  
13 finding of mild C two tenderness in the x-ray of the cervical  
14 spine that we just showed you was taken. That there was no  
15 follow up treatment. That he returned to work the following  
16 workday without restriction and that his symptoms resolved.

17 He had no injuries or treatment to his cervical spine  
18 between October of 2008 and the date of this accident, September  
19 25, 2013. That he had never had any symptoms of radicular pain  
20 with respect to his cervical spine. Do you have an opinion to a  
21 reasonable degree of medical certainty what the cause of the  
22 pain, the dysfunction, the symptoms that you noted with respect  
23 to the cervical spine are?

24 MR. VAN ETEN: Objection as well as asked and  
25 answered.

1 THE COURT: Yes. Sustained.

2 MR. TURNBULL: As asked and answered?

3 THE COURT: I believe so. He's already given his  
4 opinion as to the causation.

5 MR. TURNBULL: I just want to make sure, your  
6 Honor, that it includes the October 2008 accident.

7 Q Does that change your opinion, Doctor?

8 THE COURT: You can answer that question if there's  
9 no objection to it.

10 A It doesn't change my opinion. I still believe that the  
11 injury occurred -- his condition occurred from the 9/25 injury.

12 Q With respect to his lower back, Doctor, I want you to  
13 assume that there's been testimony that around 1994 Mr.  
14 Gulinazzo had a work-related accident where he injured his lower  
15 back at a water park. That he saw a doctor a couple of times  
16 missing time from work. No physical therapy. No injections.  
17 No pain medication. No x-rays. No MRIs. That after he  
18 returned to work the symptoms resolved.

19 Then he had the October 2008 accident we just mentioned  
20 where he went to the emergency room and reported some lower back  
21 tenderness. Those symptoms resolved. Returned to work full  
22 time, full duty. He had no treatment, no injuries to his lumbar  
23 spine between October 2008 up until the date of this accident in  
24 this case, September 25, 2013. That he was working up until the  
25 date of that accident full time as a construction laborer with

1 no restrictions and he had no complaints prior to September 25,  
2 2013 with respect to radicular pain from his back.

3 Do you have an opinion to a reasonable degree of  
4 medical certainty the cause that Mr. Gulinazzo's back pain and  
5 radiating symptoms?

6 MR. VAN ETTEN: Same objection as well as to the  
7 narrative containing inconsistencies.

8 THE COURT: I will overrule the portion of it for  
9 the inconsistencies and allow the same question as before if  
10 it changes his opinion.

11 A It doesn't change my opinion. I believe the injury of  
12 9/25/13 is the cause of his lower back condition.

13 Q Do you have an opinion to a reasonable degree of  
14 medical certainty as to the necessity for the lumbar fusion  
15 surgery that was performed on Mr. Gulinazzo?

16 MR. VAN ETTEN: Objection. Cumulative.

17 THE COURT: Overruled. I'll allow it.

18 A I do. In my opinion his lower back surgery was  
19 necessary. The discs that had slipped out of place were getting  
20 progressively worse, were putting pressure on the nerves, were  
21 causing nerve damage. He didn't respond to physical therapy,  
22 medications and injections and he needed that surgery.

23 Q Same question with respect to the cervical infusion  
24 surgery?

25 MR. VAN ETTEN: Objection.

1                   THE COURT: Overruled.

2           A     Likewise he had slipped discs in his neck that were  
3     causing nerve damage that wasn't getting better with therapy and  
4     injections. He needed that surgery as well and certainly has  
5     shown some improvement after the neck surgery.

6           Q     Doctor, do you have an opinion to a reasonable degree  
7     of medical certainty as to whether Mr. Gulinazzo's injuries are  
8     permanent?

9                   MR. VAN ETTEN: Objection.

10                  THE COURT: Overruled. You can answer that.

11          A     I do.

12          Q     What is your opinion?

13          A     In my opinion they're permanent to nature. Once the  
14     disc slips out of place it can never go back to its normal  
15     healthy state. Once the nerve is damaged to this extent it  
16     can't repair itself.

17                  He's had pain now for nine years plus it's unlikely  
18     that he's just going to wake up one day and be back to normal.  
19     It's typical with this type of condition that there's going to  
20     be good days and bad days, exacerbations and remissions but he's  
21     always going to have this problem.

22          Q     Do you have an opinion to a reasonable degree of  
23     medical certainty as to the progression of his pain and other  
24     symptoms into the future?

25                  MR. VAN ETTEN: Objection.

1                   THE COURT: Overruled. You can answer.

2           A     I believe that his pain is going to continue into the  
3     future. I can't say for sure if it's going to get worse or get  
4     better. Typically people with these types of conditions have  
5     exacerbations or remissions, good days and bad days, depending  
6     on various factors which is changes in the weather, types of  
7     activities that they did that day before, how they slept,  
8     whatever treatment they've gotten.

9                   I can't say that he's going to continue to have the  
10    pain. I can't tell you if the pain is going to get worse. I  
11    don't have that crystal ball but I do know that he will need to  
12    be followed periodically because he's certainly at risk of  
13    deteriorating.

14          Q     Doctor, do you have an opinion as to the effect that  
15    the aging process will have on these types of injuries?

16          A     The osteoarthritic process or degeneration that will  
17    occur over the course of time can make his condition worse, can  
18    cause progression of his pain and other symptoms.

19          Q     Do you have an opinion to a reasonable degree of  
20    medical certainty whether Mr. Gulinazzo will require future  
21    treatment of the type that you provide a diagnostic testing  
22    examinations the way that you described it here today?

23          A     Yes, he will.

24                   MR. VAN ETTEN: Objection. Are we asking him for  
25    his neurological or others?

1 MR. TURNBULL: For the doctor's.

2 THE COURT: Did you answer?

3 THE WITNESS: I got lost in that question.

4 MR. TURNBULL: I'll rephrase.

5 Q Do you have an opinion to a reasonable degree of  
6 medical certainty whether in the future Mr. Gulinazzo will  
7 continue to require the type of treatment you provided and you  
8 discussed, follow ups, diagnostic testing and other treatment  
9 that you described?

10 A Yes.

11 Q What is your opinion?

12 A He's going to require treatment for the rest of his  
13 life.

14 Q And what type of treatment of the type that you  
15 provided would he require?

16 A He would need office visits to monitor his condition to  
17 make sure that he's not deteriorating or developing new  
18 symptoms. That he's tolerating his medications. So either  
19 neurology or pain management visits once every other month more  
20 or less. He will need surveillance diagnostic, so repeat MRIs  
21 of the neck and back every five years or so.

22 He will need repeat EMGs of the upper and lower  
23 extremities every three to five years or so to make sure that  
24 his condition is stable. He needs medications for his pain and  
25 other associated symptoms that he's having from his neck and

1 back.

2 MR. VAN ETTEN: Move to strike all that are not  
3 relevant to Dr. Hausknecht's treatment as he has not  
4 prescribed medication, he has not --

5 THE COURT: That's a long speaking objection.  
6 We're going to go in the back, please.

7 (Whereupon, the following takes place outside the  
8 presence of the jury in the robing room.)

9 THE COURT: Can you read back the whole answer?  
10 (Whereupon, the record was read back by the Court  
11 Reporter.)

12 THE COURT: Basis for your objection?

13 MR. VAN ETTEN: As he initially testified, he was  
14 initially called in to provide electrodiagnostic study for  
15 the patient, which he did, and then five years later he came  
16 back and saw him again and this year he's seen him another  
17 time. He has not prescribed medications. He has not made  
18 any recommendations on the diagnostic studies of this. He  
19 has deferred that along with his opinions to the treating  
20 physicians.

21 That's why initially I made the objection at the  
22 beginning to say to only limit it to what, he, as the  
23 neurologist has been treating him for. So he is, A, going  
24 beyond what he's been treating him for. He's never been  
25 disclosed as an expert -- I had another one in there too but



1 I just lost my train of thought.

2 THE COURT: Plus what you said.

3 MR. VAN ETTEN: Plus what I may have said before.  
4 He's not treating him for his conditions. It's cumulative.  
5 We've already had Dr. Merola come in. We had the pain  
6 management guy come in and testify to all the future  
7 treatment and now he's doing it.

8 They're using a neurologist that was specifically  
9 retained for electrodiagnostic studies to assess if there  
10 was nerve damage and now they're using him to cumulate with  
11 the films and everything else on the other people.

12 THE COURT: Mr. Turnbull?

13 MR. TURNBULL: I would agree with respect to the  
14 pain management. With respect to the diagnostic testing,  
15 the MRIs and EMGs that's clearly in Dr. Hausknecht's area  
16 but he also refers patients for MRIs. The medications I  
17 would agree but whether he's tolerating the medications it's  
18 something that would be within Dr. Hausknecht's expertise as  
19 well.

20 THE COURT: But that's not what he's done for this  
21 patient, you know what I mean. It's not what he's done for  
22 anybody, it's based on his experience as a treating  
23 physician for this patient.

24 MR. TURNBULL: Well, he does evaluate whether  
25 medications are effective.

1 THE COURT: Okay. As part of the office visit. So  
2 I'm going to, I guess, sustain in part the objection to  
3 strike it. It's got to be limited to the doctor's treatment  
4 of the plaintiff in this particular case.

5 So if you want to raise the objection, I can give  
6 that instruction or if you want to give it in a question or  
7 get an answer, he's probably going to say the same things.  
8 I'm going to at this point -- I'm not sure that's helpful,  
9 he's speaking based on his experience.

10 MR. TURNBULL: I can clarify it in my question. I  
11 will ask him to limit it to treatment that he specifically  
12 would prescribe or perform for this patient.

13 THE COURT: I am going to strike from the record  
14 the portion of the answer referring to the pain management,  
15 the medications, but I'm going to let the answer stand as it  
16 goes to the office visits in the beginning regarding the  
17 neurology. I haven't heard him say anything regarding  
18 managing the medications.

19 MR. TURNBULL: He said see whether they're  
20 tolerating --

21 THE COURT: I mean in the past, before this answer.

22 MR. TURNBULL: As long as the office visits, the  
23 EMGs.

24 THE COURT: That's in.

25 MR. TURNBULL: MRIs.

1 THE COURT: That's in.

2 MR. TURNBULL: That's all I need. So if you want  
3 to sustain the objection and strike the answer with respect  
4 to pain management and medications, I have no problem with  
5 that.

6 THE COURT: I just don't remember if he was done.

7 MR. VAN ETEN: I try to be polite, Judge.

8 THE COURT: I know you do. That's it.

9 (Whereupon, the following takes place in open court  
10 in the presence of the jury.)

11 THE COURT: Okay. Back on the record. So I am  
12 sustaining the objection to the extent that I'm moving to  
13 strike the portion of the answer regarding the pain  
14 management and the portion of the part of the answer  
15 regarding the office visit to ensure that he's tolerating  
16 medications for pain or something to that effect. It's your  
17 recollection that controls. The remainder of the answer  
18 stands.

19 It's 11:12, I understand one of you wishes to use  
20 the restroom. We'll take our morning break now for ten  
21 minutes. We'll ask everyone to come back at 11:23. Thank  
22 you so much.

23 COURT OFFICER: All rise. Jury exiting.

24 (Whereupon, the jury exits the courtroom.)

25 THE COURT: Everybody, we'll take our break.

1 Doctor, you're free to step down, just don't discuss your  
2 testimony.

3 THE WITNESS: Understood.

4 THE COURT: 11:23 everybody.

5 (Whereupon, there was a ten-minute break in the  
6 proceedings.)

7 COURT OFFICER: All rise. Jury entering.

8 (Whereupon, the jury enters the courtroom.)

9 THE COURT: Everybody can have a seat. Doctor,  
10 you're reminded you're still under oath. Mr. Turnbull, you  
11 may continue.

12 MR. TURNBULL: Thank you, your Honor.

13 Q Dr. Hausknecht, do you have an opinion to a reasonable  
14 degree of medical certainty whether Mr. Gulinazzo can ever  
15 return to manual labor?

16 A I do.

17 Q What is your opinion?

18 A I don't think that he can go back to a job that  
19 requires manual labor, lifting, carrying, pushing, pulling,  
20 climbing, crawling, stooping. Because of the injuries to his  
21 neck and back he would not be able to perform those activities.  
22 Those activities would cause him pain and discomfort and those  
23 activities would aggravate or accelerate the injuries that he  
24 already has to his neck and back.

25 Q Do you have an opinion as to whether he could go back

1 to work in any capacity?

2 A He might be able to go back to work in some type of  
3 sedentary position where he's able to alternate between sitting  
4 and standing and take breaks as needed.

5 Q Doctor, I would like you to return just briefly to your  
6 last note for Mr. Gulinazzo. You state, I advise Mr. Gulinazzo  
7 to engage in low impact aerobic exercise program. Do you see  
8 that?

9 A I do.

10 Q So why did you make that recommendation to Mr.  
11 Gulinazzo?

12 A To try and maintain the strength and flexibility of his  
13 spine and extremities. Exercise which is walking or biking or  
14 stationary bike or treadmill as tolerated is healthy for your  
15 spine.

16 Q All right. And when you treat patients who become  
17 inactive or do not exercise, in your experience what happens?

18 MR. VAN ETEN: Objection.

19 THE COURT: Overruled. I'll allow it.

20 A In those patients they lose muscle strength. They lose  
21 flexibility. They gain weight. All those factors can aggravate  
22 the -- a person's neck and back problems and that's why I  
23 suggested it to him.

24 Q Doctor, would slow dancing like a two-step shuffle be  
25 the type of activity that you would discourage or encourage?

1           A     I wouldn't discourage it as long as it wasn't causing  
2 pain or discomfort. I mean that's not typically the type of low  
3 impact aerobic exercise I recommend but that would be okay.

4           Q     Thank you, Doctor.

5                   THE COURT: All right. Cross-examination.

6                   MR. VAN ETTEN: Sure, Judge. Thank you.

7 CROSS-EXAMINATION

8 BY MR. VAN ETTEN:

9           Q     So in nine years since Mr. -- withdraw that.  
10                Hello, Dr. Hausknecht.

11          A     Good morning.

12          Q     So in nine years since he's been treating nobody has  
13 given him aerobic exercises to do?

14          A     I'm not sure if nobody has given it to him but that's  
15 something that we discussed.

16          Q     Home exercises after physical therapy, was any of that  
17 recommended?

18          A     I'm not sure. I would assume so but I don't know.

19          Q     You have all those records in there, don't they have  
20 physical therapy in your chart that show that he was recommended  
21 to do home exercises?

22          A     I don't have those particular records that recommend  
23 home exercises.

24          Q     And when you spoke to Mr. Gulinazzo before you made the  
25 recommendations for aerobics did he tell you he was doing home

1 exercises as per the recommendations of Dr. Merola and the  
2 physical therapist?

3 A He did, yes.

4 Q And is a two-step shuffle aerobic exercise?

5 A It's -- like I said, that's not what I would recommend  
6 on a typical basis but dancing can be low impact aerobic  
7 exercise, sure.

8 Q Good. All right. Got a lot of issues here, Doctor, I  
9 would like to talk to you about. We'll go right back to the  
10 last -- I think it's the last x-ray that you reviewed which is  
11 the cervical spine x-ray from October 8, 2008.

12 That's the one you never saw before; right?

13 A That's correct.

14 Q And you never knew about the October 10, 2008 accident  
15 throughout your treatment until you came here to prepare for  
16 trial; true?

17 A Correct.

18 Q So Mr. Gulinazzo when he came in and gave you that  
19 history right at the beginning never told you he had a fall down  
20 accident where he went and treated at Mount Sinai West; true?

21 A We did not discuss that, true.

22 Q So you did not get an accurate history from Mr.  
23 Gulinazzo the first time that you saw him; correct?

24 A No, I wouldn't agree with that statement.

25 Q Well, you're asking him about prior injuries and

1 accidents; correct?

2 A Correct.

3 Q And he did not tell you about it; true?

4 A True.

5 Q So that's not an accurate history; true?

6 A Not true. I asked him if he had any significant prior  
7 injury to his neck or back. Significant to me would be missed  
8 work, MRIs, treatment, he said he hadn't and that's accurate.

9 Q Would being removed from a job site on a backboard in a  
10 cervical collar be a significant potential injury?

11 A Potential but it wasn't, it was a precaution.

12 Q Why would that be a precaution?

13 A If you have an injury and there's concern that there  
14 might be an unstable neck fracture, you stabilize the neck to  
15 prevent any further damage.

16 Q So that would be something a person would remember if  
17 they were transported from a job site on a backboard in a  
18 cervical collar; true?

19 MR. TURNBULL: Objection.

20 THE COURT: Overruled. I'll allow it. You can  
21 answer it.

22 A He may or may not remember it. I didn't ask him if he  
23 ever had moved on a backboard, I asked him if he ever had an  
24 injury to his neck or back that required treatment before and he  
25 said that he had not other than the lower back one from '95.



1           Q     Well, he did go to the hospital on October 10, 2008;  
2 true?

3           A     True.

4           Q     So that would be treatment; true?

5           A     True.

6           Q     And he took x-rays, that's a form of treatment; true?

7           A     That's a diagnostic test, true.

8           Q     Yeah. So, again, inaccurate treatment from Mr.  
9 Gulinazzo to you; true?

10          A     I disagree. I'm not concerned about every single  
11 insignificant event. If he had an injury to his neck that  
12 required treatment where he was seeing doctors, where he was  
13 missing work, that would be important to me. But the fact that  
14 they took a precautionary x-ray and that they put him in a  
15 collar doesn't necessarily mean that he had a neck injury.

16          Q     And your reports indicate that he had a prior  
17 on-the-job injury; correct?

18          A     Correct.

19          Q     And what does your report say that on-the-job injury  
20 involved?

21          A     To his lower back.

22          Q     Okay. But how did that happen?

23          A     I don't know.

24          Q     You didn't inquire about the mechanism of the injury  
25 for the prior low back injury?

1           A     It was a long time ago. He treated, went back to work,  
2 got better, stopped treating. I don't recall if we discussed  
3 the mechanism, we may have but it's not recorded.

4           Q     Do you know where he treated?

5           A     I don't.

6           Q     Did you get those records?

7           A     No.

8           Q     Do you know whether he had diagnostic testing films?

9           A     I don't know.

10          Q     You don't know. Again, relying on Mr. Gulinazzo to  
11 provide you with a history; correct?

12          A     That's correct. I found him to be credible.

13          Q     Did he tell you about the Great Adventure accident that  
14 he had over 20 years before?

15          A     No.

16          Q     Great Adventure accident and 2008 accident you didn't  
17 know about, so that's two accidents that he had previously;  
18 fair?

19          A     Fair.

20          Q     So we now know he had a third accident because he did  
21 tell you about one; fair?

22          A     Correct.

23                   (Whereupon, Senior Court Reporter Rachel Simone  
24 takes over as the official reporter.)  
25

1 CROSS-EXAMINATION crux continued

2 BY MR. VAN ETTEN:

3 Q Are you aware that no other doctor in any of the  
4 records address that third accident because Mr. Gulinazzo never  
5 told him?

6 A I am not sure what he told those other doctors. I  
7 don't know.

8 Q You have the reports. He doesn't mention it to  
9 Dr. Merola, he doesn't mention it to Dr. Datta, he doesn't  
10 mention it to Dr. Dassa in all the reports in your folder; true?

11 A It is not in their reports. Whether or not he  
12 mentioned it, I don't know.

13 Q So you don't know how many on-the-job accidents he has  
14 actually had; fair statement?

15 A I only know what I have been told, the one in '95, the  
16 one in 2008, and the one in 2013.

17 Q All right. Let's go back again to 2008 for a second.

18 In 2008 he would have been about 35, not 40; true?

19 A He was born in '70, so he would have been 38.

20 Q Because you said about -- I thought you said  
21 "40-something-year-old man" when -- okay, so 38.

22 A 38.

23 Q So the degenerative changes you saw in the neck x-ray  
24 film moving it five years forward, that's still normal at that  
25 point, five years before 2013?

1 A Yes.

2 Q Okay.

3 So degenerative changes, as you indicated, lots of  
4 people have it and it is normal; right?

5 A Degenerative joint disease affects all adults starting  
6 in late 20s to early 30s, progressing throughout their lifetime.  
7 Everybody has it, but that doesn't necessarily mean it is  
8 symptomatic or that you are having problems with it.

9 Q Some people have degenerative disease that can be  
10 symptomatic, true?

11 A Sure.

12 Q And sometimes degenerative disease without trauma will  
13 result in herniations, true?

14 A On occasion, yes.

15 Q Okay.

16 So a herniation can occur without trauma -- and,  
17 by the way, do you look into the history, family history of  
18 whether there is degenerative disease in the family, because  
19 sometimes people -- dad has a spinal issue with narrowing of the  
20 spine, a son has one, a brother, a sister; do you check on stuff  
21 like that?

22 A It's not really relevant.

23 Q Well, if somebody has a congenital spine condition that  
24 would be relevant; true?

25 A If they did, but he doesn't.

1 Q I am just asking. You check on those types of things?

2 A If they had a congenital condition, yes. Otherwise I  
3 wouldn't typically ask a patient if their dad ever had back  
4 issues.

5 Q So, we now know that in 2008 with the cervical spine  
6 x-ray, which has been marked Exhibit 45 in evidence, that you did  
7 find example of osteoarthritis already affecting the neck;  
8 correct?

9 A Correct.

10 Q So now we are now having someone with neck arthritis  
11 continuing to work in this heavy labor job you are talking about,  
12 right?

13 A Right.

14 Q So that heavy labor job will then further cause  
15 progression of the degenerative changes, true?

16 A True. Degeneration occurs in everybody. With people  
17 that engage in manual labor, it's typically more pronounced than  
18 in someone in a more sedentary position.

19 Q So if you had those same degenerative conditions which  
20 you saw on the day of the accident in the back that's something  
21 that has progressively been getting worse, correct?

22 A I am not sure I understand the question.

23 Q On September 25, 2013 when he went to Lenox Hill  
24 Hospital and you saw these x-rays with all the degenerative  
25 conditions in that back, that didn't happen that day?

1           A     No. That was preexisting arthritis.

2           Q     So, we now know at least from the one film we have in  
3     2008 we've got degenerative in the neck, and we now know from the  
4     date of the accident he had degenerative in the lower back; true?

5           A     True. I would need x-rays to make that diagnosis.  
6     Everybody has that.

7           Q     So without even looking at an x-ray, you can tell tat  
8     every person here that's over 30 they have degenerative disease  
9     in their back?

10          A     They have evidence of degenerative joint disease, yes.

11          Q     But here when you made your causation opinions,  
12     including in your reports, you did so because he was  
13     asymptomatic; true?

14          A     Sorry. Repeat the question?

15          Q     When you said that you believe this was causally  
16     related to September 25, 2013, one of the reasons is because he  
17     was asymptomatic, true.

18          A     Correct.

19          Q     Look at your Lenox Hill Hospital records, please. It's  
20     Page 8 of 9 if it's labeled the same as Plaintiff's Exhibit 14 in  
21     evidence. Look under the nursing notes for September 25, 2013 at  
22     9:07.

23                     Do you see that?

24          A     Yeah.

25          Q     It states: 43-year-old male appears well in no acute

1 distress. History of occasional back pain from long-term  
2 work-related strain, relieved PRN, which is as needed, with  
3 Aleve.

4 Is that correct?

5 A Correct.

6 Q That would be someone who is experiencing symptomatic  
7 pain, true?

8 A True.

9 Q You had those records and you didn't even know about  
10 it, true?

11 A Not true. I have these records. I am aware of it.

12 Q You are now. Before you just said that one of the  
13 reasons you based your opinion is because he was asymptomatic,  
14 but those records say he is symptomatic; true?

15 A I disagree. "Symptomatic," to me, would be someone  
16 that required treatment. Feeling sore after a day's work is not  
17 necessarily a lower back condition.

18 Q And for you to know whether he was actually treating,  
19 he would have to give you an accurate history, true?

20 A He would or there would be some records to that effect.  
21 If you have some treatment records, I would like to see them.

22 Q Well, doctor, this is not my degree of proof. That's  
23 theirs. That's why they gave you all those new records, right?

24 MR. TURNBULL: Objection.

25 THE COURT: Sustained.

1                   You don't have to answer that.

2           Q     The Lenox Hill Hospital records you didn't refer to in  
3     your first report but you did in your second, correct?

4           A     Correct.

5           Q     That's because you didn't have the Lenox Hill Hospital  
6     records the first time you saw him, it wasn't until after;  
7     correct?

8           A     Correct.

9           Q     Okay.

10                   So, when you gave your initial causation opinion  
11     in your first report when you first saw him, you didn't even have  
12     the record from the date of treatment, including the x-ray films;  
13     true?

14          A     True.

15          Q     So you didn't care when you prepared that report about  
16     having all the records that you just asked me for, true?

17          A     I don't know what you mean by "care." I want to be as  
18     complete as possible. I want as many records as are available.  
19     On that particular date, the Lenox Hill Hospital records were not  
20     available. I subsequently reviewed them, but it doesn't change  
21     my opinion.

22          Q     By the way, let's talk some more about some accuracy  
23     issues.

24                   You testified to this jury that plaintiff fell to  
25     the ground, correct?



1           A     Correct.

2           Q     You have Dr. Dassa's records, you have the Lenox Hill  
3     Hospital records, you have Dr. Datta's records. Do any of them  
4     say that he fell to the ground?

5           A     Lenox Hill Hospital: I was crushed with a manlift and  
6     container at work.

7                     Dr. Dassa: Pushed into a manlift striking his  
8     left shoulder and back.

9                     For Dr. Datta I don't have his history of injury.

10          Q     All right.

11                    I want you to assume the jury was here last  
12     Friday, that when I started my cross with Dr. Merola before it  
13     was interrupted he had testified, in fact, that plaintiff had not  
14     told him he had fallen to the ground and never heard that  
15     history.

16                    So, so far now, three years post-accident you are  
17     the only person that recorded him falling to the ground. Are you  
18     aware of that?

19                    MR. TURNBULL: Objection.

20                    THE COURT: Sustained.

21                    You don't have to answer that.

22          Q     Did you see any records from all the records you got  
23     that said that he actually fell to the ground?

24                    THE COURT: Mr. Van Etten, the records are in  
25     evidence. You can certainly sum up on it. I will not ask

1           this doctor, Dr. Hausknecht, to go through every single  
2           record.

3                       MR. VAN ETTEN:   Okay.   That's fair, Judge.

4                       THE COURT:    So let's move on.

5           Q     By the way, let's go back to the cervical spine films  
6           again from 2008.

7                       You had never seen that film prior to preparing  
8           for trial, right?

9           A     Correct.

10          Q     And you never included that in any of your reports?

11          A     That's correct.

12          Q     And you never discussed that with any of the referring  
13          doctors?

14          A     Correct.

15          Q     And those x-rays had nothing to do with your being  
16          hired to provide an electrical diagnostic opinion back on the  
17          initial referral, right?

18          A     I am not sure what you mean by "hired."   The initial  
19          time I saw him, it was on the direct referral from Dr. Colon to  
20          perform NCV and EMG studies.

21          Q     You were asked to provide an opinion, you saw him and  
22          that's it; so that wasn't part of the electrodiagnostic testing  
23          that he was referred to you for?

24                       MR. TURNBULL:   Objection.

25                       THE COURT:    Overruled.   You can --

1                   Sorry, Mr. Turnbull. Did you want to say  
2 something?

3                   MR. TURNBULL: I don't understand what the  
4 antecedent was, what the "that" was referring to in the  
5 question.

6           Q     The cervical film studies from 2008 had no relationship  
7 to the EMGs and nerve conduction testing that you had  
8 Mr. Gulinazzo referred to you for?

9           A     An X-ray is different than an EMG, that's true.

10          Q     When you gave any prior opinions in your reports, that  
11 was based never on that particular film study or those records;  
12 true?

13          A     That's true. I saw those films about two weeks ago.

14          Q     And the first report where you made your statements on  
15 causation, that was also not based on the Lenox Hill Hospital  
16 records because you didn't have those records at that time; true?

17          A     True.

18          Q     You talked about desiccation before, correct?

19          A     Correct.

20          Q     Disk desiccation is a drying out of the disk?

21          A     Yes.

22          Q     When that happens, the disk shrinks?

23          A     That's part of what happens, yes.

24          Q     And when disk desiccation -- by the way, disk  
25 desiccation is a degenerative condition, fair?

1           A     Correct.

2           Q     And when that happens, when you look at things such as  
3     the MRIs you looked at, you can tell when a disk is degenerating  
4     because the color of the disk changes; correct?

5           A     Correct.

6           Q     In fact, you talked about the one film study before,  
7     the one from Stand Up MRI that was a stand up test, that was one  
8     that showed the better exhibits of the fluid in the spinal area;  
9     correct?

10          A     Correct.

11          Q     So when you are looking at a normal healthy disk in  
12     those circumstances, the disk is white or is a whiter, lighter  
13     color; right?

14          A     Brighter, yes.

15          Q     Brighter color, fair.

16                     When you look at a disk that is aging and is  
17     desiccating, it's darker; correct?

18          A     Correct.

19          Q     Doctor, if you don't mind, please step down.

20                     THE COURT: Watch your step, please.

21          A     (Witness complies.)

22          Q     I want to talk to you right now looking at Plaintiff's  
23     Exhibit 32, all right? You circled the disks that are herniated,  
24     right?

25          A     Correct.

1 Q Now, this would be the L5-S1?

2 A Correct.

3 Q That's the lower one I am pointing at that you circled?

4 A Yes.

5 Q The next is L4-L5?

6 A Correct.

7 Q And L3-L4, correct?

8 A Right.

9 Q And right here is what?

10 A L2-3.

11 Q L2-3. Now, that disk, what color is it? Is it  
12 brighter?

13 A Brighter than the one above and below, sure.

14 Q And all of these are darker indicating disk desiccation  
15 and degenerative disease, correct?

16 A Correct. This is in 2015, a year after the injury,  
17 which is with what you would expect.

18 Q Well, doc, you are having degeneration occurring over  
19 time -- and, by the way, you have a herniation at L2, right?

20 A L1-2.

21 Q L1-2, okay.

22 And that disk is discolored and smaller and  
23 thinned out, correct?

24 A It is.

25 Q Now these are the ones from 2013, correct?

1           A     Correct.

2           Q     Again, poor study.  We may have to go to the other ones  
3 here, right, but we are looking here --

4           A     I'm sorry.  I didn't understand.

5           Q     Sure.  We are looking at the 2013 studies now, correct?

6           A     I don't think it's poor, but yes.

7           Q     I am saying as to the lightness that you were talking  
8 about before with bright and not bright, or is this film study  
9 accurate for that?

10          A     This is an accurate MRI.  It's a different magnetic  
11 field.  This is T1.

12          Q     Right.  So you are not able to see the brightness we  
13 were just talking about as well, correct?

14          A     As well, correct.

15          Q     But looking at the disk shape, because we are talking  
16 about size, you see the shape of that disk here at L2-L3, right?

17          A     I do.

18          Q     Shape and size are --

19                   MR. TURNBULL:  I'm sorry.  It's not clear which  
20 exhibits are being referred to.

21          Q     Looking at Exhibit 32 we just said that L2-L3, that  
22 looking at the shape and size, they're appropriate; correct?

23          A     Correct.

24          Q     Now looking at Exhibit 30, the same shape and of that  
25 disk.  Though the color is different, it is essentially the same?

1           A     The same. The ones below it as well. So this is an  
2     indication that there wasn't disk degeneration --

3           Q     Doctor, I said is that one the same as this one? Can  
4     you answer that yes or no?

5           A     Yes.

6           Q     Okay. He will redirect. You have done this before,  
7     right?

8                     THE COURT: Come on now. I will strike that. Ask  
9     a question.

10          Q     You said before when you first started testifying that  
11     you testify on occasion, correct?

12          A     I testify on occasion, correct.

13          Q     Okay.

14                     Now, you have already said you testified at least  
15     a dozen times for Sacks & Sacks?

16          A     More or less.

17          Q     So you testify for other --

18                     THE COURT: Hold on, Mr. Van Etten. If the doctor  
19     is going to be stepped down by the diagrams --

20                     MR. VAN ETTEN: I will come back to the diagrams,  
21     Judge, in a second, but he brought up --

22                     THE COURT: Well, then, I need him to sit back  
23     down.

24                     MR. VAN ETTEN: All right. I will have him stay  
25     here and continue, Judge.

1           Q     So, doc, when you look at the shape and size of the  
2     disks and you're now saying it is showing a change, you can still  
3     see when looking at the two exhibits, 32 and 30, that essentially  
4     the disk shapes and sizes have not changed; correct? I'm saying  
5     shape and sizes.

6           A     I disagree with that statement.

7           Q     Okay.

8                     Now, you refer -- you can sit down, doctor.

9           A     (Witness complies.)

10          Q     Now, doctor, you refer cases to radiologists to do  
11     MRIs; correct?

12          A     I do.

13          Q     You rely on the radiologist to provide you their  
14     opinions, correct?

15          A     In part, yes.

16          Q     You'll look at the films yourself, true?

17          A     True.

18          Q     That's doing your job?

19          A     It is.

20          Q     Radiologists do films ten twenty or more a day,  
21     correct?

22          A     A radiologist read films. Each radiologist reads  
23     different amounts of films.

24          Q     That's their job, right?

25          A     That's correct.



1 Q You are a neurologist. You need to look at the films,  
2 we'll agree on that, but you are not a radiologist; correct?

3 A I am not a radiologist.

4 Q You are not board certified in radiology?

5 A I am not.

6 Q To be fair, I don't think counsel asked you; you are  
7 board certified in neurology, correct?

8 A I am.

9 Q So radiologists are the specialists who look at review  
10 and interpret films, true?

11 A Correct.

12 Q Okay.

13 Now, when you went back to Exhibit 44 of the  
14 lumbar spine and you talked about the degeneration in the lumbar  
15 spine, you showed it to everybody. And as you are looking at  
16 that, on the left-hand side is the back of the back; correct?

17 A Correct.

18 Q All right.

19 Now, down to the lower end, is there a narrowing  
20 of the disk space of the vertebrae on the left-hand side?

21 A Mild, yes.

22 Q So a narrowing on an x-ray that you are seeing back in  
23 2013 on the date of the incident is showing evidence of  
24 degeneration where vertebral heights instead of being, let's say,  
25 more uniform, is now narrow at the area where the herniation

1 occurred; correct?

2 A Correct. The disk slipped out of place. The vertebrae  
3 collapsed and caused narrowing of the foramen.

4 Q By the way, you also see on these films that you looked  
5 at that you have the end parts of the disk where there is kind  
6 of, like, maybe some osteophyte or bony growth occurring?

7 A There are some osteophytes or bone spurs. This is part  
8 of the degenerative process. That's why I interpret that as mild  
9 degenerative joint disease, because there are some irregularities  
10 of the vertebral bodies.

11 Q Well, the bone spurs that you see here are also  
12 creating a narrowing of that disk space where the cushion for the  
13 disk is; correct?

14 A No. I disagree.

15 Q Well, looking at Plaintiff's Exhibit 42 that you  
16 referred to on multiple occasions, the model, your disks, when in  
17 a normal condition, tend to have uniformity; correct?

18 A Yes.

19 Q Now, looking at the films as you go to the back where  
20 you have some of the bone spur, I believe -- correct me if I am  
21 wrong -- it is between the L4-L5 where you have the uptake for  
22 the bone spur; correct?

23 A I don't see any bone spurs that are causing stenosis.  
24 There is some irregularity of the vertebral margins but no bone  
25 spurs in the foramen.

1           Q     So the irregularities in the vertebral margin, that is  
2     a lessening of the height of the disks in the area where the  
3     herniations were subsequently found on MRI a year later; true?

4           A     Not true.

5           Q     Now, the history part again, you talked a little about  
6     that with Mr. Turnbull about the history.

7                     Is the mechanism of injury important to you when  
8     you are examining the patient and coming up with both your plan,  
9     your prognosis, and your opinions?

10          A     Yes.

11          Q     Okay.

12                    Because let's say, for example, you have an injury  
13     such as Mr. Gulinazzo where he got caught between two objects;  
14     okay? You told the jury he got struck by the container earlier  
15     today, correct?

16          A     Right.

17          Q     And you are aware from the records that we talked about  
18     that he came into contact with another object, correct?

19          A     My understanding is that he was caught between a lift  
20     and a container.

21          Q     Okay. But do you know the amount of force involved  
22     when he had the container and came into contact with the lift?

23          A     I wasn't there. I didn't see it, no.

24          Q     Did you question Mr. Gulinazzo about the degree of  
25     force involved?

1           A     I didn't ask him specifically how forceful it was, but  
2     I asked if it caused him an injury, if it caused him pain. He  
3     said it did.

4           Q     Well, this is three years later when you asked;  
5     correct?

6           A     That's the first time I saw him, correct.

7           Q     Now, when you are talking, though, about mechanism of  
8     injury, wouldn't that be relevant as to whether or not there was  
9     a significant, as you talked about before with traumas, where you  
10    said that the other earlier accidents didn't matter unless it was  
11    significant? Wouldn't you need to know if this degree of contact  
12    on September 25, 2013 was, in fact, significant?

13          A     "Significant" to me is clinical, not the amount of  
14    force. Somebody could be involved in a high-speed collision in a  
15    car accident, for example, and have no injuries, and somebody  
16    could be involved in a low-speed collision and have significance  
17    injuries.

18                   "Significant" to me refers to how it affects that  
19    person clinically. Did they require treatment? Did they miss  
20    work? Were they having problems? That's what I mean by  
21    "significant," not the amount of force but the effects that that  
22    force had on the patient.

23          Q     And the effects of force that we are talking about is  
24    all what Mr. Gulinazzo reported during the initial treatments,  
25    let's say, in the first six months; true?

1           A     I'm sorry. I don't understand the question.

2           Q     Well, you are saying whether it affects a person for  
3 going to work. Let me just ask you to assume that Mr. Gulinazzo  
4 on direct examination, when he testified said, said that a week  
5 later after having gone back on light duty he went to his bosses  
6 and told them that he decided to relieve -- that's the word he  
7 said -- himself from work because he didn't think he could do it.

8                     Are you aware of that?

9           A     Once again, I didn't treat him during the first week,  
10 but I don't think that these injuries are compatible with the job  
11 that he had.

12          Q     Job he had? What was he doing at that point a week  
13 later?

14          A     Construction.

15          Q     Well, I want you to assume that there has been  
16 testimony that he was placed on light duty and was just basically  
17 sweeping and maybe picking up things. That's the job that they  
18 were having him do afterwards.

19                     Would that be something that a person couldn't do  
20 after the type of trauma involved?

21          A     I don't think that he would be capable of sweeping and  
22 picking things up and moving things around on a daily basis with  
23 these types of injuries, no.

24          Q     I want you to assume, because you said before you  
25 thought he was asymptomatic, that his superintendent came in and

1 said that he had been complaining about his back prior to the  
2 accident and that they had to modify his job and put him on light  
3 duty. Were you aware of that?

4 A No.

5 Q Would someone whose job duties have been modified and  
6 put on light duty be someone who may be exhibiting symptoms of  
7 degenerative changes in his back that are worsening?

8 MR. TURNBULL: Objection.

9 THE COURT: Sustained.

10 Q Do you have any idea if the testimony of the  
11 superintendent was accurate that he had to modify the duties for  
12 Mr. Gulinazzo and that this would be an example, as you talked  
13 about, of the progression of degeneration for a construction  
14 laborer?

15 MR. TURNBULL: Objection.

16 THE COURT: Sustained. You can rephrase.

17 Q In other words, doctor, if he is complaining of pain to  
18 his boss, his boss modifies his job, and we know he has  
19 degenerative disk disease in his back; isn't that part of the  
20 same progression that you have talked about with the worsening of  
21 degenerative disease?

22 MR. TURNBULL: Objection.

23 THE COURT: Overruled. I will allow this answer.

24 A Lower back pain can be a sign of degenerative joint  
25 disease.

1           Q     So, we have a number of prior injuries. And, by the  
2 way, you said before that if we have an earlier prior back injury  
3 that he treated with and then stopped treating, and then we have  
4 another trauma where he fell in 2008, and you said before that  
5 trauma from 2013 could have exacerbated or aggravated the  
6 underlying degenerative changes; couldn't the 2008 accident have  
7 aggravated or exacerbated the degenerative changes?

8                     MR. TURNBULL: Objection.

9                     THE COURT: Overruled. I will allow it.

10          A     Possibly but it seems unlikely. He didn't go for any  
11 treatment for his lower back.

12          Q     You only know that because that's what he told you,  
13 right?

14          A     And you have not shown me any treatment records or  
15 given me any evidence to the contrary.

16          Q     Doctor, you didn't even know about those records when  
17 you first saw him and when you gave your opinions, did you?

18          A     What records are you referring to?

19          Q     The 2008 treatment records at Mount Sinai West.

20          A     No, those records I didn't have.

21          Q     Are you aware that he did, in fact, treat after his  
22 accident at Great Adventure and had been treated at the scene and  
23 afterwards and missed some time from work, though minimal.

24          A     I am not familiar with any of the details of that  
25 particular event.

1           Q     Are you aware that he started a lawsuit after his  
2     accident in Great Adventure?

3                     MR. TURNBULL:  Objection.  Foundation.

4                     THE COURT:  Yes.  Sustained.

5           Q     Would it be significant to you, doctor, if someone had  
6     an accident involving their back that they had enough pain that  
7     they would commence a lawsuit?

8                     MR. TURNBULL:  Objection, your Honor.

9                     THE COURT:  Sustained.

10                    So, jurors, when I sustain the objection, please  
11     disregard the question.  It's the question and answer that  
12     becomes evidence.  I will explain that to you again at the  
13     end.

14           Q     Now, you have Dr. Datta's records.  Throughout  
15     Dr. Datta's records and Dr. Colon's records, unlike yourself,  
16     Mr. Gulinazzo said he had no prior pain in his back or neck; are  
17     you aware of that?

18                    MR. TURNBULL:  Objection, your Honor.  He is  
19     asking the witness to do a search of records.

20                    MR. VAN ETTEN:  I am not.  I asked if he is  
21     aware --

22                    THE COURT:  Let me hear the objection.

23                    MR. VAN ETTEN:  Sorry.

24                    MR. TURNBULL:  He is asking the witness whether he  
25     is aware of certain portions of Dr. Datta and Dr. Dassa's



1 records. The records are in evidence. They speak for  
2 themselves.

3 THE COURT: They will, but I will allow this  
4 question because I believe it's the basis of some other  
5 treatment he's already spoken about that he observed and  
6 read; but I certainly understand your objection, and we will  
7 not go that much further with this line.

8 MR. VAN ETTEN: No.

9 A Dr. Datta indicates he also has a radiating lower back  
10 pain. Basically denied these complaints prior to the accident.

11 (Continued on next page)  
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1           Q     Would it be clear then, Doctor, you don't recall what  
2 prior history was given to those prior doctors; would that be  
3 fair?

4           A     How could I recall, I wasn't there. I didn't take the  
5 history and Dr. Colon doesn't say anything about prior back pain  
6 but he says patient comes to us today complaining of severe low  
7 back pain which radiates down both lower extremities.

8           Q     And, Doctor, the question I asked you was not what  
9 complaints he made, it was were you aware that he had made  
10 complaints of prior pain when he first saw those doctors. The  
11 answer is yes or no?

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

13          Q     Fair enough. You made an interesting statement earlier  
14 and I'm not sure if I got it accurately so please correct me.  
15 Something about with the degenerative changes overtime with  
16 trauma there could create a herniated disk or a pinched nerve;  
17 is that what you said?

18          A     I'm not really sure but degenerative joint disease on  
19 occasion can result in a disc herniation and on occasion that  
20 disc herniation may cause a pinched nerve. It's possible.

21          Q     Part of you said, you said where the degenerative  
22 disease exist plus trauma can cause a pinched nerve?

23          A     Sure.

24          Q     Okay. And you are aware that Mr. Gulinazzo had a  
25 pinched nerve before the accident; right?

1 MR. TURNBULL: Objection.

2 THE COURT: Overruled. I'll allow it.

3 A I didn't have the treatment records from 1995 or 2008,  
4 so I'm not sure about that.

5 Q I'll show you what's been marked as Defendant's I for  
6 identification. I believe it's Total Rehab records. I think  
7 you have a portion of those in your file from Total Rehab?

8 A Is that Dr. Colon?

9 Q No, it's physical therapy?

10 A I don't think so. Oh, yeah.

11 Q Right there; right?

12 A Yes.

13 Q You have portions of the Total Rehab records in your  
14 file; right?

15 A Yes.

16 Q Do you have Mr. Gulinazzo's intake sheet from October  
17 8, 2013 when he started his physical therapy?

18 A No.

19 Q To make this quicker, I will show you the two pages  
20 once the Judge allows me to approach the witness.

21 THE COURT: Thank you. Yes.

22 MR. VAN ETTEN: This is Defendant's I for  
23 identification with the October 8, 2013 date.

24 A Yes.

25 Q Can you turn to the next page. And I'll try to do it

1 again to expedite, the history written up by Mr. Gulinazzo, what  
2 does he say for prior medical history?

3 A Indicate if you have had any of the following, pinched  
4 nerve, yes.

5 Q And he says a pinched nerve; correct?

6 A Yes.

7 Q So we now know he had degenerative disease before the  
8 accident. We know the trauma of 2008, after the trauma of Great  
9 Adventure. We know of the trauma that you speak about but you  
10 don't know the dates. And we know he complained of the pinched  
11 nerve which you stated equates to a herniated disc.

12 So Mr. Gulinazzo told his therapist within two weeks of  
13 the accident that he had a prior pinched nerve or a herniated  
14 disc; true?

15 MR. TURNBULL: Objection.

16 THE COURT: Sustained.

17 Q Were you aware that Mr. Gulinazzo had a pinched nerve  
18 and herniated disc before you gave your causation opinion?

19 MR. TURNBULL: Objection. As to time.

20 THE COURT: Do you understand the question, Doctor.

21 A I do. I don't think that that form indicates when he  
22 had a pinched nerve or when he had a disc herniation. You would  
23 have to ask Mr. Gulinazzo who filled it out but there is no  
24 indication in any of the records by any of the doctors that  
25 prior to 2013 he had a slipped disc or a pinched nerved.

1           Q     You also agree there were no MRIs or CAT scans done  
2 between September 25, 2013 and October 8, 2013; correct?

3           A     Correct.

4           Q     So in order for plaintiff to know he had a pinched  
5 nerve, somebody had to have told him that; true?

6                     MR. TURNBULL:  Objection.

7                     THE COURT:  Sustained.

8           Q     Counsel asked you about experience with patients that  
9 come into you, if a patient comes into you complaining that they  
10 have a pinched nerve, would you ask the question who diagnosed  
11 you with a pinched nerve?

12          A     No, I would ask them what is it that you feel.

13          Q     So a person saying I have a herniated disc or a pinched  
14 nerve would have no meaning to you to know where they knew that?  
15 He's a layperson, right, he's not looking at films --

16                     MR. TURNBULL:  Objection.

17                     THE COURT:  Sustained.  Let's move on.

18          Q     What I'm trying to say, sir, is the term herniated  
19 disc, that is a medical term; true?

20          A     Yes.

21          Q     A pinched nerve is a medical term; true?

22          A     It's a lay term.

23          Q     You testified to it as part of one of your things  
24 saying that trauma on top of degeneration can cause a pinched  
25 nerve.  Was that a lay term when you said that to Mr. Turnbull's

1 questions?

2 A Yes. A lay term would be a pinched nerve. A medical  
3 term would be radiculopathy.

4 Q So a pinched nerve would be radiculopathy. So he did  
5 have radicular symptoms before the accident; true?

6 MR. TURNBULL: Objection.

7 A Not true.

8 THE COURT: I'm going to overrule the objection.

9 The answer stands.

10 Q And how did you know he didn't have radicular symptoms  
11 before if you just said a pinched nerve can be radicular  
12 symptoms?

13 A I asked him if he ever had any similar problems,  
14 radiating pain, numbness or weakness, he said no. There's  
15 nothing in any of the records that indicates that he had  
16 radiculopathy or a disc herniation prior to this accident. The  
17 fact that he checked off pinched nerve doesn't mean that a  
18 doctor diagnosed him with a pinched nerve prior to this  
19 accident.

20 It's not uncommon in my practice for a person to come  
21 in and say I have a pinched nerve in my neck and I would say,  
22 well, what do you mean. Well, I have this pain and it's  
23 shooting down, it's electric, it's tingling. And that's their  
24 self diagnosis of a pinched nerve. That doesn't necessarily  
25 mean that I diagnosed them with a pinched nerve but that's not

1 an unusual complaint.

2 Q So, again, you're relying exclusively on the history  
3 given to you by Mr. Gulinazzo?

4 A Not exclusively. As I said to you before if there are  
5 any records of a disc herniation or a pinched nerve prior to  
6 2013, I would love to see it.

7 Q Doctor, as we've already gone forward and I don't want  
8 to keep arguing with you and I'll probably get cut off again --

9 THE COURT: You almost were. Let's move on.

10 Q Doctor, so what I'm trying to figure out here is that  
11 we have the other doctors records who are treating Mr. Gulinazzo  
12 immediately after the incident and some of them have testified  
13 and their records indicate that how the accident happened there  
14 was no fault. Yet in 2016 you come in and say there was a  
15 fault. And then we have these other records that you were  
16 unaware of from the prior accidents and now we have another  
17 record saying there's a pinched nerve of which we're unaware of  
18 and you're downplaying --

19 MR. TURNBULL: Objection.

20 THE COURT: You were doing so well. Let's get to  
21 the question.

22 Q So looking at those records, so when he comes in in  
23 2016 you're unaware of certain things, you have a history now,  
24 all of a sudden you have a history of him falling and you're  
25 saying he had no prior, isn't it true that when he came to you

1 in 2016 he had started this lawsuit and that's why you got --

2 MR. TURNBULL: Objection.

3 THE COURT: Sustained.

4 Q Were you aware when he came in he had a lawsuit  
5 pending?

6 MR. TURNBULL: Objection.

7 THE COURT: I'm going to overrule the objection.

8 A I did not have firsthand knowledge but I knew that he  
9 had an attorney so I assumed that there was a reasonable  
10 likelihood that there was a lawsuit but that's not why I was  
11 seeing him and that's not who referred the patient to me.

12 Q Are you aware that Dr. Dassa was referred to plaintiff  
13 by his attorneys?

14 A I'm not aware who referred him to Dr. Dassa.

15 Q Are you aware of any of the other doctors that he was  
16 treating with were referred to by attorneys?

17 A I don't know who referred the other doctors to Mr.  
18 Gulinazzo. I know for a fact that he was referred to me by Dr.  
19 Colon, 100 percent.

20 Q Now, you talked about concern about the medicines that  
21 plaintiff was taking; true?

22 A True.

23 Q And in fact one of the notes that you have is the fact  
24 that he was always getting pain medicine?

25 A I'm not sure that that's the way that I would phrase it



1 but, yes, each time I saw him he was on different medications.  
2 I felt that they weren't effective. There might be better  
3 combinations of medicines for him and I discussed that with Dr.  
4 Colon and Dr. Perez.

5 Q Did you see any indication in any of the records that  
6 you had that any doctor ever gave him anything other than pain  
7 medicine and on two or three occasions epidural steroids?

8 A You lost me. You talking about medications?

9 Q I was trying not to give you an out. Did you ever see  
10 an indication that anybody prescribed anything other than pain  
11 medicines and muscle relaxers, I forgot about those?

12 A I would have to review the entire medical record but as  
13 far as I know when I saw him he was taking pain medications and  
14 muscle relaxers.

15 Q And at some point you raised with Dr. Colon the fact  
16 that he shouldn't be taking oxycodone as much?

17 A That's correct. I thought he would be better off on a  
18 combination of medications. Antiinflammatories, Percocet or  
19 oxycodone for moderate to severe pain and then something else on  
20 a daily basis to try to prevent that pain, control the  
21 neuropathic pain that he was experiencing.

22 Q And it's frequent, Doctor, and you as a neurologist  
23 that you would make recommendations for antiinflammatories for  
24 the types of symptoms that Mr. Gulinazzo had; true?

25 A That would be part of my recommendation, yes.

1           Q     At no time you're aware anybody prescribing any  
2 antiinflammatory medication for him; true?

3                   MR. TURNBULL:  Objection.  Asked and answered.

4                   THE COURT:  Sustained.  You don't have to answer.

5           Q     Go to your initial report of July 19, 2016, please.  
6 Sorry, are you there?  In your examination part under  
7 mechanical, did you find any cervical spasms?

8           A     Not on that date, no.

9           Q     And when you looked at the testing down in your notes  
10 there had been a new MRI of the cervical spine?

11          A     There were series of MRIs for the neck and back.  The  
12 most recent that I saw was 4/14/16 for the neck and the back.

13          Q     And on that new film from 2016 after the first film  
14 study said there was a new C five, C six herniation; correct?

15          A     Correct.

16          Q     And what traumatic event intervened from 2013 until  
17 2016 to cause that new herniation?

18          A     None.  I think it was already there.  It was present on  
19 the 2014 MRI.

20          Q     Well, you didn't say that in your report.  In fact said  
21 it was new; true?

22          A     I didn't say it was new, that's what the radiologist  
23 said.

24          Q     Well, I thought you looked at the films, sir.

25          A     I did.  Not on that particular date so I couldn't know

1 that it was new. When I compared it to the prior studies I  
2 realized it was already there.

3 Q Sir, when you were asked by counsel about your initial  
4 report and you were talking about your examination and testing,  
5 you said MRI films and you said you had reviewed them when you  
6 did this report. You had not reviewed the actual film studies?

7 A Calm down. I reviewed the MRI films but I didn't have  
8 the prior MRI from 2013 so I couldn't know if it was new or  
9 preexisting. Once I reviewed the MRIs from 2013 I saw that it  
10 was there.

11 Q You just described earlier when you were looking at the  
12 film studies by counsel that he showed and you talked about the  
13 cervical derangement diagnosis. Your impression said, cervical  
14 derangement was C three, C four; C four, C five; C five, C six  
15 herniations; right?

16 A Correct.

17 Q When you looked at the films and you circled everything  
18 and you showed the C three C four you said it was a bulge to Mr.  
19 Turnbull; true?

20 A True.

21 Q Your report says herniation. Is that because you  
22 didn't look at the films back then and you looked at them today  
23 for the first time?

24 A For the first time, no.

25 Q Did you look at them when you prepared with Mr. Weir?

1           A     I did but that wasn't the first time.

2           Q     And when you're talking about the nerve conduction  
3 studies that plaintiff was referred to you for, you also had  
4 looked at Dr. Datta's earlier studies; right?

5           A     Correct.

6           Q     And on the cervical level you only saw C five-C six  
7 radiculopathy; correct?

8           A     That's correct.

9           Q     And your report says C five C six is a new herniation;  
10 correct?

11          A     No, the radiologist said that C five six is a new  
12 herniation in the 2016 MRI. And when I saw him in 2016 I did  
13 not have the 2014 MRI available for review. When I reviewed the  
14 2014 MRI it became apparent to me that disc herniation was there  
15 in 2014. It wasn't new.

16                   MR. VAN ETTEN: Move to strike as nonresponsive.

17          Q     The question, Doctor, that I asked you --

18                   THE COURT: Can I rule on that, please. I will  
19 allow the answer.

20          Q     Okay. Your report says there's a new herniation at  
21 that level; true or false?

22          A     For the third time, my report says --

23          Q     True or false? Can you answer true or false?

24                   THE COURT: So, Doctor, if you can answer it in a  
25 true or false fashion.

1                   THE WITNESS: I can't answer it true or false.

2           Q     Can you read the jury under testing the third sentence  
3 that you have on that first date?

4           A     There is a new left C four five disc herniation.  
5 There's a --

6           Q     That's all I asked you to read, sir.

7                   THE COURT: Okay.

8           Q     Is that the sentence you put in your report?

9           A     That is in my report which is paraphrased from the  
10 radiologist report. That's not what I found, it's what the  
11 radiologist found.

12                   THE COURT: Let's move on.

13          Q     And also at that point you only saw L five S one  
14 radiculopathy; correct?

15          A     On the electrodiagnostic test that I performed I only  
16 saw L five S one radiculopathy on the left side.

17          Q     Okay. And Dr. Datta had found multiple levels of  
18 radiculopathy back in 2013 and '14; correct?

19          A     He also found it at L four.

20          Q     So at this point plaintiff has had less radiculopathy  
21 three years later or two years later from where Dr. Datta first  
22 saw him and tested him; correct?

23          A     I'm not sure how to answer that question.

24          Q     You told this jury that the EMGs and nerve conductions  
25 are objective tests; correct?

1           A     Yes.

2           Q     And you have Dr. Datta's records and they're in  
3 evidence and that showed multiple levels with radiculopathy?

4           A     Correct.

5           Q     And then when you examined him two or three years later  
6 there were only two levels with radiculopathy so that's less;  
7 correct?

8           A     There were less levels, yes.

9           Q     So there's less radicular symptomology two or three  
10 years later; correct?

11          A     Yes.

12                THE COURT:   Less levels.

13          Q     Do you have your reports before you for your nerve  
14 conduction and EMG testing?

15          A     Yes.

16          Q     And for the EMG can you just pull that up, please.  I  
17 think it's page three for the testimony?

18          A     Okay.

19          Q     All right.  And when you did the nerve conduction and  
20 EMG testing throughout the cervical lumbar spine of Mr.  
21 Gulinazzo -- that's what you did, right, the entire spine?

22          A     The neck, the back, the arms, and legs.

23          Q     So 28 nerves, nerve roots and muscles?

24                THE COURT:   You want him to count it?

25                MR. VAN ETTEN:  He does the tests every day, I

1       assume he knows how many he tests.

2       Q     Is that how many you did, 28?

3       A     You're asking how many muscles were sampled.

4       Q     Yes, how many muscles were sampled?

5       A     Twenty-eight.

6       Q     And of the 28 you have eight different forms of tests  
7 where you were addressing whether there was a normal or abnormal  
8 finding?

9       A     Correct.

10      Q     So 28 times five is about 140 different nerve  
11 conduction velocity test you're undertaking?

12               MR. TURNBULL:  Objection.

13               THE COURT:  Mr. Van Etten, we have to pull out  
14 calculators?

15      Q     Out of all of those that you did that are in your  
16 report, you have three positives out of 100 plus nerve  
17 conduction tests; true?

18      A     Not fair.  Not true.  Incorrect.

19      Q     Count them for me then.

20      A     Come over here and I'll show you.  Here is one muscle,  
21 there's another muscle, there's another muscle, there's another  
22 muscle, so five out of 28 muscles were abnormal.

23      Q     All the C six and the L five S one?

24      A     That's correct.

25      Q     So where I got confused, Doctor, it's where it was two

1 plus two plus and one plus?

2 A I don't want to comment on your state of confusion,  
3 counsel.

4 MR. VAN ETTEN: I gave him that opening, Judge.

5 THE COURT: Let's move on.

6 Q Now, on your planned section on that first visit, we'll  
7 take you to the second one, Doctor, on April 20, 2021, I think  
8 you talked about before on the first examination when you did  
9 the examination of muscle strength and you had seen the  
10 lessening of the strength in the left shoulder area; do you  
11 recall that?

12 A Yes.

13 Q And then he came back and you didn't see him again for  
14 four years -- five years and now strength was five minus and  
15 five; correct?

16 A Five minus over five.

17 Q Over five. So the strength had increased; correct?

18 A On the valuation that day I felt the strength had  
19 improved.

20 Q And you were aware when you first saw Mr. Gulinazzo in  
21 2016 that he had undergone an arthroscopic surgery on the  
22 shoulder?

23 A Yes.

24 Q And were aware whether he had completed his physical  
25 therapy and treatment when you observed the lack of strength in



1 the shoulder at that time?

2 A I didn't believe that he hadn't completed his course of  
3 treatment, he was involved in the treatment.

4 Q And after arthroscopic surgery you need to restrengthen  
5 those muscles following surgery; correct?

6 A Typically, yes.

7 Q So you indicated there could be muscle issue or there  
8 could be nerve issues which caused those strength loss issues on  
9 that first examination; true?

10 A True.

11 Q You mentioned that you had recommended surgery and I'm  
12 not sure that I saw anywhere in your reports where you had  
13 recommended surgery. Maybe I missed that and was confused there  
14 also.

15 A Well, it doesn't specifically say surgery, no.

16 Q Okay. Because that's what I thought you told Mr.  
17 Turnbull that you had, based on your examination, made a  
18 recommendation and told them, the doctors, that he needed  
19 surgery. And in your reports there was no mention of you  
20 referring to Dr. Merola or Dr. Colon or even Dr. Perez about the  
21 surgeries; true?

22 A It doesn't say it in the report, correct.

23 Q Okay. And now I found the other thing and I apologize  
24 for being duplicative, possibly.

25 On your report of April 20, 2021 towards the -- on the

1 last page under your plan, I think that's where we were  
2 addressing and it says, I had suggested he discuss possible  
3 alternatives for the oxycodone as I do not believe that this is  
4 particularly effective in treating his pain and I do not believe  
5 that it is particularly good sleep medication.

6 That's the accurate statement for the recommendation  
7 that you made for the chrome press?

8 A Yes.

9 Q Do you know if anybody prescribed medical marijuana to  
10 him?

11 A It's my understanding that they did.

12 Q And is that something that went on?

13 A Essentially, yes.

14 Q And that's the purpose, yes, to try to alleviate the  
15 symptomology past, present, and possibly future; fair?

16 A The goal of medication is to alleviate the symptoms  
17 without causing any side effects or complications.

18 Q What I'm trying to figure out, Doctor, you advised him  
19 at various times to restrict his activities; true?

20 A True.

21 Q And the other doctors at various times other than  
22 physical activities advised him to restrict his activities;  
23 correct?

24 A What other doctors recommend to him, is that your  
25 question?

1           Q     Yes.

2           A     I would have to go through all the records to give you  
3     that answer but that was my understanding.

4           Q     And they have the records because what I'm trying to  
5     piece together is that if in 2013, a week after the incident,  
6     Mr. Gulinazzo took himself out of the workplace and his doctors  
7     recommended him to restrict various activities other than the  
8     physical therapy that he was doing, what would cause the  
9     progression of his degenerative disease if there is no active  
10    physical activity?

11          A     Once the disc is slipped out of place, the spine is  
12    destabilized and just every day activities, getting up from a  
13    chair, bending, walking, lying down is going to cause  
14    inflammation and irritation that the levels of the spine had  
15    been damaged.

16          Q     And if he had fallen five years prior, hurt his back,  
17    and there were indications that he had pain or tenderness in his  
18    back in the 2008 records and then continued working on it and  
19    had symptomology, this would be evidence that he was actually  
20    having that progression taking place before the accident; true?

21          A     No, I don't agree with that statement.

22          Q     But the prior treatments, the prior symptomology, the  
23    prior complaints were of no matter to you when you wrote your  
24    report because without those records you fully said the injury  
25    was causally related from the first day you saw him?

1 MR. TURNBULL: Objection.

2 THE COURT: Sustained.

3 Q On the first day you saw him you put in a statement  
4 that the injuries were causally related; correct?

5 A Correct.

6 Q And you didn't have the Lenox Hill Hospital records  
7 either; correct?

8 A Correct.

9 Q And you didn't have the 2008 records; correct?

10 A Correct, sir.

11 Q And you didn't have all the records or information  
12 about the earlier accident; correct?

13 A Correct.

14 Q And you hadn't looked at the films at that time, you  
15 only looked at the film report; correct?

16 A Correct.

17 Q So with that history and everything you wrote that it  
18 was causally related because you knew that he had counsel and he  
19 was in lawsuit; correct?

20 MR. TURNBULL: Objection.

21 THE COURT: Overruled. I'll allow him to answer  
22 it.

23 A I wrote that it was causally related because I thought  
24 it was causally related. It's not a coincidence that he started  
25 having neck and back pain and couldn't work after the injury of

1 9/25/13 because it's the injury of 9/25/13 is what caused these  
2 problems.

3 THE COURT: Any additional questions, Mr. Van  
4 Etten?

5 MR. VAN ETTEN: I'm looking to see if there is  
6 anything additional now, Judge.

7 THE COURT: Let me just say this for the record, in  
8 hindsight I would have sustained the objection but I'm going  
9 to allow the question and the answer to stand. I don't know  
10 why I'm confessing on the record but I'll allow Dr.  
11 Hausknecht's answer to stand.

12 MR. VAN ETTEN: Dr. Hausknecht, thank you very  
13 much. Appreciate it.

14 THE COURT: Okay. Redirect.

15 REDIRECT EXAMINATION

16 BY MR. TURNBULL:

17 Q Dr. Hausknecht, Mr. Van Etten asked you about Mr.  
18 Gulinazzo checking a box that said pinched nerve on an intake, a  
19 physical therapy record on October 8, 2013, so that was two or  
20 three weeks after the accident.

21 Now, were you aware that Mr. Gulinazzo had been  
22 referred to physical therapy by a doctor?

23 A I assumed so but I don't have firsthand knowledge of  
24 that.

25 Q So we talked today about Mr. Gulinazzo seeing a

1 physician's assistant at Concentra Medical facilities two days  
2 after the accident. You don't have those records but I can tell  
3 you on that date that Mr. Gulinazzo reported low back pain with  
4 paresthesias noted to the left lower extremity.

5 Can you explain to the jury what paresthesias means?

6 MR. VAN ETTEN: Objection.

7 THE COURT: Overruled. I'll allow it.

8 A The term paresthesia refers to a tingling or electric  
9 blood sensation.

10 Q Is that something that's caused by a pinched nerve?

11 A That is one of the symptoms of a pinched nerve, yes.

12 Q All right. So on September 27, 2013, two days after  
13 his accident, Mr. Gulinazzo goes to a doctor and reports that he  
14 has symptoms that, as you just testified, can be related to a  
15 pinched nerve?

16 A Correct.

17 (Whereupon, Senior Court Reporter Rachel Simone  
18 takes over as the official record.)  
19  
20  
21  
22  
23  
24  
25

1 REDIRECT EXAMINATION

2 BY MR. TURNBULL:

3 Q All right. So --

4 MR. VAN ETTEN: There wasn't a question there.

5 That was testimony by Mr. Turnbull.

6 Q Correct?

7 THE COURT: I will sustain the objection.

8 Rephrase it, please.

9 MR. TURNBULL: All right.

10 Q So, doctor, based on that record, it's your  
11 understanding, correct, that when Mr. Gulinazzo went to physical  
12 therapy, filled out an intake form and checked "pinched nerve,"  
13 he had seen a doctor two days after his accident complaining of  
14 symptoms that you attribute to a pinched nerve; is that correct?

15 MR. VAN ETTEN: Objection.

16 THE COURT: I am going to overrule it and allow  
17 it, but still I'm going to ask you to watch the leading.

18 A That's correct.

19 Q So when he checked "pinched nerve," that doesn't mean  
20 that he had a pinched -- does that mean that he had a pinched  
21 nerve prior to the date of his accident?

22 A I don't believe so.

23 Q And when you saw him for the first time you did a  
24 history as you testified, correct?

25 A Correct.

1           Q     And he gave you a history of a prior accident that he  
2     had to his lower back?

3           A     Correct.

4           Q     I believe you said just a moment ago that it happened  
5     in around 1995?

6           A     Something like that.

7           Q     Mr. Van Etten asked you if Mr. Gulinazzo ever told you  
8     about the accident that he had at Great Adventure.

9                     Do you remember that?

10          A     Yes.

11          Q     I want you to assume there has been testimony in this  
12     case that Mr. Gulinazzo testified that that is the accident he  
13     had in 1994 or 1995, all right?

14          A     Okay.

15          Q     So, did Mr. Gulinazzo tell you about that accident when  
16     he saw you for the first time in July of 2016?

17          A     He told me about an accident in 1995. If that was the  
18     Great Adventure accident; then, yes, we discussed it.

19          Q     So he told you about that? You knew about that?

20                     MR. VAN ETTEN: Objection.

21                     THE COURT: Yes. Sustained.

22          Q     Mr. Van Etten asked you about an EMG that Dr. Datta  
23     performed in 2013, one that you performed in July of 2016 and the  
24     different findings. Do you remember that, those questions, that  
25     testimony?



1           A     Yes.

2           Q     Now, when you did your EMG, that was after  
3     Mr. Gulinazzo did have the lumbar fusion surgery done; correct?

4           A     Correct.

5           Q     Would you expect an EMG taken three years before and  
6     one taken after the lumbar fusion surgery to have the same  
7     findings?

8           A     No.

9                     MR. VAN ETTEN:  Objection.

10                    THE COURT:  Overruled.  I will allow it.

11           A     No.  I would expect them to be different.

12           Q     How would you expect them to be different?

13           A     Hopefully, if the surgery is successful the nerve  
14     damage identified on the initial electrodiagnostic test would be  
15     improved.

16           Q     All right.

17                     So is there anything unusual about the findings of  
18     radiculopathy on the EMG that you performed being at different  
19     levels from those found on Dr. Datta's EMG taken in 2013?

20           A     They weren't different levels, they were just less  
21     levels.

22           Q     What is the significance of a lack of finding of spasm  
23     during the initial examination you performed on Mr. Gulinazzo's  
24     cervical spine?

25           A     A spasm is an involuntary tightening of a muscle due to

1 some type of underlying injury. A spasm comes and goes. It may  
2 be more or less severe. It may be treated by different  
3 medications.

4 My examination initially didn't show is spasm in  
5 the neck, it did show spasm in the back. The subsequent  
6 evaluation showed spasm in both places. It's really not of any  
7 clinical significance in my opinion.

8 Q Do patients sometimes have spasm one day and not the  
9 next?

10 A Sure.

11 Q So that's a symptom that can wax and wane, it can be  
12 present or absent?

13 A It can.

14 Once again, depending on the state of the spine  
15 and also whether or not the patient has been taking any  
16 medications. In this particular instance, I know he was taking  
17 muscle relaxers. That may have been the reason that I didn't  
18 find spasm.

19 Q That's a good point. What effect would taking a  
20 relaxer have on muscle spasms?

21 A It ideally reduces the level of spasm.

22 Q Mr. Van Etten asked you some questions about  
23 Mr. Gulinazzo going back to work after his accident and  
24 performing light duty or, the testimony has been, for a short  
25 period of time.

1 Do you have any information about what that work  
2 entailed?

3 A Only what was mentioned, sweeping and picking things  
4 up; otherwise I am not aware of what transpired during that week.

5 Q All right.

6 Is it common, Dr. Hausknecht, for symptoms to  
7 worsen or to progress in the immediate aftermath of an accident  
8 over a period of days or weeks?

9 MR. VAN ETTEN: Objection. Beyond the scope.

10 THE COURT: Overruled. I will allow it.

11 A It is.

12 Typically I explain to my patients that after a  
13 traumatic event, the first two or three weeks is usually worse.  
14 Things typically get better over the course of months or years  
15 depending on the nature of the injury.

16 Q Were you aware, doctor, that Mr. Gulinazzo was given  
17 pain medication at Lenox Hill Hospital, Motrin 600 milligrams,  
18 and he continued taking it after he was discharged -- after he  
19 left the hospital on that date?

20 MR. VAN ETTEN: Objection.

21 THE COURT: Overruled. I will allow it.

22 A Yes.

23 Q Doctor, Mr. Van Etten asked you about findings in the  
24 emergency room records from Lenox Hill Hospital about  
25 Mr. Gulinazzo reporting occasional lower back pain due to the

1 type of work he did that he would treat as needed with Aleve.

2 Do you remember that?

3 A I do.

4 Q And what significance did that have to you in  
5 diagnosing -- oh, you didn't have those records when you first  
6 saw Mr. Gulinazzo, correct?

7 A I did not.

8 Q All right.

9 With that understanding now that he had occasional  
10 back pain that he would treat with Aleve on an as-needed basis,  
11 does that change your conclusions or your opinion as to the cause  
12 of Mr. Gulinazzo's severe chronic back pain with radicular  
13 symptoms?

14 MR. VAN ETTEN: Objection.

15 THE COURT: I will allow that.

16 A No, it is not unusual that an individual may have some  
17 aches and pains. That's very different than having severe  
18 shooting pain down the leg with numbness and weakness and an  
19 inability to perform activities.

20 You know, when I treat patients with lower back  
21 problems, I ask them if they ever had any significant prior lower  
22 back problems including sustained pain, treatment, missed work,  
23 that kind of stuff. Occasional aches and pains that require  
24 Aleve, I would not consider that to be clinically significant.

25 Q All right. One last question, doctor.

1                   You mentioned in response to one of my questions  
2                   and one of Mr. Van Etten's questions that you saw evidence of  
3                   osteoarthritis on the cervical spine x-ray done in 2008; do you  
4                   remember that?

5           A       2008?

6           Q       Yes.

7           A       Yes.

8           Q       All right. So osteoarthritis is commonly associated  
9                   with older people. Is it uncommon to find osteoarthritis in a  
10                  person of Mr. Gulinazzo's age at the time that that x-ray was  
11                  taken?

12                         MR. VAN ETTEN: My objection is twofold.

13                         THE COURT: Sustained. It's really the beginning  
14                         part.

15           Q       Is it unusual to find osteoarthritis in a construction  
16                   worker of Mr. Gulinazzo's age at the time that that x-ray was  
17                   taken in 2008?

18                         MR. VAN ETTEN: Objection.

19                         THE COURT: Overruled. You can answer.

20           A       No. It's typical in a 38-year-old construction worker  
21                   to see some degenerative changes. In his cervical spine x-ray  
22                   there was mild arthritis. It's nothing unusual.

23                         MR. TURNBULL: Nothing further.

24                         THE COURT: Anything?

25                         MR. VAN ETTEN: Just two or three, Judge.

1 THE COURT: Should I hold you to that, Mr. Van  
2 Etten?

3 MR. VAN ETTEN: Three? Depends if I get "yes" or  
4 "no."

5 THE COURT: Okay.

6 MR. VAN ETTEN: Thank you.

7 RECROSS-EXAMINATION

8 BY MR. VAN ETTEN:

9 Q On your initial report you were just asked questions  
10 about the significance of the lack of spasms in the cervical  
11 spine and waxing and waning. So when you were asked by  
12 Mr. Turnbull about the spasms in the lumbar spine on that same  
13 day, those same lumbar spine spasms could wax and wane also;  
14 true?

15 A True.

16 Q You were just asked about the Concentra Medical Center  
17 records which you have never seen before, and you were asked  
18 about the pinched nerve and the diagnosis of a pinched nerve that  
19 may have been provided to Mr. Gulinazzo before starting physical  
20 therapy. So I am going to show you the Concentra Medical Center  
21 that are marked into evidence as Plaintiff's Exhibit 15 in  
22 evidence. And I will show you the visit of October 4, 2013, four  
23 days before that physical therapy note. Can you tell me what the  
24 assessment was on that day by the doctor or the PA?

25 A Assessment: Back contusion, back strain, lumbar strain

1 shoulder strain.

2 Q Where does it say "pinched nerve"?

3 A I don't see that it says "pinched nerve" in this  
4 report.

5 Q Thank you.

6 THE COURT: That's it?

7 MR. VAN ETEN: That's it. I told you three.

8 THE COURT: Any redirect?

9 MR. TURNBULL: No, your Honor.

10 THE COURT: Doctor, congratulations. You made it  
11 through.

12 THE WITNESS: Thanks.

13 THE COURT: You are free to leave us. We  
14 certainly do appreciate your time.

15 THE WITNESS: Leave my file here?

16 THE COURT: Yes. Keep in touch. Let us know what  
17 it is you need -- actually, counsel, can we break now?

18 MR. TURNBULL: Sure.

19 MR. VAN ETEN: Yes.

20 THE COURT: (To the witness) I know you need to  
21 make some copies?

22 THE WITNESS: Well, Wade --

23 THE COURT: All right. Ladies and gentlemen, we  
24 will break. It is 12 minutes to 1:00. Please come back --  
25 you guys are always prompt, but I have to say it. Please

1           come back promptly at 2:15. We will continue then with the  
2           evidence in this case.

3                     Please enjoy your lunch. Don't discuss the case.  
4           Keep an open mind.

5                     COURT OFFICER: All rise. Jury exiting.

6                     (Jury steps out of courtroom)

7                     THE COURT: All right. Everybody.

8                     (L U N C H E O N     R E C E S S)

9                     (Off-the-record discussion was held.)

10                    COURT OFFICER: All rise. Jury entering.

11                    (Jury enters courtroom)

12                    THE COURT: Everybody, you can have a seat.

13                    Before we begin, Mr. Able, I want to make sure  
14           that letter is okay, sir?

15                    ALTERNATE JUROR 1: Yes.

16                    THE COURT: I didn't know who to send it to. If  
17           there is anything you want me to change, don't be shy. I  
18           have my laptop here and I will do that.

19                    ALTERNATE JUROR 1: I appreciate it.

20                    THE COURT: If you need something in the future,  
21           let me know. And that goes for everybody. If anybody needs  
22           a letter or anything, let me know. I know this is an  
23           extended experience for you.

24                    Okay, as you can see, Mr. Gulinazzo is on the  
25           stand. We are going to continue with his testimony on



1 direct examination.

2 Do any of the attorneys want me to have him sworn  
3 in again since there has been a gap in time?

4 MR. TURNBULL: No.

5 MR. VAN ETTEN: No.

6 THE COURT: You are reminded you are still under  
7 oath, Mr. Gulinazzo.

8 THE WITNESS: Yes, your Honor. Thank you.

9 SALVATORE GULINAZZO, having been called on behalf of  
10 Plaintiff, having been previously duly sworn, was examined and  
11 testified as follows:

12 DIRECT EXAMINATION (CONTINUED)

13 BY MR. TURNBULL:

14 Q Sal, welcome back.

15 A Thank you.

16 Q I want to go back for just a moment to the moment you  
17 described before when you made impact with the manlift.

18 Do you recall your testimony?

19 A Yes.

20 Q Now, you said you were moving a debris container out of  
21 the elevator at the time, correct?

22 A That's correct.

23 Q When you made impact with the manlift, where was the  
24 container?

25 A The container was in front of me, and it was pinned,

1 basically, up against my chest with my hands out like this.

2 (Indicating)

3 Q All right. So you said it was pinned up against your  
4 chest?

5 A It was not pinned but it was close to my chest where I  
6 was not able to -- not really pinned, but kind of like having me  
7 like this with my arms so that it wouldn't get pinned. My hands  
8 were in front.

9 Q All right.

10 A On the sides, yeah.

11 THE COURT: I need you to describe that for the  
12 record, what he was doing with his arms, with his hands.

13 MR. TURNBULL: Sure.

14 Q So, you testified before that when you were moving the  
15 container out your hands were positioned on the side of the  
16 container?

17 A Yes.

18 Q They remained in that position?

19 A Yes.

20 THE COURT: Actually, maybe I didn't make myself  
21 clear. Let me give it a shot.

22 When Mr. Gulinazzo was just demonstrating with his  
23 arms -- and, Jurors, you saw but I have to put it for the  
24 record. His arms were bent to the front of him and, as he  
25 mentioned to keep from -- I am paraphrasing -- getting

1 pinned more.

2 It looked like you brought your arms a little  
3 closer to your body in the front of you?

4 THE WITNESS: Yes, your Honor.

5 MR. TURNBULL: All right.

6 MR. VAN ETTEN: Your Honor, would you just  
7 describe that? I couldn't see that because of the court  
8 reporter. Did he pull his arms up to his chest under his  
9 chin or were they --

10 THE WITNESS: No. They were on the side bent like  
11 this.

12 THE COURT: Wait. He is sitting, so midway  
13 between waste and chest.

14 MR. VAN ETTEN: Thank you.

15 THE COURT: I don't know if that was accurate,  
16 but, Jurors, you saw it. Thank you.

17 Q Mr. Gulinazzo, you sat through some testimony, you have  
18 seen some photographs marked as exhibits, and there has been some  
19 testimony about the area that is shown in these photographs. I  
20 want to show them to you.

21 First I will show you what was marked as  
22 Exhibit F. Do you see this photograph?

23 A I do.

24 Q Do you recognize what is shown in that photograph?

25 A Yes, I do.

1           Q     There has been a stipulation that this photograph was  
2 taken on October 2, 2017.

3           A     Yes.

4           Q     What is shown in this photograph?

5           A     It looks just like a sheetrock wall. It looks like it  
6 has been covered up from where the elevator used to be.

7           THE COURT: I'm sorry. I am just looking at the  
8 stipulations. We didn't say F, but I think it was implied  
9 because it was a blow-up of C. So I just want it clear for  
10 the record that the stipulation was B, C, D, and E were all  
11 taken on October 2.

12                  So now it's okay to stipulate, Mr. Van Etten, that  
13 F as well was taken October 2?

14           MR. VAN ETTEN: Yes, your Honor.

15           THE COURT: Of 2017.

16           MR. VAN ETTEN: Yes, your Honor.

17           THE COURT: Okay.

18           Q     Do you recognize the area that is shown in this  
19 photograph?

20           A     Yes, I do.

21           Q     Tell us what it is.

22           A     That's the hallway on the fifth floor. That was where  
23 the elevator -- was at the time in 2013, that's where it was.

24           Q     All right. So the elevator is no longer there?

25           A     No.

1           Q     So we see some material, some panels or something --  
2     it's hard to say what it is -- leaned up against a wall; do you  
3     see that?

4           A     I do.

5           Q     Can you tell us in relation to those objects where the  
6     elevator was located?

7           A     I would say they would be where that material is, from  
8     that -- maybe a foot or two off that wall on the left and  
9     basically to the end of that piece of material.

10          Q     Okay. You referred to a wall on the left. We see a  
11     wall projecting out from the wall where you said the elevator was  
12     located, correct?

13          A     Correct.

14          Q     How far in from that wall was the elevator?

15          A     It was about a foot or two.

16          Q     All right.

17                     Now, you testified that after you made impact with  
18     the manlift you were jerked forward by Giovanni. Do you remember  
19     that testimony?

20          A     Yes.

21          Q     You said you fell to the ground?

22          A     Yes, I did.

23          Q     Does this photograph show where you landed?

24          A     Yes, it does.

25          Q     Can you tell us where it is?

1           A     Can I get up?

2           Q     Well, let me come over to you.

3           A     Okay.

4                     So right in between this space here (indicating)  
5     from the wall right up against here.

6           Q     So indicating from the corner of the protruding wall,  
7     that corner and the space where the material or the items are  
8     stacked against the wall?

9           A     Yes.

10          Q     What part of your body was in that area?

11          A     My head, the top of my head.

12          Q     And where was the rest of your body?

13          A     The rest of my body was on an angle with my feet going  
14     in towards the space of the -- out the space of the fifth floor.

15          Q     What happened to the container after you fell to the  
16     floor?

17          A     I'm not really sure. The container wasn't in view when  
18     I fell and hit the ground.

19          Q     Okay. So you don't know where the container was  
20     located when you hit the ground?

21          A     No, I do not.

22          Q     Do you know where Roberto was located?

23          A     No, I don't.

24          Q     Do you know where the shelter woman was located?

25          A     No, sir.

1           Q     You testified before that when you fell to the ground  
2     you looked up and you saw the manlift?

3           A     Yes, that's correct.

4           Q     And you said that it was moving?

5           A     Yes, it was.

6           Q     In which direction was it moving?

7           A     It was moving towards the open -- the big open space  
8     that was on the floor, so it was over to my -- if I was laying  
9     this way, it would be going to my left but towards the open  
10    space.

11          Q     Okay.

12                     You testified a big open space where you were  
13    cleaning up that morning. Is that the same space?

14          A     Yes, it is.

15          Q     Now, could you see how fast the -- could you tell how  
16    fast the manlift was moving?

17          A     I could not.

18          Q     How long did you see it?

19          A     A few seconds.

20          Q     Did you see a person in the manlift?

21          A     Yes, I did. I saw a body in there, yes.

22          Q     Did you hear the manlift making any sounds such as a  
23    beep beep beep?

24          A     No.

25          Q     I believe you said that Giovanni came over to you,

1 correct?

2 A Yes. Giovanni and Frank.

3 Q Who arrived first?

4 A Frank arrived first.

5 Q And Giovanni?

6 A Then Giovanni followed after.

7 Q And what happened to the manlift?

8 A I don't know.

9 Q You said that you got up at some point?

10 A Yes.

11 Q And you took the elevator down to the basement shanty;  
12 do you remember that?

13 A Yes.

14 Q When you got up, got on the elevator, do you know where  
15 the manlift was?

16 A No, I don't.

17 Q Do you know where the container was?

18 A No, I do not.

19 Q Was Roberto there?

20 A In the shanty or up on the floor.

21 Q No, when you got up to take the elevator down to the  
22 shanty.

23 A I don't recall seeing Roberto.

24 Q All right.

25 You testified that down in the shanty you were



1       approached by an electrician. Do you recall that testimony?

2           A       Yes, I do.

3                   MR. VAN ETTEN: Objection.

4                   THE COURT: I will allow that.

5           A       Yes, I do.

6           Q       And you said it was an R.B. Samuels electrician?

7                   MR. VAN ETTEN: Objection.

8                   THE COURT: Sustained. If you want to pinpoint a  
9       particular area --

10                  MR. VAN ETTEN: Asked and answered.

11                  THE COURT: -- I will give you a little leeway to  
12       do that, but don't rephrase the direct.

13       Q       How do you know if the electrician was employed by R.B.  
14       Samuels?

15       A       I recognized him as being part of Frank's crew before,  
16       he was on the job before.

17       Q       You were here when Mr. Brancato testified?

18       A       Yes.

19       Q       From that very chair?

20       A       Yes, I was.

21       Q       And you heard him say that after the accident you and  
22       he got together? He even took you to church?

23       A       That's correct.

24       Q       Do you remember that testimony?

25       A       Yes, I remember.

1 Q Did that happen?

2 A Yes, it did.

3 Q Had he ever taken you to church before the accident?

4 A No, never.

5 Q Had he ever been to your home before the accident?

6 A No, never.

7 Q Who initiated the contact? Did he call you or did you  
8 call him?

9 A No. He reached out to me.

10 Q And when did that happen?

11 A I guess it was a few weeks after, a few days after. I  
12 don't recall really, but he reached out to me just to see how I  
13 was doing, you know, and whatnot, and just to ask me how I was  
14 feeling and how I was getting along.

15 Q When he took you to church, when was that? Was that  
16 2013, 2014, some other time?

17 A Somewhere around 2014.

18 Q And Mr. Brancato said he came over and did some  
19 electrical work on one of your cars?

20 A Yes, I remember that.

21 Q When did that happen?

22 A It has to be a couple of months after the accident.

23 Q Now, when Mr. Brancato took you to church and came over  
24 to your house and called you, did you believe that he was the  
25 person operating the manlift?

1 MR. VAN ETTEN: Objection. Leading.

2 THE COURT: Yes, sustained. Rephrase.

3 Q You testified before that it wasn't Frank Brancato --

4 A Yes, I did.

5 Q -- operating the manlift?

6 A Yes.

7 MR. VAN ETTEN: Objection.

8 THE COURT: I will allow this.

9 Q At some point, did you become aware that Frank Brancato  
10 claimed that he was the person who was operating the manlift?

11 A Yes, I did?

12 Q When was that?

13 A Sometime along my first deposition I was told and  
14 showed some e-mails or something that was written from  
15 Mr. Brancato stating that he was the man driving the manlift.

16 MR. TURNBULL: I think we can stipulate, your  
17 Honor, that his first deposition was taken March 16, 2016.

18 THE COURT: Is that okay to stipulate?

19 MR. VAN ETTEN: That's fine.

20 THE COURT: When you say "first deposition," is  
21 that the one where you learned that? Is that the correct  
22 date?

23 THE WITNESS: Yes, your Honor.

24 THE COURT: Thank you.

25 Q Now, you heard Mr. Van Etten this morning ask

1 Dr. Hausknecht some questions about an intake form you filled out  
2 when you went to physical therapy on October 8, 2013.

3 Do you remember that testimony?

4 A Yes, I do.

5 Q And did you fill out an intake form and check a box  
6 indicating you had a pinched nerve?

7 A Yes, I did.

8 Q Now, between the date of your accident and when you  
9 filled that out, did any doctor, physician's assistant, or  
10 medical professional tell you that you had a pinched nerve?

11 MR. VAN ETTEN: Objection. Leading.

12 THE COURT: Overruled. I will allow it.

13 A I believe when I went to Concentra the physician's  
14 assistant mentioned something about a pinched nerve, and I guess  
15 that kind of stuck in my head.

16 THE COURT: I'm sorry. You are saying you  
17 believed?

18 MR. VAN ETTEN: Objection. Hearsay.

19 THE COURT: Yes. I will sustain the objection and  
20 ask the jurors to disregard the answer.

21 MR. TURNBULL: All right.

22 Q Why did you check that box, Sal?

23 A Because that's what I was told before, that I had a  
24 pinched nerve.

25 Q Before when?

1           A     Before I filled out the application for physical  
2     therapy.

3           Q     Is that before or after your accident of September 25,  
4     2013?

5           A     After my accident when I saw one of the physicians at  
6     Concentra.

7           Q     Did you have a pinched nerve in your back prior to  
8     September 25, 2013?

9           A     Not that I was aware of, no.

10          Q     Now, we talked during your last testimony about  
11     treatments you received from Dr. Dassa, the surgeon who did your  
12     left shoulder surgery.

13                     Do you recall that testimony?

14          A     Yes, I do.

15          Q     Did Dr. Dassa refer you to any other physicians?

16          A     Dr. Dassa referred me to Dr. Datta.

17          Q     What kind of doctor is Dr. Datta?

18          A     A pain management doctor.

19          Q     And when you went to Dr. Datta, what were your  
20     complaints?

21          A     I told Dr. Datta that my complaints were that I was  
22     having shoulder pain, neck pain, back pain, along with some hand  
23     and arm pain.

24          Q     What did Dr. Datta do for you?

25          A     Dr. Datta prescribed some medication. He also told me

1 to follow up with physical therapy.

2 Q All right. So you were doing physical therapy?

3 A Yes.

4 Q Was that at Total Rehabilitation?

5 A Yes, it was.

6 Q How often were you doing physical therapy?

7 A We started off about three or four days a week.

8 Q How long did you do that?

9 A It was pretty consistent. I don't know exactly how  
10 many times because it's been a long time, but it was a lot.

11 Q What parts of your body were you getting physical  
12 therapy for?

13 A I was getting physical therapy on my shoulder and my  
14 back.

15 Q All right.

16 And was the physical therapy -- you talked about  
17 your shoulder with Dr. Dassa. The physical therapy to your back,  
18 what part of your back was that? Was that the lower back?

19 A My lower back, yes.

20 Q Was the physical therapy helping you, making you feel  
21 better?

22 A It was helping me to some degree; but then, you know,  
23 it just wasn't helping anymore. I got some significant results.  
24 I was feeling better. I was loosening up some tightness that I  
25 was experiencing.

1           Q     Did your pain symptoms resolve because of the physical  
2     therapy?

3           A     No, they never resolved.

4           Q     Did you return to Dr. Datta and report that?

5           A     Yes, I did.

6           Q     And what did Dr. Datta recommend?

7           A     Dr. Datta recommended a series of steroid shots to my  
8     lower back.

9           Q     All right.

10                     Did you have a series of steroid shots to your  
11     lower back?

12          A     Yes, I did.

13          Q     How many?

14          A     I believe there was a series of three.

15          Q     All right. How far apart were they?

16          A     I guess they were a few weeks from each other.

17          Q     Did you get any relief from those injections?

18          A     Somewhat, yes.

19          Q     Okay.

20          A     But the pain just kept coming back.

21          Q     All right.

22                     Did you have any injections to any other part of  
23     your body besides your lower back?

24          A     I also had a series -- one injection to my neck, to my  
25     cervical.

1           Q     All right.  Is that before or after the injections you  
2     had in your back?

3           A     That was after my back.

4           Q     Did you get any relief from that injection that you had  
5     to your neck?

6           A     Not really.  I was scheduled for another series of  
7     shots, but that very morning I received a phonecall saying that  
8     it was denied, so I --

9                     MR. VAN ETTEN:  Objection.

10          A     -- did not go.

11                    THE COURT:  Yes.  Sustained.

12                    Please don't tell us what you learned.

13                    Ask the next question.

14          Q     So, Sal, you said you had a second injection to your  
15     cervical spine that was scheduled but canceled?

16          A     Correct.

17          Q     Do you know why it was canceled?

18                    MR. VAN ETTEN:  Objection.

19                    THE COURT:  What was your understanding, I will  
20     allow that.

21                    THE WITNESS:  My understanding is that it didn't  
22     go -- it wasn't approved, your Honor.

23                             (Continued on next page)

24

25



1 Q Was it your intention to have that injection performed?

2 A I was ready to get it done, yes, that morning.

3 Q All right. So, Sal, you've done physical therapy,  
4 you've done lumbar spine injections, cervical spine injections?

5 THE COURT: I'm not sure how this could not be  
6 leading. You're on a path, I don't want to interrupt you.

7 MR. TURNBULL: Withdrawn, your Honor. I'll  
8 rephrase it.

9 THE COURT: I will allow a little bit of leeway to  
10 pinpoint the subject matter but that's it. Pinpoint and ask  
11 your question without rephrasing the whole testimony.

12 Q You've had physical therapy, you've had injections,  
13 what was next?

14 THE COURT: I'll take it.

15 A The next step we discussed surgery.

16 Q Who did you discuss that with?

17 A I discussed it with Dr. Datta.

18 Q With anyone else?

19 A I also discussed it with Dr. Dassa and I also discussed  
20 it with another doctor that came into the picture.

21 Q Who was that?

22 A Dr. Merola. Dr. Andrew Merola.

23 Q When did you first see Dr. Merola?

24 A I saw Dr. Merola sometime in 2015. I believe it was  
25 January 2015.

1           Q     Before seeing Dr. Merola, did you consult with any  
2 other surgeons?

3           A     Yes, I did.

4           Q     Who?

5           A     I consulted with a doctor named Dr. Radna.

6           Q     What type of doctor is Dr. Radna?

7           A     Dr. Radna is a neurosurgeon.

8           Q     Who referred you to see Dr. Radna?

9           A     My attorneys from the worker's accident system.

10          Q     Now, after your consultation with Dr. Radna, did you  
11 discuss surgery at that consultation?

12          A     With Dr. Radna, yes.

13          Q     And what did you discuss in terms of surgical options?

14          A     He explained to me what the surgical procedure would be  
15 and I just couldn't understand and I just couldn't accept the  
16 fact that the severities of the injuries were to be done with a  
17 surgical procedure that I was told about that I was going to  
18 get.

19          Q     How did you feel about having surgery to your lower  
20 back?

21          A     I felt very nervous, scared, apprehensive. Just all  
22 these things were going through my mind like I have to be cut  
23 open.

24          Q     Now, you said you saw Dr. Merola testify here in court;  
25 correct?

1           A     Yes.

2           Q     You testified that you saw him to get a second opinion?

3           A     Correct.

4           Q     Who referred you to Dr. Merola?

5           A     A friend of mine from the union that I worked with, a  
6     guy named Charlie Caruzzo (phonetic).

7           Q     Was he a patient of Dr. Merola?

8           A     I believe so, yes.

9           Q     When you went to Dr. Merola did you explain to him how  
10    your accident happened?

11          A     Yes, I did.

12          Q     Did you tell him what your complaints were?

13          A     Yes, I did.

14          Q     What were your complaints?

15          A     At that time I was telling him that I had pain in my  
16    neck and pain in my back with pain radiating down my legs into  
17    my feet, into my toes, just stiffness.

18          Q     Did Dr. Merola review your prior MRIs?

19          A     Yes, he did.

20          Q     Did he do a physical examination of you?

21          A     Yes, he did.

22          Q     Did you give him a history of your treatment including  
23    physical therapy, the epidural steroid injections?

24          A     Yes, I did.

25          Q     Did you discuss surgery with Dr. Merola at that initial

1 visit?

2 A Yes, we did.

3 Q And what did you discuss in terms of surgical options?

4 A He told me that I needed -- because of the injuries I  
5 needed a spinal laminectomy.

6 Q Laminectomy?

7 A Yes.

8 Q Was that the same surgery that you discussed with Dr.  
9 Radna?

10 A Yes.

11 Q Okay. A second doctor is confirming that you need the  
12 surgery, how did that --

13 MR. VAN ETEN: Objection.

14 THE COURT: Sustained.

15 Q How did you feel about having the surgery at that  
16 point?

17 A Now it was surreal because I didn't have any other  
18 options and I knew this was something that had to be done.

19 Q Did Dr. Merola refer you to any physicians or  
20 facilities?

21 A Yes, he did.

22 Q Who did he refer you to?

23 A He referred me to a Dr. Jose Colon.

24 Q Dr. Colon, we heard testimony from his associate, Dr.  
25 Villarreal?

1           A     Correct.

2           Q     What type of doctor was Dr. Colon?

3           A     A pain management doctor.

4           Q     When you went to see Dr. Colon, did you discuss with  
5 him the surgical option that had been presented to you?

6           A     Yes, I did.

7           Q     At some point did you make a decision to go forward  
8 with the surgery?

9           A     Yes, I did.

10          Q     When did you have the surgery performed?

11          A     I believe it was early spring 2015.

12          Q     Where was it performed?

13          A     At the -- it used to be the Beekman Hospital, now it's  
14 called Presbyterian, New York Presbyterian.

15          Q     It's the one downtown?

16          A     Presbyterian Hospital downtown.

17          Q     How long were you in the hospital?

18          A     I was in the hospital for about six days.

19          Q     So tell the jury a little bit about the surgery and  
20 your time in the hospital and what you did during that period?

21          A     Well, from the time I decided to have surgery --

22          Q     I'm talking about your time in the hospital, those six  
23 days?

24          A     My time in the hospital was very intense after the  
25 surgery. I couldn't even begin to imagine what was going on. I

1 know I had surgery done. I know there was hardware placed on my  
2 body. There was a lot of recovery. There was a lot of pain.  
3 There was a lot of medications that was given to me, pain  
4 medications to relieve that pain. The stiffness.

5 Q Did you start the rehab process when you were in the  
6 hospital?

7 A Yes.

8 Q What did that entail?

9 A The initial therapy that they started as soon as I was  
10 able to actually walk, they begin to teach me how to walk with a  
11 walker.

12 Q So you did that while you were in the hospital?

13 A Yes.

14 Q All right. After six days were you discharged?

15 A Yes, I was.

16 Q What were your instructions on discharge?

17 A My instructions on discharge was to go home and as soon  
18 as I was able to start physical therapy go back to physical  
19 therapy but continue to do the things that they taught me in the  
20 hospital with the walker. Walk around, try to keep mobile once  
21 or twice a day, if I could do more great.

22 Q Now, at some point did you start physical therapy?

23 A Yes, I believe it was like four to six weeks after the  
24 surgery.

25 Q Where were you doing your physical therapy?

1           A     I started the physical therapy at Total Rehabilitation  
2     in New Jersey.

3           Q     Tell us about the rehabilitation, what were you doing,  
4     how often were you doing it, and what specific treatment  
5     modalities you were getting?

6           A     Basically what the physical therapist was doing for me  
7     was a series of all types of therapy. We started off with some  
8     motion exercises, some lifting of the legs, they call it a dog  
9     leash. You put it on the bottom of the foot, you raise it up as  
10    much as you can, you hold it up for as many counts as the  
11    physical therapist tells you to do.

12                There was also some treadmill incline, decline. Not  
13    right away, that was just regular. Walking gradually. I  
14    graduated to incline, decline. There was a stationary bicycle,  
15    moving the legs in circular motions, standing by a solid surface  
16    placing my hands on the solid surface, lifting my feet up and my  
17    heels up and then there was some other things that were with  
18    cushions underneath my feet, underneath my legs.

19                After that, of course, there was -- they gave me tens  
20    units. They hooked up these little patches of things on my  
21    back, they were giving me stimulation on my back along with ice.  
22    Icing of the therapy because of all the activity, the swelling.

23           Q     Over time did the physical therapy make you feel  
24    better?

25           A     Yes. At some point it did, yes.

1           Q     All right.  So after the surgery did you notice any  
2     improvement in the symptoms that you had prior to this?

3           A     Yes, I did.

4           Q     Did that improvement continue?

5           A     It continued for a little while, then it started to go  
6     down, I started to feel pain again.

7           Q     And did you report that to your doctors?

8           A     Yes, I did.

9           Q     Did you report that to Dr. Colon?

10          A     Yes, I did.

11          Q     And did he recommend any course of treatment for you?

12          A     Dr. Colon and I discussed -- he actually told me about  
13     the spinal stimulator implant.

14          Q     We heard testimony about a spinal cord stimulator  
15     implant.  Dr. Villarreal walked us through that procedure.  So  
16     you had that done?

17          A     Yes, I did.

18          Q     When did you have that done?

19          A     There was a trial basis in the beginning which I guess  
20     determined whether or not I was a candidate for this spinal  
21     stimulator.  I was explained that it may or may not work --

22                 THE COURT:  I have to cut you off.  The question  
23     was, when did you have it done.

24          A     When did I have it done?  Sometime in 2016.  I'm going  
25     to say maybe around March or so, April.



1 Q Was the trial successful?

2 A Yes, the trial was successful.

3 Q So did you have a permanent done?

4 A Yes. Shortly after that it was scheduled, yes, and I  
5 had it implanted, yes.

6 Q How did you feel about having the spinal cord  
7 stimulator procedure done?

8 A It really was scary. Again, going under, not as  
9 intense as the back surgery was but still had to go under  
10 anesthesia, the thought of that. The being sliced on my back,  
11 implanting leads to my back that was attached to my spine and  
12 then hooked up to a battery that was implanted in my buttock. I  
13 felt scared again, I felt very unsure.

14 Q But did you get relief from it?

15 A Yeah, it worked. It helped.

16 Q Okay. You said it worked. It helped. How much relief  
17 did you get from it?

18 A A significant amount.

19 Q All right. Now, after you had the spinal cord  
20 stimulator, did your pain go away?

21 A After a little while, yes, it did. It didn't go away  
22 but I still felt some pain but the pain was much lower than it  
23 was before.

24 Q How about the radiating pain that would go down from  
25 your lower back to your lower extremities; did that go away?

1           A     Not really. It did a little bit but I still felt it.  
2 I still felt the radiation, the numbness, the tingling, the  
3 burning, the throbbing in my feet.

4           Q     Now, you testified that when you first saw Dr. Merola  
5 your complaints related not only to your lower back but also to  
6 your neck?

7           A     Correct.

8           Q     Did you continue to follow up with Dr. Merola with  
9 respect to your neck?

10          A     Yes, I did.

11          Q     Describe the pain that you were feeling in your neck  
12 and the radiating pain that you --

13                   MR. VAN ETTEN: Objection.

14                   THE COURT: I'll allow it. Was it to radiating?

15                   MR. VAN ETTEN: Leading again.

16                   THE COURT: I'll allow it. Overruled.

17          A     The pain that I described -- the pain that I remember  
18 describing to Dr. Merola was very intense. I would get pain in  
19 my neck that would radiate across my trapezius into my shoulder  
20 down my left shoulder into my left arm into my hands with  
21 tingling sensation in my fingertips.

22          Q     Sal, prior to the date of your accident on September  
23 25, 2013, had you ever felt that kind of pain before?

24          A     No, I never did.

25          Q     Prior to the date of your accident on September 25,

1 2013, had you ever felt the shooting pain down your lower  
2 extremities?

3 A No.

4 MR. VAN ETEN: Objection. Asked and answered.

5 THE COURT: Overruled. I'll allow it.

6 Q You saw Dr. Hausknecht today?

7 A Yes, I did.

8 Q You saw him testify today?

9 A Yes, I did.

10 Q So at some point you begin treating with Dr.  
11 Hausknecht?

12 A Correct.

13 Q And when you saw Dr. Hausknecht, did you make the same  
14 complaints to him?

15 A Yes, I did.

16 Q And you continued to follow up with Dr. Merola?

17 A Yes, I did.

18 Q Were you doing physical therapy during this period for  
19 your neck?

20 A Yes, I was.

21 Q And was that alleviating your symptoms?

22 A It was alleviating to a certain degree but the pain was  
23 still there. The pain was generating, radiating, throbbing  
24 going down by arm, tingling sensation.

25 Q You heard Dr. Hausknecht testify today about a test he

1 did on you called an EMG; you recall that?

2 A Yes, I do.

3 Q Aside from that, did Dr. Merola or Dr. Hausknecht refer  
4 you for any other diagnostic tests such as CAT scans or MRIs,  
5 anything of that nature?

6 A Can you repeat the question?

7 Q Sure. Did Dr. Merola or Dr. Hausknecht refer you for  
8 any other diagnostic tests such as an MRI or CAT scan?

9 A Yes, they did.

10 Q Who?

11 A Dr. Merola sent me for a new series of MRIs for my  
12 neck.

13 Q All right. So you had those done?

14 A Yes, I did.

15 Q After you had them done, did you return to Dr. Merola  
16 to discuss the results of the MRI?

17 A Yes, I did.

18 Q Without telling us what Dr. Merola told you, can you  
19 tell us what your understanding of your condition with respect  
20 to your neck was when you did those MRIs with Dr. Merola?

21 A He said there was damage to my neck, cervical damage.  
22 There was discs, there was vertebrae that was damaged.

23 Q Did he recommend a course of treatment?

24 A Yes.

25 Q What did he recommend?

1           A     He recommended to go for cervical spine surgery.

2           Q     What type of cervical spine surgery?

3           A     I believe it was sort of like the one that I had for my  
4 back.

5           Q     All right. How did you feel about that?

6           A     Again, it was -- I just emotionally I couldn't believe  
7 that I had to go under the knife again, now my neck.

8           Q     Did you have the surgery done?

9           A     I did.

10          Q     When was that?

11          A     I believe that was in early summer, I think in 2017,  
12 something like that.

13          Q     Where did you have that surgery?

14          A     I had that surgery done at Mount Sinai Hospital.

15          Q     Did you have to stay in the hospital after the surgery?

16          A     Yes, I did.

17          Q     How many days were you in the hospital?

18          A     I would say I was there about three to five days.

19          Q     While you were in the hospital after the surgery, did  
20 you start undergoing rehab?

21          A     Eventually I did, yes. After I recovered from surgery  
22 I was able to start physical therapy, I did, yes.

23          Q     While you were in the hospital --

24          A     Yes, I was doing some little exercises and stuff that  
25 they gave me but it was more when I came home.

1           Q     All right.  When you were sent home, discharged to  
2     leave the hospital, were you given any sort of equipment,  
3     anything to help you in your recovery?

4           A     I was given a bone density something.  It was like a  
5     collar that came on my neck and I was to wear that as needed --  
6     as given the instructions.

7           Q     And what were the instructions, how often were you to  
8     wear that?

9           A     I was to wear that for, I think about an hour or so a  
10    day.  If I wanted to do it twice, it's fine, but anywhere  
11    between an hour or so a day.

12          Q     Did you comply with those instructions?

13          A     Yes, I did.

14          Q     Now at some point I think you mentioned you started  
15    doing physical therapy?

16          A     Correct.

17          Q     Where did you do that?

18          A     I started doing physical therapy at Nova Care in Little  
19    Lake Harbor, New Jersey, where I moved previously.

20          Q     And did you go every scheduled day of your physical  
21    therapy, did you keep all of your appointments?

22          A     Yes, I did.

23          Q     Did you keep all of your physical therapy appointments  
24    for your lower back when you were doing physical therapy for  
25    your lower back?

1           A     Yes, I did.

2           Q     Did you ever miss a day?

3           A     The only time I missed days is when it wasn't approved  
4 and there was some gaps in between.

5           Q     So were you able to do all the physical therapy you  
6 wanted to do?

7           A     Not all that I wanted to do, all that I can do because  
8 of the gaps in between.

9           Q     Was the cervical spine surgery that you had done, was  
10 it successful?

11          A     Yes, it was.

12          Q     Did it alleviate your symptoms?

13          A     To a degree, yes.

14          Q     All right. Tell us about that. I mean, did it  
15 alleviate your neck pain?

16          A     It relieved it a little bit. In the beginning it was a  
17 significant improvement from what it was before.

18          Q     How about the shooting pain that you described to go  
19 down your arms and the numbness and complaint in your hands, did  
20 that improve?

21          A     It improved somewhat, but the tingling and numbness is  
22 still there.

23          Q     Now, you testified last time you were here that in  
24 November of 2015, I believe, you followed up with Dr. Dassa and  
25 told him that the impairments that you had before the shoulder

1 surgery had resolved?

2 A Yes.

3 Q Did that change?

4 A Yes, it did.

5 Q Did you return to Dr. Dassa and tell him that?

6 A Yes, I told Dr. Dassa that I was experiencing pain  
7 again, cracking, popping, again with some pain radiating into my  
8 hand, my fingertips.

9 Q What did he recommend, if anything, that you do?

10 A He recommended me to physical therapy and continue the  
11 home exercises.

12 Q So let's talk about that a little bit, home exercises,  
13 tell us about these home exercises. Where did you learn how to  
14 do the home exercise?

15 A I learned to do the home exercises from all the  
16 physical therapy places that I went for physical therapy and I  
17 had sheets that were given to me and I followed the sheets  
18 according to how they were explained but also from  
19 memorialization of how physical therapists taught me how to do  
20 all my therapy and stuff with the bands and, you know, with the  
21 dog leash as I explained earlier.

22 Q So were you given some instruments, you mentioned bands  
23 and dog leash that you were given to do at home with your home  
24 exercises?

25 A Yes.



1           Q     During these gaps that you mentioned when you weren't  
2     able to do physical therapy because it wasn't authorized, were  
3     you doing home exercises?

4                     MR. VAN ETTEN:  Objection.

5                     THE COURT:  Sustained.

6           Q     During the gaps in physical therapy were you doing the  
7     home exercises?

8           A     Yes, I was.

9                     THE COURT:  Please stop leading.  I could be  
10    sustaining a lot more.

11                    MR. TURNBULL:  Thank you, your Honor.

12          Q     Have you done any home exercises consistently?

13          A     Yes.

14          Q     How often do you do them?

15          A     I would say at least once or twice a day, maybe three  
16    or four times a week.

17          Q     All right.  So what parts of your body?  You mentioned  
18    your shoulder, were you given instructions for home exercises  
19    for your lower back and your neck as well?

20          A     Yes.  When I went for physical therapy for my back I  
21    was given some instruction sheets and, again, being taught from  
22    the therapists how to do the exercises for my back and then also  
23    for my neck.

24          Q     So when you went you returned to see Dr. Dassa because,  
25    as you said, you had some symptoms related to your left

1 shoulder, he told you to do physical therapy. Did you go do  
2 physical therapy?

3 A No, I did not.

4 Q Why not?

5 A Because he gave me an option to either go to physical  
6 therapy or continue the home exercises.

7 Q Did you continue the home exercises?

8 A Yes, I did.

9 Q Did you return to Dr. Dassa again?

10 A Yes, I did.

11 Q When was the last time you saw Dr. Dassa?

12 A I saw Dr. Dassa February of this year 2022.

13 Q Why did you see Dr. Dassa on that date?

14 A Because I was experiencing again with the cracking, the  
15 popping and I just wanted him to be aware of what was going on  
16 because he told me to come back if I was experiencing those  
17 again.

18 Q And what did Dr. Dassa recommend?

19 A To continue the home exercises.

20 Q Have you continued to follow up with Dr. Colon's  
21 office, pain management?

22 A Yes.

23 Q How often have you been seeing Dr. Villarreal, his  
24 associate?

25 A I see Dr. Villarreal on about a six to eight week time

1 basis, so approximately every two months.

2 Q How about Dr. Merola, did you continue to follow up  
3 with him?

4 A I continue to see Dr. Merola, I believe I see him in  
5 March of this year 2022.

6 Q Has Dr. Merola given you any instructions, given you  
7 any recommendations with respect to how often you follow up with  
8 him?

9 A If I remember I think he recommended every year or so,  
10 I'm not really too sure.

11 Q During one of your recent visits with Dr. Merola you  
12 heard Dr. Merola testify that he discussed the need for future  
13 surgery to your lumbar spine, your cervical spine; do you recall  
14 that testimony?

15 A Yes, I do.

16 Q Do you recall having that conversation with Dr. Merola?

17 A Yes, I do.

18 Q And how did that make you feel, the prospect that  
19 you're going to need future surgeries to those parts of your  
20 body in the future?

21 A I felt when I heard his testimony and we were  
22 discussing it in his office it just became really real again  
23 that in the future I have to have these surgeries, being cut  
24 open again, being put on anesthesia, going through all the  
25 physical therapy and the doctor visits, x-rays, MRIs, very, very

1 scary being that now I'm getting older.

2 Just being under anesthesia again which is a very scary  
3 part of being under the surgical procedure. Being again cut  
4 open. Being put some more hardware in or changing hardware,  
5 whatever may be in the future that was showing up on x-rays or  
6 MRIs or whatever the findings that Dr. Merola would find.

7 (Whereupon, Senior Court Reporter Rachel Simone  
8 takes over as the official reporter.)

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1 DIRECT EXAMINATION (CONTINUED)

2 BY MR. TURNBULL:

3 Q Sal, Dr. Merola testified that at some point in 2017  
4 you told him you would like to get back into hosting. Did you  
5 hear that?

6 A Yes, I remember him saying that.

7 Q Could you tell us about hosting? What did you mean by  
8 "hosting"?

9 A Hosting doing MC work, like master of ceremony work. I  
10 have done it in the past. I have always been if one way or  
11 another I always been involved with music, with entertaining, and  
12 I thought that that would be something that I could do.

13 Q You said MC work. Could you just describe for us in a  
14 little more detail what that entails? What do you have to do as  
15 an MC?

16 A It would basically be, like, master of ceremonies. MC  
17 is the more phonetic term, I guess. The real term is master of  
18 ceremonies where I would get up with a microphone, walk on stage,  
19 and welcome everybody, thank them for coming to a performance or  
20 a show. And I would introduce, you know, and welcome everybody.  
21 Thank you everybody for coming out. If it was bad weather you  
22 always mention the weather, thank you for coming out, blah, blah  
23 blah. Thank you for braving the weather. Thank you for coming  
24 to support the show. You guys are in for a real treat this  
25 evening. We have a wonderful line-up of a couple of good groups

1       that are here to entertain for you.

2                       You know, sometimes I would sing a song as an  
3       opening to open up for the group. Then sometimes I would just  
4       let them do what they had to do and walk off stage.

5               Q       So these shows, what kind of venues were these shows  
6       in?

7               A       They were in, like, restaurants that had little banquet  
8       halls in the back, restaurant bars.

9               Q       Who produced these shows?

10              A       It is a company called Coll Productions D/B/A Street  
11       Corner Sound Society LLC.

12              Q       Whose company is that?

13              A       That company belongs to a gentleman called John  
14       Colasanti and my dad.

15              Q       All right. So they produced the shows and you would MC  
16       them?

17              A       For the most part, yes.

18              Q       And you said you would occasionally perform or sing at  
19       these shows?

20              A       Yes.

21              Q       Did you sometimes -- were there sometimes dance floors  
22       at these venues?

23              A       Dance?

24              Q       You know, a space where you can dance?

25              A       I mean there is a dance floor, but dancing?

1           Q     Let me ask you, did you ever go out and dance on the  
2 dance floor during one of these shows?

3           A     Yes, I danced, if you want to call it dancing. It's  
4 simple, you know, shuffle to the side, a two-step, you know,  
5 dancing with my wife who is in the audience today, also my mom.

6           Q     Did any doctor ever tell you that that's the kind of  
7 activity you should avoid?

8           A     No. Actually, I was encouraged by the doctors to go  
9 out and do some physical movement as long as I could tolerate it.  
10 I never had them say to me, No, you cannot do a simple slow dance  
11 or shuffle, if you want to call that dancing.

12          Q     Were you compensated for this work?

13          A     Sometimes. Most of the time yes, I was.

14          Q     How much?

15          A     I used to get compensated anywhere between \$75 and,  
16 maybe, \$150 to \$200 depending on the size of the show or size of  
17 the venue.

18          Q     Would you ever get a 1099 or W-2 for that compensation?

19          A     No.

20          Q     After your accident, when did you start doing MC work  
21 for these shows?

22          A     I'm sorry, repeat the question again?

23          Q     When after the accident did you begin doing or hosting  
24 these shows?

25          A     Sometime in 2016.

1           Q     Was it before or after you had the spinal cord  
2 stimulator done?

3           A     It was before I had the spinal cord stimulator.

4           Q     Then did you continue to do them for some period of  
5 time?

6           A     Yes.

7           Q     How often were you doing them?

8           A     In the very beginning when we went, my dad and his  
9 partner started this little -- you know, it really wasn't like a  
10 production company. Basically, it really started out as, kind  
11 of, a social club where people would meet up and people -- you  
12 know, groups would come to our shows that were singing  
13 previously, and they would come and sing some songs. They would  
14 try to promote themselves for other shows and venues that they  
15 were on which were bigger than ours. It was kind of like a  
16 stepping plateau for other groups to come in. They weren't  
17 national, these were just local backyard doo-wop singers that  
18 have been around for quite some time, 40 or 50 years, that never  
19 really made the national chart. So they basically started doing  
20 that.

21                     We started with one venue, you know. It was like  
22 once a month. Then as the years progressed, they incorporated  
23 another venue, and that became two times a month.

24           Q     All right.

25                     Sal, did the MC work that you were doing at these



1 shows require you to do any lifting or carrying of equipment or  
2 other things?

3 A No.

4 Q Did you help promote these shows?

5 A Yes.

6 Q How?

7 A On social media, Facebook.

8 Q Do you have a Facebook page?

9 A Yes, I do.

10 Q Have you ever heard the name Global Ambassador to  
11 Doo-wop?

12 A Yes.

13 Q What is that?

14 A That is a name that I trademarked that was actually  
15 given to me from a DJ from Philadelphia that has been around for  
16 about 58 years in radio. Now because the internet is so big,  
17 radio is kind of obsolete in some fashion and internet is very  
18 big. And this one particular DJ, a disc jockey -- sorry for the  
19 abbreviation, but he is a disc jockey, he coined me in the  
20 beginning. He said you've got to be an Ambassador to Doo-wop,  
21 and I'm going to coin you that Ambassador to Doo-wop because when  
22 I'm not around, maybe, maybe you could take my place. Maybe.

23 Q Okay.

24 A And then from there I started to get --

25 Q Just to be clear, by "ambassador" you don't have any

1 diplomatic credentials, do you?

2 A No, I do not. It is kind of just -- to me it was like  
3 wow, I'm an Ambassador to Doo-wop.

4 As you know, I love '50s and '60s music. I am a  
5 young man, but I grew up with this music in my home. My father  
6 taught me this music, introduced me to this music. It has always  
7 been in my family. It is something that I embraced, something  
8 that I love. It has meaning, the words the melody. It meant so  
9 much to me. I mean, I grew up in an era where it was -- you  
10 know, I was born in '70, so the '70s music was -- you know,  
11 Motown was still coming in. Then sometime in the '70s, doo-wop  
12 came back, you know?

13 And there was this organization, UGHA, out of  
14 Clifton, New Jersey, actually. There was a record shop. And  
15 this gentleman recreated, brought back all the doo-wop music. It  
16 was great. My parents were members of the organization. They  
17 used to take me when I was a kid to shows, 14- or 15-years-old.  
18 I really got -- I really got a love and just a connection with  
19 the music. It meant so much to me, the meaning, the words, the  
20 lyrics, the melodies, thinking about the stories my parents would  
21 tell me when I was a kid of how they used to dance at dances. It  
22 was just very, like, wow.

23 We don't have that today. We don't have that in  
24 our society, so I try to keep the music alive, you know? I try I  
25 to keep the music going. That was always my goal. So that

1 people of age could remember things when they were children, when  
2 they were growing up, were teenagers. It brings back so many  
3 memories.

4 I've helped so many people remember things.  
5 People that are widowed, people that lost children. They always  
6 come to me at the end of these meet-ups and these little shows  
7 that we do, if you want to call them shows or performances, and  
8 they always say to me, Sally G -- that's my call name. There is  
9 no hiding that. Sally G, you are a wonderful man. Thank you for  
10 bringing those memories back. My husband has been dead 25 years,  
11 my children are away, they don't talk to me; but coming here  
12 brings me back life. That makes me feel good because I do it for  
13 the love. I don't do it for anything else.

14 Q How do you feel physically when you are doing these  
15 shows?

16 A In my mind I feel great, but my body gets -- it takes a  
17 little beating. Definitely the next day or so there is  
18 definitely pain, but sometimes that pain is worth it to see the  
19 looks on their faces and to see just people in the audience  
20 having a good time.

21 Q Sal, I want to take you back to your coworker on the  
22 date of the accident, Roberto, who testified. I believe he was  
23 the first witness, so it has been a while. You were here during  
24 his testimony?

25 A Yes, I was.

1           Q     Roberto testified that you reached out to him, you gave  
2     him a call, I believe, before the holidays in 2017?

3           A     Yes, I did.

4           Q     Between that phonecall and your accident, had you had  
5     any other communications with Roberto?

6           A     I believe sometime in 2014 or so, 2015. I believe it  
7     was around in '14 that Roberto reached out to me, and, you know,  
8     he reached out to see how I was doing. I guess he was concerned,  
9     you know. Just a regular phonecall. How are things? How's the  
10    family? We spoke on the job before.

11                    You know, Roberto liked music also. Being that  
12    Roberto was Brazilian, he was into a lot of different music but  
13    was quite open to learn about. And, you know, we used to share a  
14    lot of stuff back and forth with music, dance music, stuff like  
15    that.

16           Q     In any of those conversations you had with Roberto  
17    after the accident, did you ever speak about how the accident  
18    happened?

19           A     No. Never.

20           Q     Sal, there has been some testimony about you are  
21    currently on medical cannabis, correct?

22           A     Yes, I am.

23           Q     When did you start doing that?

24           A     I started medical cannabis in 2021.

25           Q     Why?

1           A     Well, to be honest, which I have to be, I really just  
2     didn't want to continue with the narcotics. I have heard bad  
3     stories. I have heard horrific stories, and I have seen what  
4     these narcotics do to some individuals that get hooked on them.  
5     I didn't want to be that person.

6           Q     The medical cannabis, do you find that helpful?

7           A     Yes.

8           Q     How often do you do it?

9           A     I do medical cannabis every day. Usually if I'm home  
10    and not doing anything, I will do a -- it's called a sativa that  
11    I will do during the day because with sativa you can actually  
12    function. You can actually hold a conversation. You are not  
13    totally oblivious to things. Then at nighttime before I go to  
14    bed, I usually do indica. And Indica -- there's a slang term  
15    that I was taught when I went for consultations. It's that  
16    sativa, again, you could function. Indica means "in the couch."  
17    It puts you, basically, immobile in the couch, so you cannot -- I  
18    mean, it is not like you are totally oblivious, but you are more  
19    relaxed.

20          Q     Sal, you use a cane?

21          A     Yes.

22          Q     Why do you use the cane?

23          A     As everybody could see, I do use a cane. This happens  
24    to be one of my favorite canes that I use. I use it because I am  
25    afraid. I am still a little unstable when I walk. Sometimes I

1 feel my legs give out. I feel, you know, the tingling sensations  
2 and whatnot.

3 I use the cane to keep general public afar from me  
4 because I am afraid that -- and it has happened. People have  
5 come up to me, Wow, I haven't seen you in a long time and -- and  
6 we are huggers. I am a hugger. I don't know if you guys are  
7 huggers, but, you know, in my family we are huggers. I have  
8 always grown up like that with embracement. It's sincere. How  
9 you been, Buddy? One time I was hugged a little bit too tight  
10 and I said, Whoa, I had surgery and stuff. Easy, please. They  
11 were like, Wow, I forgot you had surgery.

12 So I keep it as a -- to keep people away from me  
13 because I am scared that they will come up to me out of nowhere.  
14 So if they are walking they will see this and they will, kind of,  
15 like take a couple of steps further. So it's in case of my  
16 imbalance or if they should bump into me, especially in the  
17 streets of New York City.

18 Q Now, Sal, you are in court today with your wife, Laura?

19 A Yes, my wife, Laura, is there.

20 Q When did you and Laura marry?

21 A Laura and I married this year, July 28, 2022.

22 Q Where do you reside?

23 A In Pennsylvania.

24 Q Where in Pennsylvania?

25 A We live in Monroe County in Saylorsburg in the

1 foothills of the Pocono Mountains.

2 Q Do you plan on staying there?

3 A Yes.

4 Q Were you previously married before you married Laura?

5 A Yes, I was.

6 Q When did that marriage end?

7 A That marriage ended in -- sometime in 2018. We  
8 separated after being with each other since 1998.

9 Q The injuries that you suffered in this accident, did  
10 they have an affect on that marriage?

11 A Yes, they did. They -- I'm sorry.

12 THE COURT: Take your time. Would you like to  
13 take a break, Mr. Gulinazzo?

14 THE WITNESS: No. I am okay, your Honor.

15 MR. VAN ETTEN: Actually, your Honor, may I?

16 THE COURT: Yes, okay. We will take a break.

17 I will ask you all to step out. Keep an open  
18 mind. We will bring you back as soon as possible.

19 COURT OFFICER: All rise. Jury exiting.

20 (Jury steps out of courtroom)

21 (Short recess taken)

22 COURT OFFICER: All rise. Jury entering.

23 (Jury enters courtroom)

24 THE COURT: Be seated.

25 You may proceed when ready, counsel.

1 MR. TURNBULL: Thank you, your Honor.

2 Q So, Mr. Gulinazzo, Sal; before the break you were  
3 telling us about the affect your injuries had on your prior  
4 marriage?

5 A Yes, prior to me getting emotional. It had a lot of  
6 affects on my marriage. In the beginning it wasn't so much, too  
7 much. My wife at the time was very attentive. My stepdaughter  
8 really wasn't around but my daughter was around, the one I had  
9 with the woman I lived with. You know, my wife, ex-wife. And  
10 things just seemed to gradually start to drift. I am not  
11 thinking anything of it because of what am I going through, you  
12 know? I am thinking about other things. I am thinking about  
13 surgeries. I am thinking about, you know, physical therapy,  
14 implants, all this hardware going into my body and being placed  
15 there, hearing the doctors during the course of, you know, visits  
16 and whatnot. Not too -- like, not too thoughtful, but as they  
17 testified and explained --

18 Q Sal, I would like you to focus on the effects that your  
19 injuries had on your marriage.

20 A Like I said, in the beginning it was okay. My wife was  
21 attentive, but then it started to dwindle and the effects were  
22 shown. Eventually, at the end my wife and I split up and she  
23 actually left me.

24 Q Do you attribute that to the injuries?

25 A Yeah. She always -- during the last couple of years



1 after the surgeries were all done and whatnot up until 2018, I  
2 was always ridiculed. I was always -- I was always being told  
3 that I was less of a man, that --

4 MR. VAN ETTEN: Objection, your Honor. Hearsay.

5 Not a party. I apologize having to do this.

6 THE COURT: Sustained as to that.

7 Q How did your wife make you feel?

8 A My wife made me feel like I wasn't 100 percent man  
9 anymore. She made me feel inadequate in the bedroom. She made  
10 me feel inadequate with our relationship. She made me feel  
11 inadequate with raising our children. She made me feel  
12 inadequate of how could I just sit around after surgeries and not  
13 do nothing, not go back to work doing what I was doing. Then  
14 eventually the marriage went down. I even offered at some point  
15 to have counseling. She was in no agreement with that at all.

16 Q All right.

17 Sal, because of your injuries, are there  
18 activities that you used to enjoy, that you used to do before  
19 your accident that you no longer do or don't do as much?

20 A Well, during the course of summers or times when I had  
21 off from work, if there was a gap in between a job I finished up,  
22 we would always try to make the best of it or try to get some  
23 weekends in when I wasn't working weekends because I did work  
24 weekends, I worked holidays, I worked nighttime, I worked  
25 daytime, whatever the job was. But I do -- I have a lot of

1 limitations now of doing what I used to love to do, which was  
2 like fishing, camping. You know, not just -- you know, camping  
3 with the family. Going out and finding the right spot, you know?  
4 Finding that great location, pitching the tent, getting  
5 everything ready, getting the fire all set up, getting everything  
6 ready with the kids. You know, it was quite enjoyable. I mean,  
7 I was a Boy Scout, you know? I learned how to do all that from  
8 being in the Boy Scouts. My dad was a -- my dad and my mom were  
9 both involved in the Boy Scouts. My mom was a --

10 Q Sorry to cut you off.

11 Have you been fishing or camping since the date of  
12 your accident?

13 A I have been. I tried a few times, but it is difficult  
14 sitting in a position for a long time and then having to get up.

15 I think in my deposition I do recall that I was  
16 attempting fishing one day and my line must have got something  
17 really big. It took my whole entire pole into the lake. I  
18 wasn't able to retrieve it because I wasn't able to run to  
19 retrieve it fast enough.

20 Q Sal, how old are you now?

21 A I just turned 52 years old.

22 Q On the date of the accident how old were you?

23 A I was -- I just turned 43.

24 Q And how long did you plan to work as a Local 79  
25 laborer?

1           A     I planned to work in this industry to 61 or 62 years of  
2     age.

3           Q     Now, you were a shop steward. Did you have other  
4     aspirations or goals or plans with regard to Local 79?

5           A     I sure did.

6           Q     Tell us about those.

7           A     I wanted to take advantage of every aspect that the  
8     union, my Local 79, offered. There was a lot of potential for  
9     movement. There was a lot of potential for lateral movement in  
10    Local 79 general building trades and construction. One would be  
11    an organizer, which I completed a course. I went to a course in  
12    Rutger's University. I took a course in organizing. I passed.  
13    I was considered a part-time organizer. I even have my jacket  
14    still with my name on it. The memories are great.

15                   Then from there, there was potential to become a  
16    business agent which is a field agent that goes into the field,  
17    solves problems on the job site, talks to the shop steward on a  
18    weekly basis of how the job is going and if there are any  
19    problems. You know, fortunately for me I never had those  
20    problems because I really -- I really gave myself in anything  
21    that I ever did and have done in my life, you know, I always set  
22    my goal at 155. I never really set it at 100 percent. I was  
23    satisfied with 100 percent when I could do 100 percent, but it  
24    always was 155. I never had a business agent come to my job site  
25    and remove me from my job site because I was not doing my job

1 correctly or whatnot.

2 Q Those opportunities you discussed, organizer or  
3 delegate, are those opportunities still open to you?

4 A Not with this long period of time that I have been out  
5 of Local 79. It has been a nine-year gap, nine years plus. And  
6 those opportunities are gone because you have to basically be  
7 involved still with the flow.

8 Q Did it become apparent to you at some point after your  
9 accident you were not going to be able to return to construction?

10 A Yes. It became apparent and it also became surreal.

11 Q When did you come to that realization?

12 A After I had the back surgery I knew that I was not  
13 going to be able to perform in the capacity that a laborer, a  
14 general laborer could even possibly do the work that demands to  
15 be done as a laborer.

16 Q Do you want to work, Sal?

17 A Absolutely I do.

18 Q Since your accident have you made attempts to find  
19 other work?

20 A Yes, I have.

21 Q What have you done?

22 A In 2019 I started doing this application called  
23 Instacart. It's a delivery service of groceries. I did it -- I  
24 attempted to do it with my wife, Laura. It was pretty good. You  
25 know, I was getting the flow of it. It was pretty good.

1           Q     Does that require you to actually lift and carry  
2 groceries?

3           A     It depends. That's why I worked with my wife. She  
4 would do most of the bringing the groceries to the people's home.  
5 And at that time we were just transitioning into COVID so it was,  
6 like, 50/50. People would say, Leave it on my doorstep or, Leave  
7 it in my garage so forth and so on. In Pennsylvania, you know,  
8 people have driveways, garages. There's also barns. There are  
9 farm animals and everything around.

10          Q     What other attempts have you made to find work?

11          A     I attempted to try to do, like, some kind of a delivery  
12 with, like, auto parts or something from Pep Boys or Advanced  
13 Auto, any of those delivery services because where I live it  
14 wasn't too close -- it wasn't too far from where I lived, so it  
15 would be pretty convenient for me to go and work at these places.  
16 When I did initially apply, I did not apply online nor did I  
17 apply with a paper application. I spoke with the manager first  
18 because the manager gave me some of her time -- or his time. And  
19 one of the questions that they automatically asked me was, you  
20 know, about my injury, what happened? I explained that I am  
21 disabled, I am injured and whatnot. And they said, Okay, not a  
22 problem. They asked me what kind of medications I was taking. I  
23 explained to them that I was taking on a daily basis the  
24 medicinal cannabis. From that point on, they turned around and  
25 they said, Well, since you are under the medicinal cannabis, you

1 cannot and you will not drive one of our vehicles.

2 (Continued on next page)

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1 Q Have you made any other attempts to find work?

2 A Yes, I did. I attempted to -- I actually did get  
3 involved with OVR, occupational -- VOR, vocational --

4 Q Tell us what it is?

5 A Vocational occupational rehab, something like that.  
6 What it basically is, is an organization that helps you find  
7 work in a capacity that you're able to work in something that  
8 fits your criteria that's not too hard. Something that kind of  
9 fits in with sitting, getting up, basically what I was told that  
10 I could do from my doctors.

11 Q Are you still working with that organization?

12 A Yes, I am. I'm in the process right now working with  
13 another -- with a subsidiary of theirs that actually finds you  
14 work.

15 Q How does it feel to be looking for work?

16 A Well, it feels really good that actually there is an  
17 organization out there that can help you try to find a job that  
18 could fit whatever the injuries that I have and so forth and so  
19 on. It feels good that there's somebody out there looking that  
20 can help me, direct me to these various jobs that I could try to  
21 attempt to, you know, put into action.

22 Q Okay. Sal, today, presently, do you still feel pain?

23 A Yes, I do.

24 Q What parts of your body?

25 A If you want to start from the top, my neck still has

1 pain. It radiates down my left shoulder into my arm into my  
2 hand into my fingertips going down to the lower part. Let's  
3 connect my shoulder, my shoulder still has limitations of how  
4 high I could raise it without it being uncomfortable, cracking,  
5 popping. Going down to my back, stiffness, pain that radiates  
6 down both sides of my legs, right and left, down my legs.

7           It's bearable, some days are better than others. I  
8 will not kid you with that but for the most part it's always  
9 there. I try to disguise it. I try to think of other things  
10 like music. Now my wife and I have been blessed with  
11 grandchildren. Not mine by blood but my stepdaughters love me  
12 just as much as their dada that's deceased and almost two and  
13 two months old, a little boy and a girl.

14       Q     So what does a typical day look like for you, Sal?

15       A     A typical day for me is getting up in the morning,  
16 getting out of bed, wife is usually up in the morning, she's  
17 usually getting things prepared whether it be paying bills,  
18 going to the post office, doing our daily chores, shopping,  
19 picking up groceries and whatnot.

20           Most of the days is, you know, I'm very involved with  
21 myself with music. Music has always been a passion of mine. I  
22 try to fulfill my day with that to fill the voids that this  
23 injury has caused. Try not to think about the future too much  
24 about future surgeries and whatnot but it's inevitable as you  
25 heard the doctor speak today.



1           Q     So when you look into the future, how do you feel?

2           A     Again, like I said before, very scared, very unsure,  
3     just not knowing what the next step is going to be or what's  
4     going to happen in the future. If the surgeries don't work, you  
5     know, will I be wheelchair bound. I don't know. These things  
6     go through my mind.

7                     It's scary, you know, but, you know, one thing that I  
8     do have in my life is I've always been a positive person. I've  
9     always been optimistic, right, wrong, or indifferent I've always  
10    been optimistic. Being optimistic is giving me a better sense  
11    -- a better quality of life that I'm trying to achieve and  
12    moving forward with these surgeries that the doctors have  
13    testified that will have to be in the future and it's scary.

14                    I'm not going to sit here and tell you that it's not,  
15    it's very, very surreal and it is very scary. But one thing I  
16    know that for sure because I am a positive person and I have my  
17    family, my friends, I will not let this beat me. I can't. I  
18    have too much in my life to look forward to. I have other  
19    stepdaughters that are going to graduate and get older and get  
20    married and have children, God willing, you know, paw paw wants  
21    to be around for the grandchildren and my stepdaughters who  
22    treated me with only love, compassion. And that's the scary  
23    part that I won't be able to go fishing with my grandchild or  
24    take him camping or show him how to use tools and build stuff.  
25    That's the surreal part.

1           Q     All right. Thank you Sal. Nothing further, your  
2 Honor.

3                   THE COURT: Thank you so much. Do you want to  
4 begin cross-examination?

5                   MR. VAN ETTEN: Thank you, your Honor.

6                   THE COURT: Fifteen minutes.

7 CROSS-EXAMINATION

8 BY MR. VAN ETTEN:

9           Q     You're okay right now? I know it's emotional issues.

10          A     I'm okay right now, Mr. Van Etten.

11          Q     To make it easy I'll make a little joke right now to  
12 start. I don't know if I prefer the indica and just be zoned  
13 out than the other one but that was going to be my joke.

14          A     The indica.

15          Q     The indica. Yes. Did I say that on the record? This  
16 is going to be tough. We've been going back and forth for a  
17 while, we're not going to finish today, obviously.

18                   You just were talking to your attorney and he asked you  
19 a question about five minutes ago, maybe ten, when you realized  
20 you weren't going to be able to work again and you said after  
21 your back surgery; correct?

22          A     Yes.

23          Q     That was in 2015; correct?

24          A     Correct.

25          Q     So why is it in 2013 you applied for disability?

1 MR. TURNBULL: Objection, your Honor.

2 THE COURT: Yes. We have to do a sidebar. Sorry  
3 everybody.

4 (Whereupon, the following takes place outside the  
5 presence of the jury in the robing room.)

6 THE COURT: Okay. You want to state your full  
7 objection?

8 MR. TURNBULL: Yes. That's an improper question.  
9 Disability should not be presented to the jury. It's highly  
10 prejudicial. The question itself is improper.

11 MR. VAN ETTEN: Your ruling was okay after the  
12 purpose of cross-examination he just opened the door and  
13 said he realized he wouldn't be able to work in the future  
14 in 2015 after his back surgery, yet he applied for  
15 disability in 2013. Okay. This is going to be a wealth of  
16 questions because he sat there and testified at his  
17 deposition which they're fully aware of that the first few  
18 applications didn't go through until I had the surgeries.  
19 This goes to his state of mind and what the issues are here.

20 He just sat there said I'm an optimistic person,  
21 I'm going to get through this. He sat there and his own  
22 testimony was he relieved himself from his job before he  
23 even had a doctor's note saying don't work, he took himself  
24 out of work. A few months later, within two months of the  
25 incident, he applies for disability. He hasn't had surgery.

1 THE COURT: Give me just a minute. Give me just a  
2 minute.

3 MR. VAN ETTEN: Sure.

4 THE COURT: From what I recall, I'm looking at my  
5 notes, and I'm sorry my brain wasn't focused on that so  
6 quickly, but it was more so precluding evidence of  
7 collateral sources. It was the application for the  
8 disability and the timing of it that I felt was an  
9 appropriate area of cross-examination to judge his  
10 credibility and for various other reasons, motivation and  
11 motive, that kind of thing.

12 MR. TURNBULL: This was a question to doctor --

13 MR. VAN ETTEN: Merola.

14 MR. TURNBULL: It was to Dr. Dassa, I believe.

15 THE COURT: It was the document itself.

16 MR. TURNBULL: And Dr. Dassa said he never saw it.  
17 The question then was, did you receive this form and did you  
18 fill it out. His testimony was that he never saw it. By  
19 the way, workers apply for disability all the time and then  
20 return to work.

21 THE COURT: It can be temporary disability.

22 MR. TURNBULL: It can be temporary disability but  
23 the inference that's being drawn from this question is, did  
24 you decide that you would never return to work because you  
25 applied for disability and now we can't unring that bell.

1 THE COURT: I need to hear the question. Can I  
2 just hear the question again.

3 (Whereupon, the requested testimony was read  
4 back by the court reporter.)

5 THE COURT: I'm going to overrule the objection but  
6 I have to be very clear, Mr. Van Etten, we're not getting  
7 into collateral sources. You may and I am not guaranteeing  
8 it but you may be stuck with his answer at this point.

9 MR. TURNBULL: May I be heard on that? They just  
10 heard disability, he just applied for disability.

11 THE COURT: He was out of work, he already talked  
12 about all that out of work you get disability.

13 MR. TURNBULL: I need to be able to redirect him on  
14 that. Disability as a collateral source --

15 THE COURT: That's different than talking about the  
16 actual money, what did he receive? How did that compare  
17 to --

18 MR. VAN ETTEN: None of that is going to be  
19 addressed.

20 MR. TURNBULL: But now the jury will factor that in  
21 that now he's on disability and should we make a deduction  
22 because -- they're not going to hear the amount.

23 THE COURT: None of that can be inferred and it's  
24 already come out that he was working, that he stopped  
25 working, all of that. This is just when did you apply.

1 He's saying one thing and it's fair game to cross him on the  
2 timing of when he first applied and we can see how it comes  
3 out. I will certainly give you leeway on how it comes out  
4 but Mr. Van Etten is not getting into actual collateral  
5 source, is when he felt he could not work and that's what it  
6 was for.

7 That's the basis for it, there's a big difference.  
8 It was before the surgery and you can talk about it before  
9 the surgery you already had all these other issues, we've  
10 discussed all that. It's not just one issue, it's not just  
11 one surgery, it's not just one surgery that prevented him  
12 from working. You can tighten that up.

13 MR. TURNBULL: I understand, your Honor.

14 THE COURT: Okay.

15 (Whereupon, the following takes place back in open  
16 court and in the presence of the jury.)

17 MR. VAN ETTEN: Can we have the question read back?

18 THE COURT: Yes. The objection is overruled.

19 (Whereupon, the requested testimony was read  
20 back by the court reporter.)

21 THE COURT: You can answer that.

22 THE WITNESS: I can?

23 A Under the worker's accident system I acquired attorneys  
24 to protect me for my rights and in the process we started the  
25 process of the disability.

1           Q     And in 2013 that's before you had shoulder surgery;  
2 correct?

3           A     Yes.  Shoulder surgery was in 2014.

4           Q     And that's before the back surgery; correct?

5           A     Correct.

6           Q     And before the neck surgery?

7           A     Correct.

8           Q     And when you filled out your application for that, you  
9 had to fill it out and swear that you were unable to work,  
10 correct, you had to do that under oath?

11          A     I believe so, yes.

12          Q     Okay.  So when you just said in 2015 it was the first  
13 time you realized you were not going to be able to work two  
14 years prior, you had already made that claim; correct?

15                   MR. TURNBULL:  Objection, your Honor.

16                   THE COURT:  Overruled.  I'll allow it.

17          A     Yes, with explanation.

18          Q     Okay.

19                   MR. TURNBULL:  Your Honor, may he explain?

20                   THE COURT:  It's cross-examination, you may have an  
21 opportunity on redirect.

22          Q     We'll go somewhere else right now since we have a short  
23 period of time.  You talked earlier and even on your first day  
24 and you mentioned Frank Brancato who came in to testify;  
25 correct?

1           A     Yes.

2           Q     You knew Mr. Brancato from that job?

3           A     I met him on that job, yes.

4           Q     And you acknowledged today that he had come to your  
5 house afterwards, helped you with your car and taken you to  
6 church; correct?

7           A     After the accident, yes.

8           Q     It was within a few weeks, a couple of months after;  
9 correct?

10          A     Yes, that's fair.

11          Q     When you testified in -- on March 16, 2016 at your  
12 deposition, which you mentioned also earlier today, when you  
13 were asked do you know someone named Frank Brancato --

14                   MR. TURNBULL:   What page?

15          Q     Page 48.   And you gave the answer I know the name?

16                   THE COURT:   Tell us the line.

17          Q     I'm sorry, line eight through ten and then line 11:  
18 Do you know who he worked for?

19                   ANSWER:   I believe he was the foreman R.B. Samuels.

20          A     Yes.

21          Q     So a man who came to your house, took you to church,  
22 who you worked on the same job site for for over a year,  
23 correct, when they asked you if you knew him at your deposition  
24 you said I know his name?

25          A     Yes, I did know his name.



1 Q And you saw Mr. Brancato come in here just as you did?

2 A Yes.

3 Q Put up his right hand and he swore to tell the truth,  
4 just as you did. And he said he was on the lift at the time  
5 that you were pushed into it with the cart. You heard that;  
6 right?

7 A Yes, I heard that.

8 Q And you have now told this jury on your last day of  
9 testimony that Mr. Brancato was not on that cart; correct?

10 A That's correct.

11 Q So it's your testimony to this jury that Mr. Brancato  
12 has come in here and lied; true?

13 MR. TURNBULL: Objection, your Honor.

14 THE COURT: Overruled. I'll allow it.

15 A No, he didn't lie.

16 Q So he was on the lift; true?

17 A No, he was not on the lift.

18 Q Okay. So then he lied, right, one or the other?

19 THE COURT: I will sustain the objection.

20 Q Okay. Sir, you also testified that you never saw Mr.  
21 Brancato that morning before your accident; right?

22 A That is correct.

23 Q Yet you just told the jury later this afternoon that he  
24 was the first person to come to the scene?

25 A Yes, he was.

1           Q     How did he get there before Giovanni who was two feet,  
2 three feet away from you?

3                   MR. TURNBULL:  Objection.

4                   THE COURT:  I'll allow it if you can answer that  
5 question, if you saw it.

6           A     I saw him after the initial accident with the impact.  
7 He came right away to my aid, almost simultaneously with  
8 Giovanni.  And he was in my face, Sal, are you okay.  Sal, are  
9 you okay.  Waiving his hands, all in my space.  It was very  
10 weird.  It was very weird that he was in my area, like just like  
11 why was he panicked where my foreman was like, come on, Sal,  
12 you're okay.  He was just very in my face.  It was very weird.  
13 Very weird.  But he was the first one to come to my aid almost  
14 simultaneously with Giovanni.

15          Q     And you also testified on your first day, if I'm wrong  
16 please correct me, that you didn't see the electricians working  
17 anywhere in the area where you were where you had your accident  
18 before the accident?

19          A     Not where I was working, that's right.

20          Q     Yet somehow a man who wasn't on the lift was the first  
21 person to come to your assistance; correct?

22                   MR. TURNBULL:  Objection, your Honor.  
23 Argumentative.

24                   THE COURT:  Sustained.

25          Q     The area that you had come from earlier in the day --

1 withdraw that.

2 That morning when you started working you had been  
3 doing some sweeping and cleaning getting ready for delivery;  
4 right?

5 A Yes, I was preparing up an area that had a little light  
6 debris on it.

7 Q And that was in the other section of the fifth floor  
8 about 20, 30 feet away from the elevators?

9 A Approximately, yes.

10 Q And then you came over to the area around the elevator  
11 with the containers; right?

12 A Correct.

13 Q And during that entire time you never saw any  
14 electricians?

15 A No, I did not.

16 Q So the electricians would have to have been 20, 30 feet  
17 away; correct?

18 MR. TURNBULL: Objection.

19 THE COURT: Overruled. I will allow that.

20 A Where I was in the section of the fifth floor, the  
21 portion, I could not see that other side.

22 Q You couldn't see on the other are side of the duct  
23 work; right?

24 A I could not see on the other side of the passageway  
25 floor, no.

1           Q     That area right out side the elevator, we'll get into  
2 more detail next time I get to talk to you with the photos, but  
3 that area right outside the elevator had duct work to the  
4 left-hand side of the elevator as you came out; correct?

5           A     It had some duct work that was coming out of the  
6 ground.

7           Q     Right. And about 10 or 12 feet away there was a bigger  
8 section of duct work; correct?

9           A     Not a lot but, yeah, there was duct work that  
10 maintained the building, yes.

11          Q     And where you parked the containers, that was in front  
12 of the little section of the duct work to the left side of your  
13 exit; correct?

14          A     No, it wasn't.

15          Q     You wouldn't park a container in front of the elevator;  
16 right?

17          A     No.

18          Q     You even testified previously about a foot or two  
19 before the elevators is where you parked the containers; right?

20          A     No.

21          Q     No?

22          A     No.

23          Q     Were they further than a foot or two of the elevator?

24          A     They were on the opposite side of the opening of the  
25 elevator. There was a little staging area that you could park

1 one or two containers if you had to.

2 Q I thought you said, sir, when you looked at the  
3 photograph earlier that there was only on the other side of the  
4 elevator a foot or two from the wall?

5 A That was the space. If you looking straight from the  
6 elevator where I was looking to the left it was only one or two  
7 foot space and the elevator opened up, then there was a wall,  
8 and then there was a small wall that dropped down from the left  
9 side of the space.

10 Q So you parked it in front of the elevators between the  
11 small section of duct work and that wall to the side?

12 A Not in the duct work no, sir.

13 THE COURT: We're going to have to break,  
14 Mr. Van Etten.

15 MR. VAN ETTEN: Sure.

16 THE COURT: All right. Everybody, you know the  
17 drill. It's about 4:27 so we're going to break for today.  
18 We're off Thursday and off Friday and obviously the weekend.  
19 I'm going to need everybody back on Monday morning at say  
20 9:40. We're going to have the attorneys and everybody else  
21 come at 9:30 in case there's more things to introduce into  
22 evidence. Okay. Have a great weekend. Keep an open mind.  
23 Don't discuss the case. Thank you.

24 COURT OFFICER: All rise. Jury exiting.

25 (Whereupon, the jury exits the courtroom.)

1                   THE COURT: You're free to step down, Mr.  
2                   Gulinazzo. You're on cross-examination, you can speak to  
3                   your attorney but just not about the substance of your  
4                   testimony. Keep in mind you may be asked. Thanks,  
5                   everybody, have a good afternoon. I'll see you on Monday at  
6                   9:30.

7                   MR. VAN ETEN: With everything with the scheduling  
8                   with Mr. Gulinazzo I don't know that we're going to be able  
9                   to put him on until after Columbus Day. Is that what we're  
10                  doing?

11                  THE COURT: All I could just say is work it out  
12                  guys.

13                  MR. VAN ETEN: Okay.

14                  THE COURT: We'll figure it out. I am available,  
15                  by the way, if you need to e-mail me for anything in the  
16                  next couple of days. Take care.

17                  (Whereupon, the proceedings were adjourned to  
18                  Monday, October 3, 2022 at 9:30 a.m.)  
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