2023 WL 11805003 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.
Kings County

Jhon CONTRERAS, Plaintiff,
v.
831 QUINCY STREET, LLC., Defendant.

No. 504105/18.
June 6, 2023.

Testimony of Plaintiff's Expert Witness, Thomas Kolb - Direct Examination

Name of Expert: Thomas M. **Kolb**, M.D.
Area of Expertise: Medical & Surgical >> Radiology
Area of Expertise: Medical & Surgical >> Pediatrics
Representing: Plaintiff
Jurisdiction: Kings County, New York

For the Plaintiff: Gorayeb & Associates, P.C., 100 William Street, Suite 1900, New York, New York 10038-4512, By: Frank Kelly, Esq.

For the Third-Party Defendant - 831 Quincy: The Gold Law Firm, P.C., 1666 Newbridge Road, 2nd floor, Bellmore, New York 11710, By: Jeffrey B. Gold, Esq., By: John Calabro, Esq.

Before: Honorable Devin Cohen, Judge.

THE COURT: All right, you can all be seated, thanks.

(The jury entered the courtroom and the following occurred:)

MR. KELLY: Plaintiff calls Dr. Thomas Kolb.

THE COURT OFFICER: Doctor, right this way. Doctor, I will ask you to remain standing. She will be over in a minute.

THE COURT CLERK: Raise your right hand please. Do you swear or affirm that the testimony you are about to give will be the truth, whole truth, nothing but the truth?

THE WITNESS: I do.

THE COURT CLERK: In a loud, clear voice please state your name, address for the record.

THE WITNESS: Dr. Thomas Kolb, 257 West 34th Street, New York 10001.

T H O M A S K O L B , M. D., called as a witness, upon being duly sworn by the Court Clerk, was examined and testified as follows:

THE COURT CLERK: 257 West 34?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

THE WITNESS: Correct.

THE COURT: It is KOLB?

THE WITNESS: Correct.

THE COURT CLERK: Thank you so much.

THE COURT: M.D.?

THE WITNESS: M.D., yes.

THE COURT: Your witness, sir.

DIRECT EXAMINATION BY MR. KELLY:

Q Good morning, Dr. Kolb.

A Good morning.

Q Tell us what is your profession.

A I am a diagnostic radiologist.

Q Doctor, would you please tell us a little bit about your professional education?

A So I went to college here in Queens College, City of New York. Graduated a long time ago, 1979. I went to medical school here in Brooklyn, Downstate Medical Center, graduated 1983, and then I became a pediatrician. I spent three years at Jacobi, Montefiore Hospital, Albert Einstein College of Medicine in the Bronx, board certified as pediatrician. I then went back and did another four years of training, 1986 through 1990 Manhattan Columbia Presbyterian Medical Center, Washington Heights at Columbia University. That was in diagnostic radiology. I became Board Certified also in diagnostic radiology. So I am Board Certified in both, and I practice diagnostic radiology.

Q Are you licensed to practice medicine in the State of New York?

A I am.

Q Can you tell us what it means to be Board Certified?

A Board Certified means you have to finish a certain number of years of training, pediatrics is two years, radiology was four years. Then take two exams. One is an oral exam and a written exam. Then if you pass the oral exam and if you pass both examinations, you become a member or a diplomat of the American Board of Radiology which is shortened by saying you are Board Certified.

Q Have you published in your field, Doctor?

A I have.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And have you conducted any research in your field?

A I have.

Q Can you tell us a little bit about your publications and --

A So my practice is divided into two parts. One part of my practice is breast cancer diagnosis. I see a large numbers of generally young, high-risk women. I do mammograms, ultrasounds which I will get into in a second, MRI and I do biopsies, many biopsies also for detect -- detection of breast cancer. I have done that since I started practicing radiology and a large practice.

During the course of that practice, you know, a long time ago, it became apparent to me that mammograms don't find all breast cancer. I tried to figure out what was the reason why mammograms were not totally accurate. Actually they miss a lot more than we thought. The answer was breast density. You may have heard about that nowadays, but back then it was a new concept. I did a large study of over 27,000 women. One of the studies I did where I added a breast ultrasound onto all of these patients and found a lot more cancers. So that was published and became the American Medical Association scientific public publication of the year for all medicine, not just radiology so that was the largest publication.

I did one a few years earlier than that to start the research going and then published it in a large paper, and then I had abstract as well that were published. But all of it was in the field of breast cancer diagnosis. I traveled around the world teaching, I was invited to faculties, conferences. I think that answers your question.

Q Thank you, Doctor.

Can you also tell us a little bit about your professional affiliations, societies?

A Well, I belong to the radiologic society of North America and other groups like that. Those are my affiliations. I mean I was an assistant clinical professor of radiology for a number of years at Columbia University and Presbyterian Hospital during my career.

Q Are you engaged in a private practice at all --

A Yes.

Q Tell the jury if you would, what do you do in the practice of radiology?

A Good question.

So I do two things. One as I just told you I did breast cancer diagnosis. I see every patient, physically examine them and so on, but I also read X-rays, CAT scans, MRI scans on all different parts of the body. So part of my practice or half of my practice I would say is breast cancer diagnosis. The other part does imaging of different parts of the body. Like anyone that comes in to the doctor and says my back hurts or my neck hurts, we would do either an MRI scan or X-ray looking for fractures, so on. So I do that as well.

So my day is taken up with both, more so on certain days, and those are the two parts to my practice.

Q Okay, with what sort of frequency do you perform these studies?

A Which ones, the X-rays, CAT scans, MRI's?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Yes.

A Daily, every single day.

Q In our case, Doctor, Mr. Contreras claims that he suffered injuries when a mass, construction material struck him, thrust him into a wall injuring his back. Do you have experience with, in your profession to the problems that Mr. Contreras has --

A Yes.

Q Doctor, have you been previously qualified as an expert in New York courts?

A Yes.

MR. KELLY: Your Honor, I offer Dr. Kolb as an expert witness in the field of radiology.

MR. GOLD: No objection.

THE COURT: Without objection.

Q Dr. Kolb, did there come a time when you encountered Mr. Contreras?

A Yes.

Q What was the nature of that initial encounter? You can refer to your records if you chose.

A Well, I initially encountered the patient in my practice. The patient was sent to me with Dr. Grimm back in 2018. I performed MRI of the thoracic spine in 2018 and MRI of the thoracic spine in 2019.

I also performed MRI of the cervical spine in 2019, and I also performed MRI's of the thoracic spine which is the mid back -- we will get into all of that, in 2018 and 2019 as well. So I did a number of scans on this patient sent to me by this physician because of, I believe, symptoms the patient was having like pain.

Q And tell us, Doctor, if you would, what is an MRI, what does it do?

A So, an MRI uses magnetic waves that are pulsed into the body. It's a very common test nowadays. The magnetic waves pulse into the body. There is a rearrangement within, on anatomic level. There is a very powerful computer that picks up these changes and is able to create an image of the patient, the neck, the back and so on, every part of the body. It's a very powerful test to look inside the body.

Q Does an MRI show soft tissue as opposed to bony structures?

A Yes.

So MRI's are very powerful for many reasons. One reason is X-rays which have been around for a very long time and CAT scans which are a form of X-rays really look for differences between things that are hard and things that are soft. So if you wanted to know if you had fractured a bone, an X-ray would be a very good idea to do, but if you wanted to know about structures around the bone like a disk and in the neck or ligaments, tendons, muscles, all of those things are soft, and that, an MRI can see whereas and X-ray wouldn't see. So there is a time and a place for everything. MRI's are extremely powerful to look inside the body.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And you performed MRI's on Mr. Contreras; is that correct?

A Yes, I did.

Q Doctor, we have blown up some of your films which the films are in evidence here in court. Would it assist you in explaining your impressions, findings to the jury if you utilized those blow ups?

A Yes.

MR. KELLY: Your Honor, may we use?

THE COURT: You may, and also, Mr. Gold, if you want, to go around the side if you want to see.

MR. GOLD: In the back?

THE COURT: In the back is fine.

Sir, I remind you you remain under oath even if you are off the stand.

THE WITNESS: Yes, Your Honor.

THE COURT: Can you mark those exhibits before -- did you mark those exhibits before you showed them?

MR. KELLY: We did not -- we marked them, but they are in evidence --

THE COURT: They are in evidence? Even if they are in evidence, we need to know which exhibits we are referring to when the jury sees them. So what record does that come out, out of, Plaintiff's 1?

MR. KELLY: It is Plaintiff's Exhibit 3.

THE COURT: All right, so let's call it three in A, B, C order so we know which one we are referring to. Christine, we can put a tag on each of these so that they are identified.

THE COURT CLERK: 3A, B and C.

THE COURT: How many are there?

MR. KELLY: A through E.

THE COURT: A through E. Elmhurst Hospital chart, from Elmhurst, correct?

MR. KELLY: Yes.

THE COURT: Three, through 3E.

THE COURT CLERK: Okay, hold on, Judge, is it not from Elmhurst, Counsel; what did you just say?

MR. KELLY: Sorry, it is my mistake, it is number four.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

THE COURT: So it is four.

THE COURT CLERK: It is four.

MR. KELLY: 4A through E.

THE COURT CLERK: A through E?

MR. KELLY: Correct.

THE COURT OFFICER: Counsel, want to bring them over so we can get an accurate inventory, please?

(Discussion off the record.)

(The discussion off the record concluded and the following occurred in open court:)

THE COURT: Let me try again. You are showing the witness number four what?

MR. KELLY: 4A.

Q Doctor, can you tell us a little bit, orient us a bit with what we are looking at with Exhibit 4A here?

A These squares are the bones in your back, the mid back called the thoracic spine. There are three parts of the spine. You will hear about all parts. One is called, in your neck, it is called the cervical spine. In the cervical spine there are seven bones. Each bone is called C for cervical, one through seven.

In the mid back, it is called the thoracic spine. Since it is thoracic, there are 12 bones, and we call them T1 through 12. We will look at those.

In the lumbar spine which is the lower back, there are five bones, and so we call them L for lumbar, one through five. It will become pretty obvious.

So each one of these squares is a bone. It's a vertebral body, the vertebra in the back.

A normal vertebra is square like this, look these here, above, but you will see very obvious deformities here on this one which is T7. I have already counted all of them in the ordinary course. These, this one is T7, seventh thoracic spine. T8, you see how the top of the plates, top of each vertebra are dropped in. Here it's a normal square above it. Here it's a normal square below it. These two are abnormal. These two vertebra are fractured. The plates here which is the top part of the vertebra is pushed down. We call it a fracture of the end plate here. So both of these T7, T8 vertebra are fractured. This is T7 and T8.

T9, 10 and 11 look good, they are normal. T12, again, this is a large fracture here in T12.

After we finish the T's because there are only 12, we get into the L's. So after T12, there's L1 and L2. Both of these are fractured. L1 is fractured at it is superior, and L2 is obviously also fractured here. L3, again looks normal. So we have these five fractures in the back. That is what the CAT scan shows us.

There are other parts of the CAT scan so we can take a CAT scan and optimize it to look at bones, or we can try to look at the some of the tissues in front of -- around the bones that are disks in between there. So just to fully describe all the findings on the CAT scan, there are also in between these bones, what we call -- are we what we call the disks. Bones should never touch

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

each other. If one bone in any joint including the back touches each other, bad thing, very painful. We are built and born with disks which are gelatinous fluid-type structures in between so that when we move around, the bones don't touch each other, but these are actually joints that move in our back.

So also in addition to these fractures of the thoracic and lumbar spine, there are disc bulges at three levels, T7-8 when is between the seventh bone and eighth bone; Tll-12 between these two bones and the disc bulge and L1-2.

What is a bulge, what is a herniation, what is a bulge? So I just told you that disks sit in between the bones to keep us healthy so that we can move around without pain. These disks have to be held in place, or else when we jump and move around, they would just spurt out. So they are held in place by very tight ligaments. The most two important ones are a ligament that runs around the disk space and that is called the annulus. There is another ligament, and you don't have to remember the names of any of these things, a ligament that runs behind the disk, behind the bones, and that's called the posterior longitudinal ligament. If you have a partial tear of one of these ligaments, importantly the annulus, the disk material which is -- if there is a bone here and a bone here, and there is the disk in between the bones, it will start pushing out so that you will see the disk a little bit beyond the margin of the bone. That is a partial tear of the ligament.

If you have a complete tear of the ligament, it pushes through even more, and that is called a herniation, so disc bulge, partial tear of the ligament, disc herniation, complete tear of the ligament.

Why do we care?

This space behind the bones, behind these bones, the vertebra and these bones, posterior bones, backbone in the back which you can feel with your hand those bumps in your back or these bumps right here, in between this space right here, runs the spinal cord, from the brain down to the lower back. The spinal cord comes down and from the spinal cord, nerves come out in holes in the side of the spine, one nerve at each level to going to our left side, and so from the cervical spine, it goes down on your arm; from the lumbar spine, lower back goes down your leg, so that you can feel things, you can move. You can feel pain if there is a problem with the nerve.

Then the thoracic spine which is middle, there are also holes on each side, the left side and the right side, and these nerves come out. So that is why we care about bulges and herniations. And we also care about, for example, this fracture here, and we will see the space between the vertebra, the squares and the posterior bones here is narrow because this bone is tilted a little back because of the fracture. It occupies or encroaches upon this space where the nerve roots are. That is why we really care about these things in addition to them being fractures which are important, but the nerves sit right here. The spinal cord ends here, and the nerves come out, so this is a very delicate area where all of our nerves come down so we care a lot about that.

Q Doctor, let me ask you, the findings that you are discussing, the significant findings on this film, your opinion is based on those findings are to a reasonable degree of medical certainty, correct?

A Yes.

Q All of the questions that I will ask you throughout the rest of the testimony will be to a reasonable degree of medical certainty?

A Yes.

Q And we are discussing the significant findings on this film right now?

A Yes, so those are the significance -- the most important findings, of course, are the fractures.

MR. GOLD: Your Honor, can we have one minute of a side bar? It is about the exhibit.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

THE COURT: Side bar, sure.

(Discussion held outside the courtroom, off the record.)

(The discussion off the record concluded, and the following occurred in open court:)

THE COURT: We are on the record for a second, forgive me for interrupting for a second.

Doctor, from looking -- at this exhibit which has been currently marked 4A as in Alpha in evidence, is there a way for you to tell at what facility this CT scan was taken?

THE WITNESS: Yes.

THE COURT: How do you know?

THE WITNESS: It says Elmhurst up here.

THE COURT: Okay.

I also see that there is a ACCKR something. Is that relevant at all or not relevant because you are Kolb Radiology. That doesn't indicate it was taken at your facility?

THE WITNESS: That's correct.

THE COURT: Okay, and so, Christine, Christine.

THE COURT CLERK: I am sorry.

THE COURT: Sorry.

Were these same films incorporated into your own office records?

THE WITNESS: I was shown that, those films, give me one second, in September of 2022, but my report was written in September of 2000 --

THE COURT: Let me suggest then, Christine, these came actually out of the Elmhurst records. Dr. Kolb may have had them in his records, but they are actually Elmhurst films. Let's renumber them as B3 through three echo.

If it's okay, we will redo the tags themselves so when we have a break. I think, I believe it will turn out to be academic because I believe Dr. Kolb was testifying that they were, that the films, themselves, were received by him and reviewed by him, but in any event just for clarity, in the upper right-hand corner of the film -- withdrawn -- in the upper right-hand corner of the blow up it indicates Elmhurst Light Speed 16 which Dr. Kolb has indicated the fact that it says Elmhurst indicates that it was taken at Elmhurst and same for the others. So we will, so we will renumber them with the Elmhurst designation which was Plaintiff's Exhibit 3, I believe, correct?

THE COURT CLERK: Correct.

THE COURT: Thanks.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

3A through E, with -- are there any other concerns about the labeling?

THE COURT: Are they all Elmhurst films?

MR. KELLY: MRI's here.

(Whereupon, Above Referenced Exhibit were received and marked at this time.)

THE COURT: MRI's were from Dr. Kolb's office, or they were from -- let's try that again. So it will be 3A alpha and three bravo, 3A, 3B. Then what we were calling C, D and E should actually be relabeled as four -- let's call it 4A, B, C, that would be fine. So the two CT scans which we will see today are from the Elmhurst Hospital record. Those will be numbered 3A and 3B. Then the remaining three films, remaining three films that I understand Dr. Kolb plans to testify about, and we have not heard this yet, but I understand we will hear that they were MRI's by Dr. Kolb; is that correct?

MR. KELLY: That's correct.

THE COURT: Those will be with Dr. Kolb's numerical designator, Exhibit 4.

THE COURT CLERK: That will be 4A?

THE COURT: A, B, C, but those will be correctly numbered but improperly lettered. The first two are properly lettered but improperly numbered.

As I said, I think in the end, it's a distinction without a difference since Dr. Kolb prepared reports on all five of them, but just for clarity's sake.

We okay?

THE COURT CLERK: Now, yes.

THE COURT: We will fix it lunch time, we will do it during lunch.

Q Dr. Kolb, what is the significance of the patient in the findings?

A I think the significance is that the patient has 25 fractures of their back, and the significance is it could cause symptoms for the patient.

Q Doctor, when you assumed that Mr. Contreras testified he had no prior back complaints of any time prior to the happening of the accident, and after he was shoved by 1400-pound load into the wall, he went down later, and the five fractures which are exhibits on the CT were shown, do you have an opinion to a reasonable degree of medical certainty whether or not the accident was the cause of the back fractures?

A Well, in the first light, the thing you would think, they were caused by the accident, and then we will have other studies as well coming up but that is your first line of thinking.

Q Are those fractures competent producing cause of pain?

A They can be for sure.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Does one expect Mr. Contreras to make complaints of pain as a result of the accident and condition shown in those films?

A Certainly would not be surprising.

Q Do we wish to show another film, or are we finished with that?

A So just, I don't know what number or letter is used for this, but this is the lumbar spine from Elmhurst Hospital.

THE COURT: That is now 3B.

Q 3B?

A CAT scan, Elmhurst, just the last of the spine, I told you the five bones. So this is considered the L1 and L2. This would be fractures that you have already seen. You can just -- see the rest of the spine because the patient is going to have MRI's of this part of the body also.

So when you put it together, see, that is the entire spine on the CAT scan.

Q Doctor, can I impose upon you to take a look at the MRI --

A You got it.

THE COURT: Doctor, it is 3C or 4C is now going to be 3A.

THE WITNESS: Okay.

THE COURT: Withdrawn, it is now going to be 4A.

MR. KELLY: 4A.

A So, okay, this is an MRI of the thoracic spine done on March 21, 2018.

Q Was that done under the care and treatment of Mr. Contreras?

A Yes.

This was, MRI was done because his doctor who was treating him sent him to do the MRI, the actual doing of the MRI, not just looking at something retrospectively. So this was sent to me five years ago, almost, more than five years ago, to look at this patient, and you will notice that the fractures are here, okay.

Now, we are looking at an MRI. Let's switch to MRI for one second, same anatomy, bones, all these 12 bones are here. We will talk about that. We will talk about bones in the back. But now you see a gray cord coming down the center of the back, and there is whiteness in front and the back. This is the spinal cord. From the spinal cord, the nerves come out to the left side of your body and to the right side of your body. So you see how close in proximity these fractures are. These are millimeters. I believe there is a very tiny space here between the bone and the spinal cord. So you see why it's a very important area.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

So on the MRI of 2018, if you look at this fracture here, this greater, largest fracture here, it is whiter than other spots. There are -- let me first say that -- let's talk about MRI's for one second. We take a lot of pictures. We are radiologists. We don't just take one picture, and that is it. We like a lot of pictures.

There are different ways of looking at patients. If you had, for example, a large loaf of Italian bread. There are two ways you can cut bread. You can cut it from top to bottom and open it up and you would have a hero. You would have one top of the bread, one bottom of the bread and that would be it, and that is what we are looking at here. We are looking at the patient, and we are taking one slice, we are not cutting the patient, but we are taking out one slice from the patient's head here to the patient's feet here and using all of the vertebra, all of the bones like one long piece of bread.

We can also cut the bread in slices, and we can take many slices of the bread, and you can make sandwiches. Each slice of the bread is going to be round. It is not going to be long because it is not like a sub, a sandwich, so we do that to look at the different parts of the bulges, herniations and so on. So we get many looks at this.

We can also make anything that is fluid, that has liquid in it white on than a MRI. That is what we did on this particular sequence. All depends how we pulse these magnetic waves into bodies.

So here the spinal cord is white, but also the marrow here has a certain gray color. They all have very specific colors. If I want to make anything that is fluidy or that has liquid in it dark, I do that as well, routinely. So I am not sure you can see it because we can look at the marrow signal or the color of the marrow that is in the bone, right, because bones are all made of bone marrow, and that is what we are looking at on the MRI, and we can compare the MRI -- the color of the bone and look for differences in this.

In this particular bone here, this particular fracture here which is T8, there is a whiteness in it. There is a whiteness in here which means that there is swelling. What does white mean? White means there is fluid in this particular film. Everything that has fluid is white which means there is some fluid in the marrow here. What is the fluid? It is swelling of the bone. So in my report that I wrote five years ago when I first saw this patient, I commented on this bone here, this one in particular has fluid in it meaning that it is either acute or subacute fracture. In other words, it's a recent fracture. Recent fracture because of swelling here.

The other fractures are not as white as that one. I consider them to be pretty much normal marrow signal, okay. So not different in time from when they happened, but the swelling has -- starts to go away like any fracture, eventually with time, the swelling of the bones --

Q Doctor, the accident happened February 4 of 2018. Would there be enough time for the swelling to go away between February 4 and March 21, 2018?

A So it is about six weeks. In my report, five years ago, I considered this fracture to be acute to subacute which means within the time frame of five to six weeks. The other fractures I just commented that the marrow signal is normal which the patient is unlikely in my opinion to have had four previous fractures and now just has one more fracture on top of that.

If this back patient had a number of fractures at the same time, one of them is still swollen, the marrow is still swollen.

THE COURT: Sir, can I interrupt you for a second?

Mr. Kelly, did you say the accident is February 4, right?

MR. KELLY: Yes.

THE COURT: March, April, May, three months is --

THE WITNESS: No, it is March.

THE COURT: March, I apologize. I thought you said May 21.

THE WITNESS: That is six weeks.

MR. KELLY: No, I am sorry, go ahead.

A Everything I just told you is in my report from five years ago.

Q That report was in conjunction with your treatment of Mr. Contreras?

A Treatment.

Q Not for testimony?

A No, I had no idea I would be standing here today five years later.

Q So, does -- Doctor, I would like you to assume that Mr. Contreras had no prior back problems, no prior back complaints, was fully functional prior to the happening of the accident. Do you have a reasonable degree of medical -- do you have an opinion to a reasonable degree of medical certainty that the conditions shown on that, the film was caused by the accident?

A Yes, first of all, that injury that you are explaining to me now that I am hearing makes sense why there are fractures. It was a severe injury like you mentioned. Also as I said, this still is swollen which is consistent with an accident in -- from six weeks earlier. So the answer is yes, there is evidence on this film, on this MR that it is an acute to subacute -- subacute being six weeks injury to at least this --

Q Can those findings be a competent producing cause of pain?

A Yes.

Q Can we see -- would you like to put the other films up?

A Sure.

I lost the numbers.

THE COURT: Previously numbered.

THE WITNESS: Previously numbered 4E.

THE COURT: That is now going to be 4C.

A 4C is an MRI of the lumbar spine. Remember there were lower bones, the lumbar spine in the back. These, this is L1 and L2, the fractures. You kind of got a you glimpse of them on a prior one, thoracic spine, March 2018, that I just showed you. Then you see them here. These two fractures here on the bottom are the same as these two fractures here and the top of this exhibit that I am showing you now.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

So you got to look at the whole spine so that's -- that is the thoracic and lumbar spine that I do want to add that there is a little bit more in your reports that -- and as I told you, there were disc bulges, partial tears of the ligaments in the thoracic spine at T7, between these two fractures, and the disk is bulging out here, and also there were bulges at Tll-12 T12-L1 to one down in hear, you see --

Q What is the significance of the patient, those findings?

A Partings tears of the ligaments. Patient is more at risk of forming a herniation if there is a complete tear. It could be pushing on a neural space which contains a nerve and continues to cause the patient pain.

Q Predisposes Mr. Contreras to a herniated disk as his injury progresses?

A Yes, that is what I was attempting to say just before that. Yes, it does predispose him. He is more at risk of forming a herniation.

And on the lumbar spine -- now, I am going to take back those three words on the lumbar spine and say that is all the findings from 2018.

So then we move to 2019 -- actually, what happens is -- and we don't have blow ups from 2019 because we have seen the fractures --

Q Can you describe for us the results of your findings with respect to Mr. Contreras in 2019?

A So in 2019, the fractures of T7, T8, T12, LI and L2 are of course still there. They are not going away. These things are not going to pop up into squares again. Those fractures will always be fractures.

Q So these are permanent injuries?

A These are permanent injuries.

In the thoracic spine of March 19, 2019, a year after the MRI I just showed you, the patient also developed a disc herniation at T2-3 up here. So that was a new findings in 2019.

Q What is the significance of the disc herniation for the patient?

A Right, and also I am going to answer that question, but also had herniations now in -- after at T7-8 and T8-9 which are right where the fractures are, and other herniations lower down by these fractures.

To answer your question, what the significance is, is that this patient is now walking around with fractures of the back and normal movements that otherwise would not have herniated because there are tears due, inherently due to the fractures themselves, and these tears are widening and the disk, disk material is pushing out, and the patient now has an unstable spine that is degenerating over time and forming herniations.

So year after, which is a year and let's say six weeks after the trauma, the patient is now forming a number of disc herniations in the thoracic spine, and I believe in the lumbar spine as well.

Q Doctor, are these disc herniations the result of Mr. Contreras' accident?

A Well, because they are exactly at the level of fractures, the answer would be yes. Over time the patient's ligaments are tearing completely, and these herniations would be the result of adjacent fractures.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Okay, and these disc herniations be the competent producing cause of pain?

A Yes.

Q Do disc herniations spontaneously heal, or is this a permanent condition?

A No, most always, disc herniation remains a herniation.

Q And with respect to the herniations, permanent condition of the fractures, would you expect Mr. Contreras' pain to continue for his lifetime?

A I would not be surprised.

Q Tell us about any further examinations of Mr. Contreras --

A Uhm, oh, there is one more.

So this is the neck. Here is the neck. That is, I am not sure what it is. It is March 2019 which is a year and a few weeks after the accident, a doctor ordered an MRI of the cervical spine which is the neck, and there are seven bones, and we can count them as squares. And in the neck, in the cervical spine, there are disc herniations. Remember I told you that the disk goes to the margin of the bone and stop because there are ligaments that hold them in place until ligaments are torn, boom, herniation comes out? Well, look at C2-3 between these two bones. The disk which is dark, see the disc bulge on these pictures, it goes to the margin of the bone, and it stops, and there is a little white line between the disk and the spinal cord coming out of the brain which you can see on the next one down is gone because at C3-4, the disk is herniated and touching the spinal cord.

I look at C4-5, and it is also pushed out.

Q What does it mean when the disk touches the spinal cord, what happens?

A Well, it can cause symptom to the patient. The spinal cord contains all the nerves. Anything that touches the spinal cord could cause the patient to have symptoms like pain.

And so there is a bulge here at C4-5. You see again just below it, the disk goes a little bit past the bone but not as bad as C3-4, but look at this disk here that pushes out. This is another disc herniation. So there are disc herniations at C3-4. There is a disc herniation at C5-6 and a disc bulge at C4-5. So multiple disk abnormalities in the cervical spine, the largest of which is at C3-4. Again, this was read I guess four years ago by me when the patient was sent to me.

Q This spine disintegration that there is talk of, is it the result of the Plaintiff's accident?

A Well, anybody that has fractures of the spine, the spine is going to become unstable. Just moving around is never going to be the same as it was without fractures. So there is always going to be abnormal pressure to the entire spine. So the answer to your question is clearly, the thoracic spine and lumbar spine, those are directly due to fractures. They are at the same levels.

In the cervical spine, the patient, you know, it could have been unstable as well and caused damage. It's a little bit less clear.

MR. GOLD: Objection.

THE COURT: Overruled.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q With respect to all of your findings, when is, is that the last examination you --

A That is it.

Q With respect to all of your examinations including diagnostic studies for Mr. Contreras, would we expect him to suffer pain?

A I would not be surprised if he suffered pain from all this, sure.

Q Would we expect that condition shown in the blow ups from the films to be permanent?

A Yes.

Q Would we expect spasm as a result of the conditions shown in the films?

A He could have, the patient could have spasms.

Q And will these conditions get better without medical intervention?

A I don't treat the patient so I am not going to answer it, if he can get better or not.

Q You can take a seat.

Can a patient manipulate the images shown?

A What do you mean by manipulate?

Q Can a patient fake what is shown on the films?

A No, the films are bones inside the body. Those findings of fractures are definite, no question.

Q And are these films an objective measure of the level of damage?

A Yes.

Q When Mr. -- will Mr. Contreras continue to require imaging in the future?

A Many patients do. Again, I don't treat this patient. His pain could get worse, it may not. I can't -- I cannot answer that question.

Q All right, Dr. Kolb, are you being compensated for your time here today?

A I am.

Q Can you tell us what that compensation is?

A You have to ask -- my office for $9,500.

Q Have you issued written reports with respect to reviewing these images?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Yes, they are all written, everything I talked about is written.

Q Did you charge for those reports as well?

A Yes. Uhm, so, all of the MRI's that I did, no, I don't charge for those reports. Only the CAT scans which I didn't do which was sent to me five years after I did the MRI, those are charged $800 for a CAT scan reports.

Q And you and I worked together once before; is that correct?

A I believe so. I don't quite remember.

MR. KELLY: I have nothing further for you, Doctor, thank you so much.

THE COURT: Thanks so much.

Cross-examine.

MR. GOLD: What time do we break for lunch?

THE COURT: We go to one o' clock, or we will go to I think five or ten to 1:00.

CROSS-EXAMINATION BY MR. GOLD:

MR. GOLD: Can I just see what is here?

THE COURT: Please.

Q Good morning, Dr. Kolb.

How are you?

A Good morning, thank you.

Q Dr. Kolb, when this patient was referred to you, how was he referred to you?

A Usually a phone call is made with referral script and a doctor asking for certain tests.

Q Were you aware at the time that this file was referred to you that this was a claim for a work-related injury?

A No.

Q Did you bill Workers' Comp. for this claim?

MR. KELLY: Objection.

THE COURT: Sustained.

Q Did you submit your MRI's to Worker's Comp?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

MR. KELLY: Objection.

THE COURT: Sustained.

Q Were you paid by Worker's Comp?

THE COURT: Sustained. The jury will disregard any reference to any collateral source payment in this case.

Q Were you aware that the plaintiff -- we submitted it into evidence, Judge?

MR. KELLY: Objection.

THE COURT: First of all, sustained. Second of all, that does not change the rules of evidence.

Q At what point in time did you become aware that there was a work-related injury?

MR. KELLY: Objection.

THE COURT: Overruled, the beginning word, work-related injury.

MR. KELLY: He said work-related injury claim.

THE COURT: I didn't hear the last word, but with respect to work-related injury --

MR. KELLY: That is fine, I don't care about that.

A The first time I was made aware there was any type of injury other than me not knowing what it was, was -- I believe I read in September 2022, which was four years, after I wrote my MRI report. That is the first time I became made aware because I read the CAT scans from the hospital that were sent to me five years after.

Q Did you submit bills at any entity for taking the MRI's?

MR. KELLY: Same objection, it's a roundabout way to ask the same question.

THE COURT: Well, as to this one question, did he bill for his work, it is okay, but obviously the next question is not okay.

A I have no idea how or what was billed for the MRI's done in 2018, 2019.

Q I am going to show you, since you have no idea, as a reminder --

A Uh-huh.

Q -- two pages that were received from -- that have been marked as part of Defendant's A. Does that refresh your recollection as to whether you billed any entity or individual as a result of your --

THE COURT: Just yes or no.

A It doesn't refresh my recollection at all. I have no idea what was or wasn't billed in 2018, 2019.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Can you look at the second page?

A Yes, no, I am looking at both pages. I can read these, I see what it says, but the answer to your question is I have no idea what is billed for anything that I do and how it is billed, whether it is an injury done in any which way. I have no idea.

Q Does it refresh your recollection as to when you learned that this was a work-related injury?

A No. I learned about it in September 2022. I had no idea --

THE COURT: Do me a favor, don't show the documents to the jury.

A No, the direct answer to your question is no.

THE COURT: Can I ask, do you do your own billing, personally?

THE WITNESS: This person is signed --

THE COURT: Do you personally do your own billing?

THE WITNESS: Do not personally do my billing, no, definitely not.

Q Did there come a time where you learned that Mr. Contreras was claiming trauma as a result of the accident?

A Yes.

Q When was that?

A September 2022.

Q Doctor, I would like to place in front of you -- I guess we will make it, Judge, how are we going to mark these? These are a Kolb document, from the Kolb records.

THE COURT: It is part of the Kolb records then it should probably be page numbers, just has to be page numbers as we discussed off the record before we got started today.

MR. GOLD: Doesn't have a page number.

Q I will put in front of you, a March 21, 2018 document that is in evidence?

THE COURT: Part of Exhibit 4.

Q Part of Exhibit 4?

A Yes.

Q I will ask that you read indication --

THE WITNESS: I can read it, right?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

THE COURT: I don't know what it says so I don't know if you can read it.

THE WITNESS: Indication.

THE COURT: Sure.

A Yes, it says status post trauma.

Q So you are aware there was a claim for trauma?

A I am aware there was claim for trauma, he could have fallen out of bed. I have no idea in a case that I read he could have had -- no, I knew that there was a trauma. It is in my report. More than that or less than that, I don't know on any case that I read.

Q Did you ask -- and who does that refer -- that document given to?

A It is sent to Dr. Matthew Grimm.

Q How many referrals a year do you get from Dr. Grimm?

A I have no idea.

Q Many?

A I don't know what that means, many.

Q More than five?

A Yes.

Q More than one?

A Five, I have no idea, I can't give you a number.

Q More than 15?

A I can't give you a number.

Q More than 100?

A I can't give you a number.

Q More than a thousand?

A I can't give you a number. I can sit here and tell you that I can't give you a number. I am not going to guess.

Q So you don't know how many referrals, maximum you get --

MR. KELLY: Objection, he just answered the question.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A That is correct.

Q Is he a regular referral source?

MR. KELLY: Objection.

THE COURT: Overruled, that is different from the specific number.

A I've seen his name, yes. I don't think I've ever met him.

Q Have you met his partner, Jeffrey Kaplan?

A In the last 20 years maybe twice.

Q Did Dr. Kaplan also refer you --

A I've seen his name as well.

Q Were you aware that based upon your report, they would designate treatment for Mr. Contreras?

MR. KELLY: Objection.

THE COURT: Was he aware -- do you mean did he anticipate that they would --

MR. GOLD: Did he anticipate?

THE COURT: That is fine, without phrase -- with that phrasing you withdraw the objection?

MR. KELLY: Yes, I do.

A Yes, as a radiologist, anything I write, I expect a clinician, sent me a case to read it and to bring that into their decision making process of whether I need to treat the patient or not, yes.

Q Did you send your films, the films themselves to Dr. Kaplan and/or Dr. Grimm?

A The films are available for them to read. I don't know about the word “sent,” but they are available for me to read. Whether I have a portal or cloud for them to look at or CD, answer of the question in substance, yes.

Q Do you know if they reviewed the films?

A I have no idea.

Q Do you know if they reviewed films?

A I don't know. Like I said, I don't know.

Q When you received the films, the CT scans you reviewed, did you also receive the report from Elmhurst Hospital?

A No, I don't remember receiving it. I could have, but I don't remember receiving it.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Did you bring a file with you today?

A Yes.

Q Is this your entire file?

A Yes.

Q Do you recall learning at any point in time, either from your own review or from a report that the plaintiff had osteopenia?

A No, I didn't see that written anywhere.

Q Do you see osteopenia on any of your reports, on any of your films?

A The answer is no, I don't, but I would have to read my reports to make sure, actually look through the whole set of films, whether I did say it or didn't say it, but if it's not in my report, then no.

Q Is that osteopenia present on either of these CT scans?

A From 30 feet away, you want him to get down and look at them?

MR. GOLD: I would be happy if he comes down and looks.

THE COURT: Do you mind, Doctor?

A I want to answer the question since as I said many more films than that, and you would like to also look at my report because I looked at many films, not just those two blow ups.

THE COURT: So that is fine, no objection.

MR. GOLD: I have no objection to him looking at his films.

THE COURT: Counsel, the two you put up are which numbers?

MR. GOLD: 3A and B, no, 4A and B.

THE COURT: Three became A, D became --

MR. GOLD: So we are changing it to 3A and B, right?

THE COURT: Those are the CT's not the MRI's?

MR. GOLD: No, Elmhurst.

THE COURT: Elmhurst is 3A and B, yes.

A So the answer to your question is no, I don't see it on those, and I did not put it in my reports when I looked at the totality of all the films.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q What does osteopenia look like in a CT scan?

A Well, that is a good question, what does osteopenia mean, really mean? What is the definition and how do you describe it? So we do bone densities on this patient, and I, of have not seen on this patient -- that will tell you whether the patient has osteopenia or osteoporosis, so looking at films is not a very objective way of seeing osteopenia or osteoporosis. I don't see any on this patient. That being said, subjectively looking at these films, I don't see it.

Q What would you be looking for if you were looking for osteopenia?

A I would be looking for an abnormal bone density examination.

Q Are you aware -- I think you just said you were not -- that there was an abnormal bone density examination done on this patient?

A I have no awareness of a bone density on this patient at all.

MR. GOLD: Your Honor, I just need a moment then to dig it out.

THE COURT: Sure.

(Discussion off the record.)

(The discussion off the record concluded and the following occurred in open court:)

THE COURT: Just try to keep it all in order please.

Q I am going to show you page 1159 of Elmhurst -- I am sorry, three.

THE COURT: Plaintiff's 3.

Q Plaintiff's 3.

(Handed)

Q Can you read the top line of Plaintiff's Exhibit 3?

A It is date of 4/9/2018. It says, “Other osteoporosis with current pathologic fracture, initial encounter. Severe osteoporosis likely secondary to prednisone use. Will check for other confounding etiologies including hyperparathyroidism disorder, vitamin D deficiency, start Fosamax now as well as oscal.

Q I am going to show you the page 1182, Plaintiff's Exhibit 3. What is that document, sir?

A It's a dexabone density, two sites done at Elmhurst nuclear medicine on 3/6/2018.

Q So that is roughly 32 days after the accident?

A Okay.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And two days before your first MRI?

A Okay.

Q Is that correct?

A Yes.

Q What does that bone density report show?

A It shows the T score in the lumbar spine, L4 more than L2-L3 is in the osteoporotic range while the T scores for the femoral net (sic.) are osteopenic. That is the impression.

Q So prior to your doing your MRI on this patient, he was, in fact, diagnosed with osteoporosis?

A Yes.

Q And osteopenia?

A Osteoporosis and osteopenia.

Q What is the difference between the two?

A Osteoporosis is worse.

Q What does osteoporosis mean?

A It means there are not a lot of calcium or bone elements in the bone, or there is an abnormal diminution. There is too little calcium or bone elements in the bone. It puts you at risk of fracture.

Q Now, do you do MRI's of people with osteoporosis?

A No, I imagine again, you wouldn't know without the bone density test, but I imagine -- I do MRI's on people who are elderly as well. Some of them have osteoporosis.

Q Have you done MRI's of people that you had determined had osteoporosis?

A No, because I don't do bone density at the same time as the MRI.

Q Have you done MRI's of people that you determined had osteoporosis?

A Not that I am aware of, but I am sure that I have done many MRI's on patients with osteoporosis.

Q How does osteoporosis show up on an MRI?

A You can get diminution of the -- diminution of calcium in the bones.

Q And how does that show up, what does it look like on the films?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A I won't necessarily see it on an MRI. In other words, you can't see -- you can't make a diagnosis of osteoporosis on an MRI or else you wouldn't need a bone scan. I am sorry, you wouldn't need a bone density test. In other words, you need a bone density test to find osteoporosis. An MRI does not give you a diagnosis of osteoporosis.

Q Do you send people out for bone density after you perform an MRI and find compression fractures?

A No, the doctor who gets the report will make that decision. I don't send them out.

Q Does osteoporosis cause compression fractures?

A Osteoporosis puts you at a risk of getting fractures of the bones that are osteoporotic.

Q In this patient, were there any bones that you filmed and found a defect that were not osteoporotic?

A I can't comment. I don't see osteoporosis on an MRI scan. If I did, you wouldn't need a bone density test. That is why the patient had a bone density test and not an MRI to look for osteoporosis.

Q Would you agree that compression fractures are common with people that have osteoporosis?

MR. KELLY: Objection.

THE COURT: Yes, it -- are you asking a correlation question or causation?

MR. GOLD: Correlation question.

THE COURT: Correlation, okay.

MR. KELLY: Age, gender, a whole bunch of things.

THE COURT: Well, why don't we ask that question as a foundational question, whether it is impacted by --

Q Do you generally see osteoporosis in elderly individuals?

A You are more likely to see osteoporosis in an elderly individual than in a younger individual as generally speaking.

Q Do you know if Prednisone causes bone density --

A Yes, it does. I agree with the report that I just read.

Q And you have not reviewed the actual bone density films, is that --

A No, totally unaware they existed.

Q Now, you indicated earlier that there were three disks that showed compression fractures, but normal bone marrow signals; is that correct?

A I think -- not disks. You mean fractures.

Q Vertebra?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Vertebra, yes, yes. There was a certain number that showed normal marrow signal, yes.

Q In fact, only one of the three showed an abnormal marrow signal, correct?

A I think it was one of the five.

Q One of the five?

A Yes, that is correct.

Q So there were four other disks that showed -- sorry, four other vertebras that showed normal marrow signals?

A Which, yes, which their marrow edema or swelling had resolved by the time the MRI was taken, that is correct.

Q Does that normally happen in the span of five weeks?

A It can.

Q Doesn't it normally take six to ten weeks for a vertebra to heal?

A I can't give you five weeks, six weeks or ten weeks. That is a very small time period. The answer to your question that you first asked me can, it happen within six weeks, the answer is yes.

Q What is the standard?

A There is no standard that I am aware of.

Q When a bone heals, what happens?

A In what way do you mean?

Q To the bone, what happens?

A Usually forms callus around it, extra bone. That is what usually happens, more bone is formed.

Q And is that visible on an MRI?

A It can be.

Q Was it visible on your MRI's?

A Again, I would have to look through it.

Q Please, come, look.

A Not on the MRI.

Q Doctor --

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

MR. KELLY: I am sorry.

THE COURT: He said not on the MRI.

MR. KELLY: Oh, the MRI.

A Oh, I am sorry, in 2018, there was mild anterior marginal osteophyte formation at Tll-12 and L1-2.

Q And that would be osteophyte formations, arthritis --

A That is another word. It is one of the stages of --

Q How long does it take for osteophytes to form?

A That will take months minimum.

Q So at T12 --

A Yes.

Q And on your film, which film would it be?

A CT scan of 2/13/18, not my film, the hospital.

Q Hospital film?

A Yes, here, these areas right here.

Q These extremely white areas, white here --

A No, the front, just from the front, nothing in the back.

Q Just on the side?

A No, no, just on the front.

Q The anterior, posterior?

A That is correct.

Q So this anterior section is osteophytes, and that would indicate to you that those fractures were older than months?

A No, not at all, I don't how you get that --

Q Didn't you just say that osteophytes take months to heal?

A Yes, you can have an osteophyte without a fracture, and you can have a fracture without an osteophyte.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Are you able to tell from here -- so is that arthritis that is forming there?

A Yes, I think that there is a little spur, osteophyte that has formed here, maybe smaller ones in different parts of the spine.

Q That started months before this --

A Oh, yes.

Q This film.

So that osteo -- it started years before --

THE COURT: The osteophytes?

MR. GOLD: The osteophytes.

Q It could have started years before?

A Possible, it is possible, yes.

Q And that doesn't -- so there was already spinal damage months or years at L1, L2?

A Well, I will restrict myself to what I see. There are osteophytes, right, months, at least months before, that is correct, absolutely.

Q So this film is taken nine days after the accident?

A Yes.

Q Those osteophytes were there on the day of the accident?

A Correct.

Q They could have been there a year before the accident?

A It is possible.

Q Are there times when people, you have found compression fractures on people that have no symptoms?

A It is certainly possible. I mean I can't give you a number of how current that is, but it is possible you can have compression fractures, symptoms.

Q So it is possible that the plaintiff had compression fractures without having, knowing that he had compression fractures; is that correct?

MR. KELLY: Objection to speculation.

THE COURT: Sustained, when you make it about this plaintiff unless you are going to ask him about a specific film, a specific finding.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Is it possible that the person who had the compression fractures shown --

THE COURT: That is the same thing. It doesn't matter how you phrase it, it is the same question. It calls for speculation. You just asked him whether it is possible that someone can have none -- an asymptomatic compression fracture. That is asking him a medical opinion. If you ask him about a specific person, you are calling for speculation.

MR. GOLD: That is fine, I think I have the answer. I think the jury has it.

Q Sir, what is this white line that is underneath, and what disk is that, vertebra is that?

A This is T2, L2 --

Q Now, that white line, is that bone reformation?

A No, it is part of the fracture. In other words, the normal, thin white line that you have here is not very thick because it is crushed, is now very thick because it is crushed. That is why this white line, this white line at every level of the fracture because the bone is compressed.

Q Up here, is that osteophyte formation as well?

A No, I don't think so.

Q What about here?

A No.

Q And here?

A No.

Q And here?

A I don't think so, I think that is relatively normal. Again, you have to look at all of the slices. We took out one slice to blow up for that to show the fractures, but you have to look at all of them.

Q Is there evidence on any of your films of bone remodeling?

A So modeling is a term that is used where the bone looks abnormal after something happens to it. For example, the hip, if you have a hip fracture, the bone goes around the fracture, and you call it remodel, but these are typical just fractures, but I wouldn't use the word remodeling for --

Q I am going to show you your March 21, 2018 MRI.

A Uh-huh.

Q Does that show bone remodeling?

A No, it shows fractures.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Does it show sclerotic changes?

A No, again, you would see sclerotic changes on a CAT scan, not on an MRI.

Q Does the CAT scan show sclerotic changes?

A The answer to your question is no. It shows compression fractures that because of that the bones are more white than normal.

Q You don't believe that is evidence of healing?

A Oh, no.

Q Do you believe the darker marrow is evidence of healing?

A I think, yes, I said that. The swelling is starting to, from -- for the fractures -- the darker marrow you mean on the MRI about six weeks later.

Q If I was to tell you, and let you assume that the radiologist that reviewed these films at Elmhurst concluded that the fractures were of indeterminate age, would you agree with that conclusion?

MR. KELLY: Objection to form of the question. He said these films.

THE COURT: Sustained as to form.

Q Assume for a moment that the radiologist at Elmhurst Hospital concluded that the fractures in the lumbar spine were of indeterminate age. Do you see anything in that MRI -- I am sorry -- in that CT scan that contradicts that conclusion?

MR. KELLY: Objection.

THE COURT: Objection what?

MR. KELLY: No, just objection. Do you want to know why?

THE COURT: In one or two words if you have it.

MR. KELLY: Sure, because they are not shown, shown in the MRI.

MR. GOLD: I said it is the CT scan.

MR. KELLY: I know. The CT scan doesn't show that. The doctor testified to that.

MR. GOLD: He can testify to that. You don't have to.

MR. KELLY: The Judge asked me.

THE COURT: Yes, does the CT scan give you any indication, sir -- withdrawn.

Based on, based on reading, if you will forgive me rephrasing to try to get around this objection.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Based on your reading of the CT scan, what counsel has asked you to assume about somebody else's interpretation of that CT scan, do you have any opinion as to whether or not -- I am sorry, whether or not the CT scan shows something consistent with that, is that what you are asking?

MR. GOLD: Yes.

A I can't, I can't tell you from just looking at the CT scan the date of when that fracture happened, whether it happened two days earlier or seven days earlier than the CT or what. I can't date the time of the fractures.

I do later on an MRI where I actually put in my report five years ago that the fractures were recent, within the six-week period. So just to answer your question, I can't tell you what day those fractures happened. They could have happened --

THE COURT: From only looking at the CT.

THE WITNESS: From only looking at the CT scan.

I have in something I wrote actually five years ago.

Q The fractures shown in that scan could have happened months before the date of that film, correct?

A Unlikely. You would probably see a lot more healing. Those are pretty big fractures, and that is highly -- that just looking at the CT scan. I will say, but it is highly unlikely that it happened months before based just on the CT scan. I can't tell you that happened two days before that CT or two or three weeks before.

Q Do you see any signs of swelling or edema in that scan?

A On the CT scan?

Q Yes.

A No.

THE COURT: And just for a second while you are looking at the scan, I just want to give you a head up, we need to break for lunch at ten to because I have a one o' clock meeting I have to get myself to. Normally we break about one o'clock, but I need to break about ten minutes early to get to this meeting.

Q This is the MRI that you took, correct?

A Yes.

Q It shows the same area that we were just looking at?

A Yes.

Q Do you see evidence of healing in those lower fractures?

A The only thing that I can say is what I have said to you is that the signal in the marrow that shows swelling is prominent at T8 which tells me this is a recent fracture. The swelling that was, certainly at some point, in the fractures, I don't see any more of the --

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Could this fracture you referred to as a recent fracture, could that have happened less than six weeks before the date you took the MRI?

A You are asking me if the patient had four fractures that are old and one new fracture that happened and nothing to do with the trauma?

Q That is correct?

A That is a pretty big leap there, but the answer to your question is anything in the world is possible, but --

Q I am asking you can you date with any certainty that one fracture, the one you say is recent --

A I can't tell you whether it happened a week before or six weeks before, four weeks before.

Q Ten weeks before?

A No, that is why my report doesn't have dates. You are trying to come up with numbers. My report says acute to subacute which means -- that means just recently or near recent past.

Q So that disk that you found with the white spot, I think I have the right one, with the herniation --

A Vertebra.

Q Vertebra, yes, that vertebra, that could have, in fact, fractured a week before?

A Anything is possible. I mean I said to you that the CT scan, no one can date a fracture as to when it happened on the CT or the MRI, but we have strong evidence on the MRI that it was recent.

Q But you don't know how recent?

THE COURT: To date, to the day, you are asking?

MR. GOLD: They are trying --

Q Yes, you don't know whether it is one week, six weeks, ten weeks?

A I can't tell you that it happened on February 2nd, February 4 or February 5th. I can't tell you that.

Q You can't tell me if it happened on January 20, can you?

A Highly unlikely --

Q Is it highly unlike --

MR. KELLY: Can the witness finish the answer?

THE COURT: Yes, hold on, let the witness finish the answer.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Medically highly unlikely to say that that T8 fracture was there for a very long time, months or years before the time of the --

Q Could it have been there for days before?

A You just asked --

THE COURT: Just asked.

Q No, you said weeks or months?

THE COURT: No, he said it is highly unlikely that it was weeks or months, and he has now said it to you for several times. Withdrawn, that it was several months.

THE WITNESS: Yes.

Q Could it have been days?

A You just asked me that. I can't tell you what, when that T8 fracture happened, whether it was five days ago and all the other fractures happened three years ago or they all happened on the same day at the same time at one trauma which makes common sense.

Q So it is possible that these other fractures, the lower ones happened three years ago?

MR. KELLY: Objection.

THE COURT: Sustained. We don't deal with possibilities. We deal in things that are likely to a reasonable degree of medical certainty.

MR. GOLD: Sorry, Your Honor, I thought it was his words that it could have happened three years ago.

MR. KELLY: Move to strike.

THE COURT: Sustained. It is the jury's recollection of testimony that controls it, not mine, but I believe the doctor tried to say to you several times that anything is theoretically possible but that he has opinions about which things are more likely, less likely, highly unlikely based on the interpretations he has already given.

Q Are you familiar with what is called the vacuum phenomena?

A Yes.

Q What is the vacuum phenomena?

A It is air within a disk.

Q Do you see air within any of the disks?

A I don't.

Q Does that indicate to you that these are older disk fractures?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A No, because --

THE COURT: Disk fractures or vertebral fractures?

MR. GOLD: I am sorry, vertebral fractures.

A No, because when you have fractures, you are more likely to have air in your disk earlier than air in your disk if there were no fractures, so no, the answer to your question would be no.

Q So on an older fracture, there would be no air in the disk?

A No, I didn't say that.

Q I am trying to get an explanation?

A I will say again. When you have a fracture, it is more likely to have air in the disk space than if there was no fracture. You can have air in the disk without fracture over time, but with a fracture, it is more likely.

Q Here there is no air in the disk on any of the fractures?

A Not that I see, and if there was, it wouldn't change my opinion.

Q Do you see the replacement of fat in any of the disks or -- sorry. Do you see the replacement of fat in any of the lower disks?

THE COURT: Replacement of --

Q Are you familiar with the term replacement of fact in a radiological term?

A Yes.

Q What does that mean?

A That normal fat that was in one place is not there anymore.

Q And does that occur when there is a fracture?

A It could occur with a fracture or without a fracture.

Q On older fractures, is it more or less?

A I don't know the answer to that question. I think that could go either way.

Q Do you see any edema or swelling of any of the disks on the MRI that you took on March 21, 2018?

THE COURT: Edema or swelling, disks you are saying?

MR. GOLD: I am sorry, vertebra.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A And the same for replacement of fat, I think you met vertebra and not disks.

THE COURT: Right, that is what I was trying to get at before.

THE WITNESS: Yes.

Q Do you see any edema or swelling of any of the vertebra or the associated soft tissue on any of your MRI's?

A Yes, I have spoken to that at length and said that to you many times. There is edema in the --

Q TA (sic.) only?

A You said that many times, yes, true.

Q Showing you, and if you want to come up and take a look, this is --

THE COURT: Is it one of the ones we already looked at?

MR. GOLD: Yes.

THE COURT: Just trying to figure out if that is --

MR. GOLD: Sorry, I was actually -- this is 4C, this is the earlier one.

Q This is your March 29, 25, 2019 --

A Correct.

Q When you performed your March 25, 2019 MRI, did you take a look at the T8 disk -- I am sorry, vertebra that you found was fractured on your earlier MRI?

A No, the one you have up now is the neck, the cervical spine, and the answer to your question is T8 would be down here, not beyond that.

Q When you -- did you do any -- you can look at your notes. Did you do a film, MRI of the lumbar spine in 2019 --

THE COURT: Of the lumbar spine or thoracic spine?

MR. GOLD: It is both, but it is -- I will stick with, go with the first one then I will ask the other one.

THE COURT: Sure.

A Your question is I did MRI's of both the thoracic spine and lumbar spine in 2019.

Q Okay, but we don't have those films to put up?

MR. KELLY: Objection, they are in evidence.

THE COURT: We don't have blow ups, but we do have the film, right.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

MR. GOLD: Your Honor, I would like to put them up, but I am having technical issues. I can't -- I am not -- I will have to try with the computer. I think we can, I can do that during the break.

THE COURT: You have to take that up with Mr. Kelly. I think the doctor's time is for half a day.

MR. KELLY: I have him for half a day, Judge, right, yes.

MR. GOLD: I won't be finished, Judge.

THE COURT: What is that?

MR. GOLD: Won't be finished with them.

THE COURT: Like I said, just take it up, the scheduling questions with Mr. Kelly, I am not in the middle of that. I am here to call balls and strikes. Whatever scheduling you do is between Mr. Kelly and obviously the doctor.

Q At C2 and C3 on your MRI, do you see desiccation of the disk?

A No, you can't call desiccation in any of the disks in cervical spine, on --

THE COURT: I couldn't hear the last piece, I am sorry.

A You cannot call desiccation a desk. Desiccation is losing water of disks on any of the cervical disks on this MRI including to answer your question, C2-3.

Q Do you see any -- can you point to the C2-C3?

A Indicating.

Q Do you see end plate osteophytes on C2-C3?

A No.

Q Do you see growth of bone at C2-C3?

A No, it looks normal.

Q Excuse me, Doctor?

A Yes.

Q Please.

A Sorry.

Q C3-C4, can you tell me what you see there?

A C3-4, there is a herniation that pushes on the spinal cord.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Where are you seeing the herniation pushing on the spinal cord?

A You see this white line coming down here, that is spinal fluid. The cord is here. Disk is here, the spinal fluid here. You see how you have no white line here? That is because the disk is touching the spinal cord, and you are losing the spinal cord in the -- pushing on the spinal cord.

Q Now, are herniations of that type common with people that have osteo pain or --

A It has nothing to do with bone density.

THE COURT: With bone density.

THE WITNESS: That's correct, it has nothing to do with bone density.

Q Are people that have osteopenia or osteoporosis more susceptible -- do they have -- strike that.

You mentioned, used the phrase before a stable spine?

A Unstable.

Q Unstable spine.

Would you agree that people that have osteopenia or osteoporosis have unstable spines?

A No, if you don't -- osteopenia makes you more at risk of having a fracture. If you don't have a fracture, then your spinal is not unstable. Osteopenia just means you don't have enough calcium in your bones. That is all it means.

MR. GOLD: I would like to try to get the films up, but I don't think I will be able to do it.

THE COURT: Okay, that is up to you.

Can the doctor sit back down?

MR. GOLD: Excuse me.

THE COURT: Can the witness sit back down?

MR. GOLD: He can sit.

THE COURT: Thank you.

MR. GOLD: You know what, I don't think I want to keep him for the extra afternoon if I can --

THE COURT: Pardon me.

Q Do you know when you did the MRI of the lumbar spine in 2019, did it show any further changes to L2 or L3?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A I would have to look at my reports. I think there was no change. I think I put in my report, my recollection that there was no change from the 2018.

Q And did you note further healing or full healing at T7-T8?

THE COURT: T7-T8 is a disk. Do you mean T7 vertebra and T8 separately vertebra?

MR. GOLD: I think it was T8 that he said.

THE COURT: Look at the level, at the report. That is fine, look the report over.

A So I did not mention the narrow edema in 2019 a year later so I do think that that swelling in T8 -- it was swelling -- all I can say by reading my report is that the swelling in T8, the edema went away. The phrase that I use here three years, four years ago, there is a fracture deformity predominantly involving -- T8 with no segmental change from the prior examination. I believe that I meant, I am sure I meant, but I am talking about whether the fracture got larger or not. The fracture did not get larger during the course of the year.

Q So that particular fracture healed, correct?

A Well, if you mean that there is no edema in there, and there is no swelling, we can infer that --

Q And that would be the reduction in pain as well?

A No, absolutely, of course not. One has nothing to do with the other.

Q So swelling has nothing to do with pain?

A Of course not.

MR. GOLD: Thank you, I have nothing, no further questions.

MR. KELLY: I can do it in three minutes.

THE COURT: Do it, that is great. REDIRECT EXAMINATION BY MR. KELLY:

Q Dr. Kolb, does osteopenia change the opinion whether or not the fractures shown in the films are caused by the accident?

A No, in fact, it strengthens the opinion if you think about it. If you have a patient that has washed out bones that are more at risk of fracture, the whole point of doing a bone density -- if there is any trauma to the bones that wouldn't have fractured my bones, let's say, are going to fracture this patient's bones. He is more at risk of fractures. So a trauma that happens to this patient is more likely to fracture bones than me who doesn't have osteoporosis so it makes it more likely that the trauma caused this. It is the other way around.

Q Does the osteopenia change your opinion as to whether or not Mr. Contreras suffered a permanent injury?

A Oh, yes, it is permanent. The whole topic of talking about osteopenia has nothing to do with anything being permanent. Those fractures are there. You can take pictures today of them, years later, and they are going to look just like that.

Q And the CAT scan and X-ray don't show swelling and edema, do they?

A They can, they may not, they may not.

Q But the better diagnostic test for that as well --

A MRI.

Q Would you call that the gold standard?

A It is definitely far, far, far better at finding swelling than a CAT scan or X-rays.

MR. KELLY: Thank you.

THE COURT: Thank you.

Any recross?

MR. GOLD: No.

THE COURT: Thank you, sir. You are excused. Thank you for your time.

THE WITNESS: Thank you.

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.