2023 WL 11805011 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.
Kings County

Petrika DOJCE, Plaintiff,
v.
1302 REALTY COMPANY, LLC, F&D Improvements Incorporated and Mesivta Yeshiva Rabbi Chaim Berlin, Defendants.

No. 508449/2016.
November 1, 2023.

**Testimony of Plaintiff's Expert Witness, Thomas M. 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: Law Office of Peter S. Thomas, P.c., 108-18 Queens Boulevard, Forest Hills, New York 11375, By: Peter S. Thomas, Esq.

For the Defendants: Catalano Gallardo & Petropoulos, LLP, 100 Jericho Quadrangle, Suite 326, Jericho, New York 11753, By: Domingo R. Gallardo, Esq., By: Michele R. Levin, Esq.

Honorable Peter Sweeney, Judge.

THE COURT: Good morning. Good morning, everyone. Please have a seat. Thank you.

All right. So, we have -- by the way, it's not as if we are starting at this hour. We were here discussing. We had a lot of issues that came up. And they all had to be resolved before we were able to bring you out here. So, now we are ready to go. The witness is in the courtroom.

Counsel, please call your first witness.

MR. THOMAS: Thank you, your Honor.

Your Honor, at this time we call treating physician Thomas M. Kolb to the witness stand.

(Witness takes the stand at 10:52 AM.)

THE CLERK: Good morning. Right up there. Please remain standing and raise your right hand.

(Witness complies.)

Do you swear and/or affirm the testimony you're about to give this Court and jury will be the truth, the whole truth, and nothing but the truth?

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

THE WITNESS: I do.

THE CLERK: All right.

Please be seated, and pull up your chair to the microphone.

(Witness complies.)

And, in a loud, clear voice please state and spell your name for the record.

THE WITNESS: Dr. Thomas Kolb, K-O-L-B.

THE CLERK: Address, business?

THE WITNESS: 257 West 34th Street, New York 1-0-0-0-1.

THE CLERK: Thank you.

DR. THOMAS KOLB, a witness called on behalf of the Plaintiff after having been first duly sworn and having stated his address as 257 West 34th Street, New York, New York 10001, took the witness stand and testified as follows.

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Good morning, Doctor.

A. Good morning, sir.

MR. THOMAS: You know what? Let me use the microphone.

Q. Good morning, Doctor?

A. Good morning.

Q. Doctor, please tell the members of the jury: What is your area of specialty?

A. Diagnostic radiology.

Q. And, could you tell the jury what is diagnostic radiology?

A. It's the use of x-rays, CAT Scans, MRIs, ultrasound, mammograms to look inside the body to see if there's a problem or not.

Q. Can you tell the members of the jury about your educational background and work experience?

A. Sure.

So, I went to college here at City of New York Queens College. Graduated a long time in 1979.

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

Went to medical school here in Brooklyn, Downstate Medical Center for four years, through 1983.

And, then I became a pediatrician. I did a year internship and two year residency, three years in total, at Albert Einstein College of Medicine in the Bronx, Jacobi Hospital, and Montefiore Hospital and became board certified as a pediatrician.

I then went back and did another four years of training at Columbia Presbyterian Medical Center at Columbia University in Manhattan, Upper Manhattan, four years, to study diagnostic radiology. And became board certified, again, in diagnostic radiology.

Q. Doctor, are you a member of any associations or have any other memberships?

A. Radiologic Society of North America. Various. A number of societies; yes.

Q. You mentioned board certified. Please tell the jury what does it mean to be board certified?

A. You have to finish a number of years of training. In pediatrics it was three years. In radiology it was four years.

You then have to take a written examination. If you pass that you take an oral examination. If you pass that you become a member of the board of radiology or board certified.

Q. And, Doctor, tell the jury: You a unique distinction of being involved in creating some of the modern technology of -- that we use in MRI's today; is that true?

A. Well, my practice is split into two parts.

One part of my practice is breast cancer diagnosis. And I specialize in young, high-risk woman. I've done my fair amount of research and published papers.

And, one of my largest papers was on over 27,000 consecutive woman. And I was able to demonstrate how breast density is very important in terms of how accurate mammograms are in finding breast cancers. This is new information. And, the first time it was in the public view. And the first time it was published.

And, one of my other papers won the American Medical Associations Scientific Publication of the Year Award for that.

So, part of my practice, a large part of my practice has to do with examining women for breast cancer using mammograms, and ultrasounds, and doing breast biopsies; which, I do myself. And very frequently when I see patients, when necessary. So, that's part of my practice.

The other part of my practice is looking at the rest of the body: Joints and spine, most commonly. Doing MRI's, and CAT Scans, and x-rays to look for why a patient is having a problem. The most common problem is pain. So, that's the other part of my practice, is reading films.

When I look for breast cancer, and do breast cancer diagnosis or breast imaging, I physically speak with and examine every patient.

For doing MRI's, and CAT Scans, and x-rays of the remainder of the body, that is more of a traditional radiology level where I'll look at the pictures on the screens and computers. And make diagnosis and write reports, and send them to the doctors.

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

So, those are the two major parts of what I do everyday.

Q. Now, Doctor, you're a practicing physician?

A. I am.

Q. And you see patients?

A. I do.

Q. And, have you been qualified as an expert in the field of radiology in the Courts in the State of New York?

A. I have been.

MR. THOMAS: Your Honor, I wish the Court to recognize Dr. Kolb as an expert in the field of radiology.

MR. GALLARDO: No objection.

THE COURT: All right.

So, Dr. Kolb will be permitted to express his opinions on the issues in this case to the extent that they involve in the field of radiology.

Q. Doctor, we heard of x-rays, CAT Scans, MRIs.

Can you tell the jury what the distinction is between those type of diagnostic tests?

A. Sure.

So, x-rays are actually discovered over 100 years ago. It's been around for a very long time. And, x-rays are very good tests to look at things that are hard versus things that are soft.

For example, if you're looking for a fracture, an x-ray is a really good test. Because if you're looking at a fracture of, let's say, a hand or any part of the body, neck or back, the x-ray would show the bones. They'd all be white. And everything else though, you wouldn't see very well. So, the bones you would see very well because they're hard.

But there's a lot of soft tissue structures. There's nerves. There's arteries. There's veins. There's tendons. There's ligaments. There's discs in between the bones. There's cartilage in between the joints. You won't see that on x-rays.

CAT Scans use x-rays. But instead of taking one picture of the part of your body -- let's say of your neck for example or your back -- it takes many, many thin pictures. So thin that you could see in very fine detail all these structures. You could see a little bit better the soft tissue. You could see discs, for example; which, are soft, between the bone. So, that's a good thing. So, CAT Scans improve on x-rays even though they use x-rays. it's improvement.

MRI's are a totally different technology. MRI's are magnetic waves. Magnetic waves are totally different than x-rays. An MRI machine is a very large machine. And there's a very large magnetic. And, you lie in the magnet. And, the machine pulses magnetic waves into you. And the protons in your body move. And very powerful computers pickup these different movements. And we could make pictures.

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

And those pictures are amazing in their detail of showing these soft tissue structures. They show the discs very well. They show the nerves very well. For example, if we're looking at the neck and the back, you could see the nerves; which, you're not going to see as well in other tests.

So, MRI's are now standard in use. We use them all the time to look for problems within a patient.

Q. Now, Doctor, can you give are us a little lesson on anatomy as it relates to the spine?

A. Sure.

Q. I have a model here if you want to use it. I have a large scale model, as well. But, feel free to ask for it, I'll be happy to provide it to you.

A. May I?

Q. Which one. The small one?

A. The large one.

Q. This is “Bones”. He doesn't talk much, but he's a good listener.

MR. THOMAS: So, your Honor, with the Court's permission if the doctor could step down?

THE COURT: You could step down.

(WHEREUPON, a demonstrative spine is placed in front of the jury and the witness approaches the jury box.)

A. So, this is an actual spine. And I will talk a little bit about anatomy. It won't be too technical. It will be exactly what you need to know.

The first point is that it doesn't matter male, or female, or very tall or very short. We all have the exact same anatomy. We are all born in the same way. And pretty much progress the same way in life.

So, there are three parts in the spine. We're going to look at the neck, the cervical spine, and that's up here. The patient's skull is up here. The brain is up here. The legs are down here. Left side of the patient. Right side of the patient.

(Indicating.)

A. So, in this neck, when we move our neck there are actually seven bones in the neck. And, we're able to move our neck because the bones are not connected together. The bones are separated by these gray areas here, these gelatinous structures that are called the discs. In our spine we have discs that separate the bones.

If the bones were to come too close to each other and touch; that would be a really bad thing. That would be extremely painful. The body doesn't like that. So, we are born with these little shock absorbers that are discs that allow us to move our spine. Jump up and down. All the different motions that we make, whether it's the neck or the back. So, these discs are vertical.

Now, why when we move around don't the discs just spurt out? What holds them in place; if, they're supposed to be shock absorbers?

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

Well, the body has very tough coverings called ligaments that run up the front of the spine. This is the patient's front; which, is very important. And, this is the patient's back.

And when you feel your back, you feel those bones in the back. You're, actually, feeling these spinus processes here. Here.

(Indicating.)

You don't have to remember any medical terms at all. But, these discs are held in place by ligaments. And one very important ligament goes around the disc at each level. And that's called the annulus. It's a tough covering or a ligament.

And then there's another ligament that runs through the back of these bones here. Each of these bones is called a vertebra. Again, you won't need to remember anything. It will all be very easy to look at. It's called a vertebra. And in the spine there are seven.

(Indicating.)

So, if I were to label these -- and you will see later on the MRI in a little bit. I would label them ‘C’, for cervical, cervical spine C-l, C-2, all the way down to C7. And the reason I do that is because if I want to talk to you about a problem between the fifth bone and the sixth bone; I'm going to say C5-6. C5-6 means I want you to look at the bone between the fifth and the sixth bone. So, if I want to talk to you about a problem between the C5-6 disc; that's what I'm going to call it. It's the disc that's between the fifth bone and the sixth bone. You'll see a little bit more.

Now, continuing on; why is any of this important? Because our brain is up here.

(Indicating.)

A. And from the brain comes the spinal cord down the back. And you'll see it on the MRI's. Spinal cord, down your back, contains all of your nerves. The nerves that go through your entire body. But, specifically in the neck, nerves come out -- these yellow things on the side are nerve roots that come out between the bones.

(Indicating.)

A. You see there are holes between the bones. And, there fancy name is the neuroforamena. The holes that contain the nerves. And the hole is in here and the nerve comes out. And each one of these nerves go to shoulder, neck, back, arm, forearm, hands, fingers. So, you could do everything. So, these nerves come out of the spine and travel where they're supposed to be.

And we all have the same anatomy. Same nerve that goes to my pinkey goes to your pinky. And that's the lower cervical nerves right here.

(Indicating.)

A. So, the spinal cord -- which you don't see here because there are bones here in the front and bones in the back -- you could see inside there. There's a yellow cord coming down. And that's the spinal cord. And, then off that comes the nerves.

(Indicating.)

So, this is all very important stuff. Because I told you that the disc, normally, goes to the very edge of the bone and stops. Because a ligament holds it in place.

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

So, let's talk about problems now. What happens if that ligament that holds the disc in place tears? Well, it could tear in two ways. You could have the disc -- heres the disc. And, heres, let's say, the back of the bone; right? So the bone is going to be like a square. One of these bones.

(Indicating.)

A. The disc goes to the edge of the bone and it stops. It doesn't go out here, or out here, or to the back. It stops because a ligament is holding it in place. You're not seeing a ligament on this model. You're just seeing the disc coming to the edge of the bone and it stops. But, if the ligament tears, it could partially tear and the disc is pushed through a little bit.

(Indicating.)

A. Now, if the ligament tears a little bit and the disc starts pushing it through, you'll see a little bit of a disc peaking out between the bone. And that's called a disc bulge.

A bulging disc in your neck or your back is a partial tear of that ligament with the disc starting to push through, wanting to push through. And what happens if the ligament tears completely? Ly the disc goes through like that.

(Indicating.)

A. Why do we care? So the disc has gone through a hole in the ligament now because there's a tear.

Well, you could see how tight the spaces are here. And, you'll actually see it on an MRI. Behind these bones is the spinal cord; where the nerves come off. So, anywhere that the disc pushes back where it shouldn't be, it will cause pressure on the nerves, whether the spinal cord directly, or that the nerve come off of the spinal cord.

And, if these nerves feel abnormal pressure, you could feel pain. That's why you could get a shooting pain in the back that's called sciatica going down the legs. Or you could have pain just to one part of your body. Just your arm could hurt, or your shoulder could hurt, or your neck could hurt.

So, why we care about these discs is because they occupy spaces that they shouldn't be; if, there's a tear. And if the herniation gets larger and larger, there's often more and more symptoms to a patient.

So, really that's all the anatomy you need to know. Because on an MRI I'm going to show you what a normal space looks like. And then I'm going to show you what an abnormal space looks like with a disc bulge. And it will be obvious to you.

I'm going to say it now because we're going to talk about the spine, the lumbar spine. So, the cervical spine is up here and it has seven bones. And the lumbar spine has five bones. ‘L’ for lumbar: One, two, three, four, five. So, if I want to talk to you -- and, then after the lumbar spine comes the sacrum, your tailbone and below. And, this is just looking -- it's the same thing. It's just bigger and better.

(WHEREUPON, a different demonstrative aid is handed to the witness.)

So, there is a disc. You see how it stops? It doesn't go back to the bone? It stops. And the lumbar spine there are five bones: One, two, three, four, five.

This is the sacrum. It's called S1. So, if I wanted to talk to you about the disc between this bone and that bone; I'm going to tell you this is the L5-S1 disc. And we will see it in the MRI. So, we will look at that level.

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

(Indicating.)

But, the anatomy is all the same. There are bones. There are discs. Ligaments. And there's a nerve root coming out. Spinal cord; which is right here, actually stops. And you could see what I mean. If there's a disc herniation pushing out; it could touch the spinal cord and put pressure on it, that's where pain comes from with these disc problems. And that's the spinal cord. And that usually stops right at this level and just nerve roots just comes out.

(Indicating.)

A. So, that's enough anatomy for now. More than enough anatomy.

Q. While you're still here: Ligaments connect bone to bone?

A. Correct. Tendons connect muscle to bone.

Q. So, what we're talking about in this structure with regard to Mr. Dojce, the tear in the ligament, the fact that it's in the -- there are names for the back and the front?

A. Yes.

Q. And, they are?

A. So, the back is really what we're going to talk about here. That's the most important part. And it's called the posterior, the longitudinal because it's long, ligament. Posterior longitudinal ligament runs from all the way from the top of the spine to the bottom of the spine. And, it holds the disc in place. And, then there's a second ligament called the annulus that goes around each level with a separate ligament that goes around.

Q. And, what are these discs made of?

A. So, the discs, like I told you, are shock absorbers or like little jelly donuts. Yeah, really. Inside there's a gelatinous interior. It's called the nucleus pulposus. It's jelly. And, it really is like a jelly donut. And that gives it it's springy, shock absorber quality. The outside of the disc has the annulus; which, is the tough fibrous covering. And the inside of the disc is the jelly-like material, the nucleus pulposus.

And, when you have a disc herniation with a tear of the ligament, this jelly like material can come out, be extruded or pushed out. And it can come in contact with, or cause abnormal pressure on these nerves.

Q. When there is disc material that protrudes out, or leaves it's position, and occupies the space in the posterior aspect of the spine, where the spinal cord is, where the nerve roots are, where the foramen is; what affect does that have on a person in terms of a pain process?

A. So, the most common symptom for having abnormal pressure, secondarily or directly on the nerve roots, and/or spinal cord, is pain. People complain of pain most often.

Nerves do other things. Allows you to move; right? If your nerve doesn't work right you can be paralyzed. May not function well. Nerves give you reflexes. So, you're able to do that.

(Indicating.)

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

A. They also tell the difference between hot and cold. And you can feel things, and touch, sensation. So, it could be any of those things: Tingling, numbness when nerves are involved. But most commonly is pain.

Q. And anything else that you want to demonstrate to the jury with these models?

A. No.

Q. Okay. Let's, if we can, you said that there are things that the jury could see on the actual MRI films?

A. Sure.

Q. Before we get to the spine can we start with the thigh?

A. Sure.

Q. Okay.

(Pause.)

Q. Doctor, first let's start with the MRI of the right thigh. Did you do an MRI of the right thigh?

A. I did.

Q. And, take a look at this.

(Picture handed to the witness.)

Q. When was that MRI of the right thigh?

A. It was done May 19th, 2016.

Q. And what test or method was done again?

A. I did an MRI of the right thigh of this patient.

Q. Now, when you were presented with this patient for the first time, did you know anything about what happened to him?

A. I know the patient had trauma. Some type of trauma. And the patient was having pain.

Q. And, the MRI to the right thigh, the document that you're holding there; if you could just explain to us what does this image purport before I put it on the screen?

A. Well, one second.

So, there are muscles in our thigh; right? And the two major muscle groups that we all know about are the quads, quadriceps and the hamstrings. This patient had a problem with the quadriceps, the quads; right?

So, they're lifting the leg up and extending the knee. But, there are four muscles. Nothing is ever simple. There are four muscles in the quads. That's why they're called quads, right? There are four muscles come to think of it.

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

And, one of the muscles is the vastus lateralis. You're just here. There are three vastus muscles. There's the vastus medialis. The vastus intermedius. And the vastus lateralis. The lateralis is this quad muscle up and down on the outside. There's one more. I'm not going to add another medical term because you don't need it.

So, this vastus lateralis is this muscle that you feel in your quad on the side of your thigh.

Q. Lateralis meaning lateral on the outside?

A. Exactly.

Q. And, again, the importance of this muscles in movement?

A. Yeah.

Q. Is what?

A. First of all, if there's a problem with a tear or a problem; you'll have pain. If you have pain, you won't be able to use it. But, also the muscle fibers, if there's a tear, are disrupted. And, so, you won't be able bring your leg up. You won't be able to extend your knee out. So, anything that tenses up is lateral quad. You won't be able to do.

(Indicating.)

Q. And, your office had done this film?

A. Oh, yeah, I did the film.

Q. And, attached to this image I have also a colorized portion of the film; correct?

A. Correct.

Q. And, have you looked at the markings that have been made on the colorized portion and the indications that are listed with the direction?

A. Yes.

Q. And, do they truly and accurately reflect what it is that they're pointing out?

A. They do.

Q. And, would this be helpful in pointing up to the jury; so, that you could explain what we are looking at?

A. It would be.

MR. THOMAS: Your Honor, this is, I believe, being offered into evidence as part of Plaintiff's Exhibit -- do you know what number we're up to?

THE CLERK: One.

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

MR. THOMAS: One? All right.

THE COURT: It's a new trial; right?

MR. THOMAS: Is it? Okay. Then great.

Plaintiff's Exhibit 1 will be a series of MRI's.

THE CLERK: From?

MR. THOMAS: From Dr. Kolb.

THE CLERK: Okay.

THE COURT: So, you got the actual films in evidence.

MR. THOMAS: The films are in evidence.

MR. GALLARDO: The actual films, I understand. Not the demonstrative.

Is that what you're saying?

MR. THOMAS: Judge, the films --

THE COURT: Well, why don't we mark them separately.

MR. THOMAS: Fine.

THE COURT: The films will be Plaintiff's 1.

MR. THOMAS: Plaintiff's 1 will be the MRI of the right thigh from May 19th, 2016.

THE COURT: Any objection?

MR. GALLARDO: Not to the films.

THE COURT: So, Plaintiff's 1 will be received in evidence.

(WHEREUPON, the item previously received and marked for identification is received and marked in evidence as Plaintiff's Exhibit 1 in Evidence.)

MR. THOMAS: Thank you.

MR. GALLARDO: May I, your Honor, move around?

THE COURT: Yeah.

(WHEREUPON, Plaintiff's Exhibit 1-A in Evidence is shown in open court, with the jury present, on screen.)

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

MR. GALLARDO: Your Honor, what he's being shown right now is demonstrative evidence.

MR. THOMAS: Yes.

MR. GALLARDO: I thought we marked into evidence the films itself.

THE COURT: Well, the film the Plaintiff's 1. You want to mark --

MR. THOMAS: 1-A.

THE COURT: Okay.

MR. THOMAS: This would be 1-A is the demonstrative; okay?

MR. GALLARDO: And, subject to my exception, your Honor.

THE COURT: Okay.

MR. GALLARDO: To my objection earlier.

Q. Okay.

First of all, what is it that the jury is looking at on the left side of the screen?

A. Okay. On the left side of the screen is the actual MRI taken on this patient on May 19th, 2016. All the information is here. The name of my facility is here. And the patient's birthday is here.

And this is a one picture, right? An MRI. We can take many, many, many, many thin pictures. I pulled out one picture that shows the problem. And, in fact, you see this round thing right here.

(Indicating.)

A. That's a marker. That's a marker that was placed where the patient said that the patient was feeling pain the most. So, that was put on the patient. And, then this picture was obtained. And you could see the marker next to the thigh. So, that's what we're looking at.

Q. Doctor, let me just switch positions here so I'm not standing behind you. Okay.

And, then to the right is another image of the same MRI coronal view. But, there's some colorization.

A. Right.

Q. Could you tell us what is that highlighting?

THE WITNESS: Yeah. Let's put both on. Go back down so you could see it. Okay. Good.

A. So, the thigh muscles should look like this in this sequence.

(Indicating.)

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

A. They should look all the same. They should be gray like this. Line coming down here. Lines here are all the little veins in your thigh.

You see -- and you say the marker there that I told you about. And you see two things. One is a very obvious big white area here; which, you don't see anywhere else.

And the second abnormality is more so, but pretty obvious. This entire muscle here is whiter than any of the muscles in here.

(Indicating.)

A. So, there's two abnormalities. So, this abnormality here -- this muscle here is the vastus lateralis. It's so easy when the words are on there. The vatus lateralis. So, that's what's in red.

The reason that this is white is because it's swollen.

(Indicating.)

A. Why is the muscle swollen? Because there are tears within the muscle fibers. That's why. You feel swelling when you hit a part of your body. What you're feeling that it's swollen is a muscle. The muscle fibers are partially torn. So, that's this entire muscle here, that's in red.

(Indicating.)

A. More focally, the largest area of the tear is in bright light. Because in these particular pictures, anything that is watery turns to white. And everything that doesn't have water stays dark. So, when you're comparing one muscle to another, if something is torn -- which is swollen -- that means that it's going to have more water in it. So, that's why all of this area, especially this area is lighter than the other muscles.

(Indicating.)

A. This is a tear of the vastus lateralis muscle, with the largest area of tear being right here.

(Indicating.)

A. Right next to where the patient pointed to the symptoms to the area of pain.

Q. Doctor, I want you to assume that on April 21st, 2016 Mr. Dojce was involved in an accident at work where a saw blade that was put on a grinder kicked back while he was using it. And the saw blade came in contact with his leg while it was running.

Can you assume that for a moment?

A. I can.

Q. And is the finding on this film consistent with the type of tears that you would see in the vastus lateralis muscle as a result of a saw blade coming in contact with that muscle?

A. It is.

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

Q. And the affect on ability to move, meaning his motion, with what we see in this film and what you understand happened to him; could you tell us about what affect it had with his ability to move?

MR. GALLARDO: Objection, your Honor.

THE COURT: Well, could you read back -- just repeat the last part of the question.

Counsel, just repeat the last part of the question.

MR. THOMAS: Oh.

Q. Did the tear in the muscle affect his ability to move?

A. Well, the tear in the muscle can. I'm looking at a picture. And anyone who has a tear of the muscle like this, it is going to affect them.

(Indicating.)

Q. His ability to walk?

A. Ability to walk. Ability to move. Tolerate pain. All different in different patients.

But, a tear of the muscle is going to affect the patient in someway.

Q. Anything else you want the jury to know about the tear in the right thigh?

MR. GALLARDO: Objection, your Honor.

Q. Other than what you've already told us.

THE COURT: No. You could answer the question.

A. No.

Q. Okay. Thank you, Doctor.

Let's take a look at the next body part that you did some testing on.

(WHEREUPON, Plaintiff's Exhibit 2-A in Evidence is shown in open court, with the jury present, on screen.)

Q. Let's look at an MRI of the cervical spine from May 29th, 2015?

MR. THOMAS: I would offer this as Plaintiff's Exhibit 2-A, your Honor. This is a demonstrative based on the film.

THE COURT: All right. So, again, the films of the cervical spine will be Plaintiff's Exhibit 2 and this will be 2-A.

MR. THOMAS: Yes.

And this is an MRI of the cervical spine from May 19th, 2016.

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

THE COURT: Any objection to the films coming in.

MR. GALLARDO: The films, no.

THE COURT: All right. So, the films will be marked as Plaintiff's 2 and will be received in evidence.

And, I understand that you have some problem with the illustration.

MR. GALLARDO: Yes, your Honor. Note my exception.

THE COURT: All right. Your objection is noted. But, the jury could see the illustration.

(WHEREUPON, the item previously received and marked for identification is received and marked in evidence as Plaintiff's Exhibit 2 in Evidence.)

Q. Doctor who took this film.

A. I did.

Q. And who is this film of?

A. Petrika Dojce.

Q. And the date of the film again?

A. 5/9/2016.

Q. And the same sort of format that we just looked at with the thigh; the actual film on the left-side?

A. Yes.

Q. So, what is that?

A. So, this is an MRI of the neck. And, the way it works is that: This is a long picture. And when we look at the model, one second.

Now, we're looking at the patient from the side. The patient's back is here. The patient's nose and front are here. The brain is up here. The legs are down here.

(Indicating.)

A. So, you are looking at the patient from the side, like this. So, we're looking at the patient from the side.

Now, remember I told you there were seven bones? And the bones are squares? So, this is the second bone. Two, three -- I can't really write on the screen. But, come along with me on this. Two, three, four, five, six, and seven. So, there are seven bones. The gray structures are the bones.

This gray line coming down behind the bones is it the spinal cord.

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

(Indicating.)

A. You could see, like everything, in the spinal cord. Coming off the brain going all the way down the back.

In between each of these bones are the discs. These dark areas here are all discs.

(Indicating.)

A. And, I told you that the discs stop at the back of the bone because there's ligaments. The posterior longitudinal ligament, and the annulus that go around. And remember, we are looking at the patient from the side. It's a very thin picture. We take pictures going from one side of the patient straight across to the other side. And for this I pulled out the single center picture. And we are looking right, dead center right here. And, I'm show you what I mean.

Let's look at the disc between C2, second bone and the third bone. The disc goes right to the margin of the bone and pretty much stops.

Compare that to the one below it. What is happening here? There's a nice white line coming down. That's spinal fluid. Everything that is white is bright. So, nice white line coming down. This is the C2-3 disc; which, is normal.

What happens here? There's an obvious abnormality in the disc. There's a hole in the ligament and the annulus. The disc that's pushed through. And now we have a very thin white line here. And you could see that it's being pushed in by a disc.

(Indicating.)

A. This is a disc herniation that's being pushed in. And you could see the distance between the edge where it should be, and the spinal cord has decreased. Which means that there is now pressure being applied on nerves. Spinal cord. Little nerves.

Look at the one below at 4-5. It doesn't look too bad; right, from what we learned this morning? It's not too bad looking. This one between the fourth and fifth bone looks the same as between two and three. Okay. That's normal. Normal. Normal.

(Indicating.)

A. What happens between five and six? Very abnormal. This big piece of disc that's pushing out at C5-6 on to the thecal sack; which, is the sack that contains the spinal cord. And then at 6-7; which is a smaller protrusion here. Which is also a smaller disc herniation. The largest one here is at C5-6.

So, you could see normal. And normal. And you could see how abnormal, to different degrees, of C3-4, C5-6 and C6-7.

(Indicating.)

A. So, that's the major finding on the actual MRI. I think they colorized it so you could see this. Yeah.

THE WITNESS: Move it up a little. Okay.

A. This is exactly what we said, but it's in living color. All the bones are labeled; which is nice.

So, between two and three --

THE WITNESS: Could you move it over a little bit so we could see everything. Yes.

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

A. Two-three I told you is normal. That's the way it's supposed to look. Four-five normal. That's the way it is supposed to look. But between three and four, between five and six, and between six and seven there's a hole in the ligament and the annulus that allows the disc material to push out.

So, those re the major findings of the MRI of May 19th, 2016.

Q. Doctor, the significance of the disc herniation at the C5-C6 level.

A. Yes.

Q. As it relates to the pressure on the spinal cord, what affect does that have on sensations of pain?

A. So, we're going to talk about, now, pain and nerves. Two things happen here.

First thing we already discussed: Five-six is pushing out here towards the spinal cord; okay? But, there's another thing we talked about; which, is the nerves that come off the spinal cord that go out the holes to the left and right of the patient.

And, if you look on the side, the side view, you'll also see that these holes that are in between five and six, the herniation doesn't just go back. It spreads out. It's a broad herniation. And it pushes back on the sack. But also impinges, or pushes on the foramina, the holes that contain the nerve roots.

So, at C5-6 this was -- my report was written seven and a half years ago -- there's a disc herniation pushing on the thecal sac. And there's also narrowing of the neuroforamena bilaterally.

To answer your question: Why do we care?

Two things. Nerves can, actually, push discs that are abnormal. Could actually push on nerves causing pain. But, they don't have to. They could just cause abnormal pressure. For example, if you had a balance filled with air. And you took anything, a marble. And you put it dead center in the balloon. And you took your fist. And you pushed it into the balloon. And you didn't touch that marble. That marble is going to feel abnormal pressure. Because the air in the balloon can't go anywhere. When you put your fist in, you're occupying space; so, the pressure of the air is being felt by the marble. Right? Does that make sense?

That's exactly what's happening here. The fluid that's contained in the thecal sac, this white fluid that surrounds the spinal cord has no where to go. This fluid is spinal fluid. If you put a needle in the back, that would be a spinal tap and you could get fluid out. But short of doing that, the fluid stays there. It's like a long balloon. And when you push something back, it causes abnormal pressure on the nerve root; which, can cause pain.

So, that's a very long answer to your question.

Q. And, just briefly, what sits in the thecal sac?

A. The spinal cord.

Q. And the spinal cord is the nerve center?

A. It contains all of the nerves.

Q. So, pressure on the thecal sac; which in effect causes pressure on the spinal cord, is going to create a pain sensation?

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

A. It can very well do that; yes.

Q. And, I want you to assume that Mr. Dojce was asymptomatic before April 21st, 2016.

Tell the jury what does it mean to be asymptomatic?

A. You have no symptoms.

Q. And he then has this event happen at work; where he has a saw kickback. And he is thrown backwards and makes contact with some desks, and some construction debris that is piled in the room. Can you assume that?

A. Yes.

Q. So, that the impact of his body, the back, with the desks and the debris; is that enough to cause the type of conditions that we see in these films?

A. Sure it can. Of course.

Q. And, then assuming that it took him -- well, you understand that there's more than one body part that we are claiming injury to as part of this accident?

A. I do. I did a number of different MRI's; yes.

Q. And the fact that he had this open wound on his leg, and there was no obvious visible signs of his neck and his back.

Could you explain to the jury a little bit about the sensation of these type of injuries, when these occur, versus the kind of injury that you have when you cut your skin?

MR. GALLARDO: Objection, your Honor.

THE COURT: Could you read back the question?

(WHEREUPON, the requested portion of the transcript is read back, in open court, with all parties present, and in the presence of the jury.)

THE COURT: All right. I will ask you to rephrase the question, counsel.

Q. Doctor, have ever heard of soft tissue injuries?

A. Yes.

Q. And could you explain to the jury whether Mr. Dojce suffered any soft tissue injuries in this accident?

A. Yes.

Q. Tell the jury why?

A. Well, one of them is obvious. You could see it from the outside by looking at the patient's leg, the tear that we talked about.

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

But, here in the neck and the back there was nothing on the x-ray. There was nothing on the outside. You couldn't look from the outside of the spine and see the nerves and the discs. You need the imaging. You need the MRI.

So, these abnormalities, these findings can only be seen on tests by looking inside the patient.

Q. And tell the jury what type of blood supply is there to these discs between the vertebra?

A. So, the blood supply to the ligaments around it is very poor. Once you tear a ligament, it's torn. It's not the same as a bone, a fracture that can heal. Or the muscles in different parts of your body sometimes can heal. Sometimes there's scarring. Sometimes there's not.

But once a herniation, always a herniation.

Q. So, is that a permanent condition?

A. Yes.

Q. And, do you have an opinion, within a reasonable degree of medical certainty, whether the trauma that Mr. Dojce sustained on the day of this accident to his neck and his back resulted in these permanent, residual injuries that you just described?

A. Yes.

Q. And, once again tell the jury why?

A. Once -- well, I can prove it. Once you have a herniation it's going to stay. It's not going away.

We also have an MRI three years later; which, we'll talk about in a second, that shows what happened in those three years. The three levels of herniation.

Q. There's another view of the cervical spine. And, this is the same view; correct?

A. Yes.

MR. THOMAS: Your Honor, this is still Plaintiff's Exhibit 2 in Evidence, just another view.

Q. If you could tell us what view we're looking at here?

A. All right.

So, we are looking at things that are now more round. Before we looked at long. So, the easiest way to understand this is: If you have, like, a French bread, or an Italian bread, there are two way you can cut bread. You can cut it long to make a subway sandwich. You can open it up and you'll have one long sandwich. And when I showed you pictures on the side, I showed you all seven bones in one picture. I showed you the whole spinal cord in one picture. It's like a long loaf of bread. And, that's called sagittal. You don't have to remember that. It's just called the sagittal view, long.

But, if I took a picture on that long view that I showed you, and the one that was just up. You don't have to change anything; right. We all know this. But, if I take a picture going down from the head to the foot. And I took picture, picture, picture, pictures;

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

it would be the same thing as if I took a long French bread and I did slices, regular slices; right? What would the slices be? They'd be round or square. But, they'd be round.

(Indicating.)

A. And if I had something in the middle that bread, some meat or something, and I took a long slice, like a subway sandwich, you would see the whole spinal cord. But here you don't. What do you see when you see the sandwich? That long stretcher that's in the middle, that slice that I cut like this as a sandwich, it becomes round; okay? If I pull out this picture and show it to you, it's round. This round picture is called the axial view. It is the spinal cord. This gray structure in the middle is the spinal cord.

(Indicating.)

A. Think about it. The spinal cord comes down from the brain to the feet. Around it is the spinal fluid and the thecal sac. And then I told you there are two holes on both sides. One is to the left of the patient. One is to the right of the patient. And this here is the disc.

(Indicating.)

A. Now, the disc is pushing in. And you could see that it's asymmetric. It's pushing into a space that it shouldn't be pushing into; right? In this sandwich view, the axial view. It's pushing in. It's pushing on the thecal sac. But, it's also narrowing the holes. These are abnormal. They're too thin.

And inside each one of these holes here coming out is a nerve root. The C6 nerve root comes to the left of the patient and to the right of the patient.

(Indicating.)

A. So, if you move that over, and you look at the way someone colorized it; right? That's what we are looking at. Here is the annulus. All right. Annulus. Nucleus pulposus. The jelly.

Here when the annulus tears everything shifts back and goes beyond the margin of the bone. The disc should stop here. All of this is herniation. Pushing on the thecal sac; which, in this picture is yellow. Pushing the hole that contains the nerve roots to the left of the patient, and the nerve roots to the right of the patient.

(Indicating.)

A. Now, you've seen everything. But that's the worse level, C5-6. The one I just told you about before. That's what herniations look like and that's what they do.

Q. And, Doctor, could you tell the jury the difference between degeneration and acute trauma?

A. Degeneration means, basically, the aging process. Unfortunately, as we get older things change. Everything looks beautiful when we are young. The square bones are very square.

Three things happen in the spine when we degenerate. It's another word for arthritis. The first thing that happens is this jelly like material inside the nucleus pulposus dries out. First thing that happens. It dries out.

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

And sometimes you could see that in an MRI, depending on type of scan, the positioning. You could see that MRI with the change in the color of the disc. Remember I told you that there are some sequences that are white, that are bright? Well, if you're losing the fluid in the disc; it's not so white anymore. It turns dark.

So, the first thing that happens with arthritis is the color of the disc, on an MRI, will change.

The second thing is: When you lose that jelly in the middle and it becomes dry, it's not so good as a shock absorber anymore. So, when you move around, the disc will compress, but it won't spring backup. So the bones that get close to each other don't spring back. They stay close to each other.

So, the second thing that happens with arthritis is you lose the space between the bones. They get narrow. The first thing is the disc dries out. And the bones come together. When the bones come together, the body hates that. It's painful. Also, the body tries to fix it by forming bone spurs or hypertrophy of the bone, new bone.

So, the three stages of arthritis in the neck or the back are: The disc dries out. The disc becomes narrower and get closer to each other. And, then finally they start forming new bone or bone spurs.

Q. Now, Doctor, I want you to assume that the defense in this case, in their opening statements yesterday, told this jury that the conditions in Mr. Dojce's spine are all degenerative in nature. And, that his experts would come in and talk about degeneration of his spine.

Based on your review of these films, and all the tests and information that you have; did you find any arthritic or degenerative changes in Mr. Dojce's spine that would cause the pain complex that he presented with?

MR. GALLARDO: Just objection, your Honor.

THE COURT: No. You could answer the question.

A. So, not on the cervical spine and not the lumbar spine either.

Q. What's the significance of that?

A. The significance is that this patient was about 37, not a very old patient. '79, so that's 21 and -- 37 years old at the time of this picture. That's not a very old patient. So you don't expect to see a lot. You could. You could have arthritis in a 37 year old. But, in this patient there wasn't any.

Q. And, if you did see -- hypothetically if you did see some degenerative changes in a 37 year old spine, and there are no are complaints of pain, and no restrictions or limitations of motion, would you go ahead and do surgery on that person?

A. No.

You do surgery based on the patient, not on an MRI picture. If the patient can't function or is having pain, then the doctor may want to do a surgical procedure. You don't do surgery based on what the MRI alone shows.

Q. And, in your opinion, within a reasonable degree of medical certainty, the herniations in both his neck and his back, do you believe, based on all of the information that you've been provided, that these were the result of a traumatic event?

A. Well, I have to know a little bit more. I have to know whether the patient -- you want to tell me more?

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

Q. I want you to assume that Mr. Dojce said he was working. He was leaning over with a saw that kicked back. And, that he was, in effect, thrown back. And that his back and neck area hit some desks and some wood pile that was in the room. And, that he made contact with that as a result of being thrown back from this kickback with the saw.

A. I have to know before the trauma.

Q. Before the trauma: I want you to assume that he no prior accidents?

MR. GALLARDO: Objection, your Honor.

THE COURT: Well, subject to connection.

Q. No prior injuries to his neck or his back. No prior MRIs or x-rays. And, definitely no prior surgical procedures performed on his spine.

Given all of that information, do you have an opinion, within a reasonable degree of medical certainty, whether the images that you see, and the conditions you see on these images was as a result of trauma?

A. Yes.

Q. Please, tell the jury why?

A. Well, the patient was working. Not complaining of back. Not getting treated. Not seeing doctors. Not getting MRI's. Had the trauma -- which was as you described and personally not deposed -- problems with the leg, as well.

And then on an MRI complaining of neck pain and soon after the trauma was found to have three herniations in the back. Then those herniations would be due to the trauma and not from anything else.

Q. And we've now looked at the cervical spine. We have some images of the lumbar spine. Can you take a look at that?

A. Sure.

Q. Taking a look at the lumbar spine image that you did on May 19th, 2016.

(WHEREUPON, a Plaintiff's Exhibit 3-A is shown in open court, with the jury present, on screen.)

Q. And, what are we looking at here?

A. So, on the left side is our lumbar spine MRI. The thigh bones, I guess they will be labeled here.

And, again, look how beautiful the disc goes to the edge of the bone at each level here, until we get to the very lowest.

(Indicating.)

A. And you'll see here that the disc goes beyond the margin of the bone and starts pushing on the thecal sac. The sac is this liquid. This white, bright area here.

(Indicating.)

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

A. And those are the nerves coming down inside the thecal sac; which, will come out as I've showed you from the neuroforamena.

(Indicating.)

A. So, here we have a disc herniation at L5-S1.

Q. And, Doctor, just for the record.

MR. THOMAS: Your Honor, this is part of Plaintiff's Exhibit 3. And, the colorized copy is Exhibit 3A.

THE COURT: Okay.

MR. GALLARDO: Just same exception most respectfully, your Honor.

THE COURT: All right.

MR. GALLARDO: Thank you.

Q. And this colorized version of this film, it seems that it really is isolated in one specific area?

A. Yeah. It's not like the spine where there were three herniations. There's only one here at L5-S1 that's herniated.

(Indicating.)

Q. And what's the significance of that, the fact that it's at one level versus multiple levels?

A. The patient had a herniation or tear in only one level. The other levels are all normal.

Q. Do you see any evidence of arthritis in this lumbar film?

A. No. There's no arthritis. So, it can't account for this herniation here. And, there's no arthritis on this film.

And, I think there's another.

Q. And this film is just shy of one month postaccident; correct?

A. Yes.

Q. And, arthritis doesn't develop in one month; does it?

A. No. No. It takes many months or years.

Q. We have another image on this film?

MR. THOMAS: This is also Plaintiff's Exhibit 3 in evidence.

Q. And, again, the way you cut the bologna; this is another view; correct, Doctor?

(WHEREUPON, an image from Plaintiff's Exhibit 3 is shown in open court, with the jury present, on screen.)

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

A. Yeah.

So, again, you can see here this little blip of herniation, disc herniation.

(Indicating.)

A. Disc herniation due to the front of the thecal sac here.

These little dots here are the nerve roots. These dots right here. There's a nerve root coming out here. There's a nerve root here. And, then these little dotes are traveling down and they'll come out below. You could see how close everything is. These are millimeters away from each other.

(Indicating.)

Q. And, again, the colorized version?

A. So, this is the herniation here. Now, we know what it looks like. This is a nerve root coming out here.

And this is the foramen; which, is narrowed because of the herniation. More nerve roots here.

(Indicating.)

A. So, now we kind of understand it's very similar -- the anatomy in the back and neck are very similar. This is a herniation through the annulus, where the disc material is pushing out on to the thecal sac and the neuroforamen that.

(Indicating.)

Q. Now, I want you to further assume that Mr. Dojce complained of back pain and neck pain within weeks after this accident. Do these films confirm one of the reasons why he's complaining he has back pain?

MR. GALLARDO: Objection, your Honor.

THE COURT: No. You could answer it, if you can.

A. Yeah. For the same reason.

Anything that causes abnormal pressure involving nerve roots can give you pain. That's the way that nerve root is going.

Q. Anything else in this film?

A. Not from this film. I mean, there was an image prior to this.

Q. We have that as well. Let me see if I could get that for you.

JUROR: Your Honor, can we pause for a second so I could use the bathroom?

THE COURT: Yes. Sure. All right. We'll take a break.

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

COURT OFFICER: All rise. Jury exiting.

(Jury exits at 11:46 AM.)

(Recess taken.)

MR. GALLARDO: Mr. Thomas has shown me a copy of a dump -- a series of reports that were handed to my office. Included among those reports -- and I apologize to the Court -- Mr. Thomas pointed out was an indication that there was an MRI of the thigh which was done; which, I objected to before.

So, I would like to withdraw my objection and my apologies to the Court.

THE COURT: There was a report of the MRI?

MR. GALLARDO: There was a report. Yes.

So, I understand that with respect --

THE COURT: So, he wasn't talking through his hat.

MR. THOMAS: With all due respect to Mr. Gallardo, the exchange listed the MRI report as number 3. It started with Dr. Friedman. And, then number 3 was Dr. Kolb and those reports and authorization. So, they were exchanged back in August of 2017.

So, I appreciate counsel withdrawing his objection and allowing us to move forward without objection.

MR. GALLARDO: As to that, yes.

MR. THOMAS: I just can't get that time back. But, that's okay.

MR. GALLARDO: As to that. Again, I apologize.

(Awaiting the jury.)

THE COURT: You could bring them in.

COURT OFFICER: All rise. Jury entering.

(Jury enters at 11:57 AM.)

THE COURT: All right.

You may continue.

MR. THOMAS: Thank you.

Q. Doctor, before we took a break I asked you about another exam, or another diagnostic study that was done. That's up on the screen right now?

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

MR. THOMAS: And, your Honor, I believe this would be Plaintiff's Exhibit 4 in evidence; which is a CT scan of the lumbar spine dated May 6th, 2016.

(WHEREUPON, Plaintiff's Exhibit 4 in Evidence is shown in open court, with the jury present, on screen.)

A. Yeah.

Q. Could you tell us what we're looking at in this image?

A. So, what we're looking at is an axle view, round view part. But this is a CAT Scan not an MRI. You see the bones are white. And we talked about this.

But you could also, on CAT Scans, start seeing disc herniations too. Here's the margin of bone here.

(Indicating.)

A. And we see just like we saw before that here, this is the herniation, the tear of the annulus and the herniation pushing through. That's what we're seeing here.

(Indicating.)

A. And, this was done ten days before the MRI. The findings on this scan, on the CT are exactly the same. I didn't know that the CT was done at the time that I read the MRI 10 days before. But the findings are identical.

So, the findings are a disc herniation that I'm showing you here on the CAT Scan at L5-S1.

(Indicating.)

A. Which is the same thing that I showed you already, ten days later on the MRI.

Q. Thank you.

And, the significance of the fact that there's no change between May 6th and May 19th? What does that tell you?

A. It tells me that it's herniated and it hasn't done anything in ten days.

Q. And, no trauma in between that period of time or additional trauma?

A. Not that I'm aware of.

Q. Okay.

Doctor, anything else with this image?

A. I saw just a report of this, just a short while ago today where I read it. And I saw where the doctor also agreed that there was a herniation at L5-S1. And the rest of the report shows everything being clean.

MR. GALLARDO: Objection, your Honor.

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

Q. When you say clean --

THE COURT: Wow. Wow.

MR. GALLARDO: Objection.

THE COURT: What's your objection.

MR. GALLARDO: I don't know what report we're discussing. He said he saw a report today.

Q. Doctor, tell us where this CAT Scan comes from?

A. NYU Lutheran Hospital.

Q. And, are you aware that Mr. Dojce went to Lutheran Hospital eight days after the accident complaining about back pain?

MR. GALLARDO: Objection, your Honor.

Q. I want you to assume that --

THE COURT: All right. Again.

MR. GALLARDO: I will stipulate to all of Lutheran Hospitals records into evidence; so, long as we are so stipulating that he could testify to it.

MR. THOMAS: Your Honor, if I could do my examination the way I wish?

THE COURT: Okay.

I don't know what I'm making a ruling on. All right. Go ahead.

Q. Doctor, I want to you assume that Mr. Dojce, eight days after the accident went to Lutheran Medical Center complaining of sever back pain. And this film was taken on that day at Lutheran.

Can you assume that?

A. Okay.

Q. And the findings on this, when you said that “they looked clean”; more specifically, what are you talking about?

A. So, the report --

MR. GALLARDO: Objection, your Honor.

Is this record in evidence or not.

MR. THOMAS: Yes, it is. This record is in evidence. CT lumbar spine for 5/6/16 from Lutheran Hospital.

MR. GALLARDO: Was that marked into evidence?

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

MS. LEVIN: The record.

MR. GALLARDO: Your Honor, can we have a sidebar?

(WHEREUPON, there is a discussion held off the record at the bench among the Court and counsel.)

(Whereupon the following takes place on the record in open court in the hearing and presence of the jury.)

MR. THOMAS: Your Honor, I believe the stipulation is to the CT of the lumbar taken at Lutheran on 5/6/16.

Daniel could you show it to us? This is my brother Daniel by the way. I don't think I introduced you to him.

THE COURT: They're supposed to be twins. I don't think I see that.

MR. THOMAS: I got him by ten minutes, Judge.

(WHEREUPON, images are shown in open court, with the jury present, on screen.)

Q. Doctor, would you mind? Could we run through this sequence first. And then we'll stop at an image that you could then discuss with us?

A. So, we'll start with this and just go down. And, if you keep going down you'll see that's normal, normal, normal, normal, and boom. Abnormal. That's 5-1 between the fifth bone and the next one. All the others are normal.

And, then we can take the long view also, the sagittal view also that we have here. You see the herniation best on this picture right here.

(Indicating.)

And, just like with the MRI, okay. Good. A little more. Good.

Side-view. All the bones. Same thing we showed you before. The herniation is here between five and one. This picture is taken at this level right here.

(Indicating.)

Q. So, this is both views, both the sideway view and the up and down view?

A. Right.

Q. At the same time.

And, you could see this with your own eye. You don't need a microscope?

A. No, I could see with my own eye.

Q. Okay.

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

By the way, Doctor, how many MRI and CAT Scans have you reviewed in the course of your career?

A. Many, many, many, many thousands.

Q. And, in terms of difficulty in spotting this particular condition, how would you describe it?

A. The condition of the herniation at 5-1: Obvious.

Q. Again, these were within a month after the accident. You did another set of studies sometime later?

A. Yes.

Q. And, let's start with that.

MR. THOMAS: And, again, this would be Plaintiff's Exhibit 5 in Evidence, your Honor.

(WHEREUPON, Plaintiff's Exhibit 5 in Evidence is shown in open court, with the jury present, on screen.)

Q. From 2019. And, that would be April 5th, of 2019 another set of studies were done; correct?

A. Yes.

MR. THOMAS: This is Plaintiff's Five in evidence.

Q. And, tell us what we're looking at here from April of 2019?

A. So, this is --

MR. THOMAS: No, show the whole page. There.

A. Three years later, 2019, roughly the same findings. Except some important changes. Disc herniation at C4. Disc herniation at 5-6, disc herniation at C6-7. And similar picture.

(New picture placed on the screen.)

5-6 got a little bit bigger. It's now pushing on the cord. And also there's increasing narrowing of the neuroforamena at the levels also. So, there are some increase in the size and extent of the herniations at C4, 5-6 and 6-7.

MR. GALLARDO: Your Honor, I would just note that there's colorization. This is a demonstrative piece. Is this 3-A?

MR. THOMAS: No. This is 5A.

MR. GALLARDO: 5-A.

MR. THOMAS: Every colorized image is ‘A’ of the exhibit.

MR. GALLARDO: I understand your frustration, but I do have an exception to the colorized image.

THE COURT: All right.

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

MR. THOMAS: Your Honor, I'll acknowledge that counsel has a long standing exception to all of my colorized demonstrative exhibits.

Q. At this point, Doctor, is there any evidence of a surgical procedure performed on Mr. Dojce's cervical spine?

A. No, the patient has not had surgery.

Q. And, based on this view from 2019 is he a candidate for cervical spine surgery based on what you saw?

A. Well, now he has a herniation that's pushing on 5-6 on the top cord.

But, the answer is the same as it is in the report. You do surgery based on the patient. You don't do the surgery based on the picture; okay? And the patient has to have real limitations: Pain, functions, and so on before you go on to surgery. The patient has to be in relatively bad shape to go to surgery. Because you don't want to do surgery otherwise.

But, you don't just look at the picture. It wouldn't surprise me that the patient would have surgery based on these pictures because they are so abnormal.

But, that's the answer.

Q. Doctor, I want you to assume that Mr. Dojce tried conservative treatment including epidural steroid injections to try to alleviate his condition.

If conservative treatment failed, surgery is the only option?

MR. GALLARDO: Objection, your Honor.

THE COURT: All right.

Subject to connection. I'll take it.

A. If non-evasive treatment fails, and the patient's symptoms continue or get worse, then the next step would be surgery; yes.

Q. Okay.

And, then just to move things along we have the other view. This is the sagittal view. Now we are looking at the axial view?

MR. GALLARDO: What number is this?

MR. THOMAS: Sorry.

This would also be Plaintiff's Exhibit 5 in evidence from the April 5, 2019. And, again, the C5-C6 axial view.

(WHEREUPON, a photo from Plaintiff's Exhibit 5 in Evidence is shown in open court, with the jury present, on screen.)

A. So, this herniation has gotten larger at 5-6. It's now pushing and touching the spinal cord. There's still narrowing of the neuroforamena coming out.

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

Q. Could you explain to the jury how a herniation that was caused due to trauma back in 2016 is now viewed in 2019 as being different in size and shape?

A. Once a ligament tears it doesn't heal. The herniated disc is out. It can stay the way it is without changing. Or it can get bigger.

I think that answers your question.

Q. And, when you say it gets bigger, what affect does that have in the occupying the space where the nerve root is and the affect it has on the pain syndrome or the pain complex?

A. It could cause more compression of the nerve roots. It could cause more symptoms to the patient.

Q. Any other films you want to look at?

Doctor, do you have any other films that you want to discuss with the jury other than we've already shown?

A. The lumbar from 19. The last one that I did myself.

(Pause.)

Q. Doctor, do you know what date it was?

A. Yes. I do. It was 8/16/18.

Q. All right.

But, you took that other film; correct?

A. I did. I took the other film.

Q. All right. He found it.

MR. THOMAS: And, this would be Plaintiff's Exhibit 6 in evidence.

(WHEREUPON, Plaintiff's Exhibit 6 in Evidence is shown in open court, with the jury present, on screen.)

MR. GALLARDO: And, you'll be showing him 6-A?

MR. THOMAS: No, this is the actual film.

MR. GALLARDO: Okay. Thank you.

A. Very simple. Okay.

THE WITNESS: Go back -- go towards the middle. Okay. That's fine. Go back a little bit more. Okay. Perfect will. One more the other way.

A. You could see this little piece of disc herniation here. You see that?

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

(Indicating.)

A. It wasn't changed. This is two years later. So in the cervical spine of the neck, that we just described, things got a little worse. Pushing on the spinal cord.

(Indicating.)

But, in the lumbar spine this herniation here between 5 and 1 hasn't really changed over the two years.

So, the answer to the question to: Do things get worse? It may? May not.

But the patient has whatever symptoms they have because of the herniation.

Q. And just so we're clear, in this set of sequences there's 11 images. And right now we are frozen on the 7th of the 11 image; correct?

A. Correct.

Q. And the color of the disc versus the color of the other discs?

A. Variable.

Q. Very?

A. Variable.

Q. “Variable”?

A. Variable.

Q. Great.

Doctor, thank you very much. I'm going to sit down now and counsel will ask you some questions. If you need this technology; it's available to him. So, just please let us know if you want us to show something?

MR. GALLARDO: I'll ask the questions. Thank you, counsel.

MR. THOMAS: I'm offering the technology.

MR. GALLARDO: I appreciate it.

I will use the old fashion technology. If I could use this.

MR. THOMAS: For a small fee you could use it; yes.

MR. GALLARDO: Thank you.

CROSS-EXAMINATION

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

BY MR. GALLARDO:

Q. Good afternoon, Doctor.

I'm going to try to go as quickly as I can; so to not impede lunch. But I do have some areas that I need to discuss with you.

Is that okay, Doctor?

A. Sure.

Q. Doctor, my name is Domingo Gallardo. And I represent the defendants in this case.

We've never met; is that correct?

A. Not that I remember.

Q. Okay.

So, I have a couple of areas to discuss with you. First and foremost, I want to discuss the two areas of where the injuries occur.

The lumbar: So, let me understand this correctly; because, I've had a couple of back cases in the past. Not too many. But I've had a couple.

Our back, we're blessed with having the cervical spine, thoracic spine, and the lumbar spine; is that correct?

A. Yes. And -- yes.

Q. And, the S which is the --

A. Sacrum.

Q. Sacrum; right?

But the sacrum is just where we -- I guess our ancestors may have had tails, and that just comes out there?

A. Possibly.

Q. Okay.

So, the thoracic, as I understand it, is supported by the spine -- by the rib cage; is that correct? That's where the rib cage is, the thoracic?

A. It's not supported by the ribs. The thoracic is supported by the lower spine. It's like a building.

Q. No. But the ribcage is by the thoracic?

A. The rib cage is part of thoracic vertebra. There are 12 ribs and there are 12 thoracic vertebra.

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

Q. So, my past experience that tends not to, you know, that tends -- the ribcage tends to have some form of support for it. So, you don't see as many herniations or degenerations in thoracic as you see in the cervical and lumbar.

Is that fair to say?

A. I'm not sure the ribs have anything to do with it. But the answer to your question is: You're correct.

Q. So, I was wrong all this time.

A. So, your thoracic spine is less likely to get a herniation.

Q. So, my point is that there are less herniations.

And, the two areas of the other two spines which bear kind of the most weight -- well, let me -- let's look at this first. Let's establish this first.

So, Mr. Dojce's lumbar herniation was down here; is that correct?

(Indicating.)

A. At 5-1.

Q. Okay. And, it's down here. As far as you could probably touch it. As far as down as you could touch; is that correct?

(Indicating.)

A. I'm not sure if that's accurate. But, it's at L5-S1.

Q. You can't figure out where it is on your body, sir?

A. No. L5-S1.

Q. And, the cervical one, the cervical spine ends right about here?

(Indicating.)

A. Cervical spine ends at C7.

Q. All right.

Right about here where my finger is?

A. If that's the seventh bone, yes.

Q. Okay. All right.

So, we'll count the first one as one; right?

A. Two.

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

Q. Two, three --

A. Yes.

Q. Four. Five. Six. Seven.

A. Yes.

Q. So, if that's seven, his other herniation was at what level?

A. It was at 3-4, 5-6, and 6-7.

Q. Okay.

And the one that had the surgery, which one was that?

A. 5-6.

Q. 5-6. So that would be right here; is that correct?

(Indicating.)

A. Yes. If that's 5-6, yes.

Q. So, if he had a traumatic event where he fell back and hurt those two areas, he would have hurt -- he would have had to have contact up here, or there about's; right?

(Indicating.)

Q. And, he would have had to have contact right about here; is that correct?

(Indicating.)

A. No, that's not necessarily correct at all.

Q. Well, you're testified that this was traumatically induced; right?

A. Yes.

Q. So, he hit something. That's what trauma means?

A. So, the answer to your question is: You can hit a part of your body, like either your back, and your head could go back or front. You only have enough trauma, even if you're not in contact with anything on your skull or directly on your spine, you could still form a herniation, like whiplash in a car.

Q. And, your back too? Are you saying that this whiplash, that you could whiplash your back?

A. Of course.

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

Q. So, you're telling this jury that whiplash is your neck and your lower back?

A. I'm just saying that there was some --

Q. I'm just asking is that yes or no? Could you give a yes or no answer?

MR. THOMAS: Objection, your Honor. He's in the process of answering.

THE COURT: All right. So, can you answer his question?

THE WITNESS: Sure.

Q. So yes or no: You're saying you could get whiplash, a whiplash injury from your -- on your lower back and your neck?

A. So, I'm going to be more precise.

Q. No, I don't want you to be more precise. It's a yes or no?

A. So, I'm not going to answer yes or no. I'm going to be precise.

Q. Okay. Then don't answer the question.

A. Sure.

Q. I'll move on. You obviously can't answer the question.

You testified -- you have a website; is that correct?

A. I have a website; yes.

Q. And, what is it?

A. It's “Kolb Radiological”.

Q. “Kolb radiological”.

And, if I were to visit your website -- and by the way, kudos to the work you do with respect to mammograms. Kudos to that.

But, that's basically all you do professionally; isn't that fair to say?

A. No. It's totally unfair.

Q. Okay. Well, let's look at your website for a second.

MR. GALLARDO: Could we plug in? I am going to be. Please?

MR. THOMAS: Now, you want it?

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

MR. GALLARDO: Now I want it. Please. Can I have the Elmo?

MR. THOMAS: Let's give it to him.

(Pause.)

(WHEREUPON, an image is placed on screen.)

A. That's me.

Q. So, perhaps you could tell the ladies and gentlemen of the jury -- because you've been on your website; right?

MR. THOMAS: You offering this into evidence, counsel?

MR. GALLARDO: Yeah, I'll offer this into evidence. We'll offer this into evidence.

May I have it marked or deemed marked?

THE COURT: Sure. We'll mark it as Defendant's Exhibit A.

(WHEREUPON, the item previously received and marked for identification is received and marked in evidence as Defendant's Exhibit A in Evidence.)

Q. The first thing --

THE COURT: Now, you marked something in evidence.

MR. GALLARDO: Are we going to mark it or deem it at this point?

THE COURT: Is there any objection?

MR. THOMAS: No objection.

THE COURT: So, Defendant's A is in evidence.

Q. That's you; right, Doctor.

(Indicating.)

A. Yes.

Q. So, Doctor, the first thing when you go up here, when the jury sees it, they'll be able to see it. Could you see it clear?

It says -- I'm going to turn it over. “Innovation Research Patient Care Breast Cancer Detection.”

Is that fair to say?

A. Correct.

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

Q. And, the first thing -- and, it doesn't say anything on your homepage about doing musculoskeletal imaging read?

A. So, I believe you're totally incorrect.

Q. What's that?

A. I believe you're totally incorrect.

Q. Where does it say that on your first page, sir?

A. I believe that when you go to my website -- and, again, I haven't been on it for years and somebody made it up. But, I believe the way it's setup it says: “For breast cancer diagnosis click here”, and you come to that.

My main homepage describes MRI's, CT's and x-rays with pictures. And, you'll be able to bring that up.

Q. Okay. Well, if that's the case, sir. I happen to have my laptop.

A. Well, we could show them.

(Pause.)

Q. What's your website again?

A. Kolb Radiology dot com.

Q. Okay.

MR. THOMAS: Put your screen on there if you can.

(WHEREUPON, a computer screen is shown in open court, with the jury present, on screen.)

A. That's the homepage. That's it. That's an MRI. That's a CT scan, actually.

Q. This is Kolb Radiology dot com?

A. It is. On the top right? I can't see it from here. What does it say?

Q. Could you go to “about”?

A. Yeah. There's a tab there for breast imaging. Yeah.

(Pause.)

Q. Do you have an “About Dr. Kolb” on this site?

MR. THOMAS: That's what we just did.

MR. GALLARDO: No.

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

Q. Have you ever read your “about Dr. Kolb”?

A. I assume I did; yeah. I would say I did. Yeah.

(Pause.)

Q. I'll move on. Dr. Kolb, we're going to move on. And we'll find a place for your website.

(Pause.)

Q. Dr. Kolb, over the past couple of years how many times have you testified?

A. I testify on the average about four to five times per year. Not including Covid, but before and after.

Q. Okay.

And, would it be fair to say that in the last few years you testified about 30 years?

A. I would say that's incorrect. But, 30 times in two years?

Q. Well, you say about five times a year?

A. I would say on the average, five times a year. Sometimes three. Sometimes six. But on the average.

Q. And, you still testified with respect to musculoskeletal cases, like this?

A. Yes.

Q. But your main stay of your practice is mammograms?

A. No, I didn't say that. I said that half of my practice has to do with all the breast imaging I talked about.

And the other half of my practice is actually doing and interpreting thousands of MRI's.

So, I would say half and half. But, I don't have an exacted ratio for you.

Q. And with respect to this case, you received it from - who was this case referred to you by?

A. This case was referred to me by Dr. Winiarsky back in 2016. Dr. Bora in 2018.

Q. But, I'm looking for the first referral. It's Dr. Winiarsky?

A. Dr. Winiarsky.

Q. Okay.

And, do you know how the plaintiff got to Dr. Winiarsky?

A. No idea.

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

Q. Okay.

And, with respect to -- you talked a little bit about degenerative disc disease; is that correct?

A. Correct.

Q. And, would you agree that degenerative disc disease, desiccation is part of degenerative disc disease?

A. Yes. That's what we discussed.

Q. So, what ends up happening is the disc starts bulging because it dries out?

A. No. The disc desiccates means it dries out. You don't have to have a bulge or herniation. You could have a dry disc in normal position.

Q. I understand that, Doctor.

But, I'm just asking you, it will herniate once it dries out?

A. No. That's totally an incorrect statement.

(WHEREUPON, the witness and the attorney are talking at the same time, and no stenographic record could be made.)

Q. Listen, Doctor, would you agree that if a disc desiccates it may bulge?

A. It may.

Q. Okay.

A. It may not.

Q. Would you agree, Doctor, that if a disc desiccates it may herniate?

A. Right. There's no connection.

Q. Okay. Right.

And in this case you're position is that there is no way that this gentleman had disk desiccation -- or had a degenerative disease? That this was 100 percent traumatic.

A. Right.

To answer your question --

Q. I'm just asking you that, sir. I want to get out of here by 1:00 o'clock, sir. We will be here until 3:00 o'clock, sir. It's up to you.

MR. THOMAS: Objection to the threat, your Honor.

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

THE COURT: Let's just go: Question. Answer.

What's your question, counsel?

Q. My question is simply this, sir: It's your position that this gentleman did not suffer degenerative disc disease; is that correct?

A. That is correct.

Q. It is your position that if was traumatic; is that correct, sir?

A. As we discussed and I'll repeat again. It is my position. Because the films do not show degenerative disc disease.

Q. Okay.

Now, sir, I want to ask you this: You said that degenerative disk disease occurs over time.

Is that fair to say?

A. That is correct.

Q. And, we all have some as time progresses; correct?

A. I'm not sure we all have it. But the older we get the more likely you are to have.

Q. And, you would agree also that what we do in life may be a contributing factor? Is that fair to say?

A. May or may not.

Q. Okay.

So, somebody who is a laborer, and works heavily, and mores their back a lot is more susceptible to getting degenerative disc disease than someone like me who sits on my tuchus all day. Is that a fair statement?

A. That is incorrect. That is an incorrect statement.

Q. So, you don't agree with that?

A. I do not.

Q. Okay.

A. You could have more herniations than anyone else.

Q. Sir, there's not a question pending?

A. You're right.

Q. You probably do more trial work than I do.

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

MR. THOMAS: Objection, your Honor.

Q. You know that I have to ask the question and you have to answer?

MR. THOMAS: Objection. Move to strike.

THE COURT: Okay. Next question.

Q. Sir, you said -- and I want to be clear on this -- you said arthritic changes take time?

A. Correct.

Q. And, you were asked as part of your questions to assume that Mr. Dojce was asymptomatic before you read -- before the accident; is that correct?

A. Correct.

Q. But, you don't know that for sure?

A. No. I only know what I'm told.

Q. As a matter of fact, you just know how the accident happened from the testimony and your meetings with counsel; is that correct?

A. Correct.

Q. And, how many times have you met with counsel?

A. I never met with him before today.

Q. Okay.

A. He spoke to me on the phone for ten minutes.

Q. He never prepped you?

A. No.

Q. You didn't prepare?

A. No. He asked me, do I have my reports?

I said, yes.

Q. You were coming in to take the time here of the jury and the Judge; and you didn't take any time to prepare?

MR. THOMAS: Objection. That's not what he said.

THE COURT: All right. It's a question.

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

Q. To prepare with counsel?

A. I spoke to this gentleman for ten minutes on the phone. I went over my reports. And, that's what I did.

Q. Okay.

Now, with respect to you being compensated; you're being paid how much?

A. I am $9,500.

Q. For today?

A. For being out of my office for the half day. That is correct.

Q. Okay. That's fair.

How about for the full day?

A. It could be another $9,500.

Q. Okay. I'm going to try to get you out of here.

With respect to the time that you took to do your reports, did you get paid for that?

A. I didn't.

Q. You didn't get paid for your reports?

A. You mean from an insurance company who paid for these reports that I did years ago? Or, do you mean my conversation with this gentleman?

(Indicating.)

Q. First, did you get paid for making those reports?

A. So, I'm assuming I did. I don't check billing at all. So, I'm assuming that this was sent in for payment, reimbursement. And, it was reimbursed.

Q. Okay.

And for the ten minutes that you spent speaking to counsel, are you getting paid for that?

A. I am not.

Q. So, you're just getting paid the 95 hundred dollars for half a day. Or what's that, $19,000 for the full day?

A. That's what we said.

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

Q. Now, this injury to the back and neck that you've discussed with respect to Mr. Dojce; you were told that it happened because he fell backwards; is that correct?

A. That's what I was told.

Q. Okay. Could the similar injury have happened if he fell downstairs?

MR. THOMAS: Objection of what could be.

THE COURT: No, I'll allow it.

A. Yeah.

A broad statement like that: Could disc herniations occur from falling down a flight of stairs?

Yeah, it could have.

Q. Could it have occurred if he passes out?

A. And fall's down and has trauma to the body?

It could. Sure.

Q. Sure.

But, your testimony is that his back, his lower back doesn't need to touch anything?

A. I'm sorry?

Q. His lower back doesn't have to hit anything. These herniations could occur just from the whiplash?

A. Yes.

Q. And the neck, as well. When he falls back he doesn't need to hit anything?

A. Yes. It could be from twisting or turning motion you could get herniations as well, to be more precise.

Q. But, if he hit something; that would make for a better evidence as to why this happened; right?

A. I don't know that.

(Pause.)

MR. GALLARDO: I just need a minute to check my notes.

Q. Sir, you have two websites; don't you?

A. Yes.

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

Q. Okay. You have two websites.

MR. GALLARDO: Could we show him the other website please?

A. Sure. Absolutely.

(Pause.)

MS. LEVIN: The correct website is Thomas Kolb.

THE WITNESS: What do you mean “correct”. I have two websites.

Q. Sir, sir, we'll ask you a question.

A. Oh, I'm sorry. I thought you were talking to me.

Q. Yeah. Yeah. No one is talking. No one's asking questions.

MR. THOMAS: Your Honor, a little courtesy and respect for the doctor would be appreciated.

THE COURT: All right. Wait for a question.

Q. Doctor, the reason I asked is because I Googled you at 3:00 in the morning. I do those things at 3:00 clock in the morning. I was really shocked when you showed me the other website.

But, Doctor, when I Googled you, this is the website that came up. Are you familiar with this website?

A. Sure.

Q. Okay. And, then when you -- it has “About Dr. Kolb”.

MR. GALLARDO: And I'm going to offer this into evidence.

Q. It has a long list of things that you do. And none of it -- it all has to do with breast cancer.

A. Because that's the breast cancer website.

Q. Okay.

But, it doesn't say Dr. Kolb's breast cancer website. It just says Dr. Kolb --

MR. THOMAS: Objection as to what it doesn't say, your Honor.

THE COURT: All right.

Q. It doesn't say Dr. Kolb -- the website is Dr. Thomas Kolb, M.D. dot com; is that correct?

A. Correct.

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

And, the other website is Kolb Radiology dot com; which you showed previously. Correct.

Q. And, this website says -- but, that's why I want that. Because you have that as you're email?

A. Okay.

Q. But, do you know why when I Google you this is the website that comes up?

MR. THOMAS: Objection, your Honor.

Q. If you know?

A. Let me be clear. I have two websites. I do two different things. It's very transparent.

Q. Well, you didn't tell -- sir, is it fair to say --

MR. THOMAS: Your Honor, here's cutting off the witness in the middle of his answer.

THE COURT: Wait. Wait. Wait.

So, he's asking a question. What's the question, counsel?

Q. You said you're very transparent.

When I asked you before, is this your website?

You didn't tell these ladies and gentlemen of the jury; by the way, I have two websites Mr. Gallardo. You're a buffoon.

You didn't say that, right? Right? You just said -- you let me look like a buffoon because I could only find the one. Is that correct? Is that fair? Is that a fair statement of what happened here?

A. No, that's unfair.

Q. Okay. Except the part about me being a buffoon?

MR. THOMAS: I agree. No objection.

Q. The one that says here -- so, this website when it shows up it's all about cancer, and nothing else, and there's nothing about it; is that fair to say?

A. That is fair to say.

Q. That's all I wanted, Doctor.

Thank you very much.

THE COURT: Thank you.

Counsel, do you have any redirect?

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

MR. THOMAS: Briefly, Judge.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Counsel has asked me about whether you have to contact those specific areas of your spine to have herniations or bulges.

Do you remember that?

A. Yes.

Q. And, you wanted to be more precise in your response. Do you remember when you said that?

A. Yes.

Q. I'm giving you the opportunity. Please, be more precise.

A. I'm just going to repeat what I think you've heard before.

You could fall down stairs and your back may not contact one of the stairs. But, the action of twisting and turning in an abnormal way could cause a herniation in your back, and the same with your neck.

I'm not saying anything revolutionary here. You don't have to have something hit you in your back, or the front for you to have a herniation in your back and the same with your neck. That's all I'm saying.

Q. And you understand the mechanism of this injury is consistent with the type of injury that he sustained?

Let me rephrase the question.

I want you to assume that Mr. Dojce was leaning over, working a tool, a power tool. And because of the kickback, he was thrown back. The tool made contact with his leg and his body then made contact with the desk and the debris that was in the room.

Do you have an opinion, within a reasonable degree of medical certainty, whether that type of action, that type of movement, that type of response to the kickback is consistent with sustaining the type of injuries to his neck and his spine that he sustained?

A. What I understand is: He had a trauma; which, is very clear to his leg. He somehow fell back. Part of his body fell back. I can't tell you which level fell back. But, it doesn't make a difference.

When you have a trauma, and part of your body is hit, and there's abnormal pressure, abnormal trauma -- not direct trauma but even indirect -- to another part of your body, you could sustain an injury. I'm not saying anything other than common sense. It's not a radical thought here.

Q. Do you have an opinion, to a reasonable degree of medical certainty, whether this accident was the competent producing cause of the injuries to his neck and back?

A. If this patient was not complaining about neck pain, back pain. Was not seeing doctors. Was not getting treatment. Was not getting surgery. Was not getting MRI's or CAT Scans.

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

Had an injury that required treatment to his leg immediately. And then had an MRI relatively soon after, and even a CAT Scan very soon after showing the herniations. That he it complained of pain, neck and back pain.

Then the logical answer is that it's the trauma that caused the herniations. That caused his new pain rather than something that preexisted for months or years prior to the trauma. That's all.

Q. Thank you, Doctor. I have no further questions.

MR. GALLARDO: If I may have brief redirect

(SIC)?

RECROSS-EXAMINATION

BY MR. GALLARDO:

Q. Doctor, with respect to causation, you would expect that if this injury was caused on that day, October -- I'm sorry, April 21, 2016; whoever had such a whiplash event would have gone to the hospital and would have complained about their back?

MR. THOMAS: Objection.

THE COURT: Well, you could answer the question.

A. Yeah. Most herniations don't end up in the hospital.

Q. But, if you did go to the hospital, and you ended up in the hospital; wouldn't you expect this gentleman to say, you know; ow, my cut and ow, my back?

A. Yeah, he may have said that.

Q. Okay.

And, you would expect, you would expect that the hospital at the emergency room, they would do a palpitation --

MR. THOMAS: Objection.

Q. -- if they did a palpitation?

MR. THOMAS: Objection. Beyond the scope.

Q. If they did a palpitation.

THE COURT: All right. That's beyond the scope of direct and redirect.

MR. GALLARDO: Your Honor, it's regarding causation.

THE COURT: No. You're into a whole another area counsel, with all due respect.

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

MR. GALLARDO: Thank you, your Honor.

I have no further questions.

THE COURT: All right. Thank you.

All right. We're done?

MR. THOMAS: We're done with this witness. I have another witness.

**End of Document**

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