SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK ::::: PART 37
----------X

ILDO LOPES,
Plaintiff,

-against-

INDEX NO.
605044/2018
TRIAL

TESTIMONY OF
NICOLAS MILAZZO
ANDREW MEROLA,M.D.

COUNTY OF SUFFOLK and GIBSON &
CUSHMANE CONTRACTING, LLC,

Defendants.

----------X

October 31, 2024
Riverhead, New York

B E F O R E:

Hon. Joseph Farneti
Supreme Court Justice

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COURT OFFICER: All rise.

COURT CLERK: Supreme Court, State of New York, County of Suffolk, Trial Term Part 37 is now in session, the Honorable Joseph Farneti presiding.

THE COURT: Case on trial continued.

COURT CLERK: All counsel are present.

THE COURT: You can have a seat.

Gallery can be seated.

Any procedural or substantive issues before I bring the panel in?

MR. GRILLO: Your Honor, if you don't mind.

THE COURT: I never mind.

MR. GRILLO: I spoke to Mr. Thomas. Would you mind giving a further instruction to the jury this morning before we start that if we see them in the hallway, we are directed not to look at them. I ran into one of the jurors going to the elevator, I looked down at my shoes instinctively, but I don't want them to think I'm being rude.

THE COURT: I think I covered that; they're not being rude, they're under my instructions, so I think they covers it. I think they heard me the first time.

MR. GRILLO: Okay. That's fine.

MR. PUZO: Your Honor, I have Defendant County of Suffolk's request to charge and proposed verdict sheet, which I'm going to provide to the Court and other counsel.

THE COURT: All right. Just hand that up to the officer. I had included the other request to charge and verdict sheets as Court Exhibit II. I am to add these two documents to Court Exhibit II and append both of them.

Any other procedural or substantive issues for the Plaintiff or the Defendants?

MR. THOMAS: None by Plaintiff.

MR. GRILLO: None by the Defendant.

THE COURT: Bring the panel in, please.

COURT OFFICER: All rise, jury entering.

THE COURT: All rise, please.

(Whereupon, the jury enters the courtroom.)

THE COURT: The jury may be seated when they reach their seats. Let's give the jury a moment to settle in.

Good morning, ladies and gentlemen, welcome back.

Gallery may be seated, counsel may be seated.

We are ready to continue with the Plaintiff's case.

At this time I'll call upon attorney Richard Gilbert to call his next witness.

MR. GILBERT: Good morning, your Honor. Plaintiff calls Nicholas Milazzo.

THE COURT: Step up, Mr. Milazzo, and follow the instructions of my court officer. Careful stepping up.

COURT OFFICER: When you get to the top, raise your right hand and face the clerk.

N I C H O L A S M I L A Z Z O, having been first called, was duly sworn and testified under oath as follows:

COURT CLERK: You can be seated. State your name for the record, spelling your last name, and your business address.

THE WITNESS: My name is Nicholas Milazzo, M-I-L-A-Z-Z-O. Address is 36-18 Long Island City, New York 11106.

THE COURT: All right, Mr. Milazzo. As you can see the microphone does a good job of picking up your voice. It's important that everyone in the courtroom hear what you have to say. It's important that you let the attorney finish his question before you give your answer. And Mr. Gilbert will allow you to finish your answer before he asks his next question.

That having been said, Mr. Gilbert.

MR. GILBERT: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. GILBERT:

Q Good morning, Mr. Milazzo.

A Good morning.

Q Mr. Milazzo, I'll remind you to keep your voice up even though you have the microphone, okay?

A Yes.

Q Could you tell the jury by whom you're employed?

A District Council 9.

Q And how long have you worked for that organization?

A I've been a member for 20 years. I worked with District Council 9 directly for five years.

Q And what is your current title in the organization?

A Business representative of Local 806.

Q Could you explain -- could you tell the jury a little bit about your background, leading up to --

A I'm sorry, could you repeat the question? The gentlemen coughed and I didn't hear you.

Q Could you tell the jury a little bit about your work background, leading up to you getting this particular position.

A Well, I started in the industry fairly young. Prior to that, you know, delivered pizza, worked in an auto parts store, did some moving for various moving companies. Then I got into the trade about 19, 20-years old.

I graduated a three-year apprenticeship program. I was in the field as a journeyman for about 7, 8 years. After that I became a shop steward for Local 806. About a year or two after that I became the warden for Local 806. Maybe 4 or 5 months after that I became a delegate for Local 806. That lasted about 4 years. Then I was on the executive board and became the treasurer, after that recording secretary, after that financial secretary, and now I'm currently the business representative.

Q Could you tell the jury what kind of organization is District Council 9?

A Construction and building trades.

Q And what about 806?

A 806 is under the umbrella of District Council 9. We work on bridges, structural steel, all various structures throughout New York.

Q And currently how many members are there in Local 806?

A Approximately, between 1,000 and 1,100.

Q And as you're sitting here today, approximately what percentage of those workers are currently employed?

A 100 percent.

Q Could you explain to the jurors the process by which a person becomes a member of Local 806?

A Well, we do a recruitment line. We used to do it every other year, but with the influx of work, we do it every year now. You wait on the line for an application. We give out anywhere roughly from 500 to 750 applications. After that the application process, depending on the supply need of members, we call anywhere between 100 to 200 people to come in for interviews.

After the interview process there's an orientation process. If they pass the interview process, there's an orientation process, where there's a physical test and some training involved with that. If they pass that, then they would

become state-certified apprentices.

Q Could you describe to the jury what the role of apprentice is, his duties, responsibilities?

A There's various duties and responsibilities. First and foremost they have to train -- they have to attend training classes, apprentice class once a week for four hours. That's a three-year program. So they have to do that for three years. They have to attend local meetings, which is once a month at the end of month. On-the-job site. It varies.

Again, I mentioned it is a three-year program, so when they start out they might do stuff like mixing paint, holding a stop sign, MPT traffic control. As times goes on, they will learn more about the trade.

Q And could you describe -- in order to move on from being an apprentice, does that person have to achieve certain certifications?

A Yes. They have to accumulate 144 class hours a year, not limited to -- that's the minimum. Most our apprentices achieve over that. They have to -- they require 2,000 hours a year of work. And they have to take several training classes.

Q And after they get done with that and they've accumulated sufficient numbers of hours and expertise, what's the next stage?

A They become a journeyman.

Q Could you describe to the jury the kind of work that a

journeyman does?

A There's multiple tasks. Anywhere from sandblasting to coating, to building containment, to working on mechanical equipment, painting with brush and rollers. Working with power tools, such as grinders, needle guns, welding, et cetera.

Q Could you describe to the jury what you mean by sandblasting?

A Sandblasting is basically, if you've ever driven over a bridge or elevator structure and you see rust or decay, sandblasting is basically a hose, kind of looks like a firehouse, but what comes out of it is little pellets of steel shot that removes the rust --

Q And you mentioned something about containment. Could you explain to the jury what you mean by that?

A So the containment is basically to protect the environment, to contain everything, all the rust and the dust that comes off the steel. That protects it from going into atmosphere.

Q What happens to the steel shot that's being propelled into the metal by the air gun after it hits the metal that it's aimed at?

A It will then hit the floor. And you'll have preferably apprentices, some journeyman on the ground vacuuming that stuff up. It goes into what is called a recycle unit that separates the steel shot from the debris. The steel shot is reusable. So

as it goes into the machine, it's separates and it's reused.

Q You mentioned containment. In instances where there's containment, where does the steel shot go?

A There's always containment when there's sandblasting. And the steel shot would go to the floor.

Q And in instances where work is being done over water, where would the steel shot go?

A On the scaffolding on the platform.

Q Okay. And did --

A I'm sorry. When I refer to floor, I mean platform and floor as well. Not all jobs have platforms of scaffoldings, but most do.

Q And how would would you describe the work that a journeyman does; is it light work, medium, heavy work, something else?

A Extremely heavy work.

Q Could you describe, why would you characterize it that way?

A Because it's, how can I say, non-stop action from the moment you start to the moment you end. Everything is based on numbers. You know you have to get from point A to point B by a certain amount of time. If you don't, it's kind of like you won't cut it, so to say. You have to produce a certain amount.

Q And what distinguishes painters in Local 806 from other painters in other unions that are painting something other than

structural steel and bridges?

A Well, you know, you're not working inside of a building painting a wall, you're outside in the atmosphere. You're working at dangerous heights. You're dealing with, you know, like I mentioned, sandblasting. That's a high-powered tool. When you're spraying, you know, that's a high-powered tool. You can get seriously hurt from these tools if you don't know what you're doing.

Q In your role with the organization now, could you explain what your day-to-day responsibilities are?

A My day-to-day responsibilities are handling grievances, negotiating contracts. I don't work for the funds department, but I work with them making sure benefits are paid on behalf of the members, make sure that the members get the proper training that they need to do the work.

Q Are you familiar with -- withdrawn.

In your role in the organization, are you personally familiar with the recordkeeping practices of structural steel and bridge painters, Local 806?

A I am.

Q Are you familiar with a gentleman by the name of Ildo Lopes?

A I am.

Q How are you familiar with him?

A We came in the business roughly around the same time.

We were apprentices together. I didn't know him personally, but I knew him from, you know, local meetings, rallies, apprenticeship class, things like that.

Q Are you appearing today pursuant to a subpoena that was served on Local 806?

A I am.

Q And your organization was asked to produce certain records pursuant to the subpoena?

A Yes.

Q And those records are in connection with Ildo Lopes' earnings and benefits, correct?

A Correct.

MR. GILBERT: Your Honor, can we hand up the envelopes, the exhibits? I think it's 14 and 15 in evidence.

THE COURT: 14, 15 in evidence.

COURT OFFICER: Plaintiff's 14 and 15, in evidence, presented to the witness (Handing.)

THE WITNESS: Thank you.

Q You want to open them up and just lay them out before you.

A Sure.

Q Now, in one of the documents that you were asked to produce, that 806 was asked to produce, was there a document that reflects Ildo Lopes' history in terms of work hours each

year?

A Yes.

Q Could you point out that document to us?

A (Showing.)

Q Okay.

THE COURT: Which exhibit is that contained within, sir? There's a sticker on the envelope, white envelope.

THE WITNESS: Okay, you got it.

THE COURT: It should be a yellow sticker. This way we know what document we're referring to.

THE WITNESS: 14.

THE COURT: Exhibit 14. Thank you.

Go ahead, Mr. Gilbert.

Q Could you look at that document for a moment?

THE WITNESS: Sure.

THE COURT: With respect to the hours?

MR. GRILLO: Yes.

THE COURT: Just so we're clear.

Q And does that accurately reflect Mr. Lopes' hours worked for the union in connection with certain earnings and benefits that he would receive?

A One moment, please. This looks accurate.

Q Could you say that again?

A It does look accurate, yes.

Q Okay. And in looking at that document --

MR. GILBERT: Can I have it just a moment, Judge?

THE COURT: Officer, if you would, just return that to Mr. Gilbert.

MR. GILBERT: Thank you.

Okay, thanks.

COURT OFFICER: (Handing.)

MR. GILBERT: Your Honor, can we just have a moment to put that up on the screen?

THE COURT: Sure.

Jim?

Again with the representation, Mr. Gilbert, that's what is being displayed to the jury is the hours documentation that Mr. Milazzo just testified about, this is just an enlarged copy presented on the computer screen, correct?

MR. GILBERT: Yes, Judge.

THE COURT: Thank you.

Again, counsel are welcome to relocate if they're so inclined.

MR. GRILLO: Thank you, your Honor.

THE COURT: I want so make sure the jury can see it.

Thank you, Jim.

If you need to come in front, give yourself a break, Counsel.

MR. THOMAS: Thank you, Judge.

THE COURT: Sometimes there's a delay, Counsel.

MR. GILBERT: Can we have the original back?

THE COURT: The exhibit is being displayed by use of the camera and monitor, and it's the actual document from Exhibit 14.

Bring it a little closer to the jury, too. It's not an eye test.

MR. THOMAS: I can zoom in.

THE COURT: And I anticipate that you will.

All right, so...

MR. THOMAS: I'll zoom in so it can be seen.

THE COURT: Very good.

Can you see that, Mr. Milazzo? And if you need to turn your chair, your chair is movable.

THE WITNESS: Thank you.

THE COURT: You're welcome, sir. We love technology.

Q Does that reflect -- Mr. Milazzo, does that reflect when Mr. Lopes started to accumulate hours in the union?

A This specific page right here?

Q Yes.

A No. I think he started in 2000 -- yes, 2003, that is correct.

Q Okay. And does it reflect how many hours he

accumulated in that particular month of 2003?

A Yes.

Q Okay. What does it reflect?

A Could you bring it down just a little bit, just so I can see the top? I got it now. I just wanted to see -- okay. I got it now.

So, yes, it does. It reflects the hours he worked monthly for the year. So I believe that was -- first month he worked 67, the second month 181 --

Q And that document --

MR. GILBERT: Could you just go to the first page of it?

MR. THOMAS: (Showing.)

Q Can you indicate the last month that Ildo worked hours?

A Yes. It looks like October 1, 2017, 43 and-a-half hours.

Q And prior to that in the same --

MR. GILBERT: If you can just push back to the year.

Q Does it show additional hours for the year 2017?

A It does.

Q Could you indicate -- and could you indicate when it starts hours in 2017?

A June.

Q Did he work in June?

A Yes.
Q How many hours did he accumulate in June?
A 85.
Q And in July, how many hours did he accumulate in July?
A 159.
Q In August, how many hours did he accumulate?
A 149.
Q And in September?
A 72.
Q And in October?
A 43 and a half.
Q Okay.

MR. GILBERT: We're done with that exhibit. Thank you.

THE COURT: Thank you. Can you have the exhibit returned to the officer, please?

MR. GRILLO: Excuse me, your Honor. As far as the exhibit number, is it 14?

THE COURT: It's within 14. It's the hour summary within Exhibit 14.

MR. GRILLO: Thank you.

THE COURT: Next question, Mr. Gilbert.

Q Now, in addition to that document you were subpoenaed to present additional documents, correct?
A Correct.

Q And among those documents, on top is the copy of the subpoena?

A Yes.

Q Okay. Now, could you tell the jury what a collective bargaining agreement is?

A A collective bargaining agreement is when the union and the employers sit down and negotiate the wages, benefits, rules and regulations of the industry.

Q And do you have before you the collective bargaining agreement that was in effect during the period of time that Ildo Lopes was working?

A One minute.

MR. GILBERT: Off the record.

THE COURT: We stay on the record, Counsel. I'll go off the record when I want to go off the record.

MR. GILBERT: We're done with Exhibit 14.

THE COURT: Let me.

The document you're currently looking at, Mr. Milazzo, is contained within Exhibit 15, as indicated on the yellow envelope?

THE WITNESS: Yes.

THE COURT: Can you hand that back, please?

MR. GILBERT: Your Honor, we're done with Exhibit 14 --

THE COURT: Thank you.

A Yes, it is here.

Q Okay. And does that set forth the terms and conditions of employment for work performed by union members?

A Yes.

MR. GILBERT: And that document's in evidence.

Q Did that collective bargaining agreement expire at some point during the course of Ildo's tenure with the union?

A Yes.

Q Okay. And when an collective bargaining agreement expires, what's the next step in the process for the union?

A So prior to the expiration date, the union and the employers get together to renegotiate.

Q And in your experience after a period of the negotiation, do the benefits and wages of workers remain the same?

A No.

Q What happens to them?

A They increase.

Q Okay. Is 806 in the midst of negotiating a new contract?

A We just finished negotiating. It's actually getting drafted right now. But all the terms and conditions were agreed on.

Q And how did that impact the rates and conditions?

A They increased.

Q Are you familiar with the term, a wage or rate sheet?
A I am.
Q Is that a document that was produced in connection with the subpoena?
A Yes.
Q And could you describe what a wage or rate sheet is?
A A wage and a rate sheet is basically a breakdown of where the funds are allocated.
Q Okay. And do you have that document in front of you?
A I do.
MR. GILBERT: Can we have that, for a moment, put up?
THE COURT: That's contained in Exhibit 15, in evidence, wage and rate sheet.
MR. THOMAS: Sorry, Judge, I didn't go to the manicurist, but...
THE COURT: It's okay. Next time. I recommended matte finish.
Q Now, sir, you indicated that at the time, that Ildo had achieved the position of journeyman; is that correct?
A Yes.
THE COURT: As of?
Q As of -- what year did he achieve it?
A If he came in 2003, by 2006 he would have been a journeyman.

Q And at the top of this it indicates, these were the effective rates as of what date?

A October 1, 2017.

Q And could you explain to the jury what the wages -- the wage rate was for a journeyman at that point?

A $49.50.

Q Is that per hour?

A Yes.

Q And in addition to wages, did he also accumulate certain benefits associated with his work?

A Yes.

Q And that was pursuant to the terms of the collective bargaining agreement?

A Yes.

Q What benefits did he acquire on an hourly basis during that period?

A Health and welfare, vacation, annuity and pension.

Q Start with health and welfare. Can you explain to the jury what's meant by health and welfare?

A Health and welfare is basically medical coverage for himself, his wife and any dependents.

Q And how does one earn the health and welfare benefit?

A They would have to work 1,000 hours in a rotating year.

Q When you say rotating year, could you explain that?

A So, for example, today is November 1, 2024. If a

member works 1,000 hours from November 1st of 2023, in that window they would be covered.

Q And in the event somebody, a member of the union is unable to achieve the 1,000 hours within a year, what happens to their health and medical -- they're health and welfare benefits?

A They could go out on COBRA or they could lose it.

Q By the way, if they're slightly below the 1,000-hour mark, are they able to acquire those health benefits through some other means?

A No.

Q Is there a buy-in --

A No.

Q None at all?

A None at all.

Q Okay. The next column of benefits is indicated as vacation.

A Correct.

Q Could you explain to the jury how you -- how one would acquire vacation benefits?

A So the members would be paid, at this point in time it was $6.38 an hour. They would get that hourly in their vacation, I mean in their paycheck. It would get taxed and then taken out. And then at the end of year they would get a vacation check for a lump sum.

Q And the next column?

A Annuity.

Q Could you explain for the jury, for each hour that Mr. Lopes was working what, if any, benefit did he gain in terms of annuity?

A At this point in time the rate was $12.75, that would be hourly in his annuity. And that is a retirement account for when he would retire.

Q And where did those funds go?

A They went to our funds deposited at District Council 9.

Q What happens to it there, is it managed?

A Yes, it's invested and managed to a, you know, a company.

Q Okay. And the next column, could you read what that says?

A That's APP/promo.

Q What exactly is that?

A That is basically nickels and dimes that's allocated to join the apprentice program; scholarships for member's kids, training, political action, things along those lines.

Q And those are used by the union?

A Yes.

Q To benefit the various causes that you mentioned?

A Correct.

Q And the last column, what is that?

A Pension.

Q And could you tell us what that's in reference to? How does a member gain credits for a pension?

A So once a member has five years in of 1,000 hours or more per year, they would then become vested for a pension. When they reached the retirement age, they would collect a pension.

Q Okay. And again, these rates were the rates that were in effect in October of 2017?

A Correct.

Q And since then have the rates changed?

A Correct, yes.

Q Do you have an updated rate sheet with you?

A I have it with my stuff, I do, with my book.

THE COURT: For the purposes of the record, Mr. Milazzo has produced his file from DC9 and/or 806.

Would that be an accurate description, sir?

THE WITNESS: Yes, your Honor.

THE COURT: You can hand that to him.

COURT OFFICER: Handing to the witness.

THE WITNESS: Thank you.

Place this on the floor?

THE COURT: I'll hold it for you, sir. Feel free.

THE WITNESS: Thank you.

THE COURT: The updated pension rate sheet.

MR. GILBERT: I want to make sure we don't lose

this sheet. Can we put that back?

THE COURT: Absolutely. Exhibit 15, the wage and rate sheet, being returned.

Next question; updated pension.

Q Is that an updated rate sheet for the union?

A Correct. This is as of October 1st of 2024.

Q Is that a record kept within the ordinary course of business by the union?

A Yes.

Q As part of the union's business to keep that record?

A Yes.

Q And --

MR. GILBERT: At this point, your Honor, I would actually ask that it be marked for identification and be offered.

THE COURT: So you keep that record in the regular course of your business, and your under a business duty to do so?

THE WITNESS: Correct.

THE COURT: We'll mark it for ID.

MR. GRILLO: Your Honor, can we see it?

THE COURT: I'm going to mark it for ID first.

MR. GRILLO: I just want to make sure.

THE COURT: It's okay.

MR. GRILLO: Thank you.

COURT OFFICER: Could I have Plaintiff's Exhibit 17 marked for ID only?

(Plaintiff's Exhibit 17 was marked for identification.)

THE COURT: Show that to counsel.

COURT OFFICER: Plaintiff's 17, ID only, presented back to the witness. (Handing.)

THE WITNESS: Thank you.

THE COURT: If you could, Mr. Gilbert, could you just establish for us what was the term of the prior rate and what was the commencement date of the new rate sheet?

Q Okay. When was the term of the prior rate sheet that you had looked at before?

THE COURT: When was it in effect, sir?

A It was in effect from October 1, 2017, till September 30, 2018.

Q And the sheet that you have in front of you, what's the term of that one?

A October 1, 2024, and would expire September 30, 2023 -- I mean, 2025. I'm sorry.

THE COURT: Were there additional rate sheets for each intervening year?

THE WITNESS: Correct, yes.

THE COURT: Thank you.

Thank you, Mr. Gilbert.

MR. GILBERT: Again, we offer it, Judge.

THE COURT: Any objection?

MR. GRILLO: No objection.

THE COURT: Without objection, received and marked in evidence.

COURT OFFICER: Hang on a minute.

(Plaintiff's Exhibit 17 was received in evidence.)

COURT OFFICER: Plaintiff's 17, marked in evidence, presented back to the witness.

THE COURT: He has it.

Hand that to Mr. Thomas so he can display it for the jury.

MR. THOMAS: Thank you.

Q Now, this is for the period effective 10/1/2024, correct?

A Correct.

Q What is the hourly wage for a journeyman now?

A 56.25.

Q And the health and welfare amount that he earns each hour?

A 12.75.

Q And vacation pay each hour?

A $11.10.

Q And the annuity each hour?

A $17.36.

Q Now, there are additional markings there, what are those?

A So if you recall when I referenced the apprentice promo, the Department of Labor just wanted a clearer breakdown of where those funds were allocated. So that's just an allocation of where that dollar and change are now, what I believe is $2 and change, is allocated. That's why you see nickels and dimes and smaller.

THE COURT: Mr. Milazzo, would that APP/promo category be traditionally known as dues?

THE WITNESS: No.

THE COURT: I just want to make clear.

Q And the last column?

A Pension.

Q How much would he have earned per year had he continued to work today?

A $13.33 per hour.

MR. GILBERT: Thank you. We're done with that.

Now, your Honor, I'm just going to make sure this gets back.

THE COURT: This is a separate exhibit, Exhibit 17 in evidence. Thank you.

Q Now, as of 2017, do you have an approximation of what Ildo Lopes had earned in that year?

A I would have to look through the files. If you can

give me a moment.

Q Go ahead.

A It's not broken down total. Would I be able to add whatever, calculator? Because it's monthly.

Q -- wages?

A Wages, you're looking at --

THE COURT: Just so I'm clear, Mr. Milazzo, is that contained within your office record, or is that in one of the subpoenaed exhibits what you're looking at right now?

THE WITNESS: This is one of the subpoenaed exhibits.

THE COURT: Okay. And this was out of the smaller white envelope?

THE WITNESS: Correct.

THE COURT: Exhibit 14?

THE WITNESS: Correct, your Honor.

A You're looking --

COURT OFFICER: 15.

THE COURT: This is for Mr. Lopes specifically, correct?

THE WITNESS: Correct.

THE COURT: It's his wage employment record?

THE WITNESS: Correct.

THE COURT: Thank you. For 2017?

THE WITNESS: Correct.

THE COURT: Thank you.

Go ahead. I'm not going to put him through -- the calculation --

THE WITNESS: It's roughly around 40-something thousand, it's looking like, for that year.

THE COURT: I'm not going to put you through mathematical calculations. And so we can supply the raw data to counsel and I can allow them to do the math.

Q I'm going to turn to another subject for a moment, okay?

A Okay.

Q In terms of pension, how many hours -- back in 2017, how many hours did a journeyman have to accumulate before he would be eligible for a pension?

A Well, there's different requirements.

Q Could you explain that to the jury?

A Yes. So to retire at the age of 55 you would have to accumulate 60,000 hours, at the age of 60 you would have to accumulate 54,000 hours, and at the age of 62 it would be 45,000 hours.

MR. GRILLO: Excuse me, Mr. Gilbert.

I'm sorry, your Honor. Can we just get those numbers back?

THE COURT: Yes. With respect to -- I'll do it. It's easy.

MR. GRILLO: Thank you.

THE COURT: To retire at age 55 you need 60,000 total, to retire at 60 you need 54,000 total, and to retire at 62 you need 45,000 total.

Did I get that right, Mr. Milazzo?

THE WITNESS: Correct, your Honor.

THE COURT: Thank you.

Q And typically, when do members of Local 806 retire?

A I would say on an average between age of 61, 62, maybe.

MR. GILBERT: I have nothing further, Judge.

THE COURT: Thank you.

Just so I'm clear, on that wage statement that pertained to Mr. Lopes directly, the one we looked at where you were given the math quiz, can you put that at the top of pile there, sir?

THE WITNESS: Yes.

THE COURT: So we can segregate that if counsel needs it. And with respect to Mr. Lopes 2017 record for him personally, you have it on top?

THE WITNESS: Yes.

THE COURT: Perfect. You can hand that back to the officer.

Do you have all your exhibits, Jim?

COURT OFFICER: No.

THE COURT: Give that to the officer. (Handing.)

And those will be available for counsel.

Which counsel is handling this examination?

MR. GRILLO: Your Honor, with the Court's permission --

THE COURT: You need a moment?

MR. GRILLO: Just literally five minutes, because I'd like to look, with Mr. Milazzo's permission, at the file he brought to court.

THE COURT: All right. Let's segregate Exhibits 14 and 15 separately. Mr. Milazzo has produced his original DC9 806 file. The defense counsel has the right to review that. I will afford him the opportunity to do so.

Rather than have the jury sitting here while you're doing that, because I know in court time it's like dog time, five years can turn into 17, so we'll excuse the jury for a brief recess.

Do not form or express any opinion, do not discuss it between and amongst yourselves.

Careful stepping down. Stay right there, Mr. Milazzo.

COURT OFFICER: All rise.

(Whereupon, the jury exits the courtroom.)

THE COURT: You can provide your counsel with your office files, sir. Step down. Provide that to your counsel and they'll provide it to defense counsel.

MR. GRILLO: Thank you, your Honor.

THE COURT: I'll need you available to come back on the stand when we're ready to reconvene. Ten minutes. You can step outside. Relax.

THE WITNESS: Thank you.

(Whereupon, a brief recess was taken.)

(Back in open court, on the record as follows:)

COURT OFFICER: All rise.

THE COURT: Case on trial continued.

MR. GRILLO: Your Honor, thank you for that.

COURT CLERK: All counsel present.

THE COURT: Ready for the panel?

(Whereupon, all counsel answered in the affirmative.)

THE COURT: Mr. Milazzo, you can return to the stand. I remind you you're still under oath. I'll remind you again in the presence of the jury.

COURT OFFICER: All rise, jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: All rise, please.

Jury may be seated when they reach their seats. Let's give the jury a minute to settle in.

Counsel may be seated.

The witness may be seated.

Welcome back, ladies and gentlemen.

For the purpose of cross-examination, Mr. Grillo.

I remind you, Mr. Milazzo, that you're still under oath.

MR. GRILLO: Thank you, your Honor.

THE COURT: Wherever you're comfortable.

CROSS-EXAMINATION

BY MR. GRILLO:

Q Good morning, Mr. Milazzo.

A Good morning.

Q Fair to say you and I just met this morning?

A Yes.

Q As you know, my name is Emilio Grillo; I'm one of the attorneys representing Gibson Cushmane in this litigation, okay?

A Okay.

Q I'm going to ask you some questions this morning, not too many hopefully, in response to some of the questions you've given.

Now, prior to appearing today you've brought with you your file, your, I guess, folio, we'll call it, or notebook?

A Yes.

Q Did you look at any or documents besides what was contained in your notebook?

A No.

Q Okay. As far as Mr. Gilbert or Mr. Thomas, did you speak to them before you testified here today?

A Yes.

Q When for the first time did you speak to them?

A Yesterday, Mr. Gilbert, and this morning, Mr. Thompson.

Q Mr. Thomas.

THE COURT: Thomas.

THE WITNESS: Thomas. I'm sorry.

Q It's quite all right. Can you tell me what the conversation was between you and Mr. Gilbert, and you and Mr. Thomas? Tell the jury, not me, obviously.

A Directions how to get here, where this trial was going to take place. I asked him what I should wear, as far as color of the suit. This is my first time testifying in court. Just what I needed to do to be prepared.

Q Okay. And did they go over any documents with you?

A Yes.

Q What documents?

A The ones I have in my file.

Q Okay. So as far as the union -- as far as the union wage sheet?

A Correct.

Q Okay. And as far as the actual cumulative sheet of all the wages, correct?

A Correct.

Q In addition to -- and you know that both Mr. Gilbert and Mr. Thomas are counsel for the law firm Sacks & Sacks.

You're familiar with that, right?

A Correct, yes.

Q And you've worked on behalf of the union with lawyers from Sacks & Sacks before, have you not?

A Yes.

Q Prior to today, for how long a time period was the first time you encountered the law firm Sacks & Sacks as a union representative?

MR. GILBERT: Objection.

THE COURT: I'll allow it. Overruled.

You may answer, sir.

A Approximately?

Q Yes.

A 2016, maybe.

Q So in 2016, fair to say it wasn't in conjunction with the Ildo Lopes case, when you first spoke to them?

A Yes.

Q It was, in fact, in conjunction with another case of a union member, correct?

A Well, it would be in conjunction with myself.

THE COURT: That having been said, be careful with respect to attorney/client, Counsel.

MR. GRILLO: Understood. No, no.

Q In your notebook, over the break I took a look at it. Can we agree, sir, there's an entry in your notebook dated

October 30th of 2024?

A Correct.

Q And that reflects a conversation you had with David Mayer, M-A-Y-E-R?

A Correct.

Q Do you know who he is?

A Yes.

Q Who is he?

A He works for Sacks & Sacks.

Q So he's one of the attorneys for Sacks & Sacks?

A Correct.

Q If I read your notebook correctly, it says telephone call with D. Mayer, Sacks & Sacks.

I don't remember specifically. With the Court's permission, could you just look at your notebook?

A Sure.

THE COURT: Provide that to Mr. Milazzo, please.

MR. GRILLO: He already has it.

THE COURT: That was easier than I thought.

Take your time.

A You want me to read it verbatim?

Q Sure. Or if you can read it to yourself and tell me what it says, that's fine.

A It basically says, spoke to David Mayer, Sacks & Sacks about --

THE COURT: Sir, when you're reading, I need you to go more slowly because --

THE WITNESS: I apologize.

THE COURT: No need apologize, sir.

A It says, spoke to Dave M., Sacks & Sacks, about Ildo Lopes, who is a member of upcoming case.

Q Do you have a recollection, as you sit here today on November 1st, as to how long your conversation was with Mr. Mayer October 30th, if you know?

A A couple minutes, if that.

Q Do you recall what the substance of the discussion with Mr. Mayer was?

A I do.

Q Can you tell the members of the jury what it was?

A Who the point of contact was, who I was going to meet and speak with, and where I was going to go.

Q Who did he tell you?

A Mr. Gilbert.

Q Okay? And as far as where to go, here in court or somewhere else?

A Here in court.

Q Okay. Now -- thank you.

Now, with respect to your position as the union representative, you have a fairly strong knowledge about the capabilities of the union as far as the membership is concerned,

correct?

A I do.

Q And in your particular local, I think, if I'm not mistaken, you said there are anywhere between 1,000 to 1,100 members, correct?

A That is correct.

Q And with respect to Local 806, are all those members bridge painters?

A Yes.

Q And with respect to bridge painters, are you aware, as a union representative, of other positions -- withdrawn.

I'm going to ask it this way. You said on direct examination, if I'm not mistaken, that the bridge painting is heavy work.

A That is correct.

Q That it involves the operation of heavy equipment, correct?

A That is correct.

Q Are there positions within Local 806 where there's not heavy work?

A Maybe as a first-year apprentice when you're just learning the trade, flagging, like as I mentioned earlier, MPT work, but a journeyman, no.

Q So can we go to -- withdrawn.

Now, before we go there, fair to say you haven't looked

at any medical records of Mr. Lopes; is that correct?

A That is correct.

Q Fair to say no one discussed with you any of the findings of doctors who treated Mr. Lopes; is that correct?

A That is correct.

Q Is it fair to say also, you'd agree with me, sir, you'd have no idea as to Mr. Lopes' ability to return to the workforce, correct?

A That is correct.

Q You're here today -- and I'm not discounting it. I want to thank you for coming in. You're here today just basically to explain to the members of the jury how the union functions and the positions and the wages, correct?

A That is correct.

Q And, of course, the pension and the collective bargaining?

A That is correct.

Q But as far as you sit here today, Mr. Lopes' ability to return to work, you're not aware of it, his physical ability?

A That is correct.

Q Thank you. And I'm not trying to be smart here or anything, or be cute about it, but you don't have any qualifications as far as -- it's not a criticism, it's just a confirmation -- you don't have any qualifications to assess someone's ability to return to the workforce as a vocational

rehabilitation person, correct?

A Qualifications; no.

Q Okay. Now, I think you talked a little bit about the apprentice program. The union, you'd agree with me, does provide training to its members?

A Yes.

Q And can we go to Plaintiff's Exhibit No. 14, which forgive me, I don't remember the actual -- what it's called?

COURT OFFICER: Plaintiff's Exhibit 14, in evidence, presented to the witness. (Handing.)

THE COURT: Give us a category, Mr. Grillo.

MR. GRILLO: It's his work history. I don't think it's -- I don't think it's a rate sheet cumulative.

THE COURT: Counsel confer off the record.

MR. GRILLO: I think it's a cumulative --

THE COURT: Let the counsel confer off the record.

MR. GRILLO: Sorry.

I'm going utilize the term cumulative work record.

THE COURT: Thank you.

You have that, Mr. Milazzo?

THE WITNESS: I do.

MR. GRILLO: Judge, could we have it displayed on the screen?

THE COURT: Certainly.

MR. THOMAS: Judge, may I move my chair?

THE COURT: Absolutely. And I allow counsel to relocate any time they wish.

I appreciate counsel's cooperation.

Q Now, Mr. Milazzo, to the extent that there's a series of dates on this, can we agree, sir, that there are gaps between certain dates where Mr. Lopes was not working?

A Yes.

Q Okay. I think you testified earlier about a 1,000-hour requirement on a rotating year in order to -- for Mr. Lopes to secure pension benefits, or health care. Excuse me.

A Correct. And it was 1,000 hours for five years to be vested for a pension.

Q 1,000 hours for five years to be vested for a pension.

A Yes.

Q And as far as when you say 1,000 for five years, does that mean someone has to work continuously for five years to vest for the pension?

A Correct. But there are some -- for example, if he worked for three years and then had a short year in the fourth year, but fifth and sixth worked the thousand hours, that would apply.

Q As you sit here today, based on your review of Mr. Lopes' employment records, this sheet in particular, was he vested in the pension?

A Yes.

Q Now, with respect to the gaps in this, we can agree, sir, there were certain points in time where Mr. Lopes was not working, correct?

A Yes.

Q And specifically, I'd like to direct your attention to a time period -- bear with me -- between the time of December 31 of 2016 --

MR. GRILLO: If I may approach it, your Honor?

THE COURT: Yes. If you need to see it, that's fine. If you'd like to direct attention, just don't block the view of the jury if it can be helped.

Q Can you see that?

A Correct.

Q Do we agree, Mr. Milazzo, that from the period of December 1, 2016 -- thank you -- to December 31st of 2016, his cumulative hours were 44 hours for that month, correct?

A For the month of December?

Q For the month -- certainly, yes.

A Correct.

Q And similarly from November 1st of '16, the previous month, to November 30th of 2016, it was 44 hours for that month as well, correct?

A Correct.

Q Now, there's also another entry for work with respect to November 1st, there's multiple entries for November 1, 2016

through November 30th of 2016. Do you see that?

A I do.

Q How is that calculated?

A It's basically how the contract got paid in. So they could have paid in, at that particular time, weekly, monthly. Some of our contractors -- if you want me to get into further detail. We have associated contractors and we have independent contractors.

It looks on this list that Ahern Painting contractor was paying in, so they're what you would call an associated contractor, they can pay the benefits every three months, as opposed to independent who pays weekly, sometimes monthly.

Q So as you sit here today, do you know, as far as all those records or based on your review of these records, how many hours he worked from November 1st of -- from November 1st of '16 through November 30th of '16? If you know.

A I can only refer to this. It's looking like 199 hours.

Q For the month?

A For the month.

Q Now, moving ahead to December 31st of 2016. Can we agree, sir, your review of this, he stopped working for Ahern Contractors on or about December 31st of '16, and the next time he went back to work was on June 1st of 2017, correct?

A Again, that could be a little misleading. That could have been when they paid in. So he could have worked for them

in May and they paid in, in June, because Skanska would be considered an independent contractor, they get paid benefits monthly.

Q Okay.

A So I can't give you an exact, I can just give you an estimate.

Q So you're not aware of what Mr. Lopes' medical condition was like during that gap year, if you will, that gap time?

A No.

Q Okay.

MR. GRILLO: Now, if we can take this down and put the other exhibit up.

THE COURT: Which one?

MR. GRILLO: The rate sheet, please, which I think it Plaintiff's 15.

THE COURT: 17 or 15? Which contract, the new or the old contract?

MR. GRILLO: The old --

THE COURT: There's two.

MR. GRILLO: Thank you. I'll take 17. You read my mind, Judge. Thank you. Rate 17.

THE COURT: Do you have Exhibit 17?

THE WITNESS: I do.

THE COURT: They're going to display it for you.

MR. GRILLO: I want to put it on the screen.

THE COURT: Just so we're clear. Just give us a moment.

Thank you, Jim.

COURT OFFICER: You're welcome.

THE COURT: Again, thank you, Mr. Thomas.

MR. THOMAS: No problem, Judge.

Q Obviously, Mr. Milazzo, this is the new rate sheet?

A Correct.

Q With rates. Can we agree, sir, obviously, that the wage of a journeyman now are $56.25?

A Correct.

Q Wages for a third-year apprentice, $45 an hour, correct?

A Correct.

Q And with respect to alternative means of employment, are there other positions with the union that Mr. Lopes could have availed himself to, not necessarily a journeyman, but are there other positions potentially that could be available to him as a union member, a vested union member?

A One thing is, he would not be able to go back to being an apprentice, so that would be off the table. As far as other positions; not that I'm aware of.

Q Okay.

A I don't know Mr. Lopes' certain qualifications for

other things.

Q Forgive my ignorance on this, but as the union, all those other companies that Mr. Lopes worked for that were on the prior exhibit, those are -- those are contractors that come through the union?

Tell me how Mr. Lopes, for example, was working for Ahern Plumbing -- Ahern Painting, excuse me, one, for one time period and then I think the next time period he's working for Skanska? Does Ahern hire him directly or they go through the union? How does that work?

A Yes, Ahern would hire them directly. So again, I wouldn't know each scenario, but there's a bunch of different situations that could happen. He could have been working for Ahern, and that job completed and they didn't have nowhere else to put him. So then he worked for Skanska. That job could have completed and he could have gone back to work for Ahern. That's how our industry is.

Q That's what I'm trying to get, so the jury understands as well. So as far as the union is concerned, there's no involvement from the union, or do you have a role in placing him at these various companies?

A We have no role. We're not a hiring call.

Q Okay. So this is employment he seeks on his own.

A Correct.

Q When he secures a position with a company, his union

wages apply to the work he's doing.

A Correct.

Q Thank you. Now, to your knowledge, has Mr. Lopes ever made any attempt to return to work since, if you know, from October 17th -- October 10, 2017, to the present time?

A Not that I'm aware of.

Q Has anybody ever shown you any medical records reflecting Mr. Lopes' ability to return to work in some capacity?

A No.

Q Has anybody shown you medical records indicating and reflecting that Mr. Lopes could return to light-duty work?

A No.

Q And as you sit here today -- withdrawn.

And again, not to belabor it, but Mr. Lopes -- in order to secure the employment, Mr. Lopes would have to go get it himself, correct, the union would not assist him?

A That is correct.

Q Now, as far as the hours that are worked, you say there's a 1,000-hour minimum, correct?

THE COURT: For what purpose?

MR. GRILLO: 1,000 to remain vested, to obtain medical care. I apologize for that.

A On a rotating year; that is correct.

Q Rotating year. And we can agree, sir, that one of the

reasons why there's a -- there's only a 1,000-hour per year requirement is because a lot of the bridge painting is seasonal work, correct?

A Yes and no. I can elaborate, if you like.

Q Sure. Sure. I'm just trying to learn. I mean this sincerely. Go ahead.

A Certain projects are. The industry is changing. But as everyone's noticed, the winters have been a lot more milder. But at one point in time, probably even before I came into this industry, it was considered seasonal. Now with certain advances in the industry, we're really not considered seasonal anymore.

Q I see.

MR. GRILLO: Can we go back to the prior exhibit, No. 14, for a second? Just on the screen.

THE COURT: Which document?

MR. GRILLO: The cumulative --

THE COURT: Wage and benefits sheet?

MR. GRILLO: Wage and benefit sheet that identified the employers. Thank you.

THE COURT: So this is Mr. Lopes' record, cumulative record?

MR. GRILLO: Yes, sir.

THE COURT: So we're clear what we're looking at.

MR. GRILLO: Thank you. If we can go to the first page.

MR. THOMAS: Turn it over?

MR. GRILLO: Yes, please.

Q So in looking, for example, at the bottom of the top page, do you see there's -- from the second line from the bottom, Ildo Lopes, there's a date of October 1st of 2015 through October 31st of 2015, correct? Do you see that for Ahern?

A Yes.

Q Okay. And obviously it's regular industrial crafts, and the entry of 106 hours?

A Correct.

Q That's as of October 31st of '15. The next entry isn't until, that is the line above it, is April 1st of 2016 through April 30th of 2016, where's there's a total of six hours worked, correct?

A Correct.

Q And above that is May 1st of 2016 to May 31st of 2016, with 14 hours, correct?

A Correct.

Q And so on until we get to June of 2016, when he works -- June 1st of 2016 through June 30th of 2016, when he worked 189 hours, correct?

A Correct.

Q So we can agree, sir, can we not, from October 31st through April 1st, is a period of five months where he did not

work, correct?

A Going by this, that is correct.

Q All right.

MR. GRILLO: And can we just see the second page, the page before, please?

And then if I may, your Honor, I'm almost done.

THE COURT: Take your time.

MR. GRILLO: Thank you.

Q Mr. Milazzo, where counsel has been good enough to put his pen, do you see there's an entry from November 1, 2014 through November 30th of '14, correct?

A Correct.

Q And that reflects him working 128 hours during that time period, correct?

A Correct.

Q The next time, according to this, of course I know you don't have personal knowledge, but according to the sheet the next time Mr. Lopes goes back to work is May 1st of '15 through May 31st of '15, where he worked 83 hours.

A Correct.

Q So that's another gap of five years -- five months, excuse me, where Mr. Lopes was not working.

A That is correct.

Q And then similarly moving back to 2014 --

MR. GRILLO: I'm sorry. Bottom of the page. No,

no, you can keep it there.

MR. THOMAS: It's falling over.

MR. GRILLO: It's all right.

Q Similarly towards the end of 2013, December 1st of 2013 through the 31st -- December 31st of '13, he worked for 62 hours. He didn't work in January and he went back in February. And so there's a gap of a month there, correct?

A Correct.

Q So if we reviewed this document that's in evidence, we will find, will we not, sir, certain gaps of time where Mr. Lopes was not physically working, fair enough?

A That is correct.

Q Thank you. I don't have any further questions for you, Mr. Milazzo. I want to thank you for coming down today, I appreciate it very much.

THE COURT: Mr. Puzo, any questions?

MR. PUZO: Yes, I have a few questions. Thank you, your Honor.

THE COURT: Off the record.

(Whereupon, a discussion was held off the record.)

(Back in open court, on the record as follows:)

MR. PUZO: Still good morning.

THE COURT: Six more minutes. Go ahead.

Thank you again, Mr. Thomas.

MR. THOMAS: Sure, Judge.

CROSS-EXAMINATION

BY MR. PUZO:

Q Good morning. Just some follow-up questions.

If you went through those records, was there also a several-month gap in the year of 2017, where Mr. Lopes did not work?

A That is correct.

Q About how long?

A Six months.

Q Okay. Was Mr. Lopes ever a shop --

A I apologize. It was five months.

Q Five months in 2017, okay.

A Correct.

Q Are you aware why he wasn't working?

A No.

Q Okay. Are there periods of time where the union member may not be able to find a job or just doesn't find a job?

A Again, certain projects shut down, maybe complete, and he might have been in between jobs at the time.

Q And that happens?

A It happens.

Q Okay. Was Mr. Lopes ever a shop steward?

A Not to my knowledge.

Q Okay. Was that available to him if that is a course that he wanted to pursue at any time during his career?

A Not to my knowledge.

Q Why wouldn't that be available to Mr. Lopes?

A I wasn't -- you know, when Mr. Lopes was in the field, I was still in the field. There's certain things that you have to do to become a shop steward. I don't know if Mr. Lopes was doing that.

Q That's what I'm getting it. I'm not saying did he do those things to be a shop steward, be a delegate, all these other -- you described for us the steps that you took to transition from a journeyman to the position you are in now, correct?

A Correct.

Q I'm not asking you did Mr. Lopes do it, I'm saying if he wanted to do it, could he have done it?

A Possible.

Q Okay. So there was nothing that would prevent him from taking that journey along the union path?

MR. GILBERT: Objection.

THE COURT: I'll allow it. He has the credentials. You can answer.

A Not to my knowledge.

Q Okay. Could he do that now? Could he begin taking those steps now?

A No.

Q Why is that?

A Because a shop steward has to be able to work on the job. He would have to identify certain hazards -- he would have to be able to identify certain hazards and be able to climb to the top of the bridge. A shop steward is a working journeyman, but basically the liaison between the union and the job site.

Q Understood. Are you still working on any job sites, or you're in a different position?

A Me personally?

Q Yes.

A No, I'm working for the union directly. I'm the business representative.

Q When you did you stop performing, being on any job sites or potentially being on any job sites?

A Working on a job site, it was April of 2019.

Q What was your title or position then?

A In April of 2019?

Q Yes.

A I was the financial secretary for the union, and I was a shop steward out in the field.

Q Do union members have to pay dues?

A Yes.

Q Tell us how that works.

A So it's monthly. Our union members pay the dues monthly. Ours is a little different. We have them paid yearly. But it equals to on a month-to-month basis, but they pay it one

time.

Q Okay. And how did they pay it?

A It would come out of their vacation check at the end of year.

Q About how much is that per month, per year?

A $55 a month, $660 a year, for a journeyman. Apprentices are different.

Q Understood. I think that's all I have for you. Thank you.

A Thank you.

MR. GILBERT: Very brief.

THE COURT: Mr. Gilbert, Redirect.

REDIRECT EXAMINATION

BY MR. GILBERT:

Q You mentioned that, that your job is no longer considered a seasonal job.

A That's correct.

Q And that was due to some sort of technical advances in the work that's being performed?

A There's a lot of components to that. You know, as everybody can see, the winters have been a lot more milder. The MTA specifically would never let us work through the winter, they would always shut down November 15th. We have a lot of MTA projects; they are letting us go through the winter. They are letting us use heating systems, if need be. To be honest, we

haven't had to use those in the past couple of years, again because the winters have been mild. So yes, there's been a lot of advancements industry, it will go year-round.

Q Could you tell the jury, were those advancements in place in 2017?

A No, not to my knowledge.

Q And I just want to be clear on this one issue. When Mr. Lopes was working, he was earning $49.53 per hour; is that correct?

A In the wage, yes.

Q And if he were working today, he'd be making $56.25 an hour in wages?

A In wages, yes.

Q And if he had been working straight through from then as he was, he was averaging about 1,000 hours a year, wasn't he?

A Yes. More or less, yes.

Q And he would have been earning from 2017 until today, and he'd be earning that $56 -- $25 an hour?

A 56.25 an hour, correct.

Q And your records don't reflect any hours worked between October of 2017 and today, correct?

A That is correct.

THE COURT: Let me just clarify one point.

Did the wages change at all between 2017, before the updated schedule in 2024?

THE WITNESS: That is correct. They change yearly.

THE COURT: So there'd be different amounts incrementally from 2017 to 2024, would that be accurate?

THE WITNESS: Correct. On the average of about 3 to 4 percent a year, more or less.

THE COURT: Thank you.

Q And that would be without -- and that's not accounting for any benefits that would have accumulated during that period of time, right?

A That is correct.

Q And the benefit amounts increased from 2017 yearly until the present, correct?

A That is correct.

MR. GILBERT: Nothing further.

THE COURT: Thank you, Mr. Milazzo.

MR. GRILLO: Can I ask one question?

THE COURT: I'll give you one.

MR. GRILLO: Thank you.

RECROSS-EXAMINATION

BY MR. GRILLO:

Q Mr. Milazzo, if we were to calculate, then, Mr. Lopes' wages for the year, we would take that hourly rate, multiply it by 1,000?

A Well, no. You would also add the vacation, because that is considered a wage. And I don't know the extent of what

Mr. Lopes did on a day-to-day, but if he did do any spraying, power-tooling or sandblasting, there's an additional wage to that, which at the time was $6 an hour, now it's $7 an hour, above the hourly rate.

THE COURT: And that's in the collective bargaining agreement?

THE WITNESS: That is, correct. Yes.

Q Okay. And then we would be able -- same question, sorry.

THE COURT: It's the same question, but finish it.

Q We would be able to calculate then, would we not, using your 3 to 4 percent increase per year, we would be able to calculate what he earned year by year using the formula I just gave you, correct?

A It's a little more detailed than that, because you don't know how many of those hours were regular time and overtime.

For us, at the time of Mr. Lopes' employment, anything after 2:30 and before 7:00 is at time-and-a-half. Anything on Saturday and Sunday is at time-and-a-half. Anything at night would be at 10 percent nighttime differential. So all of though variables would come into play.

Q But we can make an approximation --

A Yes.

Q -- which I'm not going to do now.

THE COURT: But also, each year would have a different rate.

THE WITNESS: Correct.

THE COURT: Thank you.

Q 3 to 4 percent increase per year?

A More or less. We usually, to use the term, *back-load* our contracts because we understand that contractors have projects that have already been bid, and they're long-term projects, so maybe the first year you'll have 2-and-a-half percent, but the last year you'll have 4-and-a-half percent, but in that range, 3 to 4 percent, more or less.

THE COURT: One more clarification. But there are annual actual schedules of what the rates are.

THE WITNESS: Yes. The rates have increased as long as I've been in this union, since 2004, every year on October 1st.

THE COURT: So we don't have to say approximately 3 percent or 4 percent, we can just look at the schedule in effect for a particular year, correct?

THE WITNESS: Correct, yes.

MR. GRILLO: Thank you, your Honor.

Thank you, Mr. Milazzo.

THE COURT: Thank you, sir. I appreciate it very much. Be careful stepping down.

Oh, I'm sorry, Mr. Puzo, I didn't mean to

shortchange you.

MR. PUZO: Thank you.

CROSS-EXAMINATION

BY MR. PUZO:

Q If you're a member of Union 806 and you're working a job as member of that union, as a journeyman, everyone's paid the same amount; is that correct?

A Correct. Except for the foreman.

Q Except for the foreman.

And you listed various jobs that a member of 806 would do, and one of them I think you said was painting with a paintbrush and a roller; is that correct?

A It's a little misleading. On elevators, on elevated structures like train elevators, there are certain applicants that are -- one part of the process would be brushing and rolling, yes.

Q Okay. And you gave us a list earlier in your testimony of what a member of 806 might be doing in terms of on-the-job work, correct?

A Correct. Yes.

MR. PUZO: Okay, thank you.

THE COURT: Thank you, Mr. Milazzo. Be careful stepping down.

Do you have another witness for us, Mr. Thomas?

MR. THOMAS: Yes, Judge. We have Dr. Anthony

Merola.

THE COURT: Is he prepared to begin?

MR. THOMAS: I believe he's in the hallway.

THE COURT: Officer, Anthony Merola.

MR. THOMAS: I'm sorry if I said Anthony, it's Andrew Merola. I apologize.

THE COURT: I do name changes on a daily basis.

(Whereupon, the witness enters the courtroom.)

Step up, Dr. Merola. Follow the instructions of my uniformed officer.

COURT OFFICER: Step up into the box, watch your step, remain standing, raise your right hand and face clerk.

A N D R E W M E R O L A, having been first called, was duly sworn and testified under oath as follows:

COURT CLERK: You can be seated.

Just state your name for the record, and spelling your last name, and your business address, please.

THE WITNESS: Andrew Merola, M-E-R-O-L-A. 567 First Street, Brooklyn, New York 11215.

THE COURT: Good afternoon, Dr. Merola. I'm going to ask you to use the microphone. Please keep your voice up, sir. Let's wait until the question is finished before we begin our answer. And Mr. Thomas will refrain from asking the next question until you have finished your answer.

Mr. Thomas.

MR. THOMAS: That's fine, Judge. I don't want to block their view until I use the screen. Is it possible that we can just --

THE COURT: Jim, can you pull that back?

(There was a brief pause, and proceedings resumed as follows:)

THE COURT: Thank you, Jim. And thank you Mr. Thomas, as well.

MR. THOMAS: No problem, Judge. I will ask for Plaintiff's Exhibit 1 and 1A in evidence, if we can give that to the witness.

THE COURT: Give us one minute.

And those are in evidence. I believe they are Dr. Merola's records.

MR. THOMAS: That's correct, Judge.

COURT OFFICER: Plaintiff's Exhibit 1 and 1A in evidence presented to the witness. (Handing.)

THE COURT: He has them.

MR. THOMAS: May I inquire?

THE COURT: Please.

DIRECT EXAMINATION

BY MR. THOMAS:

Q Good afternoon, Dr. Merola.

A Good afternoon.

Q Dr. Merola, please tell the jury what kind of a doctor are you?

A I'm an orthopedic surgeon that has a subspecialty in spinal reconstructive surgery.

Q And can you tell the jury a little bit about your educational background and work experience?

A I went to Howard University College of Medicine, and subsequent to medical school I went to SUNY Downstate Medical Center, where I did a residency in general surgery for a year-and-a-half, and then I completed an orthopedic surgical residency thereafter.

I then went to the University of Colorado, in Denver, where I did a subspecialty fellowship in spinal surgery. And ever since I finished my fellowship I've been working with children and adults who have spinal issues that require surgery.

Q Are you currently a practicing physician?

A Yes, I am.

Q And do you currently operate?

A Yes, I do.

Q How often are you working in the operating room on patients?

A About 2 or 3 times per week.

Q Are you being compensated for your time away from the office in an effort to be here today to assist this jury in understanding some of the treatment rendered to Mr. Lopes?

A Yes, I am.
Q At what rate are you being compensated?
A $650 per hour for time away from the office.
Q Do you know the name Ildo Lopes?
A Yes.
Q Tell the jury how you know that name.
A He's a patient of mine.
Q Now, Doctor, have you been qualified as an expert in the field of orthopedic surgery prior to today?
A Yes.
MR. THOMAS: Your Honor, at this time I wish to offer Dr. Merola as an expert in the field of orthopedic surgery, specifically spine surgery, as he's testified.
THE COURT: Counsel?
MR. GRILLO: No objection.
MR. PUZO: No.
THE COURT: Without objection.
Q Now Dr. Merola, your notes and records were subpoenaed here to court. They are in front of you in evidence as Plaintiff's Exhibit 1 and 1A.
If during the time of your testimony here today you wish to refer to those notes, with the Court's permission may the Doctor refer to them?
THE COURT: He may not only refer to them, he may read from them, in his discretion. They are in evidence.

Q Doctor, just so we're clear, are those a complete record of the notes and records kept by your office with regard to Mr. Ildo Lopes?

A Yes.

Q Doctor, before we get into it, just tell the jury, what is the field of orthopedics, and then more specifically the subspecialty of spinal surgery?

A So, orthopedic surgery typically deals with the musculoskeletal system, so that's your bones, your joints, your muscles, and the nerves that make them work. It's everything that's necessary for you to be up and about and walking around during the day so that you can do your normal activities of daily living.

Q And the subspecialty of spinal surgery?

A Spinal surgery itself deals with the column that essentially supports your head over your pelvis, and it is also responsible for maintaining the spinal cord and the nerves that are then responsible for moving your arms and hands and legs and feet around.

Q And in the course of your career have you had the occasion to treat injured workers with spine injuries and orthopedic-type complaints?

A Yes, I have.

Q Tell us how Ildo Lopes first came to become your patient.

A So, Mr. Lopes was referred to me by his neurologist and pain management doctor for a spinal consultation regarding his back.

Q And when was that?

A My first visit with the patient was on February 12th of 2018.

Q And did you actually meet and examine Mr. Lopes on that day?

A Yes, I did.

Q Tell us what you learned in terms of the history on your first evaluation and examination.

A So, I learned that there was an incident that occurred on October 10th of 2017. He was working as a bridge painter at the time and sustained a fall. He had come in to see me subsequent to conservative treatment, which was rendered subsequent to the accident. As I said, he had been seeing Dr. Hausknecht, Dr. Colon, and he had also seen a previous treating physician named Dr. Shein.

He basically came in to me because of recalcitrant pain in his low back, with radiating symptoms down into the legs and feet.

Q By the way, what language did you speak with Mr. Lopes in when you first had that evaluation and consultation with him?

A I was speaking English with him, as well as a little bit of Spanish, and a little bit of Portuguese as well.

Q Do you speak Portuguese?

A I don't speak very, very well, but my cousin married a Portuguese young lady, and I've been to Brazil a number of times. I also speak Spanish fluently. I get by, but I did speak English with Mr. Lopes as well.

Q How would you describe his English when you spoke with him?

A Understandable, purposeful. A bit of an accent.

Q And when you took this history, did you learn the mechanism of injury; how he injured himself back in October of 2017?

A Yes. I had transcribed that he had fallen from what I indicated was approximately 12 feet.

Q And in the world of information that you've reviewed in this case, did you learn that there's another height or different height than you listed in your notes that he claims to have fallen from?

MR. GRILLO: Objection.

THE COURT: Sustained as to form only.

Q With regard to your note and an indication of a fall of 12 feet, as you're sitting here today, did you learn any other information other than that?

A Yes.

Q What do you understand now?

A That he had fallen from a height that --

MR. GRILLO: Objection to form.

THE COURT: I'll allow it.

You may answer, Doctor. For the purposes of treatment, you may answer.

A That he had fallen from a height that was greater than 12 feet.

Q And do you know what that height is?

A 20 feet.

Q In the scheme of things -- withdrawn.

In the nature of work that Mr. Lopes was doing and the type of accident that he had, what presentation did he make to you with regards to symptoms and complaints?

A So, primary complaints and symptoms involving his lower back, with some radiating pain and symptoms as well.

Q Are those complaints that he made consistent with a fall from a height?

A Yes.

MR. THOMAS: Your Honor, just if you know, do we know the height of this floor to the ceiling in this courtroom?

THE COURT: I haven't measured it.

MR. THOMAS: Just wondering if you knew, Judge.

THE COURT: You can ask the question.

MR. THOMAS: Okay.

Q What else did you learn on presentation, in your

initial evaluation when he presented?

A Let's see. That he had also sustained injuries where he had felt dazed and confused. He was utilizing the low back support which he had been prescribed.

THE COURT: Doctor, if you're going to read, I'll just ask you to read a little more slowly. If you're reading, and as you're testifying, as I do, I tend to speak quickly, but I modulated that in the position. And it's important, because we can clearly communicate at that speed, but it could be somewhat difficult for transcription purposes. And if you can just speak a little more slowly, I would appreciate it.

THE WITNESS: Okay.

THE COURT: Thank you.

Go ahead, Mr. Thomas.

MR. THOMAS: Sure.

Q You said he felt dazed and confused.

A He had also been prescribed a little back support. He was doing conservative treatment, and continued to have symptoms.

Q And did you learn when he first sought medical care and treatment for the injuries from this accident?

A Yes. I do not recall the date, but I did not transcribe it in my initial report.

Q Do you know if it was days, weeks, months, years before

he first sought medical care and treatment for the injuries from this accident?

A I believe it was pretty shortly after the accident itself happened.

Q And the treatment that he had received from the time he first started treating until the time you saw him in February of 2018, conservative treatment?

A Yes.

Q And do you know what that conservative treatment consisted of?

A Sure. It's standard treatment for a low back condition of this type, which includes being off-duty work, modifying your activities, medications, physical therapy, a back support, which he had been prescribed, and he had also been seeing a pain management physician.

Q Did you learn whether the physical therapy he was undergoing and the other treatments were helping him?

A These treatments were temporarily helpful, but not in any significant way. In other words, they hadn't reversed or helped ameliorate his continued complaints and symptoms.

Q And after conservative treatment failed, what's generally the next option once conservative therapy and treatment is not working?

A So, after conservative treatment fails, typically you see whether or not there are things that are amenable to doing

something surgical, and that's where surgical consultations can be helpful.

Q And who sent Mr. Lopes to you initially for surgical consult?

A Dr. Hausknecht.

Q And when you saw Dr. -- sorry. When you saw Mr. Lopes at the referral of Dr. Hausknecht, it was Dr. Hausknecht's opinion that he was a surgical candidate at that time?

MR. PUZO: Objection, your Honor.

MR. GRILLO: Objection.

THE COURT: I'll allow it. It was for treatment purposes and reflected in the record. It was represented to him by Dr. Hausknecht. It's offered for purpose of treatment of the plaintiff, I'll allow it. Overruled.

You may answer, Doctor.

A Yes.

Q Do you often get referrals from other doctors of their patients when their patients become surgical candidates?

A Yes.

Q Do you provide therapy and treatment before these patients seek surgical consult?

A No.

Q So as the surgical consult, you did an examination on Mr. Lopes?

A Yes, I did.

Q Tell us about that.

A So his physical exam showed -- and it's based on several things. It's based on observations, so you're observing the patient. You're also palpating them, which means you're feeling their body parts. And then you're testing their musculoskeletal system; in this case their neck and back.

And in this case he demonstrated that he had a significant restriction in the ability to bend his lower back backwards, or what we call extension of the lumbar spine, which at 10 degrees of extension produced something called a spinal Phalen's test, which is spasm in the lower back with symptoms radiating down into the legs and feet.

He also had, on the right side of his lower extremities, straight leg raise.

And he had Achilles tendon reflex loss in his lower extremities, with L4, L5 and S1 sensory abnormalities as well.

He also had, in his neck, what we call Spurling's sign, which is where you push down and compress the neck, reproducing spasm in the neck, with radiating symptoms into his arms and hands, mostly involving a biceps loss on the right side at C5. That's one of the nerve roots involved with the neck.

Q And when you did this physical examination on him, what were your conclusions and interpretations based on these tests?

A That he did have dysfunction of his neck and back areas that were indicative of radiculopathy, and what we call

mechanical dysfunction of the neck and back.

Q And on your first evaluation with Mr. Lopes, did you have the benefit of any other documentation or records indicating his prior medical history?

A I did see diagnostic imaging films, which I looked at and reviewed on that day as well.

Q And did you learn his prior medical history prior to performing surgery on him?

A Yes.

Q What did you learn about his prior medical history before performing surgery?

A That he had had some treatment to his lower back previously. In fact, he had seen one of the treating physicians that he had seen prior to seeing me, which was Dr. Shein. So he had some prior history of treatment to his lower back, and that subsequent to this accident he underwent another course of conservative management as well.

Q Did you learn whether he ever had any lumbar or back surgery prior to the back surgery that you performed?

A Yeah. He did not have any previous surgical intervention, no.

Q On his neck or his back, correct?

A Correct.

Q And did you have the benefit of any diagnostic testing before making your final opinions?

A Yes.

Q Tell us what diagnostic testing you used.

A I looked at his MRI films, and then correlated those with his physical exam.

Q Doctor, I'd like to show the jury some of those films. But before we do that, do you think it might be helpful to do a brief anatomy lesson so that when we look at the films we'd have an idea of what we're looking at?

A Sure.

MR. THOMAS: With the Court's permission, your Honor, I have a model here that the doctor may use, if he finds it helpful.

THE COURT: Doctor, I'll permit you to step into the well, sir, for purposes of demonstration, but in response to questions from Mr. Thomas. You may step down sir, if you find it helpful.

Careful stepping down.

Let's give the doctor a moment.

There are two models, Doctor. There's a full base to pelvis model on the hanger, and there's also a smaller model with respect to vertebrae, et cetera.

Next question, Counsel.

MR. THOMAS: Sure.

Q Doctor, if the model will help in explaining, just giving a little brief anatomy lesson so that we'll have a little

better understanding as to the testimony you're offering as it goes on with regard to the neck and back and Mr. Lopes' conditions.

A Sure. So, your spinal column is essentially that, it's a column. It's a support column, and it supports the head.

This is the base of the skull, at the top of the spine, over your pelvis, which is the area that contains your hips and then your legs.

If you're looking at it from front to back, it looks as those it's straight up and down. If you're looking at it from the side, it has this gentle S shape to it. And you're essentially basically balancing your head over your pelvis so you can walk normally.

It's made up of a number of separate bones that are lined up on top of each other, that are essentially glued together by pieces of cartilage called discs. And the column contains a canal, which, if you're looking down into the column, contains, at the top of the column, the base of your brain, that then leads to your spinal cord, that then travels down the entire column up until your lower back area, where it becomes a collection of nerves.

At each level of the column there are exit openings for the nerves that travel into the various parts of your bodies.

Up on top, in the area of what's known as your cervical spine, or your neck, are the nerves that travel into your arms

and hands.

In the middle portion of your spine, or your upper back, the thoracic area, are those nerves that travel around your thoracic and ribcage region.

And in your lower back are those nerves that then travel down into your legs and your feet.

At the base of the spinal column is a triangular-shaped bone that sits in the middle of the pelvis, and that's known as sacrum. The sacrum contains some tiny little nerves as well, and those travel down into your pelvis region.

So you can think of it as doing two real basic things. No. 1, it's a support system for your head over your pelvis, and No. 2, it's also a conduit for traveling nerves that exit from your brain into your arms, hands, legs and feet so that your body can do what it needs to do to be up and about and walking around.

THE COURT: Next question.

Q And why are there two numbers for each level?

A So, there are two numbers for each level of the spinal column because each level is glued together by a disc.

Each bone has a number associated with it. And in the neck area, which is the cervical spine, they all start with a C, for cervical, and then they're numbered 1 through 7.

In the thoracic spine they all the start with a T, for thoracic, and they're numbered 1 through 12.

And in the lumbar spine there are lumbar vertebrae with L in the beginning of their names, numbered 1 through 5.

As we said, the sacrum is a separate bone, and that has the S designation in front of it.

Each two bones are glued together by a disc. So each spinal segment really consists of a bone on top, a disc in the middle, and a bone on bottom. So for example, if something is located between L4 and L5, it's the L4-5 segment, and it's referred to by the bone on top, the bone on the bottom, and the disc in the middle.

Q And the benefit of the diagnostic testing and the MRIs that were done, tell the jury, what is an MRI?

A So an MRI is a very powerful magnet that your body is passed into, and then that magnet causes some changes in the water structure of the stuff that you're made out of; your muscles, tendons, bones, joints and things like that.

And then it produces an image that's in black and white and shades of gray. And those images give us kind of an idea of what's happening with the internal anatomy of a particular patient.

Q And in this case with regard to Mr. Lopes, you're aware that there were some diagnostic tests, some MRIs or X-rays that were done before the accident where he fell off the scaffold?

A Yes.

Q Tell the jury what's the significance of having

pre-accident diagnostic films in making your overall assessments and opinions in this case.

A It gives you an idea of what was happening prior to the accident itself.

Q And have you seen those films prior to this accident?

A Yes.

Q Did you notice anything about Mr. Lopes' spine that you believe the jury should know before we look at these films?

A Sure.

Q Tell us.

A So, his spine showed what we call some -- there are some degenerative changes within the spine itself. Those are changes that happen as you get older.

Additionally, there's also an area of the lower back, in the region between the L5 bone and the sacrum, that had a condition whereby the bones themselves have kind of slipped apart from each other. That's a condition known as a listhesis, specifically a spondylolisthesis, which is basically a Greek term that means a slippage of the vertebral bodies.

Q If you know, how many people have this listhesis, or this bone slippage, just naturally?

A So, it can naturally occur in people. In the general population, best kind of educated guess that we have regarding that is somewhere in the neighborhood of about 7 percent of the general population.

Q Would somebody know that they had that condition if they didn't have any complaints of pain or symptoms or issues?

A So, in the absence of symptoms, you wouldn't be aware of the fact that you have that internal structure to your spine, no.

Q You also said that Mr. Lopes had some degenerative changes in his spine?

A Yes.

Q Do you know how old he was when this accident happened?

A I don't have his exact date, but he was, of course, an adult. And I believe -- I have to check his birth date, but he was adult over the age of 30, so that makes him --

Q February 3rd, 1969, is his date of birth. So late 40s?

A Correct.

Q And a person in their late 40s, would you expect to see some degenerative changes on a diagnostic test like an MRI?

A Yes.

Q How about for someone in the field of heavy labor, or working as a laborer using their hands and working on job sites, would you expect to see that kind of condition for people like that?

A Yes.

Q Does that mean that they have pain all the time just because their MRIs showed degenerative changes?

MR. GRILLO: Objection.

THE COURT: Sustained as to form only.

Q What's the significance of seeing degenerative changes on an MRI in somebody in their late 40s?

A So, any MRI findings need to be correlated with what's actually happening to the patient. It's basically clinical correlation. So you can see things on MRIs, but you need to marry them up to whatever happens to be going on with a particular patient.

Q In my opening statement I said to this jury, "We don't treat MRI films, we treat patients."

MR. GRILLO: Objection.

THE COURT: Sustained as to the reference to the opening statement. Just make a question.

MR. THOMAS: Sure.

Q Doctor, have you ever heard the expression "You don't treat MRI films, you treat patients and complaints and symptoms"?

MR. GRILLO: Objection.

THE COURT: I'll allow if he's ever heard it.

A Yes.

Q Do you agree with that?

A Yes.

MR. THOMAS: Now, I want to, if we can, Judge, if we can set up the screen. I'd like to put some films up for the doctor.

THE COURT: Certainly. Just give us a moment.

Again, Counsel, feel free to relocate.

(There was a brief pause, and proceedings resumed as follows:)

THE COURT: You might have a career in tech.

MR. THOMAS: I don't know, Judge. My brother is the guy I really need.

THE COURT: Well, he's welcome.

MR. THOMAS: I have to use the other computer. I'm sorry.

THE COURT: Take your time. No problem. Slow is fast.

Would you like some water, Doctor?

THE WITNESS: Sure. Thank you.

(There was a brief pause, and proceedings resumed as follows:)

Q We're going to start with the, only because it's the one that's up here, October 27, 2017, MRI T2 image.

THE COURT: Lumbar, sagittal --

MR. THOMAS: It's sagittal T2. And this is in evidence, Judge. It's part of the Alpha 3T MRI, which is the MRI of Mr. Ildo Lopes, on the top right corner.

With the Court's permission, can the doctor step down?

THE COURT: Absolutely.

Just be careful not to block the jurors' views. I know we're a little tight.

Doctor, we're going to give you a little more room. We're going to move -- if you can just step away, we'll get that table out of your way.

MR. THOMAS: Sorry, Judge. I should have done this before.

THE COURT: That's what we do, we adapt and we overcome.

It will give you a little more space.

THE WITNESS: Thank you.

THE COURT: You're welcome, sir.

MR. THOMAS: All right.

THE COURT: Nice job, Jim. Thank you.

Q Doctor, this MRI film shows image 1 of 12 here. In the top left corner it says 1 of 12. But I'm going to just cycle through the 12 images, and then I'm going to go back and ask you some questions, okay?

MR. GRILLO: The actual exhibit number on this one in evidence?

THE COURT: Alpha 3T is Exhibit 11 in evidence.

Q Okay. I've just cycled through the 12 sequences. I'm going to go back to Sequence 1. But just tell us what we were just looking at as I just cycled through those images?

THE COURT: And if you can start with point of

view, Doctor, it would be helpful for the jury.

THE WITNESS: Sure.

A This is a side-view image, as though I'm facing the clock on the wall, of the patient, of the spinal column.

To the right of this image are the muscles and the skin and the fat on the right side.

In front is the abdomen and the intestines and the organs and the aorta.

And in between those are the square, gray objects that represent the vertebral bodies of the spinal column that are stacked up on top of each other.

At the bottom of the image is the triangular bone, called the sacrum.

So the top is on top, bottom is on the bottom. Sacrum is the triangular bone on the bottom. And the squares are all of the vertebral bodies themselves. And in between each vertebral body is the cartilage disc.

Q I'm going to sequence through. Tell me when to stop. And I specifically want to ask you questions about the L5-S1.

And before I start, just can you point to where that area is?

A Sure. It's at the bottom region of this image. All the way at the bottom.

THE COURT: Would you point to L5 and S1 separately, so the jury can see that?

THE WITNESS: L5 is the square, and S1 is this kind of broken triangle at the bottom of the image.

THE COURT: Thank you, Doctor.

Q I'm at Sequence 2.

I'm at Sequence 3.

I'm at Sequence 4.

A Stop right there.

Q Sorry. Sorry, Doctor. That's 4.

A This is the middle of the spinal column. So it's neither the full right side nor the full left side, it's pretty much in the middle.

The reason we can see that is that you can see the spinal canal pretty clearly, containing these gray lines that are the nerves inside the spinal canal.

You can see these projections that appear to be, they look like oysters coming off to the right. These are the spinous processes. That's what you can feel if you put your finger in your back along your bones, you're feeling those pieces of bone.

And then to the left of that you can clearly see the outline of squares, the bottom square being the L5 and the bottom bottom being this triangular bone called the sacrum.

And what you'll notice is, as everything is lined up, there's actually this bone that's misaligned with the sacrum. So that's a slippage. If you look at the back edge, that bone

has slipped in front of the area where the sacrum is. And you can most clearly see it here on the middle sagittal or side-view image.

Q And as you testified earlier, this listhesis, this bone shifting, that was something that Mr. Lopes had before this accident?

A Yes.

Q And as far as you know, did that affect his ability to live his life, and work, and do all the activities that he was doing before?

MR. GRILLO: Objection.

MR. PUZO: Objection.

THE COURT: I'll allow it.

You may answer, Doctor.

A For a period of time it had, when he had had treatment to the lower back.

And then subsequent to that treatment he did have an opportunity to go back on with his life.

THE COURT: Doctor, you had the opportunity to view the prior films and compare them to the 2018 --

MR. THOMAS: 2017.

THE COURT: October 27, 2017, film, correct?

THE WITNESS: Yes.

THE COURT: Thank you.

Q Again, the misalignment of bone, that was in place

before this accident, correct?

A Yes.

Q Tell us about the position of the disc at the L5-S1 level.

A So, in between the bones are the discs. This is a rather normal-appearing disc, because you can see that it has a nice signal to it. The signal is the grayness that's inside the disc. There's no significant disc material that's sticking into the spinal canal.

But on the bottom area you can see that the space in between the bones is not quite as high as the other spaces are, so there's some collapse of this disc space. And there's also some protrusion, or some sticking out, of this material to the right, which is in the area of the canal.

There's a little sticking out in the front as well.

Q And when the disc material is sticking out, as you say, in the posterior aspect, or into the area of the spinal canal, what sensation does that produce for that person?

A So, when the disc material is sticking out in the area where the nerves are, it can produce the symptoms of nerve pain, which include things like numbness, or tingling, or weakness, or what we call radiating pain, which is pain that travels down your legs and your feet.

Q Was this one of the complaints and symptoms that Mr. Lopes presented to you with?

A Yeah.

Q This tingling, numbness, pain radiating?

A Yes.

Q I just want to finish the sequence, if I can.

And just so we're clear, how are these images tracking?

A So, these images typically track right to left.

When you are in an MRI scan, it's as though you're putting the patient's body into, like, a baloney slicer in the deli, right? So you're getting these separate slices. So each one of these cuts that we're seeing is a slice across the side views of the lower back.

THE COURT: And from your point of view, Doctor, of facing away 90 degrees to the jury, No. 1 would be closer or further from the jury, versus No. 12?

THE WITNESS: So, No. 1 should be on the right, the furthest away.

THE COURT: I just want it clear for the jury.

THE WITNESS: And No. 12 would be closer to you, towards the left side of the body.

THE COURT: Thank you, Doctor.

Q Anything else from this sequence that you want to discuss, other than what we've already mentioned?

A If you can cycle back a couple of...

Q I'll go back to 1, and then --

A Right there.

Q Okay. No. 1.

A Okay. So the way the spine is put together, one of the things is to think about how the joints --

MR. GRILLO: Doctor, if I may.

Your Honor, I'm sorry to interrupt the doctor.

Can you just identify which slide that is before you go? I'm sorry to stop you.

THE WITNESS: No problem. That's image 1 of 12.

THE COURT: I believe he stated T1.

MR. GRILLO: Okay. I want to make sure. Thank you. Sorry to interrupt.

THE COURT: It's all right.

THE WITNESS: No problem.

A If you look at the specific way the bones themselves are put together, on the backside of the bones there are four joints. There are two joints on top that slide into two joints on the top of the other bones, and there are two joints on the bottom that slide down onto the other joints of the bone that's attached to it.

And those four joints, two on the right side and two on the left side, are connected by a small bridge of bone. So there's a connection in between these two joints on the right side and in between the two joints on the left side. That area of bone is what's called the pars, that means part; inter, in between; articularis, which means articulations or joints.

On this side view, because it's all the way in the neighborhood where the joints are, you can see that there's a kind of a black line area here in between the top joint and the bottom joint, and that means that there is a discontinuity, or there's a loss of connection between those joints. And that's called a lysis. The loss of connection is known as a lysis. And that disc continuity in between the joints essentially helps to cause the fact that those bones can kind of slip apart.

Q I want to show you now an image -- well, sorry.

THE COURT: Mr. Thomas, we're coming up on 12:45. Would this be a good point to break, or do you want to make another point before we break for lunch?

MR. THOMAS: If I can just pull up this one more image.

THE COURT: Okay. Take your time.

Q What is this?

THE COURT: First let's determine which study it is.

MR. THOMAS: This is an X-ray, Judge. I just want to make sure. It's a lumbar spine X-ray.

THE COURT: Dated?

MR. THOMAS: Dated 10/17/2017.

THE COURT: And this is?

MR. THOMAS: Images 1 of 12 to Mr. Lopes. And this is what I was looking for before, but we went out of order.

THE COURT: What's the point of view from this X-ray, Doctor?

THE WITNESS: This is a front to back image, also known as an AP image.

Q I want to cycle again quickly through the 12 images.

MR. GRILLO: Which exhibit is this?

MR. THOMAS: Sorry. This is from Lenox Hill Radiology, Judge.

THE COURT: This is Exhibit 12, Lenox Hill Radiology, in evidence.

MR. THOMAS: Thank you.

This -- sorry. I said 1 of 12, I meant 1 of 2, Judge.

Q So there's two images here. This is the front view, you said?

A Correct.

Q And then the second image on this is the --

A This is the side view image. And in this image, though as opposed to the MRI which we saw, the patient is now looking at His Honor, the judge. So it's a side view image, but we're looking at the opposite wall.

Q With regard to the position of the vertebral bones, those vertebral bodies, specifically the L5-S1, since we looked at the MRI, now I want to look at the X-ray and then I'll be happy to take a break, Judge.

A So we look at all the bones lined up on top of each other, you'll see that all the squares nicely lined themselves on top of each other with that side view gentle S-curve that's normal for a side view.

Up until you get to the bottom area where the triangular bone is and the square, the square being L5, the triangle being the sacrum, you'll notice that the back edge of the sacrum is here, where the edge of this card is, and that the back edge of L5 is here, where the edge of this card is. So they're malaligned or misaligned, and that's a condition known as a spondylolisthesis.

Q Condition caused by this accident?

A A condition that has been aggravated by this accident.

MR. THOMAS: It might be a good time to take a break, Judge.

THE COURT: Doctor, if you could hold your position there for a moment.

Ladies and gentlemen, we're going to break for lunch. I need you back in the building by 2:00.

Again, do not form or express any opinion about the case. Do not discuss between and amongst yourselves. Do not discuss with any third party. If anyone attempts to discuss the case with you despite you telling them not to, you need to bring that to my attention without discussing that fact, or any other fact you feel you need to bring to

my attention, with your fellow jurors.

I appreciate your obvious attention. And again, we'll make as respectful use of your time as we can.

All rise as jury exits for the luncheon recess. 2:00 back in the building.

(Whereupon, the jury exits the courtroom.)

THE COURT: Doctor, be back at two. Careful stepping out. Watch the wires. Whichever way you're more comfortable.

MR. THOMAS: Thank you, Judge.

THE COURT: Two o'clock, gents.

(Whereupon, the proceeding was interrupted for the luncheon recess.)

(Whereupon, the afternoon session was stenographically recorded by Maria Tamburrino, Senior Court Reporter, as follows:)

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