UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
NANCY M. ESPINAL LORA,

Plaintiffs,

Civ. No. 123 CV 09013

-against-

COWAN INTERMODAL GROUP, ET AL,

Defendants.
----------X

December 20, 2024
10 a.m.

Virtual Deposition

THE EXAMINATION BEFORE TRIAL of DR. SEBASTIAN LATTUGA, a Witness, held remotely, before a shorthand reporter and Notary Public within and for the State of New York.

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

HARMON LINDER
3 Park Avenue
New York, NY 10016
BY: KESETE TAYE
For the Plaintiff

LEWIS BRISBOIS BISGAARD & SMITH
77 Water Street
New York, New York 10005
BY: GENNINE GERRARD
For the Defendants

* * *

F E D E R A L S T I P U L A T I O N

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties hereto, that the filing, sealing, and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any notary Public with the same force and effect as if signed and sworn to before this court.

DR. LATTUGA

MS. GERRARD: I'd like this recording of video and audio turned off.

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

(The Magna Legal technician entered shut all recording off.)

THE STENOGRAPHER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that will be reporting this remotely.

They further acknowledge that in lieu of an oath administered in person, I will administer the oath remotely under penalty of perjury.

All Counsel stipulate and agree to allow the court reporter to swear in the Witness remotely regardless of the location of the Witness or any of the attorneys or parties present. The parties and their Counsel consent to this arrangement and waive any objections to this manner of reporting.

Please indicate your agreement by

stating your name and your agreement on the record.

MR. TAYE: Kasete Taye, so agreed and stipulated.

MS. GERRARD: Gennine Gerrard, so agreed and stipulated.

THE STENOGRAPHER: Will the Witness kindly present his or her government-issued identification by holding it up to the camera for verification, or can his or her attorney simply attest to the identity of the Witness.

(The Witness complied).

THE STENOGRAPHER: Please raise your right hand.

(The Witness complied.)

THE STENOGRAPHER: Do you solemnly swear or affirm that the testimony you give today will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

THE STENOGRAPHER: Please state your full name for the record.

DR. LATTUGA

THE WITNESS: Sebastian Lattuga.

THE STENOGRAPHER: Please state your complete address for the record.

THE WITNESS: 2001 Marcus Avenue Lake Success, New York, 11042.

MS. GERRARD: Good morning.

THE WITNESS: Good morning.

MS. GERRARD: My name is Gineen Gerrard, and we represent a defendant in this case, with respect to your care and treatment and your professional opinions with respect to Plaintiff.

THE WITNESS: Yes.

MS. GERRARD: If you don't understand the question, just please let me know, and I will be more than happy to rephrase or repeat it.

THE WITNESS: Yes.

MS. GERRARD: If you need a break, at any time, at all, for any reason, at all, as long as there is no question that is open and still pending and awaiting a response, we will be more than happy to give you the opportunity

DR. LATTUGA

to take that break; okay?

THE WITNESS: Yes.

EXAMINATION BY

MS. GERRARD:

Q. Could you tell me what you reviewed in preparation for giving testimony today?

A. I prepared a narrative document for the care and treatment of this patient 9/4/24, reviewed the narrative, and also reviewed certain medical records. I am scrolling here.

Q. Okay.

A. So the on report Dr. Mian has the left shoulder, MRIs, standup MRIs, shoulder MRIs, I didn't treat that. Somebody else did. Queens stand-up cervical MRIs. I reviewed that. And the films and the lumbar spine MRIs, as well.

Q. It is that everything you reviewed?

A. Yes, the narrative and notes, the summary with me here.

MS. GERRARD: Okay. One moment.

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

EXAMINATION BY

MS. GERRARD:

DR. LATTUGA

Q. Okay. You reviewed Stand-up MRI films, and lumbar and cervical in preparation for today or the report?

A. In my care and treatment. Not in the last few days, no.

Q. Have you ever cared for the patient in the last few days?

A. No.

Q. When was the last time that you saw this patient?

A. I will look.

(The Witness reviewed the materials and/or documents before him.)

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

A. Okay. The last time that he was seen in the office was 11/7/24. These are not my records the lawyers sent.

MS. GERRARD: Okay. I don't have the records Plaintiff's Counsel has. I never got it. Where is it?

MR. TAYE: No, I don't have that.

MS. GERRARD: Can you e-mail that to Plaintiff's Counsel?

DR. LATTUGA

THE WITNESS: Okay.

EXAMINATION BY

MS. GERRARD:

Q. What was the visit prior to that?

A. 10/29/24.

Q. Was that visit where you saw patient?

A. No, he saw the pain management doctor.

Q. The patient is a woman.

A. Oh, oh, she, oh sorry.

MS. GERRARD: I don't have those records.

EXAMINATION BY

MS. GERRARD:

Q. What was the visit before that to the pain management doctor?

A. Dr. Cherkalin.

Q. Okay. Generally speaking what was done at that visit, if anything?

A. The pain management, so they do the pain stuff, and the patient was examined by the doctor and prescribed medications and injections; things of that nature.

Q. Were medications prescribed on that visit ?

A. Yes, on 10/29.

Q. When medications?

A. Meloxicam.

Q. Was any treatment rendered at that visit?

A. An exam visit, assessment with plan for the treatment.

Q. What was the plan for treatment from that visit?

A. Recommendation to continue physical therapy continue follow-up with the spine surgeon, start Meloxicam, no injections on that day.

Q. When you say start Meloxicam, the patient took it prior or a new prescription ?

A. I don't know. I would have to check the records. Hold on.

(The Witness reviewed the materials and/or documents before him.)

Q. Okay.

A. Prior visit he was -- she is on 9/5/24 documents start Meloxicam visit before that 9/4/24, she came to the office and saw me. And I examined her. And did the evaluation at that time.

Q. Is that the last time that that you saw her?

A. Yes.

Q. Do you have that up on your screen?

DR. LATTUGA

A. Yes.

Q. Could you share that?

MR. TAYE: No. He cannot share it send it to me for my review. Maybe we can.

THE WITNESS: I don't know how to do that anyway.

MR. TAYE: Objection. He cannot share it.

MS. GERRARD: Well, how can I conduct the deposition without the complete records?

MR. TAYE: He can mail it to me later.

MS. GERRARD: We will bring him back. Get me the records. I have the opportunity to depose you right now, and notes and a narrative --

THE WITNESS: It's the same thing here.

MS. GERRARD: No.

EXAMINATION BY

MS. GERRARD:

Q. What was the purpose of your creating this

DR. LATTUGA

narrative?

A. I was asked to prepare it.

Q. By Harmon?

A. Yes.

Q. Did you see the patient September 4th or not or is it just a date you wrote the narrative?

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

A. The 9/4/24 narrative.

Q. I understand that. I just asked if you saw you patient on that date or if you drafted it.

A. I don't know. I don't have an independent recollection.

MR. TAYE: Off the record.

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

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

EXAMINATION BY

MS. GERRARD:

Q. Did you actually see the patient on 9/4 or is that just the date you the wrote the narrative summary?

A. I saw the patient on 9/4/24.

DR. LATTUGA

Q. Okay.When was the last time that you spoke to anybody from Harmon Linder about your deposition testimony today?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: So yesterday I spoke to Counsel.

EXAMINATION BY

MS. GERRARD:

Q. In person?

A. No.

Q. By telephone?

A. Yes.

Q. How long did you speak for?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Five minutes or so or 7 minutes last night or five minutes, you know, this morning.

EXAMINATION BY

MS. GERRARD:

Q. Okay. We were provided with a CV. Can you see

that on the screen?

A. No.

Q. Hospital, Franklin Medical Hospital, is this affiliation, is that still accurate?

A. No, not active.

Q. Not active?

A. Correct, not active right now.

Q. What year were you no longer affiliated with Franklin Hospital?

A. Like ten years ago.

Q. Do you have a more recent CV?

A. I'll get that to you.

Q. Send it to Plaintiff's counsel.

A. Okay.

Q. What about Winthrop?

A. No longer.

Q. When was the last time that you were affiliated with Winthrop?

A. Same thing, ten years ago.

Q. North Shore Long Island Jewish Hospital Health System?

A. Not active now.

Q. For how long have you been inactive with North Shore?

DR. LATTUGA

A. Same thing, ten years ago.

Q. Long Island Center, Mineola?

A. Same thing.

Q. Ten years ago ?

A. Yes, I moved the practice to New York City ten years ago.

Q. Then what is current?

A. Hudson Regional New Jersey.

Q. Anything else?

A. No.

Q. You are not affiliated with New York Presbyterian Hospital?

A. Same thing. It was ten years ago. I am older now. I stay home.

Q. When was the last time that you practiced there?

A. This year.

Q. Have you had your license or any hospital affiliation suspended or revoked for any reason, at all?

A. No.

MR. TAYE: Objection.

To the form of the question.

You can answer.

DR. LATTUGA

THE WITNESS: No.

EXAMINATION BY

MS. GERRARD:

Q. When did you begin your affiliation with Hudson Regional Hospital?

A. 2019 or 2020.

Q. Do you have a title there?

A. Attending physician.

Q. Did you currently have teaching positions?

A. No.

Q. Have you ever?

A. Yes.

Q. When was the last time that you held a teaching position?

A. A few months ago at New York Presbyterian Hospital.

Q. When was your -- withdrawn.

The affiliation with New York Presbyterian Hospital was that with the entire New York Presbyterian Hospital chain of hospitals or one particular facility or something else?

A. Attending surgeon, at the lower Manhattan hospital.

Q. The hospital was Beekman?

DR. LATTUGA

A. Yes.

Q. Prior?

A. Yes.

Q. What were your job duties and responsibilities there?

A. It was clinical education of orthopedic residents there.

Q. How long did you do that for?

A. Ten years.

Q. Are you board certified in any area?

A. Ortho spinal surgeon.

Q. When is it up to recertify?

A. 2018. No. 2028.

Q. You provided a list of trials and/or deposition testimony you gave in the last four years, with the last -- first is on November of 2021, and nine cases in it.

Is this up to date?

A. No. And I have no records on that.

Q. Have you testified at trial or depositions since January 30, 2024?

A. Yes.

MS. GERRARD: Counsel, this list is incomplete. I will request an

DR. LATTUGA

updated complete list for the last four years pursuant to the federal rules.

MR. TAYE: Taken under advisement. Put all of your production requests in writing.

EXAMINATION BY

MS. GERRARD:

Q. Did you testify as a general rule just for Plaintiffs law firms?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I limited testimony to Plaintiff firms.

EXAMINATION BY

MS. GERRARD:

Q. Okay. Have you testified for defendants in any case in the last ten years?

A. No.

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: No.

EXAMINATION BY

DR. LATTUGA

MS. GERRARD:

Q. You only testify in cases in which you have performed surgery. Is that correct?

A. Yes.

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Yes.

EXAMINATION BY

MS. GERRARD:

Q. Have you ever given expert testimony in a case where you were not involved in the treatment of that Plaintiff patient?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I don't think so.

EXAMINATION BY

MS. GERRARD:

Q. And is this your first case working with Harmon Linder?

A. I mean, it's hundreds.

Q. In this case, you are the treater and also the designated expert; is that correct?

DR. LATTUGA

A. Yes.

Q. Have you been in that situation before with this law firm Harmon Linder?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: No.

EXAMINATION BY

MS. GERRARD:

Q. How many times have you testified for Harmon Linder before?

A. I don't remember.

Q. Ballpark it.

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I would be guessing, so I don't know.

EXAMINATION BY

MS. GERRARD:

Q. Is it one or a hundred or a a thousand; something else?

MR. TAYE: Objection.

To the form of the question.

DR. LATTUGA

You can answer.

THE WITNESS: I can guess a range. I don't count. Hundreds.

MR. TAYE: No guessing.

THE WITNESS: I could be off. That was a guess.

EXAMINATION BY
MS. GERRARD:

Q. Okay. In the cases that you have worked with Harmon Linder before, did you testify in all of those?

A. I don't understand that, but I mean we always go to trial, to testify at trial.

Q. Correct.

A. Yes. I don't remember.

MR. TAYE: Do not guess.

THE WITNESS: It's hundreds. I am guessing on that one, because I don't remember.

EXAMINATION BY
MS. GERRARD:

Q. Now, do you have a fee for your medical-legal work?

MR. TAYE: Objection.

DR. LATTUGA

To the form of the question. You can answer.

THE WITNESS: A thousand dollars per hour. Or 1200.

EXAMINATION BY

MS. GERRARD:

Q. Okay. What activities do you bill a thousand dollars per hour for?

A. It is a medical-legal hourly rate. I charge for testimony and documentation.

Q. Would that include review of records?

A. Yes. It is all related for created medical-legal opinions work put into doing that.

Q. Can you give a summary of what work that would encompass?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I reviewed my charts and the narrative and the MRIs reports and my operative reports. And I reviewed the office notes. So that's all collected in medical-legal testimony.

DR. LATTUGA

EXAMINATION BY

MS. GERRARD:

Q. Would meeting with the attorneys and discussing cases with the attorneys also be included in that thousand dollars per hour?

MR. TAYE: Objection.

To the form of the question.

You can answer.

Privilege.

He can answer.

THE WITNESS: Yes. If it was all extensive meetings, I will charge for that, yes.

EXAMINATION BY

MS. GERRARD:

Q. And your fee for court?

A. Same thing. Maybe that is 1200 an hour in that case.

Q. Does that include travel time?

MR. TAYE: Objection.

To the form of the question.

You can answer.

He never said anything about traveling.

DR. LATTUGA

You can answer.

THE WITNESS: I can say, depending on travel to the courthouse.

EXAMINATION BY

MS. GERRARD:

Q. Would the Bronx be travel time for as charged for?

A. Yes.

Q. Approximately how many cases have you reviewed on behalf of Plaintiffs for personal injury cases?

A. I don't understand reviewed.

Q. Reviewed. Approximately how many cases have you worked on with Plaintiff firms as a medical-legal expert?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Ten in the last 8 years. That is a maybe. A guess now again.

EXAMINATION BY

MS. GERRARD:

Q. In addition to the ones that go to trial approximately how many cases per year do you do

DR. LATTUGA

reviews and consultation with Plaintiff law firms on personal injury cases?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I mean, I don't do reviews.I am a treating physician, so patients and evaluations, I give them advice on the spine treatment. I don't keep tallies on how many of the people I see have you know injuries related to an accident or not. I don't have that for you.

EXAMINATION BY

MS. GERRARD:

Q. Well, when you -- putting aside your treatment of the patients for a second -- withdrawn.

Do all the patients that you treat have pending personal lawsuits?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Not all, no.

EXAMINATION BY

DR. LATTUGA

MS. GERRARD:

Q. What percentage of your patients have pending personal injury law suits?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I have no records of that, but like 80 percent approximately. Included in that is injuries, Worker's Compensation workers, not just third party litigation patients.

EXAMINATION BY

MS. GERRARD:

Q. In the past ten years, have you treated any patients who have not been injured as a result of an accident or a work-related injury?

MR. TAYE: Objection.

To the form of the question.

Go ahead.

THE WITNESS: Yes.

EXAMINATION BY

MS. GERRARD:

Q. And in this particular case, when was the first time that you spoke to attorneys at Harmon Linder

DR. LATTUGA

and Rogowsky about giving a medical-legal opinion?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I didn't have a conversation with them. The process is they requested it.

EXAMINATION BY

MS. GERRARD:

Q. Okay. And they requested to designate you as an expert in the case, is that correct?

A. Correct.

Q. Were you then provided with records and documents specific to this matter?

A. Yes, well, I have a department for that, and I produce a narrative.

Q. Sir, I want to know when you first became aware that Harmon Linder and Rogowsky was representing this Plaintiff and wanted you to work with them as a hybrid treating physician and then as a case expert, and I want to know that, with those distinctions, specifically.

MR. TAYE: Objection.

To the form of the question.

DR. LATTUGA

You can answer.

THE WITNESS: I mean, I have no independent recollection of that. My practice is really for treating people and really, not every patient I see I become an expert on.

MS. GERRARD: Move to strike the portions of the answer that were not responsive to the question.

EXAMINATION BY

MS. GERRARD:

Q. Sir, I want to know when you first were contacted by anybody at Harmon Linder and Rogowsky about this case and this patient?

MR. TAYE: Objection. To the form of the question. You can answer. And don't interrupt him, and then move to strike.

MS. GERRARD: You know, if you keep objecting to every single question, we are going to be here past 5 p.m.

MR. TAYE: Well, the doctor has a hard stop.

THE STENOGRAPHER: And my job

DR. LATTUGA

sheet says 10 a.m. Until 12 p.m.

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

(Whereupon, a short break was taken.)

(Whereupon, the pending question was read back by the stenographer.)

THE WITNESS: I don't know the answer to that.

EXAMINATION BY

MS. GERRARD:

Q. Now, when was the first time you saw this patient?

A. 3/8/23.

Q. Was she referred to you by Dr. McGee in Far Rockaway?

A. Yes.

Q. And do you have a relationship with that doctor?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: No.

EXAMINATION BY

DR. LATTUGA

MS. GERRARD:

Q. Well, had he referred patients to you in the past?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Yes.

EXAMINATION BY

MS. GERRARD:

Q. As of your first visit with the Plaintiff in this case on March 8, 2023, were you aware that she had a pending lawsuit?

A. I mean no independent recollection of that. But if she was involved in a motor vehicle accident, then I would I would imagine so.

Q. Had you spoken to anybody at Harmon, Linder and Rogowsky about this patient prior to seeing her on March 8th?

A. No.

Q. When was the first time that you spoke to anybody at Harmon Linder and Rogowsky about doing medical-legal work for them in this case?

MR. TAYE: Objection.

To the form of the question.

DR. LATTUGA

You can answer.

THE WITNESS: The only conversation was between like same response as before, prior, I spoke to Counsel last night and today. I did the narrative.

EXAMINATION BY

MS. GERRARD:

Q. Sir, the narrative was written a few months ago, is that correct?

A. Yes.

Q. So are you telling me that in September of 2024 was the first time that you had any communications with Harmon Linder and Rogowsky about doing medical-legal work on this case?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Yes.

EXAMINATION BY

MS. GERRARD:

Q. When did they tell you they wanted to use you as an expert, as well?

A. I don't recall.

DR. LATTUGA

Q. At the time you were asked to create a narrative in September of this year, you were aware that you were going to be testifying at some point; is that correct?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Not necessarily.

MS. GERRARD: Oh, no?

THE WITNESS: They don't all go to trial. But once I prepared a report, with an opinion or causality usually it is being used for that reason.

EXAMINATION BY

MS. GERRARD:

Q. Do you have somebody in your office or somebody who coordinates your medical-legal work?

A. No one, particularly.

Q. Do you have files on each case that you ar retained on?

A. No. I am just treating patients. If somebody asked me to make a narrative, then my report narrative is mailed to the attorneys.

Q. Okay. Who would I contact if the Plaintiff

DR. LATTUGA

attorney, if I wanted you to do a narrative for the patient that I was representing in the personal injury lawsuit, who would I contact in your office in order to ask you to do a narrative and testify at trial?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Not one person. It is going to staff to answer the phones and whoever picked up the phone will then inform me.

EXAMINATION BY

MS. GERRARD:

Q. Do you keep files on each of the cases that you are been retained as an expert on?

A. I mean, this is it. This is the file from the medical record.

Q. What about billing medical legal work?

A. (No verbal response.)

Q. Where do you keep that?

MR. TAYE: Objection.

To the form of the question.

You can answer.

DR. LATTUGA

THE WITNESS: The billing department, you know, they are in charge of the money, and accounting. It is posted when it came in.

EXAMINATION BY

MS. GERRARD:

Q. Well, I am trying to understand now, how you keep track of the cases that your are retained as an expert on?

A. I answered you. A call comes in. And I keep no separate file for patients. If somebody asked me I respond to that. And so that's the system that I use.

Q. Well, for example, you indicated that in preparation for today's deposition you reviewed the records of the physician who treated Plaintiff's shoulder; is that correct?

A. Yes.

Q. Where are those record maintained in the ordinary course of business?

A. In my file.

Q. Which file?

A. This file.

Q. They are not in your chart of your records not

your records. Right? So what I am trying to get at here is, do you have a file for each case in which you are retained as an expert, where you maintain a bill of particulars to what the claims are in the case?

A. No. Five times now you asked me. I have no separate file. And five times I gave you the same answer. I don't have that. We get the request and comply with the request. That's it.

Q. To-date how much have you billed Harmon Linder and Rogowsky for any medical-legal work you have done with respect to this case that we are here for today?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I don't know.

EXAMINATION BY

MS. GERRARD:

Q. Okay. And who would know the answer to that question?

MR. TAYE: Objection.

To the form of the question.

You can answer.

DR. LATTUGA

THE WITNESS: I would know it.

MS. GERRARD: What?

THE WITNESS: I never got paid besides the narrative for 1200 dollars as a bill. I never requested money from Harmon Linder and Rogowsky.

EXAMINATION BY

MS. GERRARD:

Q. You will generate a bill for the narrative at some point?

A. Yes, 1200 dollars and the testimony today is would be similarly 1200.

Q. A flat fee --

A. For the narrative.

Q. Your first note. March 8th. You have that in front of you?

A. Yes.

Q. Where did you obtain the history of present illness?

A. The patient.

Q. The patient worked as a patient navigator. Do you understand what that means?

A. She was involved in patient care. She characterized it with that title.

DR. LATTUGA

Q. How did you to determine that the patient did not have any prior neck or back injuries at the first visit?

A. We ask the patient.

Q. Do you require that they provide you with any medical records?

A. Require? That's not appropriate. Obviously patients can bring in the reports and studies with them prior if they feel it is relevant, so MRIs; things of that nature .

Q. You take a history from what they say, is that correct?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Yes, the patient gives a history of what their substantive complaints are and mechanics of injury associated.

EXAMINATION BY

MS. GERRARD:

Q. Now, the section here, well -- withdrawn.

So now it has on here: It says: medical history/surgery/hospitalization.

DR. LATTUGA

Do you see that?

A. Yes.

Q. What part of the surgical history did the patient report to you at the first visit?

A. No history. Of prior accident. But hypertension.

Q. Where is that?

A. The history the patient filled out.

Q. A form separate and apart from your notes?

A. Yes.

Q. Why is that not in your chart?

A. It is.

Q. I am looking at a note of March 8th.

A. It's not there.

MS. GERRARD: Calling for the production of that separate history document not included in the record we were provided here.

EXAMINATION BY

MS. GERRARD:

Q. Do you have that separate history and physical in front of you?

A. Yes.

Q. What medical history did you document in that

DR. LATTUGA

separate history and physical?

A. Hypertension, thyroid disease, on medications for that.

Q. Did she record any chronic illnesses?

A. No.

Q. Did she advise that she had any prior surgeries?

A. Nothing related to the neck and back.

Q. Or surgeries of any kind?

A. I would have to check the records.

Q. Okay. Go ahead.

(The Witness reviewed the materials and/or documents before him.)

A. She had surgery 1/19/23, bladder surgery at that time.

Q. Anything else?

A. No.

Q. No other surgeries?

A. No.

Q. Did she indicate to you in that form whether or not she had a primary care physician?

MR. TAYE: Objection.

To the form of the question.

You can answer.

DR. LATTUGA

MS. GERRARD: What's wrong with that question?

MR. TAYE: Objection.

To the form of the question.

Foundation. You can answer.

THE WITNESS: No.

EXAMINATION BY

MS. GERRARD:

Q. Is that something you normally asked in the history and physical?

A. No.

Q. Is there a specific question in the history and physical about if the patient had been involved any prior accidents?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Yes.

EXAMINATION BY

MS. GERRARD:

Q. What did you document there?

A. No prior history, no significant history of any neck or back problems.

Q. At the time of the first visit on March 8th,

DR. LATTUGA

did you already have the films from Stand-up MRI of Queens?

A. I don't know. Just reports probably. I don't know about films, and I have no independent recollection of that.

Q. Under musculoskeletal physical exam, do you see that?

A. Yes.

Q. First paragraph there, measurements of the patient range of motion on examination?

A. Yes.

Q. That's cervical and lumbar?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Okay. As of March 8th, what was your treatment plan for this patient?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Continue physical therapy, chiropractic care, visit to the pain management doctor.

EXAMINATION BY

DR. LATTUGA

MS. GERRARD:

Q. Was the physical therapy session had she had prior to her visit with you March 8th?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I mean, I don't have the records here. Dr. McGee is the podiatrist with physical therapy for the patients.

EXAMINATION BY

MS. GERRARD:

Q. After that March 8th visit, -- withdrawn.

Does your facility offer physical therapy?

A. No.

Q. Was your understanding March 8th would continue physical therapy with Dr. McGee?

A. Yes.

Q. Did you ask her, did she indicate in the history and physical what that physical therapy consisted of?

A. No.

Q. Would that have been important for you to know so that you could create a future plan?

DR. LATTUGA

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: No.

EXAMINATION BY

MS. GERRARD:

Q. Did you refer tests?

A. No.

Q. What was the referral?

A. Pain management and nothing else.

Q. Do you refer out for pain management at your practice?

A. Yes.

Q. Is that New York Spine and Pain?

A. Yes.

Q. Did she have epidural spinal injections for pain management?

A. Yes.

Q. Lumbar and cervical?

A. Yes.

Q. When was that.

A. 3/10/23 epidural shots, cervical.

Q. Why did you refer her for epidural cervical spine epidural shots at that time?

DR. LATTUGA

A. Yes.

Q. Why?

A. Well, the reason was the patient has cervical radiculopathy and she had herniated disks. MRIs showed that the patient had treated with physical therapy and whatnot and it was successful. So with her substantive complaints still, so my recommendation was the pain management.

Q. Did you prescribe any medications at that visit?

A. No.

Q. So two days after the visit with you she had epidural steroid injections at C7/T1 in your office; is that correct?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Yes.

EXAMINATION BY

MS. GERRARD:

Q. And do you have a operative suite in your office?

A. Fluro only.

Q. Was the next time that you saw the patient

DR. LATTUGA

March 20th; is that correct?

A. It is all backwards here.

Q. Just scroll up.

A. Yeah.

Q. Had you received the actual films from Stand-up MRI at that point?

A. Yes.

Q. How do you know that?

A. Because I reviewed the films prior to indicating surgery.

Q. As custom and practice?

A. Yes.

Q. To your knowledge, on March 20th you recommended surgery, what conservative treatment had the patient had before that date?

A. Physical therapy and epidural injections, injections and anti inflammatory.

Q. You don't know what the physical therapy consisted of?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I do. It was pretty standard for cervical lumbar and all

DR. LATTUGA

done with Dr. McGee, as we have recommended it for somebody in general. And he tailored it for each person. Dr. McGee does it. And I don't know the actual details. And I have no records on that.

EXAMINATION BY

MS. GERRARD:

Q. Do you know how many visits she had prior to your recommending the surgery on March 20th?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: No.

EXAMINATION BY

MS. GERRARD:

Q. Do you know when she started physical therapy in connection with the her accident?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: No.

EXAMINATION BY

MS. GERRARD:

DR. LATTUGA

Q. As of 3/20 surgery is recommended. Do you know how many sessions of the physical therapy she had before that?

MR. TAYE: Objection.

To the form of the question.

You can answer.

MS. GERRARD: Is that correct?

THE WITNESS: I don't have the record.

EXAMINATION BY

MS. GERRARD:

Q. And so Dr. McGee's physical therapy was March 20th?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: No. I don't have physical therapy records. I said that before.

EXAMINATION BY

MS. GERRARD:

Q. As of March 20th you didn't have any idea how many sessions or what physical therapy?

MR. TAYE: Objection.

DR. LATTUGA

To the form of the question.

Asked and answered.

MS. GERRARD: He can answer. You can answer.

THE WITNESS: No. I had a conversation with the patient going to physical therapy. I don't have an independent recollection, no.

EXAMINATION BY

MS. GERRARD:

Q. Did you talk to Dr. McGee?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: No.

EXAMINATION BY

MS. GERRARD:

Q. If you did not know how many visits she had or what physical therapy she had prior to March 20th how did you make a determination on that date she had failed conservative treatment?

MR. TAYE: Objection.

To the form of the question.

You can answer.

DR. LATTUGA

Argumentative.

You can answer.

THE WITNESS: I didn't have the records on hand. And I don't have them today. I had a conversation about prior treatment with her.

I had no details on the therapy. I know only what kind physical therapy she had -- not specifically a modality put generally the physical therapy and needed to receive more information in order to ascertain whether or not the treatments were successful.

EXAMINATION BY

MS. GERRARD:

Q. What was your understanding as to what physical therapy she received?

MR. TAYE: Objection.

To the form of the question.

Asked and answered. Objection to the form of the question. Asked and answered. Multiple, multiple times now. You can answer again.

THE WITNESS: She saw Dr. McGee

DR. LATTUGA

for cervical and lumbar radiculopathy and did physical therapy.

MS. GERRARD: Any more details?

THE WITNESS: I don't know. And I don't have the records so I can't specifically say. I don't want to guess. This is all under Dr. McGee's control.

EXAMINATION BY

MS. GERRARD:

Q. Based on the patient's statement she had some physical therapy, Dr. McGee, and she was still having pain, you made a decision to do spinal surgery March 20th?

MR. TAYE: Objection.

To the form of the question.

You can answer.

Argumentative.

Asked and answered. Objection to the form of the question. Asked and answered. You can answer.

THE WITNESS: No. My decision is just is based on the history of a patient. She made subjective complaints

DR. LATTUGA

and objective. She had a physical. In the physical examination, it was my review and the MRIs report, and her failure to respond to physical therapy and failure to respond to the cervical epidurals. And so all of those factors played into my creation of this treatment plan.

EXAMINATION BY

MS. GERRARD:

Q. And what was the treatment plan as of March 20th?

A. Surgery.

Q. Which surgery?

A. Diskectomy and fusion.

Q. Which levels?

A. 34, 5 -- let me see here. I am reading from this now. Sorry.

(The Witness reviewed the materials and/or documents before him.)

I recommended surgery C6-C7.

Q. Is that all?

A. And 3 4.

Q. Is there some other note that I am missing

DR. LATTUGA

where you say you will do 6, 7 but will think about doing 3, 4 later?

A. No.

Q. That's the only note referring to your surgical plan at that point?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Yes.

EXAMINATION BY

MS. GERRARD:

Q. Do you have the stand-up MRIs cervical spine radiology report?

MR. TAYE: Objection.

To the form of the question.

You can answer.

MS. GERRARD: What is your form objection? I asked him if he had something. We are going to be here all day now. I'm not sure you understand, this is a deposition. I asked if he had something.

MR. TAYE: I can object as much as I want.

DR. LATTUGA

MS. GERRARD: Well, we're going to make a record as to these constant and inappropriate objections.

Don't waste all of our time. We're going to be here to five o'clock.

THE WITNESS: No, we're not.

MS. GERRARD: Off the record.

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

(Whereupon, a short break was taken.)

MS. GERRARD: Okay. We can try to continue this some other time.

MR. TAYE: For the record the doctor said he has a hard stop.

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

(Whereupon, a short break was taken.)

EXAMINATION BY

MS. GERRARD:

Q. Do you have the MRIs from Stand-Up?

A. Yes.

Q. Did you compare the films and the report?

DR. LATTUGA

A. Yes.

Q. Did you agree with the interpretation?

A. Yes.

Q. It indicated on the report spinal canal normal limits size without evidence of stenosis; is that correct?

A. Yes.

Q. And indicates here neural foramen not narrowed, is that correct?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Yes.

EXAMINATION BY

MS. GERRARD:

Q. Did you take any x-rays prior to -- in between your visit of March 20th when you had the treatment plan for doing the ACDF on the patient cervical spine and when you performed the ACDF on March 27th seven days later?

A. No.

Q. Can you look at your operative room cervical report --

A. Okay.

Q. Do you have it?

A. I would have to check the records.

Q. Let me know.

A. Yes.

Q. Okay. You indicated your pre-operative diagnosis is cervical instability at C6-C7.

A. Right.

Q. What was the basis for your determination that there was cervical instability?

A. The review of the MRI and the clinical physical.

Q. What about the -- where does it say in the MRI report cervical instability?

A. It is not in the report. I read the MRIs myself.

Q. Okay. What in the MRIs led you to determine cervical instability?

A. The nature of the disk in association with the patient's subjective complaints then and the findings.

Q. What complaints and findings led you to determine cervical instability?

A. Both radiculopathy, as well as, all related, her complaints of pain and numbness and tingling,

arms weakness upper extremities and back and sensory loss and bilateral C4-5 problems.

Q. No motor loss?

A. Correct.

Q. What are flexing films?

A. It is performed sometimes when I want to -- I'm not sure which levels -- on -- on a plane, I didn't feel they were necessary in this case.

Q. Is there anything in your March 20th office note where you recommended surgery due to cervical instability?

A. I did not say it.

Q. Well, did you use any words mean the same thing?

A. I am not referring to that phenomenon in this note.

Q. Okay. In March of 2024, what was your feeling as to an adequate trial of conservative physical therapy before doing the ACDF?

A. 2023.

Q. Oh --

A. -- physical therapy and restrictions of activities and anti-inflammatories and intervention of pain management as standard treatment for

radiculopathy.

Q. And I apologize, because I might have already asked this question, but did you have a time frame that you believed was an adequate trial of conservative treatment in 2023, before surgical intervention was warranted?

A. No, not necessarily.

Q. Did you perform a cervical hemivertebrectomy on C6-C7 on March 23, 2023?

A. Yes.

Q. Why did you do that?

A. It is the procedure in order to remove all disk material behind the vertebral body and to relieve the disk between the spinal cord and behind the vertebral body, a section of the bone, so you can get access to the spinal cord.

Q. So when you performed the hemi vertebrectomy attempt on March 27th, how much bone did you remove at that time?

A. A small portion of the vertebrae.

Q. A hemivertebrectomy implies half ; is that correct?

A. Yes, up to half.

Q. Here what was it?

A. Up to half is hemi.

Q. You are talking half of the vertebral height or anything up to the vertebral --

A. Not height. Because it is the section of the vertebrae that is directly in front of the spinal cord used. You use the high speed burr, and you will burr the vertebral body and not the entire amount.

Q. The hemivertebrectomy performed on this patient, had it removed the end plates?

A. Yes.

Q. Of the vertebral body?

A. Yes, yes, of course.

Q. So approximately how many centimeters of bone would you have removed in your hemivertebrectomy?

A. I have no recollection.

Q. Really? That is not something you document in your operative report?

A. No, no. Not the exact number of millimeters, no.

Q. What is the vertebral height of the C6 vertebrae?

A. Could be anything. Depends on the person. Everyone is different.

Q. How did you determine before you do a ACDF what size implants you will use?

A. Measured the peripheral area.

Q. Is that after you do the hemivertebrectomy?

A. Yes.

Q. Do you always do a hemivertebrectomy when doing a fusion?

A. No.

Q. How do you make a determination?

A. If I feel there is a chance there is disk material in the vertebral body based on MRIs or based on clinical findings, then I don't want to do it, unless I am sure there is no remaining disk.

Q. In your operative report you mentioned the hemivertebrectomy at C6, it says second paragraph: Adjacent to the spinal cord disk material along with fiber and scar tissue anterior portion of spinal cord.

Do you see that?

A. Yes.

Q. What was your -- withdrawn.

Was the scar tissue something visible on the MRIs that you reviewed?

A. No I didn't really know what I was looking at

there, so an independent recollection I would say, no.

Q. In your operative report you say at the completion of the "decompression."

Why did you put that word in quotes?

A. I don't know. I have no answer for that.

Q. Okay. How much bone did you remove in the hemivertebrectomy at C7?

A. Same. Less than half.

Q. No bleeding bone --

A. No, the plates were a several millimeter burn down further.

Q. Edges of plates removed?

A. Yes.

Q. In the report, you discuss fusion.

A. Right.

Q. It says the epidural plates were roughed to expose the implants to the bleeding --

A. Yes.

Q. If you had already removed the end plates completely during the hemivertebrectomy, what were you referring to right here in this section of your report?

A. I am referring to bleeding bone.

DR. LATTUGA

Q. Is it a typo?

A. I don't know. I should amend my writing. That it is confusing. It is for me to document that I am seeing good healthy bone, which is bleeding bone prior to that.

Q. So the section end plates were roughed that the note accurate end pleated already removed you did the hemivertebrectomy, is that correct?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Correct.

EXAMINATION BY

MS. GERRARD:

Q. And here, end plates were prepared to accept the implant.

Do you see that?

A. Yes.

Q. That is --

A. The load bearing spur of the vertebral body was remaining and the quality of it. So that is what is -- that refers to.

Q. So not actually the end plates that were prepared?

DR. LATTUGA

A. No.

Q. So there it was the end plates of the vertebral body?

A. End plates in a hemivertebrectomy is what's left over of subchondral bone, and part of the procedure is insuring that bone is level and supported the implants.

Q. Why is the words implants in quotes in your operative reports?

A. I don't know. It is just the way my records are created.

Q. And what size implant was used in this operation?

A. I don't know.

Q. Okay.

A. You should check the hospital record.

Q. In your office notes from March 20th, where you gives your plan of treatment and discuss ACDF C3-4 and 6, 7, do you do mention anything regarding the lumbar and surgery, plans of treatment?

A. (No verbal response.)

Q. Do you mention that?

A. On that note.

Q. Yes.

DR. LATTUGA

A. I don't believe so. I would have to check the records

(The Witness reviewed the materials and/or documents before him.)

A. On this note just the cervical surgery.

Q. Why was that?

A. No reason.

Q. When was the next time that you saw the patient after the ACDF?

A. 4/5/23.

Q. Did you take any postoperative films in your office?

A. Yes.

Q. It indicates you took two films; is that correct?

A. Yes.

Q. Which views?

A. AP and lateral.

Q. They were satisfactory?

A. Yes.

Q. And continued to -- must follow your -- for the physical therapy or pain management after -- withdrawn.

You had indicated that your office doesn't

provide physical therapy; is that correct?

A. Correct.

Q. Okay. Did the patient continue to follow up in your office for pain management after her ACDF at any time?

A. No.

Q. Okay.

A. I have no notes on that, and I see the pain management that was subsequent to the surgery at that time.

Q. Did the patient resume physical therapy after your ACDF?

A. Yes.

Q. How do you know that?

A. We send them.

Q. Who did you send her to, Dr. McGee?

A. Most likely.

Q. Okay.

A. But I don't know.

Q. She did have physical therapy after her ACDF?

A. I don't have the records on that here with me now.

Q. If you had a spinal surgery patient, you referred them back to physical therapy, did you ask

for the records showing when they attended the physical therapy or what their physical therapy consisted of?

A. No.

Q. Is the physical therapy important after the spinal fusion?

A. I mean, it is not absolutely necessary. We recommended it, because it does help people in recovery and get them more moving. Or on their own. It is not essential for healing.

Q. Do you know what the case was for this patient whether or not she did physical therapy after the ACDF or not?

A. You have the records.

Q. You have the records.

A. It's in the record.

Q. Did you review the films of her lumbar spine taken at Stand-up MRI of Queens?

A. I don't remember. I have no documentation on that, but it is the course of treatment prior to the surgeries.

Q. To which surgery?

A. To either.

Q. You would have reviewed MRIs films prior to

lumbar spine and prior to your ACDF procedure, is that correct?

A. Yes. Custom and practice. I don't remember. I don't remember. It is together in the file so go check it on there.

Q. Okay. You have no recommendation for any lumbar fusion prior to your last pre-operative note on 3/20/23; is that correct?

A. Correct.

Q. Do you agree with all the findings of the radiologist regarding the lumbar films taken at Stand Up MRI of Queens?

A. I will pull is that up. I am reviewing the report.

(The Witness reviewed the materials and/or documents before him.)

A. Yes.

Q. Do you agree there was some stenosis noted at L3-L4 as well as with respect to L4 through S1?

A. I agree with the report.

Q. What is spinal stenosis?

A. It is narrowing of the spinal canal and a narrower space for nerves to travel in the spinal canal and foramen.

Q. That is something that happens over time; is that correct?

A. Yeah, in large herniated disks or in the studies there are all kinds of age-related changes like you suggest.

Q. Right.

A. I have no indication of the etiology here in this case.

Q. So you looked at the lumbar films; is that correct?

A. Yes.

Q. What was the cause of her spinal stenosis upon review of the lumbar films?

A. It was related to the herniated disks and the overgrowth of the age -- of the age-related changes in that segment.

Q. Age-related changes you think is bone developing over time.

A. (No verbal response.)

Q. So that is your opinion; is that correct?

A. Yes, it is related to people's age and lifestyle.

Q. Does it have -- withdrawn.

Did you ever take a height and weight of this

patient in the history and physical from the first visit?

A. No.

Q. It is not something you would document in the records?

A. (No verbal response.)

Q. Height and weight for a patient?

A. No.

Q. Why is that?

A. It is not part of what I generally speaking do in orthopedic exams, and if a patient was morbidly obese, maybe I would put it in the narrative. By the -- we don't really note the height and weight on our exams here.

Q. Now, the lumbar MRIs show she had osteophytes.

A. Okay.

Q. What is that?

A. Bone spurs.

Q. That's a degenerative change?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: In this case it is related -- age-related changes and not

DR. LATTUGA

degenerative charges.

MS. GERRARD: Well, it sounds nicer for sure.

MR. TAYE: Is that a question?

MS. GERRARD: No. I thought that was obvious.

THE WITNESS: That is where I distinguish --

MR. TAYE: Doctor, you don't have to explain.

EXAMINATION BY

MS. GERRARD:

Q. And the patient also had scoliosis; is that correct?

A. Yes.

Q. MRIs showed that; is that correct?

A. Yes.

Q. Did the patient ever have epidural injections of the lumbar spine at your facility?

(The Witness reviewed the materials and/or documents before him.)

A. No.

Q. Back to the hemivertebrectomy. The bottom here. If you performed a hemivertebrectomy on a

DR. LATTUGA

patient, would you be allowed to bill for that separate item?

A. Yes.

Q. And how much more would you be able to charge if you performed a hemivertebrectomy than if you didn't perform one?

A. I don't know.

Q. Well, does 50 thousand dollars sounded about right?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: I don't think so.

EXAMINATION BY

MS. GERRARD:

Q. It more or less?

MR. TAYE: Objection.

To the form of the question.

You can answer.

THE WITNESS: Less.

EXAMINATION BY

MS. GERRARD:

Q. And then at some point did you create a treatment plan to perform post lumbar fusion on this

patient.

A. Yes.

Q. When was the first time that that you discussed the potential lumbar fusion with this patient?

A. The first time, in our initial conversation, all conversations I discuss surgeries. She had a neck, back condition. I discussed it with the first time. We did focus on the neck first. We discussed the back. So we did discuss it. She did understand about lumbar surgery.

Q. Where is that documented in your notes?

(The Witness reviewed the materials and/or documents before him.)

(JURAT BREAK.)

DR. LATTUGA

A. 3/8/23.

MS. GERRARD: Off the record.

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

THE STENOGRAPHER: You have mentioned going past 5 p.m., and my job sheet calls for me to be here from 10 a.m. To 12 p.m. I will be signing off at this time. Have a good weekend.

MS. GERRARD: You can sign off and I will call Magna.

(Whereupon, this examination was concluded at 12:05 p.m.)

* * *

I have read the foregoing the time and place noted in the above heading hereof, and I do hereby acknowledge it to be a true and correct transcript of the same record of my testimony taken at that time.

_____

SEBASTIAN LATTUGA

Signed and subscribed to before me on:_____, 20__

C E R T I F I C A T I O N

DECEMBER 29, 2024

I, PAUL GOLDSTEIN, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the Witness(es) whose testimony is herein before set forth was duly sworn or affirmed by me, and the foregoing transcript is a true record of the testimony given by such witness(es), recorded to the best of my ability, and given any set of circumstances.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

PAUL GOLDSTEIN

PAUL GOLDSTEIN

I N D E X O F E X A M I N A T I O N

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EXHIBIT INDEX

NO EXHIBITS WERE MARKED.

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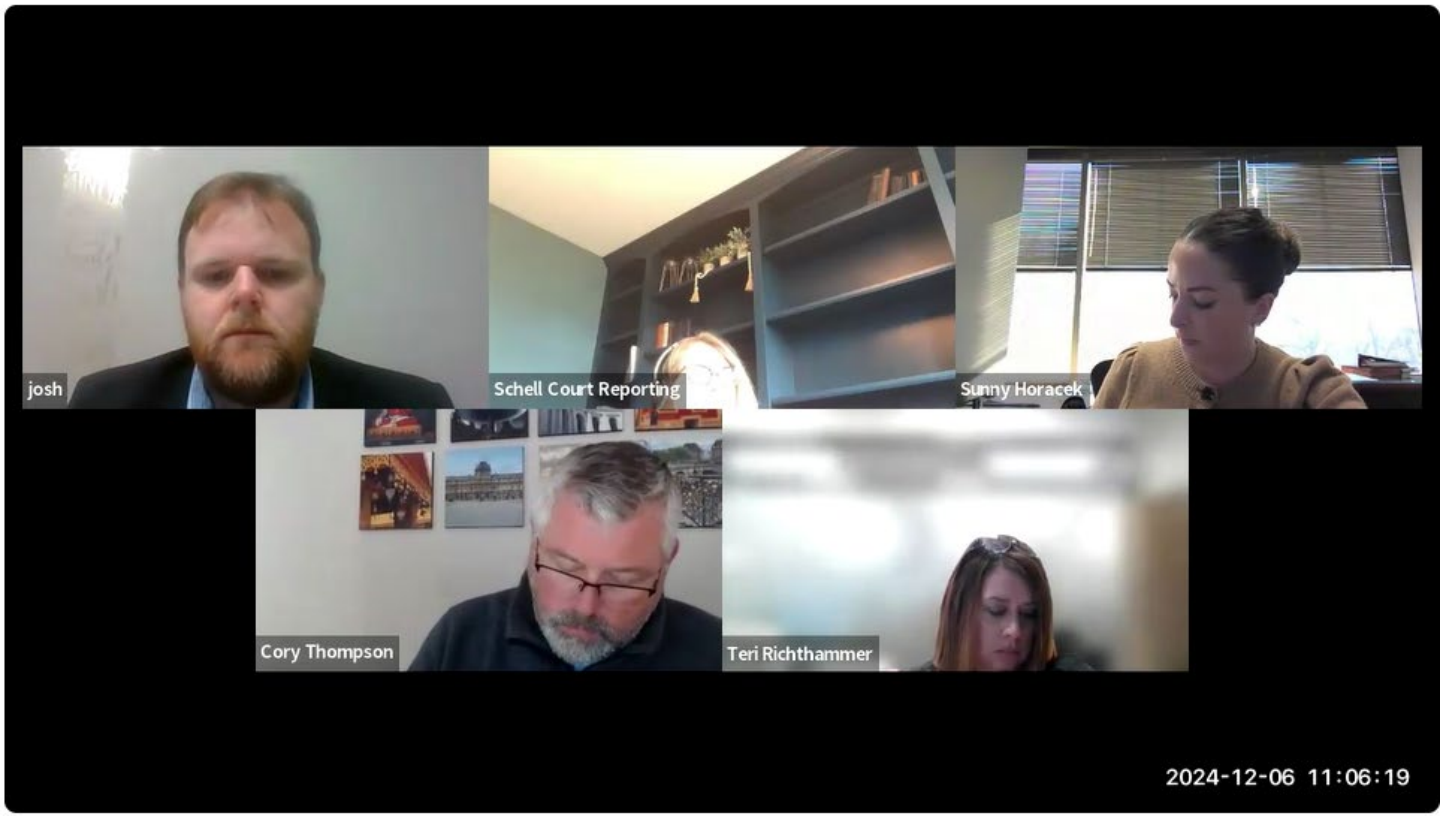

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