EXHIBIT R

In The Matter Of:

Hansraj v.

Epstein

May 15, 2025

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self - sole proprietor

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CIVIL TERM: PART 38
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NAVINDRA TAMESHWAR HANSRAJ

Plaintiff, INDEX NO. 725377-2020

-against-

HAL M. EPSTEIN

Defendant. Jury Trial

----------X

H E L D:

88-11 Sutphin Boulevard
Jamaica, New York 11435
May 15, 2025

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THE HONORABLE CARMEN R. VELASQUEZ

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THE CLERK: Calling to the record 725377 of 2020, Hansraj versus Epstein. All appearance remain the same. Case on trial continues.

THE COURT: Trial continues.

MR. TOWNSEND: Good morning, Your Honor.

MR. SMITH: Morning, Your Honor.

THE COURT: Good morning everyone.

I understand that we have a jury. And they are on, I think, on the third floor upstairs. I also understand that there is a motion on the floor. So I will ask counsel for the plaintiff, do you have anything for today.

MR. OCCHIOGROSSO: Yes. Thank you. Good morning, Your Honor.

THE COURT: Good morning.

MR. OCCHIOGROSSO: Your Honor, based upon the application we made yesterday -- and I won't belabor it -- there is a very thorough record of what our application was based on, pertaining to remarks during opening statements and objections that were sustained. As the Court is aware, we submitted a written application for a curative instruction. There was a lengthy oral record made on that application yesterday. Ultimately, the Court denied that application and did not give a curative instruction.

Based upon that, Your Honor, our position is that, at this point, irreparable prejudice has been done to

Mr. Hansraj's ability to prosecute his claims, and we are therefore moving from this mistrial.

THE COURT: Thank you, Counsel. Counsel for the defense.

MR. TOWNSEND: Your Honor, we have spread the defense view of that application on the record yesterday. Our position has not changed. The case that was submitted to the Court overnight is specifically referenced in the Second Department's decision, which be granted defense the opportunity to try the plaintiff's comparative negligence before the jury. The Court has fashioned such remedy as needs to be fashioned. It did so in its opening instructions. Any further attempt to do anything by the Court, I think, would upset the careful balance that the Court -- that this Court has already struck in this unique and -- in this unique situation.

THE COURT: OK. Very well. I did allow plaintiff to ask the question as to the right of way. And even though there was an objection, that was overruled. At this time, the decision will be the same. Let's bring the jury.

Please, officer, make sure that everybody turns off their cell phones. Thank you. And we won't have to ask twice as well.

You have your witnesses, Counsel? Counsel, do you have your witnesses?

MR. OCCHIOGROSSO: Yes, Your Honor.

THE COURT: Can you bring your witness to the chair?

(Whereupon a discussion was held off the record).

(Moving TV, disregard all that stuff).

THE COURT: Are we ready, counsel?

MR. TOWNSEND: Yes, Judge.

THE COURT: Okay. Let's bring the jury in.

THE COURT OFFICER: All rise. Jury entering.

THE CLERK: All rise.

Both sides stipulate to the presence and proper seating of the jury?

MR. SMITH: Yes.

THE CLERK: Calling case 725377 of 2020: Navindra Tameshwar Hansraj versus Hal Epstein. All appearances remain the same.

Counsel, your appearances, please.

MR. OCCHIOGROSSO: Good morning. Scott Occhiogrosso from Block O'Toole & Murphy on behalf of the plaintiff, Navindra Hansraj. Good morning.

MR. SMITH: Good morning, Your Honor. David Smith from Block O'Toole & Murphy and on behalf of plaintiff, Navindra Hansraj.

MR. SAN ROMAN: Good morning, Your Honor. Michael San Roman from Block O'Toole & Murphy on behalf of plaintiff, Navindra Hansraj. Good morning.

MR. TOWNSEND: Good morning, Your Honor. Kim Townsend from Galo Vitucci Klar for the defendant. Good morning.

MR. LAURI: Judge, Andrew Lauri, Galo Vitucci Klar, for the defendant, Hal Epstein. Good morning.

THE COURT: Good morning, jury. I am so pleased that you are all here, that means we can start. We already had a legal argument earlier today, so we are all ready for you. Now, you notice that every time in the morning when you are coming in, the attorneys have to say their names, I call it the 20 seconds of fame. When I was a trial lawyer over 16 years ago for about 27 years, I used to try cases. By the time it was over, nobody knew who I was.

So I decided that on day one as a judge, I would make sure that the lawyers have their notice of appearance, at least at the beginning of the day so that the record will be straight for the day. And also, you get to know their names, maybe not at the beginning, maybe at the end, but then at least you know who the plaintiff and the defendant is. That is the purpose of that as well.

They all have your names because of jury selection. So my court clerk always asks at the beginning: Is this jury acceptable to you as he did today. Because sometimes, maybe you are sitting in a different location or whatever. We want to make sure to get away with any type of human error. So that is how we start. Very well.

Counsel, for the plaintiff -- so what happens is that sometimes during -- when we have a trial, especially when it is an accident trial, the witnesses have to be out of order depending on the schedule of certain witnesses. Plaintiff and defendant had agreed that today we are going to stop the testimony of plaintiff because we have another witness who has to be taken testimony today. That is what we are going to do. Plaintiff.

MR. OCCHIOGROSSO: Thank you, Your Honor. At this time the plaintiff calls Dr. Alexandre De Moura.

THE CLERK: Good morning. Please raise your right hand.

Do you solemnly swear or affirm that the testimony you give shall be the truth, the whole truth, and nothing you about the truth.

THE WITNESS: Yes, I do.

THE CLERK: Please be seated.

THE WITNESS: Good morning, Your Honor.

THE COURT: Good morning.

THE CLERK: In a loud voice, sir, could you please state your name, spelling your last name.

THE WITNESS: Alexandre, A-L-E-X-A-N-D-R-E, last name, D-E, space, M-O-U-R-A.

THE CLERK: Thank you. And your address, sir?

THE WITNESS: 761 Merrick Avenue, Westbury, New York,

11590.

THE CLERK: Thank you.

THE COURT: Thank you, Doctor. As you know, the lawyers will ask you questions. Please answer the questions as given to you. If you hear an objection, please stop, I will rule on it. Also, as indicated earlier, during the trial, sometimes we tend to say "uh-huh." We have absolutely no idea what that means, I will ask you to please, you know, give us an answer with "yes," "no," or whatever answer that may be. But "uh-huh" doesn't cut it; OK?

THE WITNESS: Yes, Your Honor.

THE COURT: With that, counsel for the plaintiff, it's your witness.

MR. OCCHIOGROSSO: Thank you very much, Your Honor.

DIRECT EXAMINATION

BY MR. OCCHIOGROSSO:

Q. Good morning, Doctor.

A. Good morning.

THE COURT: Turn that off. Turn that off whoever that is. I don't want to have anything on the screen: I can't see the big one. Put it off. Thank you. It's a distraction.

MR. OCCHIOGROSSO: May I, Your Honor?

THE COURT: Yes, please.

BY MR. OCCHIOGROSSO:

Q. Doctor, can you please tell us your educational background, sir?

A. So I went to the George Washington University, in Washington, D.C., undergraduate after high school. Then I went to a medical school in Chicago, Chicago Medical School, which was another four years. Then I decided to go into orthopedic surgery. I did five years of training in orthopedics at Temple University in Philadelphia. On top of that, I did one added year of neurosurgery, orthopedic, spine surgery at NYU.

Q. Doctor, are you presently employed?

A. Yes, I am.

Q. What is the nature of your work, sir?

A. I am an orthopedic spine surgeon, and I do -- I focus my practice on the spine.

Q. Are you board-certified?

A. Yes. I am.

Q. Can you please explain to the jury what it means for a doctor to be board-certified?

A. So, after you finish your training and residency, you have to take something called the boards. And the boards is comprised of, once you go into practice, you now are taking care of your own patients. And the first six months, you will have patients that you treat. Some of them have surgery, some of them don't. And you will collect those patients, and you will

present a list, I think, of about 20 patients that you treated, that had surgery.

That list is then sent to the American Board of Orthopedic Surgery, which is headquartered in Chicago. They then have you come to Chicago, and they will take those 20 patients that you treated, and you will sit in front of four other orthopedic spine surgeons, and they will ask you questions about each patient you treated, where you treated them, what the problem was, how you treated them. If they had surgery, how did the surgery go. And if you pass that, the oral part of the boards, you now become board-certified. That is good for every ten years, and I passed the boards three times in 30 years so far.

Q. Doctor, you mentioned orthopedic surgery. Can you give us a working definition of what orthopedic surgery is?

A. So orthopedic surgery is surgery of the bones, and muscles, and ligaments, and the spine of the human body.

Q. Doctor, how long have you been treating patients in your specialty of orthopedic spine surgery in the New York area?

A. So, I have been treating patients since 1996.

Q. And your practice is still active as of today?

A. Yes, it is.

Q. Doctor, if you are not here testifying on behalf of one of your patients, Navindra Hansraj, where would you be, sir?

A. Either doing surgery or actually seeing patients in my

office all day.

Q. Are you being compensated for your time here today away from your medical practice?

A. Yes, I am. For a full day, that is usually in the $10,000 range.

Q. Doctor, in or around November of 2020, the year 2020, did Navindra Hansraj become a patient of yours?

A. Yes, the patient did.

Q. OK. I note that you are referring to some paperwork you have with you.

MR. OCCHIOGROSSO: If I could just bother my colleagues for a second. I want to make sure on the record, Your Honor, we know the Doctor's chart, what exhibit it is in evidence.

MR. SMITH: The New York spine records would be Exhibit 31, which has the medical records and billing, and there are films also, Exhibit 32, 33, 33A, and 33B.

MR. OCCHIOGROSSO: Thank you. We will refer to Plaintiff's Exhibit 31, primarily, as the doctor's chart.

BY MR. OCCHIOGROSSO

Q. Is that what you have with you, Doctor, you have a copy of your chart for the patient, Navindra Hansraj?

A. Yes.

Q. If at times during the questioning, if it is helpful for you to refer to the chart, with the Court's permission, I

would ask that you do so, and just let us know what date or what entry you are looking at; OK?

A. OK.

Q. Do you know how it is that Navindra Hansraj came to be a patient of yours?

And by that question, Doctor, I mean do you know who recommended that he see you?

A. I don't recall.

Q. Please tell us when a patient first comes to you, what is your general procedure that first initial visit?

A. So when a patient comes to me, I really want to find out why they came to me. So I am a surgeon. I do surgery only of the spine. I tell all my patients, surgery is always the last resort. When a patient comes to me, I want to find out what happened to them, how have they been treated, do they have any studies that show what might be going on with them. I would like to examine them to also find out, more physically, what is happening. Then I can make an assessment as to what the injury is, how it can be treated, and how I can potentially make a patient get better.

Q. Did you follow that procedure with Navindra Hansraj?

A. Yes.

Q. Can you tell us, Doctor, what was the first date of treatment?

MR. OCCHIOGROSSO: And if we could display that note

on the --

BY MR. OCCHIOGROSSO

Q. On the screen, we are looking at Plaintiff's Exhibit 31. Doctor, whichever is easier for you, to look at the monitor or look on your hard copy, do you see the date of that first appointment there?

A. Yes, I do.

Q. OK. And can you tell us -- just take us through the note and explain to us the entries and how you got the information, if you would, sir?

A. OK. So the patient was first seen in the office on November 16, 2020. He came in with something called a chief complaint. That is the main thing that is bothering the patient. I will ask him: What is bothering you the most. And he had a chief complaint of neck and low-back pain. And then I would find out how this all started. It is called a history of the present illness, the HPI.

The history for this patient states this was a 30-year-old male, the patient was involved in a motor vehicle accident that occurred on August 15, 2020. He was right-handed, the patient was wearing a seatbelt when another vehicle coming the opposite direction made a left turn causing the patient to strike the other vehicle. So they had impact approaching one another.

The patient did not have any history of accidents

before this, so he was in no accidents before. He also denied any problems with his neck or back, so he never had neck or back problems until this accident. The note also showed that the patient had undergone physical therapy, so he was treating. He had chiropractic care also. He also had seen pain management and had injections. The notes states cervical, epidural, steroid injections, which are injections into the neck. He also had diagnostic imaging, so usually probably X-rays or MRIs to show me possibly what is going on.

Q. Doctor, as we go down on that page, you just mentioned that he had diagnostic imaging done. There is a section that reads "Radiology." When you see the patient, if they have prior studies, what is your practice with regard to those prior studies?

A. So, we usually tell the patients to come to the office with their MRI results. A lot of these MRIs, I can actually look up on the internet, so I can actually see the pictures. So, it is my usual customary fashion to always look at the pictures. Indeed, here we see that the patient had an MRI done. MRI stands for magnetic resonance imaging. So I am sure everybody has heard of X-rays. On Halloween, you have seen pictures of what a skeleton looks like. An X-ray shows us bone, it doesn't show the body. That's why you see a skeleton, you don't see a face, you don't see the skin, you don't see the muscles. Those are all soft tissues.

We have something called MRI, and MRI shows us the soft tissues of the body. So you can see the muscles, you can -- in this instance, we are now looking at the spine. We are going to focus on the spine, so you are going to see something called disks, which are soft. You can see nerves, you can see the contents of the spinal canal. So that is what the MRI can show us more clearly, whereas an X-ray would not show that. Here, the patient came with an MRI that showed that he had damaged to disk between C5 and C6. In the neck, we have seven bones, so this is between No. 5 and 6.

Q. Doctor, as reported in your note, you described what you see on that image as a prominent disk herniation at C5, 6. What do you mean when you say "a prominent disk herniation"?

A. This would be an MRI that shows a disk that you readily can look at the picture and you can see there is a herniation.

Q. What is a herniation of a disk?

Doctor, if you have anything with you, with the Court's permission, that would aid in your explanation of the medicine, please tell us what it is you have and we can go from there.

THE WITNESS: Your Honor, I brought a model. If I could approach and show to the jury.

THE COURT: Why don't you stand up on the other side.

THE WITNESS: All right.

THE COURT: It is kind of small, so we will allow you to go into the front.

THE WITNESS: So this is a model of the spine. These are the bones of the spine. And between each bone there is a disk. The disk is like a shock absorber. So we have the spine, which basically holds everything -- basically attaches to the spine. And the spine has purposes of protecting the nerves, which connect the brain to the body. And the spinal cord is in this area too.

So in the neck, we have seven of these bones. So it's called cervical, C1 to C7. Thoracic is the area where you have the middle part, where all the ribs attach, and we have 12 of those, so it's T1 to T12. Then the lower back, we have five vertebrae, they are called lumbar, so it is lumbar 1 to lumbar 5.

So here we are going to focus on the neck, which is the cervical spine. So we are going to use the term C and the number. In this instance, I told you we have a herniated disk between C5 and C6. That is important because when I examined the patient, they are going to be certain things that are important that I can pick up on that examination.

Let's go back to the model here. The model shows the disks, which is the soft stricture. If you imagine like a jelly doughnut at Dunkin' Donuts, when you buy a fresh

doughnut and you squash it, the jelly comes out, that is what we call a herniation. There are different degrees of herniation. First, you can get a tear in the outer portions of the disk.

Just imagine if that jelly being squashed in the doughnut, and it is trying to go through the dough of the doughnut but it hasn't come out yet. We will call that, like, a disk bulge. But it is not completely a ruptured disk. If this instance, this patient had a rupture disk. If we look inside here, if you look inside the clear, you can actually see where the outer portion of the disk can get ripped, the red thing. See the red inside of there? So that shows how the disk can get ripped.

What is important is the outer portion of the disk is the only portion of the disk that has nerves. So, if there are nerves there and something gets ripped, that can cause pain; OK? So, once you develop that rip, then the material which is inside the disk can now at times come out. We call that extrude or a disk herniation where the disk material has actually come out. In real life, it is not jelly, it looks more like crab meat. It has a consistency to it if it's irritated. If you look here, when I squeeze --

MR. TOWNSEND: Judge, can we just have the Doctor, please, not climb into the jury box.

THE COURT: Right. Right.

Doctor, I am not allowing you to get that close to the jury.

THE WITNESS: OK.

THE COURT: Usually, it is by plaintiff's counsel, one step behind, I usually have a little dot.

THE WITNESS: If you can see here, when I squeeze -- can everybody see how that comes out. I don't know if the second row can see. When that material comes out, that is what the herniation is. See how it comes out here?

That is important because that material is no longer where it is supposed to be. If you get a pebble in your shoes, I don't care how tiny the pebble is, you know there is something in your shoe. The bottom of your foot is not nearly as sensitive as the spine, the central nervous system.

So when that material comes out, if it is near a nerve, then that nerve can get irritated. It won't function properly. You can start getting pain, numbness, tingling. I am sure everybody has heard of sciatica. Sciatica is when you have pain that shoots down your leg. In this instance, this is like sciatica with this patient, but he was having symptoms in the arms of numbness, tingling, weakness of the nerve that goes to a certain part. So this just basically shows everybody what a disk

herniation is.

MR. OCCHIOGROSSO: Thank you very much, Doctor.

THE COURT: Thank you, Doctor. Please take your seat.

BY MR. OCCHIOGROSSO

Q. Doctor, you discussed the images and what you see on an MRI. You, as an orthopedic spine surgeon, is the radiologist review of an MRI, is that the total picture for you in diagnosing a patient?

A. No. As I stated earlier the radiologist, comes up with a report because he looks at the picture. He doesn't have the benefit of having a patient there, where he can see what the patient is having, then you can formulate a judgment from the patient and the study. A radiologist just looks at the picture and only comes up with that. I, as a surgeon, I have the patient in front of me looking for help. I have pictures, which will give me pieces of the puzzle to figure out what is going on with the patient. So it is important for me to look at the actual pictures because sometimes a radiologist might miss something, and its important that I pick it up. Because if I am going to do surgery -- I am sure if you were going to surgery, you would want to make sure your surgeon knows what he is going in for.

Q. Doctor, on that subject of the additional steps you take when you are examining a patient and come up with a treatment plan, we have now gone to the second page, that

initial note from your first visit with Mr. Hansraj. This section at the top, it reads: Neck, cervical spine.

Can you take us through what is written here and explain how you came upon that information, sir?

A. OK. So this is an examination of the patient in motion. We want to see whether the patient can move normally or not. If they have something called spasms, that is when you touch the person and the muscles are very tense and tight. They have no control over that. I am sure there are plenty of women here in the jury, you can imagine when you have a contraction from the muscle when you are going into labor, that muscle, when it contracts, is very painful.

So any muscle in the body that contracts and is in spasms, causes pain. We can assess, in this examination, whether the patient has muscle spasm, whether they have a range of motion. I use something called a goniometer, which is a device that you can measure angles. The patient moves his neck fully, I can measure that range. If they move one direction, I can measure that.

Having been in practice for almost 30 years, I am basically objectively trying to measure something subjective. The patient has control over the motion. They don't have control over the spasm, but they have control over the motion. I using this device, basically classify my patients into four categories: One is normal examination, where they can move

normally. Then I have range of the motion, which are these numbers that I categorize into mild, moderate, and severe.

Q. OK. Doctor, the first paragraph there indicates that: Patient was viewed to be in excessive discomfort. What do you mean when you say "excessive discomfort"?

A. When you see the patient, when they move, they wince; right? They have facial gestures, they are not comfortable like everybody is here sitting today.

Q. The next line says: Bilateral paraspinal muscular spasm. You described for us what muscular spasm is. When you say "paraspinal muscle spasm," what part or what parts of the body are we talking about?

A. If we split the human body in half, we have two sides: The right side and the left side. Paraspinal means on both sides of the spine. This patient had spasm on the muscles on both sides of the spine.

Q. Where it says that: There is tenderness to palpation. What is "palpation"?

A. Palpation is a fancy term of when I touch the patient, I am palpating.

Q. When you say "tenderness to palpation," in this case, under this section of neck cervical spine, where would you be palpating the patient?

A. I would be touching the muscles in the back of the neck. And there I can see that when I touch, the patient moves,

I am creating pain in those muscles that are already are tight.

Q. You discussed with us that the different classifications for range of motion from normal to severely or extremely restricted. Please take us through your findings with respect to Mr. Hansraj at this initial visit, as compared to the normal ranges of motion, and then tell us what your conclusion was.

A. So we can see here that the patient had flexion. Flexion is when you bend forward only about 20 degrees. Normal is about 50 degrees. So, greater than 50 percent loss of motion. Extension is when you bend backwards, and this patient had about 10 degrees of motion, so not much motion backwards. That created a lot of pain so the patient was stopping. Normal extension is about 60 degrees, so significant loss of motion there.

Then I measure rotation, which are turning right or turning left. Here we can see the patient only had about 10 degrees, normal is about 80 degrees. If you look here, you look to your side, you can almost turn a full 90 degrees and look to the sides. Then we have lateral flexion, which is when you tilt your head sideways. Normal is about 45, this patient can only move about 5. That is pretty close to a severe loss of the range of motion.

Q. Doctor, based upon your review of the images, your discussion with Mr. Hansraj, and your examination of

Mr. Hansraj, did you develop a treatment plan for him that day?

A. I did, but we should also talk about the neurological exam just before that.

Q. Oh, I'm sorry. Please do.

A. Can we go back one page?

So looking at the bottom of this page, we can see that I also examined the patient neurological. That is very important because not only can I look to the patient and talk to them and see what they are feeling -- they tell me they are feeling, I check the range of motion, that is pretty much the examination where I am just measuring the patient being able to move their neck. I touch them, I found that they had spasms.

But now I want to see if anything correlates neurologically. When I showed you this model, I showed you little nerves that come out at each level. That's important because, as I told you, there is seven bones in the neck. We are dealing between 5 and 6. Between the fifth and sixth level is the sixth nerve. If you look at your right hand and do this, make a No. 6, and that is exactly where the sixth nerve distributed itself to go down the person's arm.

Not only did the patient have an MRI that showed a disk that was damaged between C5 and C6, the neurological examination confirmed the patient had weakness of the muscle that the sixth nerve innervates. That sixth nerve controls the muscle, which basically raises your wrist up. When you raise

your wrist up, you are using the sixth nerve that goes down. The brain tells your muscle, pull the wrist up. I found that to be somewhat weak in that patient.

Also, I then like to see if the person has normal sensation. When your nerves have been damaged or pressed upon or irritated by a disk, that can cause numbness and tingling. I am sure everybody has slept on their arm; right? Then you wake up, the arm feels weird, it falls asleep on you. That can happen too when the nerve is squeezed by the disk herniation.

What I do, is I tell the patient to close their eyes, I get a paperclip. So there is the pointy side of the paperclip and then there is the round side, which is soft. Then I tell them: Am I touching with the pointing or the dull side? Normally, a patient can tell the difference between sharp or dull. But if they had some damage to the nerve and the nerve is irritated, they can't tell the difference. Here, it clearly says that the patient had decreased sensation to pin prick and light touch in that C6 distribution.

So now we have a patient who has pain down the arm, has neck pain also, has an MRI that shows damage to the C5 and C6 disk. The patient has muscle spasm, the patient has a neurological examination that is not normal. All of the pieces are of the puzzle are there now for me to come together and tell the patient: This is why you are having these problems, you have a damaged disk between C5 and C6. You never had this

problem in your life with, but when you were in that accident of August 15, 2020, you sustained damage from the impact of the cars colliding with one another.

Q. Doctor, you also noted for us before that the patient reported to you that he had gone through conservative treatment prior to coming to you?

A. Yes.

Q. Is that failure of conservative treatment a factor that you take into consideration when devising a treatment plan for your patients?

A. Absolutely. As I told you earlier, I am the last resort. I just do surgery and that is how I help people that have ongoing pain, that surgery can help with. But the majority of patients will get better with physical therapy, the majority of patients will usually get better within 6 to 8 weeks. The patient that doesn't get better and can't live with the pain, those are the patients that surgery can help with.

If you think about that pebble again, like I told you earlier in your shoe, it is a tiny pebble, but you know it is in the shoe. But maybe you continue walking a couple of blocks. But eventually, I don't care how much you try to forget about it, you know there is a little pebble in your shoe and you need to take your shoe off, and you shake it, and you take the pebble out. Same thing here. When that disk herniates, it is irritating, it hasn't gotten better in 6 to 8 weeks. And if the

patient is bothered enough by it, then they become a surgical candidate, and that is when a majority of my patients come to me and say: Doctor, I just can't live like this anymore. Can you help me? In this case, this patient was a candidate for surgery between C5 and C6.

Q. Doctor, I want you to assume also that Mr. Hansraj testified here that among the symptoms that he had during this time period, before he came to you, was also severe headaches. What he describes as migraine. Does that, in your opinion, to a reasonable degree of medical certainty, is that consistent with the pathology that you observed?

A. Yes. The patients that have disk herniation and have muscle spasms, those muscle spasms can go into the face of the occipital -- the skull, and that can give people ongoing spasms. My notes later on show and document that the patient got better from having headaches that then went away after surgery. I also use -- this is an electronic medical record. So I use something called review of systems, which usually let me know how the entire body is working normally. And I have one instance where it says the patient didn't have headaches. But indeed, the patient did have headaches, and indeed, it is documented, the headaches got much better after surgery.

Q. So if in this initial note there is an entry that says "denies headaches," in the review of systems, are you telling us that is not that he actively denied it, it is that the

information wasn't inputted?

A. Yeah. It was a mistake on our part, uh-huh.

Q. OK. At this initial meeting, if we go to that second page and just look at your treatment plan very quickly. OK. We are looking now at the treatment plan that you devised for Mr. Hansraj. You told us what it is, that he was a surgical candidate. The initials here, it says: Patient requires an ACDF at C5, 6. You've explained to us that C5, 6 is that disk level in the surgical spine.

Can you explain to us what "ACDF" stands for?

A. OK. Before I do that, it is also important to note that the patient had the accident on August 15, 2020. He saw me 3 months later. So it is not like he just had the accident and came to me. He had been through physical therapy, he had chiropractic care, he tried injections, everything failed. As I told you earlier, if you fail conservative treatment for about 6 to 8 weeks, then you become a candidate for potentially having surgery.

Q. Doctor, I have to stop you there. There's a really important point I wanted to make, and I appreciate you bringing that up.

I want you to assume that the defendants have argued that your treatment of him was what they described as aggressive. That it was too aggressive, this treatment plan at this juncture. How do you respond to that accusation?

A. Well, what I would say to them is how aggressive are you if you had a little splinter in the bottom of the foot. It is just a splinter; right? Keep walking. But you know there is a little splinter in your foot. It is painful. It has got to come out. Unless it pops out by itself. A patient who has this ongoing pain, the patient that has a cavity next to the nerve, they go to the dentist, they take care of the cavity. That is not aggressive. You are treating a person who is dealing with pain, didn't ask to be put in pain; right? And now hasn't gotten better with conservative treatment.

It's not like he came to me the day after and I'm telling him: Yeah, let's go to surgery right away. No. The patient had physical therapy and chiropractic care, had injections, and all of those treatments didn't make the patient better. So, at one point, that pebble in your shoe has got to come out, otherwise you'll be dealing with the pain everyday. So this is not aggressive, this is the human way to help another human that is in dire straits.

Q. Doctor, you have used the analogy of the pebble in the show, but obviously, we are talking about something way more serious here. Can you tell us, from a medical standpoint, do you have an opinion, to a reasonable degree of medical certainty, given the way that Navindra Hansraj presented to you, if he had not agreed with your recommendation and had the surgery, what do you expect would have happened to him?

A. I think the patient would have continued to have ongoing pain, he would have to deal with the spasms in the neck, the numbness, the tingling, the weakness in the arm. Potentially, the weakness could get worse with time. There is something that is not where it is supposed to be, which is the disk herniation, and it is giving this patient those symptoms.

Q. Thank you, Doctor. If you could explain to us -- I think we were talking about ACDF, what that stands for?

A. Sure. Now the patient comes to me three months after the injury, and I have reviewed everything and now he's a candidate for an ACDF: A stands for anterior, which means through the front, c stands for cervical, we're talking about the neck bones, discectomy means we take out the disk, and then fusion means we make the bones grow together. It's ACDF, anterior cervical discectomy and fusion.

(Whereupon, the following was recorded and transcribed by Official Court Reporter VICTORIA A. BIFULCO.)

DIRECT EXAMINATION

BY MR. OCCHIOGROSSO:

Q Thank you, Doctor.

We are going to talk more specifically about the surgical procedure. I just wanted to touch on one other portion of this note. Below the treatment plan, there is a section that says discussion. If we could highlight that for a moment. Okay.

Here in your discussion portion you say based on this clinical evaluation, the current problem is causally related to this accident.

What do you mean when you say that the clinical problem, the clinical evaluation led you to that conclusion that the problem is causally related to this accident?

A Well, the problem we know now is the disc herniation. That disc is not where it's supposed to be. The patient had no problems before the accident in August. He never had symptoms like this in August, before August. He never treated for neck pain radiculopathy which is the numbness and tingling in the arms before the accident.

He only developed this after the accident, so that's why I am saying that what happened to him at the time of the accident and his problems that arose are related to the accident.

So they are causally related to the accident.

Q Would it be fair to say based on what you are telling us and what's in your note here that to a reasonable degree of medical certainty, do you believe the competent causative event for the injuries that Navindra Hansraj suffered to his spine was the motor vehicle accident of August 15, 2020, Doctor?

A Yes. I believe that within a reasonable degree of medical certainty, which means more probably than not, when that impact occurred, he sustained damage to the neck bones between five and six causing that herniation.

Q And, Doctor, if as you noted, Navindra Hansraj never had an MRI study prior to that accident, if he did or if an MRI study showed degenerative changes in his spine, does that impact your assessment?

A Well, first of all, he is only 30 years old. Degenerative changes means something that is happening over time, forties, fifties, sixties, years of age.

Also, an MRI is not a study to look at little spurs which sometimes can indicate, you know, degeneration.

A CAT scan is a better study to show that to really document that. The MRI is the gold standard for showing soft tissue injury.

So in this instance, this patient was not suffering from something degenerative because if it was degenerative, he would have had symptoms before the accident, and he never had

symptoms before the accident.

Q Okay. Sometimes we see, Doctor, that there are descriptions in MRI reports of degenerative changes being shown.

Do degenerative changes by themselves necessarily carry symptoms with them?

A No.

Q Okay. And then if somebody has what would be considered degenerative changes in their spine, can a traumatic insult then activate the painful symptoms?

A Absolutely.

MR. OCCHIOGROSSO: I would like to discuss the surgery with the doctor, your Honor.

This may be an appropriate time to set up the easel.

THE COURT: Very well. Let's take a break.

Take the jurors from the room.

Jury, if you want to leave things in the jury room, that's fine. Whatever you want, please leave it in the jury room and go into that room.

So we'll take a five-minute recess to set things up.

THE COURT OFFICER: All rise. The jury is exiting.

(Whereupon, at this time, the jury exits the

courtroom.)

THE COURT: We'll take a recess while the equipment is being set up.

(Whereupon, at this time, a brief recess was taken.)

THE COURT OFFICER: All rise. The jury is entering.

(Whereupon, at this time, the jury enters the courtroom.)

THE CLERK: Thank you, you may be seated.

All rise. The case on trial continues.

Do both sides stipulate to the presence and proper seating of the jury?

MR. TOWNSEND: Yes, sir.

MR. OCCHIOGROSSO: Yes.

THE CLERK: Thank you.

Please be seated.

THE COURT: So let's continue on, but before that I have to mention that you have seen these two young ladies behind me. Those are interns. And one is Jennifer Jose, a John Jay College student. She is a junior applying for law school soon, and next to her is Kimberly, and she is actually -- has applied to law school and will be entering law school in August.

I explain that because what happens is we want

to have young people on the stand and look at what happens in the courtroom, and so they will be coming in all four days so they can learn and see members of the bar and what happens with the jury and in the courtroom.

So I just wanted to let you know what's going on and why they are in the back.

Now, we'll have you put it over here (indicating).

MR. OCCHIOGROSSO: Yes, your Honor. Just so the Court can see.

THE COURT: I see counsel already has a new seat in the back.

MR. TOWNSEND: If that's okay with the Court, Judge, just so I can see it.

THE COURT: As long as it's in the back and not next to the jury, you are fine.

Very well. Let's continue.

Counsel for the plaintiff.

MR. OCCHIOGROSSO: Yes.

Your Honor, with the Court's permission I am going to ask if Dr. De Moura could leave the witness stand and stand in the well while we talk about the illustration so he can explain the surgical procedures to the jury.

THE COURT: Very well.

Are you going to have something on there?

MR. OCCHIOGROSSO: Yes. I didn't want to approach myself.

THE COURT: You would not approach. That's why we have a capable court officer with the shield on that is ready and willing to do what we need him to do.

MR. OCCHIOGROSSO: That's why I didn't approach the board.

THE COURT: What do you need?

MR. OCCHIOGROSSO: The boards that are against the wall.

THE COURT OFFICER: Do you want both boards or just one of them?

THE COURT: Just bring them both and put it aside.

MR. OCCHIOGROSSO: If you could bring them over here and put them backwards so no one can see, and I'll just hand you the ones --

THE COURT: That would be best.

MR. OCCHIOGROSSO: Okay. Thank you. If we could display this one (indicating), please.

THE COURT: Tell us what number that is in the evidence.

MR. SMITH: Judge, these have not been marked yet into evidence. They are demonstrative.

THE COURT: We always have to mark them, no matter what happens, so the record is clear.

We'll mark them later. Okay.

What number would that be?

MR. SMITH: 49.

THE COURT OFFICER: 49.

THE COURT: We'll deem it marked.

No. Why don't we mark it now?

Mark it Plaintiff's Exhibit 49.

MR. SMITH: There are three, Judge, 49, 50 and 51.

THE COURT: Okay. Give it to the court officer to mark.

Now you are going to see some background things that we do here today in your presence.

Everything has a number -- take out the jury, please.

THE COURT OFFICER: All rise. The jury is exiting.

(Whereupon, at this time, the jury exits the courtroom.)

THE COURT: All right. We are going to do the marking now.

THE CLERK: 49, 50 and 51.

(Whereupon, at this time, Plaintiff's Exhibits

49, 50 and 51 was marked for identification.)

THE COURT: Off the record.

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

THE CLERK: Exhibits 49, 50 and 51 have been marked for identification.

THE COURT: All right. I understand right now there would be an objection to this.

MR. TOWNSEND: Yes, Judge, there is an objection. I already alerted counsel.

The objection is just to introduction into evidence. I don't object to their being used as demonstrative.

THE COURT: I don't think they are going to mark it in evidence, but we need to mark it in order for the record to be complete in case there is a citation or request for any type of -- we need to mark everything that the jury is shown.

MR. TOWNSEND: Sure. One thing I have done is I have asked counsel to -- some of what is on the demonstrative exhibits is clearly art and is presumably helpful to the jury.

Other cases of what's on there, in particular the cervical MRI, looks to be actually the film itself except superimposed on the film are the vertebral disc

space numbers. Okay.

I am just asking that they have available to pull up because I want to discuss it with the doctor, the actual image that is part of their --

THE COURT: You mean during your part?

MR. TOWNSEND: Yes. When I do my cross examination. Nothing controversial.

THE COURT: I am sure counsel will understand as you have been very cooperative of what he needed to do.

MR. TOWNSEND: Thank you.

THE COURT: So they are marked for identification for demonstrative evidence. So that's how we are going to go.

I am not going to say 49 for demonstrative. I am going to say number 49 is being shown to the witness now.

MR. TOWNSEND: Okay.

THE COURT: All right.

MR. TOWNSEND: Thank you, your Honor.

THE COURT: So if you want to have it ready -- which one the is one you are going to do, 49?

MR. OCCHIOGROSSO: 49. Yes, sir.

THE COURT: Give it to the officer, so he has it to put up.

MR. SMITH: Judge, just practically speaking, I

have given Danielle, their tech person, the disks so if they want to pull up the film maybe Mike can work with Danielle and find exactly that so we can do this seamlessly.

We haven't seen it yet.

THE COURT: All right.

Counsel for the plaintiff, is that good?

Counsel for the defendant, can you see it?

MR. TOWNSEND: No, but I am going to have to move where I can.

THE COURT: All right. The other counsel for the defendant, you can't see it.

MR. LAURI: I'll be fine over here, Judge, thank you.

THE COURT: Perhaps you can -- no, we don't want to do that.

MR. TOWNSEND: Just to be clear for the Court, this is the image we are talking about. It's actually taken from the images.

THE COURT: Okay.

MR. SMITH: For the record this is the image of that film is Exhibit 26 in evidence, the film.

THE COURT: Okay.

I'm sorry, ma'am, what is your name?

MS. BROWN: Danielle.

THE COURT: What is your last name?

MS. BROWN: Brown.

MR. OCCHIOGROSSO: Ms. Brown, do you have that pulled up?

MS. BROWN: Yes.

THE COURT: Do you need this page on the monitor?

MR. OCCHIOGROSSO: Yes, your Honor, just the operative report.

THE COURT: I just wanted to know. Okay. Let's get the jury.

THE COURT OFFICER: No problem.

THE COURT: Thank you.

THE COURT OFFICER: All rise. The jury is entering.

(Whereupon, at this time, the jury enters the courtroom.)

THE CLERK: Both sides stipulate to the presence and proper seating of the jury.

MR. OCCHIOGROSSO: Yes.

MR. TOWNSEND: Yes.

THE CLERK: You may be seated.

THE COURT: Very well.

Now we have decided to put in evidence and the doctor will be speaking about -- I did want to make sure

the lady behind over there is Ms. Brown, and she does the tech work for the defense.

And as you know, counsel for the plaintiff on the left side also has tech aide.

Now we all know who is who in the courtroom.

All right. We have Plaintiff's Exhibit number 31?

MR. OCCHIOGROSSO: Yes, your Honor. Plaintiff's Exhibit 31 is on the monitor and Exhibit 49 for identification is on the easel.

THE COURT: Very well.

Counsel, you may continue.

MR. OCCHIOGROSSO: Thank you, your Honor.

Your Honor, would Dr. De Moura be permitted to leave the witness stand to discuss the illustrations with the jury?

THE COURT: Very well.

Doctor, if you would be so kind.

MR. OCCHIOGROSSO: Thank you, your Honor.

Q Okay. Doctor, looking at Exhibit 49, can you please explain to the jury what we are looking at?

I would ask you to go to the other side and please explain what we see on the board.

A So this board here is an artist's rendition and actual studies of what this patient had inside their body at

the spine between C5 and C6.

This here, for example, is the MRI. We are looking at pictures sideways of the spine like this (indicating).

And then these images over there, we are looking at the spine in this view.

So if we divide the spine in half, we can see images like this where we see the spinal canal. This is the spinal cord. The white is water. So it floats in a bath of water.

Each of these cubes are the vertebras which are the bones. And in the images here between the bones we can see the discs.

Looking at this MRI here, we can see what normal discs look like. But we go to five-six, we see there is a bump here and there is something that's come out. That's like what I showed you when I squeezed this model. That material has come out. It's no longer where it's supposed to be.

So where my finger is here (pointing), that disc should be back where my finger is here. So you can clearly see that there is a herniation at that level. The disc has protruded. It's out from where it's supposed to be.

If we look at he artist's rendition, we can see images like this, and we can see here how this is what the disc looks like on these images here (pointing). The discs would be over here.

Here is the spinal cord which would be this here

(pointing), and then we can see how this material should stop like this.

But as you can see, it's actually come down here (pointing), and it's actually pushing the spinal cord to one side, and it's indenting the spinal canal where that material is not where it's supposed to be.

So that's the disc herniation between C5 and C6.

Q Doctor, one last question before we move on to the next board.

In the actual MRI images at the operative level C5-6, there appears to be what is a brighter spine where the disc material is herniated.

What is the significance, if any, of that brighter spot?

A The significance is anything that is bright on MRI in these images shows fluid or water. That's why the spinal canal is very white.

And we can see here (pointing) that there is whiteness in that area, so that disc material which is fresh has popped out there. That gives me more inclination to believe that this happened at the time of the accident, that this is not something old.

This is new. This is newer.

Q Thank you, Doctor.

If I could, we have your operative report up on the

monitor. I'm going to ask --

THE COURT: Would you like him to come back and sit down?

MR. OCCHIOGROSSO: Not yet, Judge.

I am going to ask if Exhibit 50 could be displayed, and the doctor could explain that.

THE COURT: All right.

THE COURT OFFICER: Plaintiff's Exhibit 50 being displayed.

Q Take a moment, Doctor, for you to familiarize yourself with that.

I see in the operative report that's up on the screen, the operation lists five steps under the section that says operation. It says anterior cervical discectomy C5-6 arthrodesis, C5-6, anterior cervical instrumentation, structural allograft from C5-C6, and then the last line says bone marrow harvesting for transplantation.

That last line, is that what we are looking at here?

A Yes.

Q A rendition of that. Can you explain that process to the jury, please?

A So when the patient goes into the operating room, they are lying flat like when you go to sleep at night.

They have been put to sleep and when I do this procedure we basically operate on two areas of the body, one

is the neck.

And if you feel your pelvic bone right here, that's called the ileum, the iliac crest. That's the other area where we put in a needle. You can see here how this needle goes into the bone, and we pull out bone marrow.

I am sure everybody has heard nowadays about stem cells and things of that nature, so those cells that we get out of the bone marrow tells the bone to heal better and stronger, so I like to take bone marrow before I start the case to transplant to the neck.

Q On the bottom right of that illustration there is a square or rectangular drawing, and it says above it, harvest bone marrow packed in titanium cage.

Can you tell us what that means?

A So, we'll discuss it when you see the next pictures, but when I take this disc out, if I didn't put anything back in, you would have two bones that are rubbing against one another.

So if you take the tire off of the wheel on your car, the wheel would be rubbing on the asphalt, and you don't want that. So in order to keep this space open, we put a spacer in there. The spacer is made out of titanium. It's a little cage, and we are able to slide it in so it holds the space open. By holding the space open, that keeps the nerve free that comes out of these tunnels, and that little spacer also

acts as a scaffold so your bone cells can grow around it and through it.

So if you look there, that little square in the middle part is red. That's because I have gotten some of the bone marrow. I mix it with allograft bone which is that is processed by somebody who has died. It's pure calcium.

So I mix the calcium with the person's own bone marrow, put it inside the cage, and then your bones will grow through that cage in the future and make those two bones grow together. That's why we call it a fusion. We fuse one bone to the other and make it one bone.

Q Doctor, thank you.

One of the ingredients that goes into that pack is cadaver bone?

A Yes.

Q Okay.

MR. OCCHIOGROSSO: Lastly, I would just ask your Honor if the officer could display Exhibit 51.

THE COURT OFFICER: Plaintiff's Exhibit 51 being shown to the witness.

Q Doctor, as you look at that, please explain to us what is depicted, and as it shows the operation you performed, please explain it to us.

A So this board is showing the patient asleep on the table face up. The neck is the area where we are going to do

the operation.

So when I do the operation, the patient, we put a sterile field so everything is clean, and then I start the surgery. I make an incision. So I cut the neck at the level where the C5 and C6 disc is.

When I cut through the skin, there are bunch of things there before I get to the spine, a lot of things that if you don't do the surgery right, the patient can die on the table.

So you have the jugular vein. You heard about vampires sucking the jugular vein. You get blood out of there easy. If you nick that vein, it's like a water hose. You bleed all over the place.

You also have a carotid artery. It's a high pressure system of blood coming directly from the heart to the brain. That's also another vessel that you don't want to nick that.

Then you also have the food pipe, the esophagus. So I find the interval to pull the food pipe to one side, keep the blood vessels to the other side, and there is also a wind pipe, the trachea, so we keep those structures separate from one another.

And then there is a spacer in there. So I use these spacers -- we call them retractors -- to spread the tissue in both directions, north, south, east, west, and that you are looking at the spine like this (indicating).

So in orthopedics we say, when on bone, you are home, so when I get everything spread out of the way, I am down to the bone now.

When you are at the bone, I now can access the disc space itself also.

So over here we are seeing a cross section (indicating). We are looking at pictures like this now.

So here you can see the major arteries, veins. Here we see the wind pipe and food pipe. We can see how they have been separated safely, so I can work in there and not get into any trouble.

Once I get in, I then remove the discs. So I am taking the jelly and the doughnut out. You take the dough and the jelly out, everything out. The posterior portion sometimes the remnants of the outer portion of the disc can stay there, but mostly through the front you take it all out.

You also take all the jelly that's inside the disc space. So when I come in, you can see pictures here (indicating). I shave the bone. I get access into the disc space, so I remove the disc, and then once as I said earlier, when I take the disc out, then I put that little spacer in which is the -- it's a structural titanium piece of metal that keeps the space open and allows the bones to grow through it.

I also prepare the bony surfaces. You see there is a high speed burr being used. So I basically abrade this

surface. If I am working in this disc space, I roughen up the bone on the bottom of the C5 and the top of C6. I rough that bone up so it's bleeding bone. Because you want the blood cells to then be able to grow through and they are going to create a fusion.

When I was young, I used to make little model airplanes and things like that. Model airplanes are made out of wood. So if you have two pieces of wood and you want to glue them together, you put a clamp on them and you come back the next day and the wood has healed. It has a better chance of healing.

If you break your arm, we put your arm in a cast which holds your arm still. That gives the bones a good chance to heal together or we put plates and screws on there which will hold the bones still and allow the bones to heal if you break your bone.

This is the same thing. We want two bony surfaces to grow together. Because of that I put a plate in there with screws. It holds the bone still giving the bone a better chance to grow together.

We can see down over here you can see an x-ray that shows a side view, the plate with the spacer and the screws which are holding it in position, and then this top picture is a front view. You can see the plates in front of the spine and then the spacer that I put in there.

So that's the instrumentation part of the operative report that you see over there.

So we take the discs out. We put a spacer in. We prepare the area for the fusion, and then we put a plate and screws in there to told it in.

That's the operation.

Q Thank you very much, Doctor.

MR. OCCHIOGROSSO: If Dr. De Moura could return to the stand.

THE COURT: I'll tell everybody to come back to the seat.

Officer, you can take the illustration down.

Q Now --

THE COURT: One second, sir.

MR. OCCHIOGROSSO: Sorry.

THE COURT: Go ahead.

MR. OCCHIOGROSSO: Thank you, your Honor.

Q Doctor, one of the things that you mentioned when you were describing the surgery is that when you get there, you are actually removing the damaged disc, in this case the traumatically herniated C5-6 disc in Navindra Hansraj's neck.

In order to do that, are you visualizing that disc with the naked eye?

A Well, I am using my eyes obviously to do the surgery, but everything is magnified, bright lights so I can see

everything clearly. We use the microscope or magnifying glasses which really see into the disc space clearly, so I am getting an actual picture of the herniation, not an MRI, not a artist rendition. I am actually in there seeing the damage that was done to that disc.

Q You mentioned earlier, I think you described an MRI as the gold standard for diagnoses. Truly, Doctor, for the surgeon intra-operatively, what is the gold standard for the diagnosis of a traumatic herniation?

A Me seeing it with my eyes.

Q Having performed this surgery on Mr. Hansraj, did you come to a conclusion about what it was that you saw with the disc at C5-C6 level?

A I saw this jelly doughnut scenario. I actually saw the jelly coming out of the doughnut.

So when I went in through the front, I took out the front of the disc. I went inside, got the jelly of the doughnut, kept removing it, and then when I got to the back of the space which is the spinal canal and is near the nerve, I could see that piece of material had gone through the outer fibers of the disc, and we call that extrusion.

So I was actually able to get a little pincer, go in there, grab the disc material and pull it out.

Q Doctor, on your operative report underneath the operation section, there is a section that says findings, and

it reads, extruded disc herniation from motor vehicle accident viewed to pierce the PLL with protruded material removed.

What does that mean?

A So what that means is that I was able to go into the disc space with magnification and bright light and see everything that was happening there.

I was able to see that disc material that had squirted out. It looks like crab meat in real life.

I was able to pull that out. When I pulled it out, I could actually see that it went behind the spine here. There is something called the PLL, posterior, which means the back, longitudinal ligament. Ligaments hold bones together, so I could see where it had gone through the ligament, and it had ruptured that area. And that's a significant finding.

And I was able to see the disc material being removed from where it had gone out of.

Q Thank you, Doctor.

In describing the surgery, you showed us where there was a metal plate and metal screws that were fixed to the vertebrae, the C5-C6 vertebrae above and below the traumatically herniated disc that you operated on.

That plate and those screws, are they permanently fixed in Mr. Hansraj's body?

A Yes, they are.

Q The intention of the surgery is that those two bones,

the C5 and the C6 vertebrae would fuse together?

A Yes. I want them to grow together, and we call that fusion.

Q What is the impact, if any, on Mr. Hansraj with respect to mobility of his cervical spine if the surgery is successful and those bones do fuse together?

A He would lose motion between C5 and C6 permanently, and the motion that that segment would normally provide, if you can imagine that no longer moves, it's stiff now, gets transferred to the level above and below. They now have to do the work of that level.

Q And, Doctor, did you continue to treat Mr. Hansraj after the surgery?

A Yes.

MR. OCCHIOGROSSO: If we could, I would like to turn to a note on September 16, 2021.

A Okay.

Q Just give us a second, Doctor, to pull that up on the screen.

MR. OCCHIOGROSSO: Don't display it yet.

There is a reference to something that I don't think the jury should see, your Honor.

Q But I would ask you, Doctor, reading that note, did there come a point in time when Mr. Hansraj in postoperative visits came back to you, and you had to discuss with him about

physical therapy?

A Yes.

Q Okay. Now, we don't want to discuss the reasons that physical therapy was denied to him at this point in time. Okay. That's why I am not showing the note on the screen. But at this point in time as of September 16, if you can review that note and just see what, if any, were the symptoms that Mr. Hansraj continued to suffer in his cervical spine, first of all.

A Well, he is now after surgery performed December of 2020. We are now talking September of '21. He still has neck pain. He still has the numbness, so I think he probably has some permanent nerve damage because he still has that numbness. He does believe his symptoms improved greatly, but he still has that remaining associated neck pain and numbness and tingling.

Q And then as you look down into the next portion of your note, did you note any other injuries from this accident that Mr. Hansraj was treating for?

A Well, we know he had low back symptoms when he saw me the first time.

Q I am referring to the history of the present illness section, Doctor, the very bottom of that section.

A Patient has not seen pain management since prior to surgery. He is also following up with orthopedic for his

right shoulder.

Q So you were aware at this point that Mr. Hansraj was treating separately with a different doctor for his right shoulder?

A Correct.

Q In addition, Doctor, if we could go to the end of this note.

A Un-huh.

Q If we look at the treatment plan portion of the note, Doctor.

A Okay.

Q Okay. What at this point in time now the surgery was performed at the end of December of 2020, so this is now nine months after the surgery.

What was your treatment plan for your patient at this point?

A I wanted the patient to do physical therapy. Hopefully, it would maybe help some of these symptoms go away of the neck pain, maybe the numbness and tingling.

Q Were there any prescriptions that you added to his treatment plan?

A He was taking Tylenol for pain, and he was also taking a muscle relaxer, cyclobenzaprine as needed.

Q What does that treat?

A Muscle spasms.

Q What was your prognosis at this point in time for the patient?

A Still guarded.

Q What do you mean when you say prognosis was still guarded?

A There is still some apprehension of what he is going to do. He is not completely out of the woods, so it's guarded.

Q Doctor, do you have an opinion to a reasonable degree of medical certainty as to whether Navindra Hansraj suffered permanent consequential limitation of a body organ or member based on the motor vehicle accident that occurred on August 15, 2020?

A Yes, he did.

Q And what body organ or member?

A He suffered damage to the C5-C6 discs. This resulted in him ultimately requiring surgery. I fused that level so that is a permanent loss of motion, so it meets the criteria of what was just stated to me.

Q Do you have an opinion to a reasonable degree of medical certainty as to whether Mr. Hansraj suffered significant limitation of use of a body function or system as a result of the motor vehicle accident of August 15, 2020, Doctor?

A Yes. He had a devastating injury to that disc. It

was damaged permanently, and as such it's a permanent condition.

Q And did you in your post-operative treatment of Mr. Hansraj, did you recommend certain limitations to him on lifting and exertion?

A Yes, I did. Usually in this case I recommended no heavy lifting greater than about 15, 20 pounds.

Q Doctor, you discussed before the significance of the fusion and how the mobility that the neck no longer has at the fused level, that mobility has to go somewhere, so it then goes to the level above and the level below.

You reviewed MRI reports from Mr. Hansraj's presurgical surgical MRI --

MR. OCCHIOGROSSO: And if we have that, can we display it very quickly?

Just pull up the impression section.

THE COURT: Put on the record what that is.

MR. OCCHIOGROSSO: This is Plaintiff's Exhibit 24, your Honor.

Q In addition to the herniation noted at C5-C6, the report also notes that there is a C4-5 posterior lateral anular tear.

What, if anything, is the significance of an annular tear at the level immediately adjacent to the operative site?

A That shows he had some damage to the level above

between 4 and 5. He had portions of the disc had a tear. As we mentioned in a car you have steel belted tires. If they fray, we call that a tear.

This patient had a tear in the outer portion of the disc which is what the report shows an annular tear, so that disc above is also not normal. It didn't require surgery, but it was not normal.

And now that it's going to have to do the work and motion of the disc before, there is a good chance, probably 30 percent chance that that disc is going to degenerate in the future, and the patient will have to have that addressed surgically in the future.

Q Doctor, I want you to look at one other exhibit that is in evidence if we could very quickly. This is Plaintiff's Exhibit 43.

We just discussed that you recommended that Mr. Hansraj do physical therapy, and he did in fact continue to do physical therapy at Sports Therapy and Rehabilitation Services in Bayside.

If we look at the top right corner of the diagnosis section, you see where it reads, cervical disc disorder. First it notes the surgery that you performed, C5-6 spinal fusion and neck pain, and then it reads, cervical disc disorder at C6-C7 level with radiculopathy.

Again, Doctor, I would ask you with respect to those

adjacent levels, what, if anything, is the significance of this diagnosis of C6-C7 radiculopathy?

A We know he has a tear above and we know he has problems about the disc below, so that also, as I stated earlier, that both levels above and below will be effected because of the surgery.

Q Are you familiar with the term, adjacent segment syndrome?

A Yes.

Q Can you explain to the jury what adjacent segment syndrome is?

A The levels next to where you have a fusion surgery because of the excessive work that those levels have to do to compensate for the level that has been fused. They can have an increased chance of wearing out over time having never been damaged to the original disc.

Q Are you familiar with the term post-traumatic arthritis?

A Yes.

Q Can you explain what that is?

A That you can develop arthritis after having an injury.

Q If somebody develops post-traumatic arthritis, does that arthritic process accelerate from the normal rate?

A Yes.

Q Doctor, were you aware that the defendants have surveillance videos of the plaintiff, Navindra Hansraj?

A Yes.

MR. OCCHIOGROSSO: I am going to ask the last thing, Judge, if we could just take a quick look at some of that.

Q And, Doctor, while that's being cued up, I have another question for you.

I want you to assume that there was an EMG study done on Mr. Hansraj prior to surgery on the upper extremities that came back negative.

Does that in way change your diagnosis?

A No.

Q Please explain.

A So an EMG is a study to try to show if there is damage to the nerve. You are basically trying to see how well electricity is conducted through the nerve. Just because that test doesn't come back positive showing that there is true damage, doesn't mean that there is not damage there.

Indeed, in this patient had the symptoms. He didn't know when I was touching him for sharp or dull. The sensation is decreased. He had weakness. He had the correlating disc herniation that was effecting the nerve, so an EMG study can add, but if it's negative, it doesn't mean it takes away from the diagnosis.

Q Thank you, Doctor.

I just want you to now look --

MR. OCCHIOGROSSO: If we could display Plaintiff's Exhibit 47.

These are the surveillance footage that the Defendant's investigator recorded of Mr. Hansraj.

MR. TOWNSEND: Do you have a date on that, Scott?

MR. SMITH: July 9, 2022.

MR. TOWNSEND: Thank you.

Q As you know, that's your patient, Mr. Hansraj, is the man who does have a shirt on in the video.

I am going to zoom ahead a little bit. The testimony will come in, and that's a pressure washer. I don't know if you are familiar with that machine, Doctor.

A I am familiar.

Q Okay. Now I am going to show you a little bit of footage from July 10, 2022, and that is -- I want you to take me at my word that is Navindra Hansraj using the pressure washer. I am not going to take up your time or the jury's time right now, but we'll see how long he does that at some point in the trial, but he's pressure washing the cement a little bit.

Okay. Now, this is going to be Plaintiff's Exhibit 48.

MR. TOWNSEND: Can I get a date on that?

MR. OCCHIOGROSSO: The one we are looking at now this appears to be December 17, 2023.

Q Okay. Doctor, have you had an opportunity to look at the video that was shown?

A Yes.

Q Having seen that, does that in any way change your diagnosis or any of the medical opinions you offered here today about Mr. Hansraj?

A No.

Q Do you find anything that you see on the video to be inconsistent with the limitations that you recommended to your patient?

A No.

Q Doctor, last thing I want to ask you about is your most recent visit with Mr. Hansraj which was November of 2024.

A Okay.

(Whereupon, at this time, Senior Court Reporter Victoria Bifulco was relieved by Senior Court Reporter Noah Collin.)

DIRECT EXAMINATION (CONTINUED)

BY MR. OCCHIOGROSSO:

Q. Bear with us. Just one second. We are trying to find that. So this is also Plaintiff's Exhibit No. 31. This is another page from Plaintiff's Exhibit 31. Do you see here, Doctor, the date of the visit, November 4, of 2024?

A. Yes.

Q. OK. Please tell under the circumstances, what were your findings when you examined the patient, on this date?

Well, Doctor, let me draw your attention to a particular section. In the HPI section, which you told us before is history of present illness; is that right?

A. Yes.

Q. There is a line where it says the reports ongoing low back pain which has increased over the last six months with numbness and tingling to bilateral LE. What does bilateral LE mean?

A. He is having numbness and tingling into both legs.

Q. To you, as a spine surgeon, what is the significance of a patient reporting ongoing low back pain within increased over the last six months with numbness and tingling to bilateral lower extremity?

A. He has something going on with the lower back giving him sciatic symptoms.

Q. Below, further down on the page, the occupation, it

reads mechanic presently working desk duty. Is this is information Mr. Hansraj provided to you?

A. Yes.

Q. OK. Go to the end please, the assessment portion at the bottom.

A. OK.

Q. It reads patient is a 34-year-old male who comes in with ongoing complaints of neck and low back pain as result of accident that occurred on August 20, 2020. That accident was a little over four years before this visit. Based upon that passage of time since the treatment of the patient, do you have a opinion to a reasonable degree of certainty as to the permanency of the incidents Navindra Hansraj suffered in the accident?

A. I believe his injuries were permanent.

MR. OCCHIOGROSSO: Thank you very much, Doctor. Nothing further time at this time.

THE COURT: Thank you counsel. For the plaintiff. Now we will go to the defendant.

MR. TOWNSEND: Thank you, Judge. Before I get started may we have an exhibit?

THE COURT: Any time.

MR. TOWNSEND: Just a few minutes, very short time. I am ready to go.

THE COURT: Let's take the jury to the back.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon the jury exited the courtroom.)

THE COURT: Counsel for the defendant, what do you need?

MR. TOWNSEND: I just need --

THE COURT: You need time or you just need the exhibits?

MR. TOWNSEND: The exhibits. I just want to have something queued up so.

THE COURT: In the computer?

MR. TOWNSEND: Yeah, in the computer. Basically, so you know, I am using up the image or one of the images.

THE COURT: Whatever. Work it up. You do not need the images, the demonstrative?

MR. TOWNSEND: No, I don't. We don't ever need to see those begin.

THE COURT: It's 11:52. Let's get back at 12 o'clock. You have eight minutes.

MR. TOWNSEND: I appreciate it. Thank you, Judge.

(Whereupon a recess was taken.)

THE COURT OFFICER: All rise. Jury entering (.

THE CLERK: Please be seated jurors. Thank you.

Case on trial continues. Do both sides can stipulate to the presence and proper seating of the jury?

MR. OCCHIOGROSSO: Yes.

MR. TOWNSEND: Yes.

THE COURT: Have a seat. For the next section of the trial, cross-examination, counsel for the defense will question the witness if you choose to.

MR. TOWNSEND: Thank you, your Honor. May I proceed?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. TOWNSEND:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. Thank you for your testimony this morning. I would like to ask you questions on just about every topic you covered. First, if we could cover a little background. You are the head of an orthopedic spine practice; is that correct?

A. Yes.

Q. And the business of your practice is orthopedic spine surgery; fair enough?

A. Yes.

Q. And how many surgeons do you have under you, working for you either as your partners or your employees or whatever. I don't care what the business arrangement is, just how many surgeons are involved in your practice?

A. Four.

Q. OK. That is New York Spine Institute; is that what you call it?

A. Correct.

MR. TOWNSEND: We can put up the page. I believe it is Exhibit 27.

MR. SMITH: The MRI is 26.

MR. TOWNSEND: 26.

BY MR. TOWNSEND:

Q. Doctor, I am going to show you an image. It has already been received into evidence. It is an image that I believe -- this is what we are working on -- is the MRI image that was part of the medical part that you discussed with the jury; is that correct?

A. Yes.

Q. Do you see what is up on the screen?

A. Yes, I do.

Q. There are a few images in sequence on the CD that show this the spine. I have chosen this one. I may scroll to ones that are close by; OK?

A. OK.

Q. So the first question I want to go through with you is you spoke about degenerative conditions in your direct testimony; right?

A. OK.

Q. "OK." Well, OK -- for the record, just yes or no going forward; OK?

A. Yes.

THE COURT: So this is with what happens. Remember when I said about uh-huh. I forgot to mention also OK, because we don't know what that means. Sometimes it's yes, sometimes it's no. For clarity of the record, I will ask you to inform us what that means; OK? Thank you.

MR. TOWNSEND: Thank you, Judge.

BY MR. TOWNSEND:

Q. It is your testimony we want, not my question without an affirmative answer; fair enough?

A. Yes.

Q. You described degenerative conditions. I thought I heard you say to the jury that degenerative conditions are something you wouldn't find in a person of Mr. Hansraj's age at the time this image was taken. Did I get that wrong? You tell me.

A. That is basically what I said. A 30 year old typically does not have much of degenerative changes.

Q. This image which, you know, was taken about a month after the accident; correct?

A. Yes.

Q. Thank you. Degenerative changes are clearly shown; correct?

A. What is clearly shown here is damage to C5 and C6.

Q. We are going to get to that. I heard your testimony, the jury heard it. We will get to that.

What I am asking about is with respect to the cervical spine. Do you see my pointer? Is that coming you on your screen?

A. Yes.

Q. That's the area you have been talking about; right?

A. Correct.

Q. And we are talk to talk some more about that. But I'm talking about the disk spaces above and below. There is degenerative conditions shown there as well; correct?

A. I don't believe so. This looks like well hydrated above and below.

Q. I am looking up above there. They look pretty dark to me. You don't see that? You're the Doctor. You tell me.

A. I am looking at the disk above and below. They look well hydrated.

Q. So, there's no degeneration there?

A. We need to go through all the images, not just one.

Q. That's fine.

MR. TOWNSEND: Danielle, scroll to the next image we discussed. Can you scroll the other way? OK.

BY MR. TOWNSEND:

Q. What about this image, Doctor?

A. Once again, this shows severe disk herniation at the level. Everything else above it looks well hydrated.

Q. So your testimony is there's no degeneration evident

by your reading of this film, except for this area where there's the disk herniation you discussed; correct?

MR. OCCHIOGROSSO: Objection to the phrasing of the question.

THE COURT: Sustained.

Counsel, rephrase your question.

BY MR. TOWNSEND:

Q. Doctor, let me ask you this. Let's just talk about the disk in question. That's dark there; correct?

A. Yes.

Q. It should be like the one below it, correct, if it's healthy; correct?

A. If it's healthy, yes.

Q. Well, is it your testimony that that dark -- first of all, what is that darkness?

A. Just loss of fluid.

Q. Is it your testimony to this jury that that condition that is shown there, that loss of fluid, happened one month earlier in the accident or is that a condition that was developing whether or not Mr. Hansraj was complaining of it?

A. That disk has been damaged. The disk has come out of where it's supposed to be. So the internal architecture of the disk is not going to look normal.

Q. Doctor, this accident happened, you know, on August 15 of 2020; correct?

A. Yes, yes.
Q. On August 14, of 2020, that disk space was dark; right?
A. Yes.
Q. So --
MR. OCCHIOGROSSO: Objection.
MR. TOWNSEND: I'm sorry?
MR. OCCHIOGROSSO: Objection.
MR. TOWNSEND: The doctor answered the question.
THE COURT OFFICER: Let the Judge talk.
MR. OCCHIOGROSSO: Objection to the phrasing of the question. He said the day before the accident was the disk space dark. I don't know that it was clear.
MR. TOWNSEND: The doctor gave the affirmative answer.
BY MR. TOWNSEND
Q. Do you want to change your answer, Doctor?
A. May I here the question again.
Q. Yes.
THE COURT: OK.
BY MR. TOWNSEND:
Q. Doctor, we know the a month after the accident, this is what Mr. Hansraj's cervical spine looked like at least in this MRI; correct?
A. One month after, correct.
Q. One month after. What I'm asking you now is you know

that the accident occurred on August 15, correct, 2020?

A. Correct.

Q. On August 14, the day before the accident, that dark space, that was dark then too; was it not? Using your medical knowledge and your understanding of the way disk disease progresses?

A. First of all, thank you for rephrasing or reiterating the question. Now that I hear it correctly, we have no way of knowing how this looked the day before. But -- would you like me to proceed?

Q. Please.

A. With my knowledge and doing this for almost thirty years, if I you buy a Dunkin Donuts today, you keep it out on your counter for a couple of days, it's going to get stale in a couple of days. It's not going to be normal by the weekend if you buy it on Monday.

This is thirty days out. And that disk, to me, looks like it has been damaged and indeed was a result of this accident. So what you are calling degeneration, yeah, it degenerated because it's no longer normal. It was ruptured, it was herniated.

Q. Doctor, you have seen this condition in your patients many times; correct?

MR. OCCHIOGROSSO: Objection. What condition are we referring to? A traumatic herniation or something else?

MR. TOWNSEND: Judge.

THE COURT: Let the counsel finish his question. Then you can have a an objection.

BY MR. TOWNSEND:

Q. Doctor, you have seen disk degeneration exactly as depicted in this image in your practice in patients who have not been in an automobile accident; fair enough?

THE COURT: Do you understand the question?

THE WITNESS: It's very broadly phrased.

THE COURT: Rephrase the question, please.

MR. TOWNSEND: Sure, sure.

BY MR. TOWNSEND:

Q. The conditions shown in this cervical spine image, that you have seen in your practice, that's not always the result of an automobile accident; correct?

A. Yeah, that's true.

Q. So in other words -- well, explain to the jury -- and I would like to use this image -- how are you saying that there is evidence in this image of recent trauma? That is really where my question is. Where is the evidence of recent trauma?

A. What looks here to be recent is the actual portion of the disk that is herniated. If you put your pointer on the little white portion in the spinal canal. Go to the canal where the damage is. If you look there, that's white. That shows something white, which shows fluid content localized in one

area. That happens to be the same area where that disk material has popped out, is shown on that picture. He's thirty years old. He had no problems before, never treated before. Now a point in time, the car gets slammed, and now he has pain. A month later, the MRI clearly shows a herniation, and it shows that the fluid content of that disk is no longer white like the one -- look at the one below it. That is bright white, perfect disk. The disk above it is not perfect anymore because it has been damaged.

Q. It is your testimony that what is shown here in this image is proof, by your testimony, of injury that occurred in the accident?

A. Within a reasonable degree of medical certainty, which is more proper probable than not, what we are seeing in that pictures 30 days out from the insult of the injury on August 15, is a result of the accident.

Q. OK. Let's talk about what else is shown in that image. What is the white material we see there?

A. Spinal fluid.

Q. The darker material in the middle?

A. Spinal cord.

Q. Now, the spinal cord is what you don't want to touch; right?

MR. OCCHIOGROSSO: Objection to the form of the question. I am sure there is many things you don't want to

touch.

THE COURT: He is an expert. You can answer if you know.

MR. TOWNSEND: I will rephrase the question.

THE COURT: All right.

BY MR. TOWNSEND

Q. When you touch the spinal cord, that is where the pain begins; correct?

A. The pain originates from the nerve, sir, counsel.

Q. I understand. Can we agree that there is no encroachment onto the spinal cord in this image?

A. Well, that is true. Why is the spinal cord indented there counsel?

Q. That is another question. That is my question to you. Is that condition, it could be -- doesn't necessarily arise from this automobile accident one month earlier; correct?

A. No, I don't agree with that. I believe we have an accident and as we just stated, this is a painful condition. So if it is a painful condition, why did he never have pain before the accident?

Q. How do you know he didn't have it?

A. Well, why did he never have an MRI before the accident?

Q. All right. Let me back up. He came to you when, in November of 2020; is that right?

A. Yes, sir.

Q. On the very first day that you saw Mr. Hansraj, it was your opinion that he should undergo this fusion surgery; correct?

A. Correct.

Q. Doesn't that seem a little bit aggressive, Doctor, to go into this kind of surgery?

A. Well, why is it aggressive? Why do you think it's aggressive?

Q. You have testified that -- you indicated earlier that doing the surgery might be akin to -- you gave a metaphor of having a pebble in your shoe or a splinter, something you would want to take out. But then when counsel corrected you, I mean, the surgery was a little bit more than taking a pebble out of your shoe; correct?

A. Correct.

Q. Why would you not have at least recommended some conservative treatment?

A. Because he underwent conservative treatment, he had physical therapy for three months, he had injections for three months, he had chiropractic treatment for three months. Nothing was helping. If you take the boards, which he asked me earlier about boards, and I am an assistant clinical professor in orthopedic surgery at NYU, where I train the residents and the attendings.

The Board answer, if you have a disk herniation that is less than 6 to 8 weeks, you don't operate on those. The person becomes a surgical candidate at 6 to 8 weeks. We are at 3 months. That is 12 weeks. So 12 weeks the patient has been putting up with that pebble in the shoe. Either you live with it or you take it out. It is not aggressive. What might be more aggressive is to relegate the patient to ongoing pain.

Q. Well, Doctor, wouldn't it have been a good idea to send him to some conservative treatment that you recommended?

A. No, because he already had conservative treatment, counsel.

Q. By whom?

A. I can't tell you specifically the doctor sitting here today, but I know in -- my records indicate -- my records indicate the patient -- physical therapy is what was done, physical therapy, chiropractic, cervical epidural steroid injection, and diagnostic imaging or treatment the patient has received to date.

Q. OK. By who?

A. Well, I don't have the doctors who did it.

Q. I will tell you, Doctor. I'm going to ask you to assume that the physical therapy that Mr. Hansraj went to, and the chiropractic treatment that he went to, are care providers that were recommended to him by his attorneys; OK?

A. OK.

Q. Fair enough?
A. OK.
Q. You don't know who those providers are; correct?
A. Correct.
Q. Would you at least agree that those providers, the providers who are rendering conservative care should be good at what they do?
A. I would have no reason not to think they are not good.
Q. OK. Maybe we are just misunderstanding each other here. You don't know who those providers were; right?
A. Sitting here today, I have no recollection.
Q. OK. Do you have conservative providers, whether it is physical therapy or chiropractic, do you have people you like to recommend?
A. We have physical therapy at our office, yes.
Q. OK. Did you recommend that Mr. Hansraj do any of that treatment with your people before deciding that he should have this fusion surgery?
A. No, because I know he already had the conservative treatment.
Q. Right. But you don't really know the quality of it. All you know now is that is -- that treatment that he had was by providers recommended to him by his attorneys; right?
A. OK. Yes.
Q. So what I am asking is: Is a fusion surgery

sufficiently invasive, and whatever words you used, serious, that you would want to be sure it was something that was actually needed before you did surgery?

A. Well, I know it is needed because I tell all of my patients, and I said this earlier, if you can live with the pain, you don't have to have surgery. If you can't live with the pain, then this surgery is the perfect surgery to try and help the patient.

Q. OK. This surgery is the gold standard of surgery for this condition; right?

A. Exactly, yes.

Q. OK. So maybe this is where we misunderstand. You believe in this surgery; correct?

A. Yes.

Q. Your organization, you bank out about how many of them per year, a couple of hundred?

MR. OCCHIOGROSSO: Objection.

A. I don't bank out any --

BY MR. TOWNSEND

Q. Your organization performs over 500 of these per year, is that about right?

A. We have five surgeons, yes.

Q. In fact, I think it is more than that, is it not?

A. Well, I know how many I do --

Q. How many do you perform.

A. -- how many I perform.
Q. How many?
A. I would see about 4,000 patients yearly with my PAs, and I probably indicate about 200 -- 250 surgeries for the whole year, which comes out to about, maybe 15 a month. So every week, about 3 or 4 surgeries a week.
Q. OK. These are good surgeries, they tend to be successful?
MR. OCCHIOGROSSO: Objection.
MR. TOWNSEND: I will withdraw.
THE COURT: It is cross-examination.
MR. TOWNSEND: OK. There is the question.
BY MR. TOWNSEND
Q. This is a good well understood surgical procedure; correct?
A. Yes.
Q. And have your patients had good results with these?
A. I have had patients that had good results, I have had some patients that didn't have good results.
Q. You saw some video earlier of Mr. Hansraj. He looks like he had a pretty good result; right?
A. Yes.
Q. Are you satisfied with his result?
A. Yes.
Q. OK. I would like to show you another clip of the

video.

MR. TOWNSEND: Judge, this is longer. It may take us close to the lunch break. It is unabridged version. This is Exhibit No. --

THE COURT: We have 37 minutes. It's not 37 minutes; right?

MR. TOWNSEND: No, no.

THE COURT: OK.

MR. TOWNSEND: Well, I could make it that, but I won't.

BY MR. TOWNSEND

Q. Doctor, I'm going to show you surveillance video from, I believe it is starting in --

MR. TOWNSEND: What is it Danielle, 2022? You have the month on that?

THE COURT: No, it's all right. I need to know what the exhibit number we are discussing. 47?

MR. TOWNSEND: 47.

BY MR. TOWNSEND:

Q. June through August of 2022. How far is that close to surgery, Doctor?

A. About a year and a half.

Q. About a year and a half.

MR. TOWNSEND: Judge, can we dim the lights?

THE COURT: No.

MR. TOWNSEND: No. OK.

(Whereupon the video was played back).

MR. TOWNSEND: Can we stop here for just a minute?

BY MR. TOWNSEND

Q. Doctor, we have seen a few minutes, we will show you more. Do you see any evidence of limitations or pain in the surveillance you have seen so far?

A. I see him doing legwork.

Q. That is not what I asked you. I asked you: Do you see any evidence of limitations or pain?

A. One thing I saw, his neck seemed a little straight. But otherwise, he appears to be able to do light work.

MR. TOWNSEND: Please continue.

(Whereupon the video was played back).

BY MR. TOWNSEND:

Q. Are you looking at his neck here, Doctor?

A. Yes.

Q. I would like you to stay focused on that please.

(Whereupon the video was played back).

BY MR. TOWNSEND

Q. Doctor, I am going to ask you, rather than interrupting the video, to just raise your hand and let me know when you see any evidence whatsoever of pain or limitation.

MR. TOWNSEND: Please continue.

MR. OCCHIOGROSSO: Objection, Your Honor. He is

asking for the doctor to open-endedly raise his hand.

MR. TOWNSEND: Just to stop us, so we can show the jury --

MR. OCCHIOGROSSO: That is not a question.

MR. TOWNSEND: Well, I would ask leave of the Court.

THE COURT: Do you understand what he is asking you to do, Doctor.

THE WITNESS: I could raise my hand right now.

BY MR. TOWNSEND

Q. OK. Go ahead.

A. Look at the back of his neck, and look how straight it is. Look how he is bending forward to get close to the ground; right?

OK. Look at me right now, where is my chin? It is almost close to my chest --

Q. Probably a physical condition --

MR. OCCHIOGROSSO: Judge, he brought it up. The doctor is answering the question.

THE COURT: All right. This is how it works. There is a person in front of us who writes everything we say. If everyone speaks, we are not going to have a complete record. I would ask that you allow for -- you are asking the question. Doctor, please answer the question. What is your answer?

A. So, I have a normal neck. If I look downright now, my

chin is almost touching my thoracic -- my chest wall. Look at this picture here, the back of his neck is very straight. He is actually bending forward to try to do this sweeping motion; right? To take care of his arm. So it's just inherent to me, he is not doing this (indicating), he is actually keeping his neck like this and doing this (indicating). So there is a difference between doing that, versus looking down, and then doing this, (indicating).

Q. So your testimony --

A. So I think he is compensating for whatever he might feel in his neck. Well, one, we know he had a good result. Number two, my notes show he got back good range of motion in one of my last office visits. So I really don't see what this shows. I also told the patient: Try not to lift anything heavy about 20, 25 pounds. I know about power washers, I have power washers. They are heavy, but that's not an expensive power washer. That is one of the cheap ones, it's small. It probably doesn't weigh more than 50 pounds. He split lifting that up with, it looks like his father. They probably had about 25 pounds a piece. I don't think it was more than a 50-pound power washer.

Q. Your testimony then, Doctor, is that all of this imagery you have seen, proves that Mr. Hansraj is pain free and has limitations; correct?

A. No. What it proves to me is that he had a good

result. The patient still has limitations. We know he has limitations. One lumbar is fused. It is nowhere near normal. None of this negates the fact that he was in an accident with severe pain that didn't get better with conservative treatment, that ultimately required surgery that made him get better.

Q. Doctor, we have heard your testimony about the degenerative condition and what you say is causation. Do you know doctor Marc Katzman, he is a neuroradiologist?

A. No.

Q. OK. I am going to ask you to assume, OK, that Dr. Michael Katzman who will appear at this trial, OK, probably next week, possibly next week, that he looked at that image that we just discussed with the jury, and these were his conclusions: MRI of the cervical spine performed on September 24 of 2020, that is the one we are talking about; right?

A. Yes.

Q. Reveals mild chronic single level degenerative disk disease of the cervical spine without evidence of recent traumatic injury. Let me just stop right there. You disagree with that opinion; correct?

A. Is that all he wrote.

Q. No, no, there is more, and we'll get to it. At least as far as that goes, are you in agreement with Dr. Katzman?

A. No, I don't believe -- well, there is --

Q. Doctor, that's a yes or no question.

A. I can't answer yes or no, but I can answer it.

Q. Let me go on. My question to you though: Do you agree with that sentence, and you are unable to answer; correct?

A. I answered prior, counsel, I believe it showed degeneration within 30 days of the initial injury.

Q. Dr. Katzman says the MRI reveals mild chronic single level degenerative (MATERIAL IS BEING DISPLAYED ON THE SCREEN) disk disease of the cervical spine without evidence of recent traumatic injury. That is the important part that we are talking about; right?

A. I don't know how he can state that.

Q. Well, we will find out when he comes here. But you disagree with that; correct?

A. Yes, absolutely.

Q. OK. Because you found evidence in that bright spot that you discussed; correct?

A. Not only do we see it on the bright spot in the picture, I actually saw it in the operating room.

Q. I heard that piece of testimony. Let me ask you this: That bright spot is fluid, by your testimony; correct?

A. Yes.

Q. Is there any chance that that bright spot might be some chronic calcification?

A. Absolutely not. That is in the disk itself. It is not the bone.

Q. Because that is what you saw with your naked eye not what's revealed on the MRI?

A. No. On the MRI, we clearly saw the bright spot in the disk where you can see the bone. The bone is where you get spasms. You don't get spasms on the disk, you get spasms on the bone. You are asking me did I see that bright spot being a spasm. No. That bright spot is where the disk or jelly that is popped out of the doughnut, and we are seeing on the MRI, and I saw in the operating room.

Q. So I guess it is fair to say then, you don't agree with Dr. Katzman; right?

A. Absolutely. He didn't have the luxury of seeing him in the operating room.

Q. He didn't have the luxury of?

A. Seeing it in the operating room.

Q. I see. He goes on to say: The disk osteophyte complex at C5, 6 is, by definition, degenerative and non-traumatic. Do you agree with that statement?

A. There is not a disk osteophyte complex here. We see that in 40, 50 years old, you don't see that in a 30-year-old. You are trying to me that has been developing since he is 25 years old? That is absurd.

Q. So you don't agree with him; correct?

A. Absolutely not.

Q. I'm going to ask you to assume that Dr. Katzman also

gave the following opinion or will give the following opinion. All the degenerative changes that I just discussed with you, that you don't agree with, are clearly, clearly chronic, preexisting, and unrelated to the accident of August 15, 2020. I am asking you to assume that will be Dr. Katzman's testimony. Do you disagree with that?

A. Yes.

Q. For all of the reasons you have told us so far; correct?

A. Exactly.

Q. I am going to ask you to assume that in the view of Dr. Katzman, the neuroradiologist, there is no compression fracture, traumatic subluxation or recent appearing traumatic disk herniation. There is no evidence of recent traumatic injury to the cervical spine on the basis of this MRI exam. So, do you agree with that?

A. I agree there is no fractures, no broken bones because this was not an accident, for example, where he was riding a motorcycle and he get's thrown off his motorcycle and he breaks his neck. He didn't break his neck. He damaged his disk. I agree that there is no bony injury, but I don't agree that he is putting a time frame on when that disk herniates, which we clearly see a disk herniation one month after the accident.

Q. You are not hearing my question.

MR. OCCHIOGROSSO: I am pretty sure he is. I am

pretty sure he just answered the question.

MR. TOWNSEND: Let me try again. Doctor --

THE COURT: Counsel, please just ask your questions without commentary.

BY MR. TOWNSEND

Q. I'm going to ask you to assume that Dr. Katzman will testify that there is no -- that the degenerative changes that we are talking about, are clearly chronic and preexisting, unrelated to the accident of August 15, 2020. And that there is no evidence of recent traumatic injury to the cervical spine on the basis of the MRI exam. That is the question, on the basis of the MRI exam. We are just talking about the image here; OK? So do you disagree with that?

A. Absolutely. If he said there is no damage, this is all chronic, how does he explain the disk herniation? How does he explain the patient never had problems with his spine before?

Q. Doctor, the proposition that Dr. Katzman is putting forth here, that I am asking you to either disagree with or if you don't, explain why, has to do with what is shown on the MRI image, not what you saw, or you say you saw in the operating room. And I will talk about that in a minute. Just in terms of the image itself, Dr. Katzman saw chronic degeneration clearly unrelated to the August 2020 accident in the film. Do you agree with that?

A. No, that is a flawed opinion, I believe.

Q. OK.

A. And it's based on the MRI. You don't even have to take me looking at it in real life. That MRI shows a bright signal where the disk material has popped out of the disk. That indicates that that is a fresh herniation. That is not something chronic.

Q. Is there some other explanation that you might consider for that bright spot that you see there?

A. Where the herniation is?

Q. Yeah.

A. No.

Q. Where that condition is shown?

A. The condition of the herniated disk? The condition of the herniated disk that arose from this trauma.

Q. OK.

MR. TOWNSEND: Can we continue, Danielle?

(Whereupon the video was played back.)

BY MR. TOWNSEND:

Q. Do you see that, he had to bend his knees?

MR. TOWNSEND: Can you roll that back, please?

A. I see he is bending down at the knees to try to get closer without bending more with his upper back and neck. He could have easily have gone more like this, but he didn't. He actually was -- that is a clear evidence right there, he is bending his knees to brace himself to try to get closer to the

ground with a power washer.

Q. So it is your testimony that this film, this piece of the film is evidence of limitation and pain; correct?

A. Yeah. Because I never bend my knees when I power wash my driveway.

Q. We are not really asking about you, Doctor. We are asking about Mr. Hansraj.

A. He is bending his knees trying to get closer, and not bending his neck more to see what he is doing.

Q. So, Doctor, your testimony then is that this is proof of plaintiff's limitation and pain, correct?

A. I believe there is evidence of limitation in these pictures.

(Whereupon the video was played back.)

MR. TOWNSEND: Can we roll that back please.

BY MR. TOWNSEND

Q. Doctor, you saw any evidence there of the pain or limitation?

A. No.

Q. Doctor, can we agree he is back to normal with the limitation that you described? He does have a fusion; right? We disagree on the causation part, but regardless, he is back to his life now; correct?

MR. OCCHIOGROSSO: Objection, compound, form of the question.

THE COURT: Sustained. Rephrase your question, counsel.

BY MR. TOWNSEND

Q. Doctor, this is the summer of 2022. He is back to his life; correct?

MR. OCCHIOGROSSO: Objection. I don't understand. What does that mean, he's back to his life? Nobody ever said he left his life, Judge.

THE COURT: Do you understand the question? Can you answer the question?

A. Could you be more --

THE COURT: So he is hesitating. Rephrase the question, counsel.

MR. TOWNSEND: I will.

BY MR. TOWNSEND

Q. Doctor, do you see, in those images, any indication of a man who is incapable of playing with his daughter?

A. We know he hasn't gone back as a mechanic. He worked light duty. He is not doing heavy labor right now like he used to. I know that about him. Whether he is power washing, even with a power washer, you can hold a power washer with only one hand. I really don't see the medical significance of all of these videos.

Q. Doctor, you are practically a lawyer.

MR. SMITH: Objection. Objection.

THE COURT: Counsel, just ask a question, please.

BY MR. TOWNSEND:

Q. Do you know what Mr. Hansraj is doing now?

A. My notes indicate he is not working as a true mechanic. He has more of a desk work. Before, he used to be a mechanic.

Q. That is what your belief is now, that he is just stuck behind a desk; is that correct?

A. That is what my note indicated as of last year.

Q. You mean back in 2024?

A. Yes.

Q. When had you seen Mr. Hansraj before November of 2024?

A. It was, like, January of 2022.

Q. OK. So from January of 2022 to November of 2024; right?

A. Uh-huh.

Q. No visits to you whatsoever; correct?

THE COURT: Sir, remember what I told about uh-huh. Sorry. We don't know what that means.

A. Correct.

BY MR. TOWNSEND:

Q. And you didn't want him to come in, you didn't ask him to come in; correct?

A. No.

Q. His treatment with you and the subsequent follow-up

care was concluded; correct?

A. Correct.

Q. And it was concluded before summer of 2022?

You can look at your notes, they are right in front of you?

A. I just stated I saw him in '22, counsel, right? I saw him in January of 2022. That is the last time in 2022 I saw him.

THE COURT: Are you almost done counsel?

MR. TOWNSEND: We can take a break. I still have a way to go.

THE COURT: OK. It is 12:54. We must close the courtroom everyday at 1 o'clock due to the supervisors. I am going to ask the court officer to release you for lunch. Please be back by 2:00. We will resume after that. Actually, you can come back at 2:05. So that this way, you will have 5 minutes for whatever. And, that was also -- that allows us to, if there are any legal issues to discuss, we have that beforehand. The officer will tell you where to meet, right? Everyday, it is also like a different thing. I don't know about that. Please take care. We will see everybody again at 2:05 p.m.

Doctor, I will release you as well. I remind you that you are still in the middle of examination, and therefore, you must return to court at 2:05.

THE WITNESS: Yes, Your Honor.

THE COURT: All right. Take charge.

THE COURT OFFICER: All rise. Jury exiting.

(whereupon the jury exited the courtroom).

THE COURT: Thank you, Doctor.

Before I release anybody, counsel for the plaintiff, anything that the Court can assist you with?

MR. OCCHIOGROSSO: Yeah. Scheduling. It doesn't have to be on the record.

THE COURT: All right. Very good. Counsel for the defendant, anything that we can assist you with?

MR. TOWNSEND: Not at this time, Judge. We thank you very much.

THE COURT: Thank you.

(Whereupon, the luncheon recess was held and the following was recorded and transcribed by Official Court Reporter VICTORIA A. BIFULCO.)

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

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THE CLERK: Come to order.

THE COURT OFFICER: All rise. The jury is entering.

(Whereupon, at this time, the jury enters the courtroom.)

THE CLERK: All rise. The case on trial continues.

THE COURT: Please have a seat.

Good afternoon, everyone.

THE CLERK: Both sides stipulate to the presence and proper seating of the jury?

MR. OCCHIOGROSSO: So stipulated.

MR. TOWNSEND: Yes.

THE COURT: Continue your cross examination.

MR. TOWNSEND: May I, Judge?

THE COURT: Please.

Q Good afternoon, Doctor.

So you understand then that there is a dispute on the question of what you showed us on the image in terms of causation?

A Yes.

Q Okay. I ask you to assume Dr. Katzman would come to

court and testify that the conditions that were shown in that MRI image that we showed the jury this morning were degenerative, chronic and not related to any trauma of August of 2020.

You disagree with that, correct?

A Correct.

Q Okay. And if I understood your testimony also, you feel the gold standard is not the MRI image itself.

The gold standard by your testimony is your observation as a surgeon with the glasses, correct, of the patient; is that correct?

A The gold standard is a study.

Q I'm sorry?

A The gold standard is the study. But I have the benefit of being able to see that actually when I do the procedure.

Q So, in other words, and, again, I am just trying to understand your testimony.

Is it your testimony that what you see and what you testified that you saw in the operation itself is more revealing than what was the revealed in the MRI image that I showed the jury this morning?

A I think what I saw in the operating room is verified by what I saw in the MRI before the surgery.

Q Well, we have already established that you and Dr.

Katzman, the radiologist who will be here, disagree on the MRI film study in terms of what the study itself shows; is that correct?

A That's what you said, yes.

Q Well, I read you -- I asked you to make an assumption based on an opinion he gave during the course of litigation, and he will be here in court.

So there is this disagreement, correct?

A Correct.

Q You feel, however, or I believe you testified that in your opinion, your opinion should have greater weight to some degree because you had, I think you said, the luxury of actually being there doing the operation and seeing with your eyes the condition that we are discussing, correct?

A Correct, and knowing what the patient was experiencing before the operation.

Q Well, that's a different part. I am just talking about what you are able to see.

You think -- you believe and you have testified to the jury that what you saw in the operation adds to your interpretation of the MRI film, confirms your interpretation, correct?

A Correct.

Q So during the course of the litigation did you share the intra-operative photographs with the attorneys?

A There are no photographs taken during surgery.
Q You as a matter of practice do not take intra-operative photographs?
A Not of spine surgery.
Q Is that ever done, or is it just that you don't do it?
A I never heard of anybody under spine surgery doing photographs. It's generally orthopedic surgeons when they are going into your shoulder, they are using a camera, so they would probably take photographs.
Q So no such photographs would exist?
A Correct.
Q So, well, respectfully, Doctor, we will have to take your word for what you saw.
A Exactly.
Q Do you know -- I think you testified on this, but I am not quite sure I caught it.
You know that the plaintiff's lawyers referred him to you, correct?
A No. I stated earlier I didn't recall who sent him there.
Q Would you be surprised to learn that the plaintiff testified at other proceedings he testified that his lawyers referred him to you?
A No, I wouldn't be surprised.

Q Because that happens frequently in your practice, correct?

A There are attorneys that recommend their clients to me.

Q Do you know Elliot Ifraimoff?

A Yes.

Q And he is one of the attorneys that sends clients to you on a regular basis, fair enough?

A The name is familiar, yes.

Q On the topic of migraines, please help me understand this. I did not see any reference to a complaint of migraine headaches in any of your reports, and there are only four of them, by my count. I saw no reference to migraine headaches until the report after the surgery.

Am I correct on that?

A Yes.

Q Okay. So at least as far as your reports go, neither you nor any of your staff recorded that plaintiff was complaining of migraine headaches, correct?

A Correct.

Q And that was also true all the way back -- well, withdrawn.

Did you review that conservative treatment that you discussed earlier in your testimony? Did you personally review it?

A Sitting here today I don't have my notes in front of me.

Q Do you do that sometimes?

A It's my usual, customary fashion to review other notes.

Q What I am saying -- I am not saying it very well, so let me rephrase it.

Did you read the physical therapy records related to Mr. Hansraj before you did the surgery?

A Sitting here today, I don't recall.

Q Maybe yes, maybe no, you are not sure?

A Correct.

Q Did you read the physical therapy records of Mr. Hansraj prior to the surgery?

A Likewise, sir, all those records I don't have in front of me today, and I don't recall.

Q All right.

MR. TOWNSEND: Judge, I took a little time with Danielle over the break to edit the video so it can be a little punchier and move a little faster.

THE COURT: Whatever you have, go ahead.

I'll give you the same courtesy that I gave to plaintiff.

MR. TOWNSEND: Thank you.

MR. OCCHIOGROSSO: Judge, this is going to

Defendant's A and B are short versions. So this is Defendant's B.

THE COURT OFFICER: Do we have any of them marked?

MR. OCCHIOGROSSO: We should. In the beginning we should have. I think because they were digital copies we talked about the fact how they were going to be marked.

THE COURT: It's a different copy.

MR. TOWNSEND: Yes. I sent him both. I sent him everything. Then I sent him the shorter version so we could --

THE COURT: What is the shorter version number?

MR. TOWNSEND: That's Defendant's A and B.

THE COURT: Of what number?

MR. TOWNSEND: A is 2022.

THE COURT: No. Exhibit number.

THE CLERK: They are defense exhibits.

MR. TOWNSEND: Defendant's Exhibits A and B.

THE COURT: Which one is this one?

MR. TOWNSEND: This one will be Exhibit B.

THE COURT: Defendant's B will be displayed.

Q So doctor --

MR. TOWNSEND: May I proceed, Judge?

THE COURT: Go ahead.

Q Doctor, before I ask Danielle to roll the video --

THE COURT: So can you stop it because there is a question.

MR. TOWNSEND: We are going to do it straightforward.

Q Doctor, have a look at your screen. December of 2023.

(Whereupon, at this time, the video is playing in open court.)

MR. TOWNSEND: You can stop it there, Danielle.

Q Doctor, did you have an opportunity to see what we just showed in the video?

A Yes.

Q Is it your testimony that this portion of covert surveillance video reveals the limitations that Mr. Hansraj is suffering as a result of the condition that you did surgery on?

A With all due respect --

Q It's a yes or no, Doctor.

Is it consistent or not?

A I don't think the video shows me anything regarding disability or not.

What I find interesting as a side note, this is December and the roses are in full bloom. The plants and pots are in full bloom, and he is wearing a light hoodie. It's

almost the middle of the winter.

Q You are saying that this is a staged video or somehow there is something --

A No, I just find it interesting. It's my pick up -- my nature of picking things up.

Q But that is the import of your remark; is that correct?

A Yeah. I don't see any disability in that portion of the film.

Q I'm going to ask you to assume that one of your partners, Dr. McKenna?

A McKenna.

Q Has testified in the past that --

MR. OCCHIOGROSSO: Objection.

THE COURT: All right. Take the jury out.

MR. TOWNSEND: I'll withdraw the question, and just ask directly. I will leave Dr. McKenna out of it.

THE COURT: Whatever you want.

MR. OCCHIOGROSSO: Judge, I made an objection.

THE COURT: Why don't you take them out?

THE COURT OFFICER: All rise. The jury is exiting.

(Whereupon, at this time, the jury exits the courtroom.)

THE COURT: You can have a seat.

The problem is I don't have an officer while he takes them in. We used to have two officers in each courtroom, so it's kind of difficult to -- okay.

Do you want to have the witness here as well or leave?

MR. OCCHIOGROSSO: Judge, I made an objection because there was a question that started with something about a different doctor testifying presumably at a different proceeding. I think it could not be anything relevant or proper about the rest of the question, so I objected at that point.

Then Mr. Townsend said something about, I'll withdraw that, and then he started a colloquy with me about, is that okay with you, Scott, and I don't respond to my adversary in front of the jury.

THE COURT: Okay.

MR. TOWNSEND: I'll just withdraw the question and just ask directly. If you want an offer of proof, I am happy to give it.

MR. OCCHIOGROSSO: I would like an offer of proof.

MR. TOWNSEND: Then I withdraw the question and I'll just ask a different question.

THE COURT: Let me ask you this: Was it in this case that he --

MR. TOWNSEND: No, it was a different case. It was one of his partners who is testifying generally about the type of procedure that was done in this case.

THE COURT: All right.

MR. TOWNSEND: It's really not controversial, but --

THE COURT: If it was outside of this trial and no notice was given, I assume, because he seems to be surprised, then it would be objected and properly sustained.

All right. Let's bring in the jury.

THE COURT OFFICER: All rise. The jury is entering.

(Whereupon, at this time, the jury enters the courtroom.)

THE CLERK: Do all sides stipulate to the presence and proper seating of the jury?

MR. OCCHIOGROSSO: So stipulated.

MR. TOWNSEND: Yes.

THE CLERK: Thank you.

MR. TOWNSEND: May I proceed, Judge?

THE COURT: Go ahead.

MR. TOWNSEND: Thank you.

Q Doctor, is it a fair statement that the surgery you performed, this type of surgery, specifically this surgery has

been -- you have performed it on patients and in the case of young athletes --

MR. OCCHIOGROSSO: Objection.

Q -- returning to contact sports --

MR. OCCHIOGROSSO: Objection.

There is no relevance to how any other patient in the world did or did not recover from this surgery, your Honor.

He is asking about athletes returning to contact sports. We don't know how much money they put into their postoperative care. We don't know how they are ten years later. We don't know anything about that.

THE COURT: All right. Sustained.

MR. TOWNSEND: On the whole topic, Judge?

THE COURT: I don't know what the next question is going to be.

Q My question is, is it not a fact, Doctor, that this surgery that you performed on Mr. Hansraj is performed on athletes who are returning to contact sports?

MR. OCCHIOGROSSO: Same objection.

THE COURT: He is an expert.

I am going to allow him.

If you know.

A Unless you can tell me a specific case, I am not aware of a specific athlete that has had this surgery.

Q How about Peyton Manning?

MR. OCCHIOGROSSO: Judge, this is ridiculous.

Objection.

Unless we are going to talk about every time someone ended up paralyzed by surgery or had a revision surgery.

THE COURT: Counsel, I will sustain your objection.

We remain with this case, counsel.

MR. TOWNSEND: One more time?

THE COURT: I am going to sustain the objection.

I remind you to have your questions with this case.

Go ahead.

MR. TOWNSEND: Shall I stay away from the entire topic, Judge?

THE COURT: You can do whatever you wish.

The objection has been ruled upon.

MR. TOWNSEND: Fair enough.

May I just have the doctor's last answer read back?

THE COURT: Sure. Question and answer.

(Whereupon, at this time, the last question and answer was read by the reporter.)

MR. TOWNSEND: May I proceed?

THE COURT: Go ahead.

Q So you are unaware of any such situation; is that correct?

A Correct.

MR. TOWNSEND: Danielle -- just for the Court's edification, I have just a few more pieces of video. We made them short.

Please.

THE COURT: Is that on Exhibit B?

MR. TOWNSEND: Yes. This is Exhibit A and Exhibit B.

(Whereupon, at this time, the video is playing in open court.)

THE COURT: All right. We are ready to go.

Do you have any other questions?

MR. TOWNSEND: I don't. Thank you, Doctor.

THE COURT: Thank you, counsel.

Is there a redirect?

MR. OCCHIOGROSSO: Very briefly.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. OCCHIOGROSSO:

Q Doctor, you mentioned on cross examination that you are satisfied with the outcome of Mr. Hansraj's surgery.

Does that mean, sir, that Mr. Hansraj is pain free?

A No.

Q Does that mean that he is cured?

A No.

Q Does that mean that he is all better?

A No.

Q Is all pain visible, Doctor?

A No.

Q In the course of watching the videos, did you see a video where Mr. Hansraj was teaching his daughter how to ride a bicycle?

A No.

Q Did you see a video where Mr. Hansraj was picking his son up to put him on the monkey bars in the park?

A No.

Q Did you see a video where Mr. Hansraj was working on cars?

A No.

Q Did you see a video where Mr. Hansraj was lifting anything more than 25 pounds?

A No.

MR. OCCHIOGROSSO: Thank you, Doctor.

THE COURT: Anything else?

MR. TOWNSEND: No, your Honor.

THE COURT: Very good.

That will complete your testimony, Doctor.

You are free to stay or to go. Thank you for coming in at this time.

THE WITNESS: Thank you, your Honor.

THE COURT: You are dismissed.

THE WITNESS: Thank you, your Honor.

(Whereupon, at this time, the witness exits the stand.)

THE COURT: Counsel for the plaintiff, do you have a witness available?

MR. OCCHIOGROSSO: Yes, we do, your Honor.

THE COURT: Please call your witness.

MR. OCCHIOGROSSO: At this time we call Dr. John Vlattas.

Would you like me to go get him?

THE COURT: No, I have my officer get him.

Come all the way up, and bring whatever you need.

(Whereupon, at this time, the witness takes the stand.)

THE COURT OFFICER: Remain standing.

THE CLERK: Raise your right hand.

Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, under penalty of perjury?

THE WITNESS: Yes, I do.

D R. J O H N V L A T T A S, a witness called on behalf of the Plaintiff, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: Thank you, sir.

Please be seated.

In a loud, clear voice, state your name and address.

THE WITNESS: John Steven Vlattas.

THE CLERK: Spell your last name.

THE WITNESS: V-L-A-T-T-A-S.

THE CLERK: Your address.

THE WITNESS: Address is 1510 Jericho Turnpike, New Hyde Park, New York.

That was the business address.

THE CLERK: Zip code?

THE WITNESS: Zip code, 10401.

THE COURT: Good afternoon, sir.

The lawyers will ask you questions. Please answer the questions as they give them to you.

If you hear an objection, stop and I will rule upon it and ask you to continue or stop.

Also, there are times when the lawyers ask questions and you answer un-huh or okay. We don't know what that means.

I would ask you to spell it out whatever is the answer. As you can see, this is a big courtroom, so we need you to project your voice, so that we can all hear. The lawyers will ask you questions, but the answers need to be heard.

THE WITNESS: All right.

THE COURT: Counsel for the plaintiff, you may start.

MR. OCCHIOGROSSO: Thank you very much, your Honor.

DIRECT EXAMINATION

BY MR. OCCHIOGROSSO:

Q Good afternoon, Doctor.

A Good afternoon.

Q Doctor, were you a treating doctor for Navindra Hansraj, the plaintiff in this case?

A No, I was not.

Q Did we on Mr. Hansraj's behalf ask you to evaluate him, review treatment records and offer opinions?

A Yes, you did.

Q And did we ask you to prepare a report in connection with your review of records, examination of Mr. Hansraj and your conclusions?

A Yes.

Q Okay. Have you ever done what you are doing in this

case for the law firm of Block O'Toole and Murphy? Have you ever come to court and testified for one of our clients before?

A Yes.

Q Have you ever testified in a trial where I was one of the trial lawyers before?

A Yes.

Q On how many prior cases?

A I believe once.

Q And was that also here in Queens?

A I'm not sure.

Q I think it was. Okay.

A Okay.

Q Doctor, let me just ask you a few background questions before we get into your evaluation of Mr. Hansraj.

What is -- if you would please, sir, give us your educational background.

A I attended undergraduate Muhlenberg College in Pennsylvania. I then went onto medical school in Philadelphia and Temple University School of Medicine. Then I underwent a one year internship program at St. Lukes Hospital in Bethlem, Pennsylvania, which I rotated through internal medicine, emergency medicine, radiology, orthopedic surgery, neurology.

Then I came to New York to NYU Rusk Institute of Rehabilitation where I performed residency program in physical

medicine and rehabilitation for three years, and then I stayed at NYU through the orthopedic surgery department between Tisch NYU and Bellevue in a fellowship in the spine and sports medicine.

Q And have you -- since then have you worked in a private practice in your field?

A Yes, I have.

Q And specifically what area of medicine do you practice?

A Physical medicine and rehabilitation and pain medicine.

Q Can you tell us what -- go one at a time.

Can you tell us what physical medicine and rehabilitation is?

A Physical medicine and rehabilitation is the medical specialty which basically focuses on treating patients to maximize their functional capabilities. So patients who have sustained significant injuries, amputations, strokes, spinal cord injuries, burns and musculoskeletal injuries such as fractures and spine injuries, that's trying to use different types of treatment such as therapy, occupational therapy, physical therapy, medication management to maximize what their functional capabilities could be.

Pain medicine or pain management basically funnels into that treatment, and that's -- my practice focuses on

musculoskeletal pain management, which is mainly used in injections and medications to treat patients' pain.

Q Have you for a portion of your professional life worked with and treated patients here in Queens County?

A Yes.

Q For about how many years did you have an office and treat patients in Queens specifically in Bayside?

A I was in Bayside, Queens, for approximately 25 years. We just actually moved from there.

Q And now the office is in New Hyde Park?

A Correct.

Q Did there -- strike that?

Are you board certified?

A Yes.

Q What are you board certified in?

A Physical medicine and rehabilitation and a subspecialty certification in pain medicine.

Q Doctor, did there come a point in time when, as I said before, we asked you to review treatment records and evaluate Navindra Hansraj?

A Yes.

Q Okay. Did you examine Mr. Hansraj and author a report on October 9, 2024?

A Yes, I did.

Q Okay. If it assists you in your testimony if you

have a copy of your report with you, I would ask you to just keep that handy, and we can sort of go through your report in the course of your testimony, okay?

A Okay.

Q If you have it ready, what was the first thing that you did in preparing the report with respect to the records that were provided to you?

A I reviewed multiple records that you provided.

Q Okay. Can you give us a sense of a brief summary of what you reviewed?

A Yes. I reviewed the Urgent Care records from Excell Urgent Care Center from August 16, 2020, multiple MRI studies of the cervical spine and the neck and the lumbar spine which is the low back, shoulders, a note of a cervical epidural injection from Dr. Cove in October of 2020, operative report of the cervical spine surgery, which was an anterior cervical discectomy fusion which was in December of -- I mean, yes, December of 2020, and then some physical therapy records, chiropractic records and operative reports regarding right shoulder surgery January of 2022 by Dr. Angle.

Q Let me ask you a few questions on what you just told us about.

One, you mentioned that you reviewed imaging studies for the lumbar spine?

A Yes.

Q Did you note that in your report?
A Yes, I did.
Q And what were the findings?
A There was a left side disc herniation at the L5-S1 level.
Q What is the L5-S1 disc level?
A That's the lowest level of the lumbar spine of the lower back, so that's between the lumbar spine and the sacrum which is just above your tailbone area.
Q When was that study performed?
A That was October 19, 2020.
Q Did you review any diagnostic studies for the right shoulder?
A Yes, I did.
Q Can you tell us what the findings were?
A Yes. That was September 17, 2020, and it was tendinosis of the supraspinatus and infraspinatus or rotator cuff tendons. There was a tear at the supraspinatus attachment. There was also noted some inflammation, bursitis in the shoulder, and a sprain of the acromia clavicular joint which is the joint at the top of the shoulder with some mild arthritic changes, and there was some edema of the humeral head which could be consistent with recent trauma or repetitive stress.
Q Okay. And, Doctor, other than just the review of the

records, there came a point in time where you actually spoke with Mr. Hansraj and performed a physical examination?

A Yes. That's correct.

Q When you spoke to Mr. Hansraj, did you take a history from him?

A Yes, I did.

Q What did you learn?

A Well, he noted that he was a seatbelt restrained driver of a car on August 15, 2020, when a car turned in front of him and he struck that car in somewhat of a head-on collision, which he sustained injuries to his neck, right shoulder and right wrist and the back.

Q Did you in the course of your review of the records, did you see any records indicating that at any point prior to this accident Mr. Hansraj had ever had treatment for his neck, his back or his right shoulder?

A No. There was no report prior to this.

Q Was that consistent with the history you took from Mr. Hansraj?

A Yes.

Q In other words, he did not report any prior accidents or injuries or treatment for those body parts; is that correct?

A That's correct. He did not.

Q Did you also perform a physical examination of Mr.

Hansraj?

A Yes, I did.

Q Can you please walk us through that examination and your recorded findings?

A Yes. His standing posture, he stood with his right shoulder slightly elevated versus the opposite. I examined his neck and cervical spine, and there was tenderness and some mild spasm.

There was well-healed scar on the right lower cervical spine where he had his surgery. His range of motion was limited. I measured that with a goniometer which is a special device that gives you degrees of motion.

Q If you have it recorded, can you tell us what those limitations were in the cervical ranges of motion?

A Yes. He was able to flex or bend his head forward towards his chest 35 degrees, and normal is 50 degrees.

He was able to look upwards or extend the neck to 30 degrees and normal is 60 degrees.

He was able to bend --

THE COURT: What degrees?

THE WITNESS: Sixty.

THE COURT: The extension?

THE WITNESS: Extension was 30 degrees.

THE COURT: Extension was 30 degrees. And the -- what was the 60 degrees?

THE WITNESS: That's normal.

THE COURT: Normal.

Go ahead. I'm sorry.

A The right lateral bending which is basically trying to touch your ear down towards your right shoulder was 35 degrees, and normal was 45 degrees.

Going to the left he was able to do that to 20 degrees.

Turning your head side to side which is rotation, he was able to turn to the right to 60 degrees, and normal is 80 degrees; and he was able to turn to the left 40 degrees, and normal was 80 degrees.

Q Did you perform any other tests regarding the cervical spine in your examination?

A Yes. I performed a Spurling's maneuver which is an examination, a maneuver that you do to see if you reproduce any pain into a nerve distribution.

So his was positive, both sides, the left more than the right, but it did reproduce pain into the left arm.

Q And what is the Spurling's maneuver?

A That's basically rotating your head, side bending it, and applying pressure, and as you apply pressure, it causes compression on the joints, the disc, the nerves. And he had that positive and that was more towards the left.

Q Any other tests with regards to the cervical spine?

A For the cervical spine itself, no.

Q What about the lumbar spine? Did you perform any tests on Mr. Hansraj's lumbar spine?

A Yes. The lumbar spine did reveal tenderness with minimal spasm. There was tenderness on the right L5-S1 facet joint and SI joint. He had limited range of motion.

Q You said he had limited range of motion.

Did you record those limitations?

A Yes.

Q Please.

A He was able to bend forwards, so if he was going down to touch his toes, 55 degrees, with normal being 90 degrees. He was able to bend backwards and extend his back to 20 degrees, and normal was 30 degrees.

He was able to bend towards his right side and reaching down to touch the side of your knee to 20 degrees on the right side, and normal was 30 degrees; and to the left he had full motion at 30 degrees.

He was able to bend to the left fully.

I also performed a straight leg raising maneuver.

Q Tell us what a straight leg raising maneuver is.

A That's similar to the cervical spine where we did the Spurling's maneuver. It's a provocative maneuver. You try to see if you can reproduce any symptoms of nerve irritation, so the straight leg raising maneuver, the patient is lying on the

table on their back, and you raise the leg up without the patient assisting you doing it yourself with the leg straight and the knee straight. Between 30 and 70 degrees if there is reproduction of symptoms, it's a positive test.

Q What does that indicate?

A That there is nerve irritation, inflammation, injury in the low back in the lumbar spine.

Q As you mentioned that there was tenderness and spasm, do you make those findings based on what is known as palpation?

A Yes.

Q Were there any other findings with respect to the lumbar spine?

A No.

Q What about the right shoulder?

A On the right shoulder he had four healed arthroscopic portals where he had the surgery. He had limited range of motion in the right shoulder. His abduction or ability to raise it from the side upwards was 140 degrees, and normal is 180 degrees.

He was able to come forward reaching in front to the head, 155 degrees, and normal is 180 degrees.

He was able to rotate his arm outwards, externally rotate to 60 degrees, and normal was 90 degrees.

He was able to internally rotate which is bringing it

across the body 60 degrees, and normal was 90 degrees.

He was able to adduct it which is bringing it across the body this way 20 degrees, when normal was 30 degrees, and he was able to reach straight backwards extension to 45 degrees, and normal is 60 degrees.

Q You mentioned in your review of records and you just mentioned the scars from the surgery to the right shoulder.

In your review of the records, do you know what surgical procedures were performed on Mr. Hansraj?

A Yes. He had a right shoulder arthroscopy with a labrum repair and anterior and posterior labrum repair.

Q When you say labrum repair, what were the operative findings with respect to the findings?

A There that were tears in the anterior and posterior inferior labrum, and those were repaired during surgery.

Q Can you tell us what that is?

Give us a rough explanation or understanding of what the labrum is, how that works in the shoulder.

A The shoulder sits kind of in a ball and socket, and there is a ring of cartilage around it to make it a little bit more supportive, and then the capsule of the joint also is there, so the labrum gets torn from forces that can go front to back, up and down, and then tear the labrum.

In this case he had the labrum tears but also had some looseness or stretching of the front of the joint

capsule.

Q Is that what is known as instability?

A Correct.

Q How does that come about from a traumatic incident like this car accident, how does someone result in instability of the shoulder joints?

A Typically from a forceful backward forward motion and pulling on the shoulder joint.

Q And what are the resulting symptoms if somebody has that instability of the shoulder?

A Mainly pain, you can get a clicking sensation or popping sensation or feeling that the shoulder is wanting to pop in and out.

Q Based on your review of the records and the history you took from Mr. Hansraj and your physical examination, did you come to any conclusions about what, if any, injuries Mr. Hansraj suffered in the August 15, 2020, motor vehicle?

A Yes.

Q Please share those conclusions.

A Well, he suffered injuries to his cervical spine with C5-6 disc herniation with the subsequent surgery with residual findings of neurological abnormality and motion limitations.

He sustained right shoulder injury. Labrum tears instability which required the right shoulder arthroscopy.

He had a left shoulder sprain. That improved and

resolved. He had a lumbar derangement at the L5-S1 herniation with right-sided radiculopathy.

(Whereupon, at this time, Senior Court Reporter Victoria Bifulco was relieved by Senior Court Reporter Rivka Kaplan.)

Q And doctor, do you have an opinion to a reasonable degree of medical certainty, based on your examination of Mr. Hansraj your review of the records, as to whether Mr. Hansraj suffered a permanent consequential limitation of a body organ, or member from the August 15, 2020, accident?

A Yes.

Q What is your opinion?

A It's my opinion that he had suffered a significant permanent impairment, and injury to his spine and in the right shoulder.

Q And what is the consequential limitation when, let's talk about the cervical spine; can you explain what was the consequential limitation that you believe he suffered?

A He has permanent loss of motion of the cervical spine from fusion, which was noted in the examination. He has permanent neurological abnormalities, where he had abnormal sensation in the right arm, as well as abnormal reflexes. He also has some weakness about the shoulder and the arm, and to the hand.

Q And do you believe, doctor, that pain conditions results in a permanent consequential limitation?

A Yes.

Q And in what way does a pain condition result in a permanent consequential limitation?

A If it's constantly present, it's going to limit your

activities, limit your ability to do things during the day, sleep, be comfortable, and you are going to have to manage the condition in the future.

Q You mentioned sleep, if you would, doctor, in the history you took from Mr. Hansraj; did he discuss with you, any difficulty with sleep, any sleep disturbance?

A Yes, he did.

Q What did you learn from him?

A I noted he would wake up frequently during the night due to his neck pain every couple of hours, and I think also difficulty sleeping if he was like on his right side because of his right shoulder.

Q Do you have an opinion to a reasonable degree of medical certainty, doctor, as to what are the effects of long-term sleep disturbance or sleep deprivation on someone is?

A Yes, it can result in chronic fatigue, can result in a potential issue of pain, not allowing the body to fully relax and how the muscles to relax.

Q And do you have an opinion to a reasonable degree of medical certainty as to whether as a result of the August 15, 2020 car accident, Mr. Hansraj suffered significant limitation from use of a body function or symptom?

A Yes.

Q What is your opinion?

A That he had permanent restrictive and loss of the spine

and shoulder.

Q And what is the significance limitation with respect to his spine and his shoulder that you're referring to?

A Again, that he has limitations in the mobility, he has permanent residual neurological dysfunction, he has an abnormal muscle tone, the tenderness.

Q I want you to assume, doctor, that Dr. De Moura, the spine surgeon, earlier today that he testified that his recommendation to his patient with Mr. Hansraj that he limit himself to only lifting 25 pounds; is that in your medical opinion a significant limitation?

A Yes, it is.

Q Are you familiar with the medical term adjacent segment syndrome?

A Yes, I am.

Q Doctor, I want you to assume that the records in this case reveal that the MRI study prior to the cervical surgery was read to show that in addition to the herniation at C5-6, which is at the operative site, that Mr. Hansraj had annular tearing at C4-5, and that the pain management records of Dr. Ko, as well as the physiatrist, physical therapy records of STARS, show that Mr. Hansraj had herniation at C6-7, and radiculopathy at C6-7, knowing that those are the adjacent levels to the operative site; do you have an opinion to reasonable degree of medical certainty as to the likelihood that Mr. Hansraj will suffer the

effects of adjacent segment syndrome?

A Yes.

Q What was that opinion?

A Well, it's likely that he will suffer adjacent segment. He has issues with those segments, as the surgical site's been fused. It's going to place abnormal motions at the levels above and below these and the wear and tear and breakdown of those levels and in fact, in Mr. -- the development of adjacent segment disease in his population, which is younger males who had surgery, is higher than any other of the populations that they look at so when you're a young male, and you have this surgery you're at a higher risk of developing adjacent segment disease.

Q Well, in the case of Mr. Hansraj and no other young male, I want to ask you a couple of questions. Do you know, sir, from speaking with Mr. Hansraj that he's continued to work although now in a sedentary desk job as well as rather than as an auto mechanic; do you know that?

A Yes.

Q You know, that he is the father of two young children, and you've seen the surveillance, you know, that he makes every effort to stay active in his family life; right?

A That's correct.

Q That level of activity that Mr. Hansraj is pushing himself to maintain, how, if at all, would that affect the

likelihood of developing the adjacent segment syndrome and the progression of post-trauma arthritis?

A That those activities that he stated do increase the risk and in his case will increase the risk of further worsening adjacent segment disease with worsening pain and symptoms.

Q Doctor, in your report, did you make any conclusions with respect to the causality, what caused those injuries to Mr. Hansraj?

A Yes.

Q What was that?

A It was my opinion that the accident of August 15, 2020, caused those injuries.

Q And did you make any findings with respect to the permanency of the injuries?

A Yes.

Q What was that?

A It's my opinion that his injuries are permanent.

Q Doctor, do you believe that in Navindra Hansraj will need medical care to manage the conditions the permanent conditions and the worsening conditions that you described time?

A Yes, I do.

Q In your report did you outline what you consider to be an appropriate care of plan for Mr. Hansraj going into the future?

A Yes, I did.

Q Can you please walk us through the items that you put in your plan and I'll stop as you go to explain to them. Okay?

A Okay.

Q Please.

A It's medically reasonable to anticipate that he will be require physical therapy to his injured areas, neck, back, and shoulder, up to 18 to 24 visits in a year.

Q And doctor, if we take the high end of that 24 visits of physical therapy in a year; that's only twice a month; right?

A Correct.

Q You reviewed a record a report prepared by an expert on behalf of the defendants, a Dr. Nampiaparmpil?

A Yes.

Q N-a-m-p-i-a-p-a-r-m-p-i-l. I'm going to say Dr. N if her name comes up again with all due respect, and did Dr. N in her report comment on your findings and your plan for Mr. Hansraj's future?

A Yes, she did.

Q Okay. With respect to the frequency of the physical therapy that you recommended, what was her conclusion?

A That she was in agreement.

Q May there be times in the future that Mr. Hansraj will need more than 24 visits of physical therapy in a calendar year?

A Yes.

Q If Mr. Hansraj has physical therapy, as you've

outlined, does that mean that he is going to get better or these conditions are going to go away?

A No, that's for management of the expected exacerbations of his pain and management and maintenance of his current condition.

Q What is the next recommendation in your plan?

A That he would follow-up with his spine surgeon at least once a year.

Q Why do you feel that it would be appropriate for him follow-up with his spine surgeon once a year?

A For follow-up of his limitations because of the potential developing of the adjacent segment disease worsening over time. It could also be a regular a physical medicine doctor as well.

Q When you say it could also be a physical medicine doctor in Dr. N's report, did she offer her opinion that a yearly visit with a physiatrist would be reasonable for Mr. Hansraj in the future?

A Yes.

Q And what is a physiatrist?

A That's a physician specializing in physical medicine and rehabilitation.

Q Had you and your initial report included that item, that annual physiatrist visit?

A I did not note that in my report.

Q But the defendant's expert did?
A Yes.
Q Is it appropriate?
A Yes.
Q That's a doctor who would oversee the course of the conservative care, the physical therapy, make sure that most of those modalities were appropriate?
A Yes.
Q Sort of what you do with patients?
A Correct.
Q What's your next recommendation?
A That I would recommend that he follow-up with MRI studies of the cervical spine every 3 to 5 years on average, maybe longer, maybe shorter periods of time. But that's in order to further evaluate expected worsening of his spine and the adjacent segment, look at the hardware, being that it's a surgical site where he had spine surgery, he would require contrast to have the best pictures of the cervical spine postoperatively. So it would require a MRI for the cervical spine with and without contrast.
Q What's the next item you have?
A MRI of the lumbar spine. It's similar every 3 to 5 years.
Q You told us before, doctor, that the MRI prior -- strike that.

The MRI after the accident, and prior to when he came to see you for his lumbar spine showed a herniation at L5-S1?

A Yes.

Q And that he had limited range of motion and positive straight leg raise when you examined him?

A Correct.

Q These indications for you show that it would be appropriate that his lumbar spine be diagnostically monitored in the future to see if the conditions worsened?

A Correct.

Q I want you to assume that Dr. De Moura testified that when he saw Mr. Hansraj in November of 2024, Mr. Hansraj reported a worsening of his lower back pain over the six months that proceeded that visit; is that consistent with what you've outlined that it should be monitored diagnostically?

A Yes.

Q What's the next item?

A I had recommended an electrodiagnostic studies of the upper limbs every 3 to 5 years for evaluation of his neurologic status and condition, and expected and potential exacerbations and worsening.

Q What -- is that an EMG study?

A That's an EMG study.

Q You're aware, doctor, that there was an EMG study done prior to the surgery in this case that was read as shown it was

normal?

A Correct, yes.

Q And Dr. De Moura talked about that this morning, do you have an opinion to a reasonable degree of mental as to whether a patient can have a negative EMG, but still be properly diagnosed with cervical radiculopathy?

A Yes, we can.

Q Can you explain that?

A Yes, the EMG and CV study, it's a electromyography nerve study. It's sensitivity is 50 to 75 percent, meaning that if you are a person with a condition, such as a radiculopathy it might not show up if it's present, and it's positive, that means there is the condition. But if it's negative, it doesn't mean that it's is not present, and that's just due to the limitations of the study. Most studies have limitations. And it's the way symptoms, that your muscles, the way your nerves are innervating muscles. So there are limitations to this study, so it's not a perfect test.

Q While it's not perfect, doctor, do you feel every 3 to 5 years for the remainder of Mr. Hansraj's life it would be useful to monitor the neurologic injuries?

A Yes.

Q What's the next item you recommended?

A Cervical epidural injection.

Q Please explain?

A That's treatment for the cervical radiculopathy or the pain radiating from the neck to the arm. He did have one before the surgery. However after the surgery, with the adjacent segment worsening, scar tissue formation from the surgery, the nerves start getting involved, so he still had abnormality neurological function in the right arm, that the epidural injection is indicated with treatment of pain. It's not going to cure, it's going to -- it's a pain management technique to manage the pain from the neck into his extremity.

Q What is the frequency of those injections?

A While I had noted up to three years, sometimes it's up to 4 years 6 years depending on the, you know, the studies, but three is fairly standard up to three years.

Q Do you have an opinion as to a reasonable degree of medical certainty, doctor, if Mr. Hansraj were to follow a regimen of cervical epidural injections; would that be potentially delay the time in which he will need to have another surgery to the cervical spine?

A Yes.

Q By the way, doctor, all of the items we're discussing in your plan; did you include the costs for those items in your plan?

A Yes.

Q Where did you get those costs?

A Those were based upon my experience with doing these

procedures and seeing the procedures for the billing of them, as well as Fair Health, which is a website where you can get an ideas of costs of procedures and certain medical services.

Q What's the next item in your plan for Mr. Hansraj's future treatment?

A Well, that was discussing the need for a revision surgery of the cervical spine, due to the development of adjacent segment disease, and that would be a revision of anterior cervical discectomy fusion.

Q Do you have an opinion to a reasonable degree of mental, given everything we discussed, Mr. Hansraj's age, his current symptoms, the pathology at this level above the operative level, as well the level below the operative level, and the activity level that he is struggling to maintain in his life; do you have opinion to a reasonable degree of medical certainty, as to whether a future cervical spine surgery is more likely than not for Mr. Hansraj?

A Yes, it's my opinion that it is more likely than not.

Q You did not in your plan include any pain medication; is that correct?

A Correct.

Q Okay. And did you notice that Dr. N in her plan did include pain medication?

A Yes, she did.

Q Do you believe that that's a reasonable addition to the

plan?

A Yes.

MR. OCCHIOGROSSO: Your Honor, can I just have a second to confer with co-counsel.

THE COURT: Sure. Of course.

MR. OCCHIOGROSSO: Sorry, thank you.

(Whereupon, the attorneys conferred with each other.)

Q I will ask you to walk back through something real quick. I should have done it. Thankfully, Mr. Smith caught it. If we can just go through those items that we just talked about and if you can just give us the cost one at a time. I'll save the time, you tell me what the cost is you have?

A Yes.

Q The physical therapy?

A $200 per visit.

Q The annual doctors visits?

A That's $300 per visit.

Q The MRI studies of the cervical spine?

A That would be with or without contrast, that would be $2,500.

Q The MRI studies of the lumbar spine?

A $1,500.

Q The EMG studies?

A That would be $1,500.

Q The epidural steroid injection to the cervical spine?
A That was $2,500, including the surgical procedure itself the anaesthesia fee and ambulatory surgical fee.
Q While we're on that subject, if Mr. Hansraj's lumbar symptom continued to exacerbate or worsen, would there be any point in time where it would be a reasonable treatment or modality to have an epidural steroid injection in the lumbar spine?
A Yes, it would be.
Q Next item you have listed is the cervical spine surgery; what was the cost of that?
A That was approximately $100,000, and that would be the revision surgery and also includes hospital and anaesthesia fees.
Q And that's if the surgery was done presently; is that correct?
A Correct.
Q That's based on what it would cost today?
A Correct.
Q Dr. N, the defendant's expert included a cost for pain medication of Tylenol usage approximately $1 per 500-milligram tablet, for a total of between $208 and $416 annually. Do you agree with that?
A That's reasonable.
MR. OCCHIOGROSSO: Thank you very much, doctor. I

have no other questions at this time. Thank you, Your Honor.

THE COURT: Thank you, Mr. Townsend.

MR. TOWNSEND: Thank you, Judge.

THE COURT: Recross.

CROSS-EXAMINATION

BY MR. TOWNSEND:

Q Doctor, you met the plaintiff for the first time in October of 2024; correct?

A That's correct.

Q And that was in anticipation of litigation, in other words, of coming to court to give the opinion of future life care costs that you just gave; correct?

A That was an understanding that was possible, yes.

Q I mean that's part of what you do in your capacity as a life care planner; correct?

A Correct.

Q This isn't the first time you come to court, you told us that you've come to court before for other lawyers, plaintiffs, defendants, everybody?

A Plaintiffs.

Q You worked with plaintiffs' firms; correct?

A Yes.

Q You took a history, you told us about that, and you took plaintiff at his word, I assume; correct?

A Yes.
Q It wasn't part of your job to do an investigation of the circumstances that plaintiff says gave rise to the injuries, right? You took his word for it, because you're not doing an investigation; fair enough?
A Correct. Though did I see the dash cam video.
Q You watched the accident?
A Yes.
Q You saw the video itself?
A Yes.
Q Okay. I misunderstood, I thought you watched the surveillance video.
A I saw the surveillance video.
Q Did you watch all of it?
A Most of it, yes.
Q And can we agree that Mr. Hansraj appears to be pretty well recovered at this point?
A It was consistent with what he said he was able to do, that he was able to do things though slowly, but yes.
Q He didn't appear normal in that video that you saw?
A He wasn't doing anything exceptionally straining.
Q Did you see a power washing?
A Yes, I saw him.
Q Did you see him lifting his daughter and carrying his daughter?

A Yeah, the young child.
Q Bending over and getting into the car and hopping out?
A Slightly bending over.
Q Reaching up; right?
A Yes, I saw him.
Q Turning his head swiftly from side to side better than I'm able to demonstrate?
MR. OCCHIOGROSSO: Objection.
Q Did you see that, sir?
A I didn't see swiftly, but did I see him moving.
Q Is that consistent -- withdrawn
Are the movements you observed on the video consistent with the way he appeared to you in your office?
A Yes.
Q So he didn't seem more stiff in your office than he did, sir, he didn't seem more stiff in your office than he did on the video; correct?
A Correct.
Q When he was in your office, he moved with whatever fluid motion, if we can use that term, and you can use another if you wish, that was evident in the video; correct?
A He -- as I examined him, he was able to move though but had limitation.
Q I'm simply asking. Was he moving -- withdrawn.
Were his movements consistent with what you observed in

the surveillance video?

A They were similar to my recollection.

Q When did you first see the surveillance video?

A A few weeks ago.

Q When you looked at the surveillance video; did it bring it back for you your October 24th meeting with Mr. Hansraj?

A Bring me back.

Q Did you recall seeing Mr. Hansraj?

A Yes, I recalled it with him, yes.

Q Right, I'm just trying to -- I would like you to confirm for the jury that the person you interviewed and examined in October of 2024, was moving exactly in the same manner as what was seen in the video that we showed to the jury today?

A Well, he wasn't doing those moves. He wasn't power washing the office, he wasn't doing -- he walked into the office and I examined him.

Q Right. But my question is did he seem any more or less strained in your office than he did in the video?

A Not that I recall.

Q So nothing you saw in the video was different than the person you saw on October 24th, in terms of movement?

A His movements weren't limited. He did not show full movement in the video that I saw. So there was nothing that was different in terms of the findings that I had.

Q So your testimony then is that the video that you saw showed pain and limitation?

A Well, it doesn't show pain. Pain is a subjective thing, but it didn't show someone going through full range of motions that I recalled seeing.

Q You're saying pain isn't visible on someone's face when they're feeling it?

A It could be, but everyone is different. There is individuals depending on how they express pain, feel pain.

Q Do you have pain?

A My back is a little stiff right now.

Q And when you sit down, that can be evidence; correct, or stand up?

MR. OCCHIOGROSSO: Objection.

THE COURT: Sustained, counsel.

Q My question is simple, it's been said here that pain isn't visible; that's not true; is it?

MR. OCCHIOGROSSO: Objection.

THE COURT: Sustained.

Q Counsel has said to you and you're not the only witness, that pain isn't visible, question; is that true?

MR. OCCHIOGROSSO: Objection. I didn't say that to him.

MR. TOWNSEND: You said it all morning.

THE COURT: Judge, do you understand the question?

Sir, do you understand the question?

THE WITNESS: I believe I do.

MR. TOWNSEND: Can I just get an answer?

THE COURT: You can answer the question.

A Pain is mainly invisible. You can't see -- a patient may display certain facial characteristics motions of pain, but everybody is different. How they feel the pain and express the pain. Some patients because pain in of itself can raise your blood pressure, heart rate, and can result in physiological changes within the body that you cannot see that potentially can damage the person just from having pain.

But you don't always see pain. I mean somebody may, you know, stab them with a knife or something, you know, you're going to jump in pain, you notice them to be in pain but in terms of chronic pain, you don't always see it. But you may.

Q Did you do any testing of the blood pressure or any of that when you did your physical examination?

A No.

Q Did you see any evidence on his face of pain when you did your physical examination?

A Not that I recall.

Q So can we just confirm for the jury that when you did your physical examination, there was no overt physical characteristics that confirmed for you that he was in active pain at that moment?

A Well, I know he was in pain just based on my examination, and that was feeling, but not that I saw on his face, if that's what you're asking.

Q Doctor, did you ever request that you be provided with records of plaintiff's medical treatment prior to the accident in question?

A No.

Q Did you ever ask that anybody provide with you records of plaintiff's primary care physician?

A I did not.

Q Did you ask plaintiff whether he had a primary care physician?

A I don't recall if I did.

Q Did you ask plaintiff whether he had any other work related injuries or physical complaints as a result of the work he was doing in the automotive industry from roughly 2009 forward until the date of the accident?

A Yes, he denied having any other injuries or pain.

Q I understand that, did you ask him for any records of doctor regular health checkups?

A No, but I asked him about the neck, back, shoulder, if he had any issues that before and he said no.

Q Isn't it important to have a baseline doctor of medical observation and care?

A It could be.

Q Did you have any in this case from prior to the accident?

A I don't believe he had any prior evaluations of his neck back or shoulder. He didn't have any problems or issue with them before.

Q But what about primary care physician records, wherever they might be, surely he had a cold or something along the way; right? Wouldn't you have a primary care doctor of some sort during all of this time from 2009 until the date of the accident?

MR. OCCHIOGROSSO: Judge, if --

THE COURT: Sustained.

MR. OCCHIOGROSSO: We'll stipulate he probably had a cold.

THE COURT: Sustained, counsel.

MR. TOWNSEND: Is it form the question?

THE COURT: It's multiple questions in that, absolutely.

Q Doctor, would you want to have primary care physician records; yes or no?

A If it had to deal with his neck, back, or shoulder, yes.

Q Well, regardless, wouldn't you want to have primary care records, so you can ascertain whether he had prior injury treatment and any complaints?

A He noted that he did not have those prior injuries or complaints.

Q But did he note that he had no prior physician?

A That I didn't note if he did or didn't.

Q Was that of interest to know whether plaintiff had any record of health treatment or observation at any time in his life prior to the accident in question?

A Not, if it's not related to the areas that we were examining, if he had a cold or other issues that would not have any bearing on my examination.

Q You're a doctor; correct?

A Yes.

Q And as a doctor, when somebody makes a statement to you about their health; aren't you concerned to know what their prior health has been? Isn't there an investigative part of being a physician in that regard?

A Yes, I asked him.

Q So no records were produced for you; correct?

A For anything prior to this date of injury?

Q Not even a cold, nothing?

A Correct.

Q Not even a cold, not just film studies, but anything at all; correct?

A I did not have any prior records prior to this date of injury.

Q As far as you know, plaintiff had no health history whatsoever that was reported by anyone at any time; yes or no?

MR. OCCHIOGROSSO: Objection.

THE COURT: Sustained. Already asked and answered.

Q Do you know Dr. De Moura?

A I know of him.

Q Have you ever met him?

A Well, I just saw him outside.

Q You were speaking to him?

A No, I just said hello.

Q Did you recognize him?

A Not really, no.

Q Well, how did it come to be that you said hello?

A He was walking out and I was walking in.

Q Well, were you introduced?

A I saw his picture of him before.

Q You recognized him --

A But I didn't meet him in-person before that I recall.

Q You recognized him from photographs you had seen?

A I believe.

Q Where were those photographs?

A No, just from what -- I've had patients from him that I've seen, and we've had patients where he had treatment of the same patients in the past.

Q In cases with Block and O'toole; right?
A Not that I am aware of, no.
Q Another firm?
A No, I had patients that I see, that had seen him as well, and that he had performed surgery on a patient, and I'm treating them for pain but not in terms of --
Q No litigation case?
A Not that I recall, no.
Q In what capacity would you be hired to perform your services not in the litigation context?
A I'm not quite sure.
Q Why were you working in connection with Dr. De Moura; what was your role in that case?
THE COURT: What case?
A As a physician I see patients who had pain who had injuries that had surgery, and there was -- and he was the surgeon or he had seen them and I was the pain management doctor physiatrist that was treating the patient as well.
Q Okay, I see. Were those cases to -- did those cases involve litigation if you know?
A I don't know, but I'm sure some did.
Q So you made some recommendations; correct?
A Yes.
Q Do you know -- withdrawn.
Do you know who the medical providers, you know, the

identities of the medical providers who handled plaintiff's care for this matter; correct?

A I know their identity.

Q You referred to them -- I'm sorry if I'm being --

A Yes, I know that their names.

Q Did you consult with those providers before making recommendations as to treatment, which would be appropriate in the future?

A No.

Q You didn't even give a phone call?

A No, it was my recommendation based upon my record review and my examination of the patient.

Q Would it not be useful to actually have the opinion of the treating surgeon, Dr. De Moura, on what treatment in the future might be useful or no?

A Well, no, because we're talking about the pain that he has and the pertinent symptoms after the surgery and I'm well aware of those treatment options.

Q Do you know that plaintiff has had practically no treatment for anything at all whatsoever since he last saw whatsoever as far as we've been able to determine since 2021, his last follow-up in with Dr. De Moura and that was a follow-up?

A Yes, he noted that it was about a year to year and a half, that he didn't have any active treatment.

Q And you wouldn't regard his visit to you and your examination as treatment; correct?

A I did not treat him on that date, that's correct, I examined him.

Q You examined him for the purposes of that you've already discussed here in court?

A Correct.

Q And did you ever become understanding aware -- well, withdrawn.

Did you ask anybody at any time in connection with your investigation to provide you with records of treatment between his last visit in 2021 with Dr. De Moura up until the moment of your examination in connection with this litigation?

A He stated his -- as we stated earlier that he did not know that he had treatment for like a year to year and a half prior to see me seeing him.

Q Doctor, the reason I'm asking you these questions; is because you testified to a series of medical treatment diagnostic studies et cetera, that you believe within a reasonable degree of medical certainty plaintiff will need into the future; right?

A Yes.

Q You've attached a monetary value to them; right?

A Yes.

Q You know the reason you're asked to that; right, or no.

A Well, because there was a request regarding the treatment he would require in the future, and they expect the cost of those treatments.

Q Fair enough. You have recommended, correct me if I'm wrong, and feel free to use your report, I hope we're working off the same document.

A Yes.

Q Physical therapy up to 18 to 24 visits per year cost up to $200 per session; right?

A Yes.

Q Our doctor, we retained a doctor to respond to your report; correct?

A Yes.

Q We call her Dr. Devi Nampiaparampil. Can we call her Dr. Devi?

A That's fine.

Q You're in agreement; correct?

A With the need for physical therapy?

Q Well, with not necessarily the need for it, but the reasonableness of the numbers attached to it. You both -- you find her recommendation reasonable and she founds your recommendation for the frequency; right?

A Yes. Correct.

Q By the way, on the topic of causation, you're not here and I thought we covered this a few moments ago but maybe I'm

wrong. You're not here to opine on causation; correct?

MR. OCCHIOGROSSO: Objection, he did.

Q Let me explore that. You don't know -- all of your information is based upon records you read; correct?

A Correct, and from the patient's history.

Q Did you actually review the MRI film?

A No, I reviewed the reports.

Q But you never took a look at the actual films themselves?

A No.

Q So you have no opinion, as you sit here today, one way or the other whether or not what is depicted in the MRI film demonstrates or doesn't demonstrate a causation event at the herniated disc; correct?

A Well, I know in terms of the MRI with the disc herniation at C5-6.

Q Right, that's right.

A That was noted that was confirmed on the surgery with Dr. De Moura, that there was a disc herniation.

Q I'm talking about the causation. You don't have some extra information that hadn't already been discussed here on the topic of causation; correct?

A No, I noted that it was my opinion that the accident caused his injuries.

Q And you noted that without -- just on the basis of the

surgical report?

A No, that was corroborated with the MRI findings of the disc herniation at C5-C6, that's based upon the history from the patient, the review of the record from the Urgent Care Center, which note the pain where he had it in the neck and shoulder, and upon my examination of him in questioning of him and the fact that he was in his usual state of health functioning prior to this accident.

Q Did you ask to review the film?

A No, I did not.

Q Can you read the MRI?

A Yes.

Q You're qualified to do that?

A Yes.

Q But you didn't feel that that was important in this case?

A As I stated in this case he had Dr. De Moura's surgical findings of the disc herniation and documented cervical findings of labral tear in the shoulder?

Q Doctor, the second item that you have made recommendations for follow-up surgical evaluation once a year for the rest of his life; correct?

A Yes.

Q He is not doing that either so far; right?

A Well, I believe he's just seen Dr. De Moura in

November.

Q That was the first time in a couple of years?

A And this is based upon what would be recommended and in an in ideal circumstance in a patient which would have to have the means and ability to afford these treatments, so there are limitations in your system in terms of the ability to have these treatment that are recommended, that this would be expected and medically appropriate for the treatment of this condition.

Q Did any medical provider indicate to you that a MRI study every 3 to 5 years would be appropriate; or is that just your opinion?

A That was my opinion.

Q Is a MRI study appropriate if a person is not having pain or limitations or some active complaint?

A If asymptomatic patients with no circumstances, no. In a patient that has long pain and symptom and disc exacerbation, I believe it is appropriate.

Q But if they have no ongoing symptoms or complaints; you wouldn't get a MRI; correct?

A In general.

Q Yes, in general?

A That's correct. In this case, it's different because he does have ongoing complaints and findings.

Q That's a debated point at the trial?

THE COURT: Counsel, comments are for summation.

At this time that will be stricken from the record.

MR. OCCHIOGROSSO: Thank you, Judge.

Q Same question for follow-up MRI of the shoulder?

A Yes.

Q You are recommending that he go every year to 3 to 5 years for MRI of the shoulder?

A As I stated earlier, in general every three to five years, there may be periods where it's a longer timeframe or shorter timeframe, but this is just in general over his lifetime.

Q Starting when today?

A No, within the next, I think for the cervical spine it would be appropriate to have a follow-up MRI sooner than later because of his ongoing symptoms as well as the lumbar spine.

Q Do you have medical knowledge on the longevity of the procedure that was done on Mr. Hansraj?

A In terms of the?

Q How long did they last?

A In terms of the cervical spine.

Q That's right.

A Well, the fusion itself can last.

Q For your lifetime?

A Permanently though there is risks of it failing, the plate loosening, the screws also loosening, and then developing scar tissue and adjacent segment issues.

Q But in the case of a single level cervical fusion, those overwhelmingly last a life time without complication; isn't that a fair statement?

MR. OCCHIOGROSSO: Objection.

THE COURT: Do you understand that?

THE WITNESS: I believe I do. Please answer.

A The hardware will stay there for a lifetime. The development of symptoms increases year of year after year with more stress on to the spine above and below that surgery.

Q But the hardware itself?

A Could stay there if there was no longer fracture.

Q And the fusion?

A Correct.

Q The fusion stays solid; right?

A For the most part, yes.

Q So you say that symptoms that might develop from the adjacent segment disease, right, ASD, the extra load that's part?

A Part of the adjacent segment disease, part of it is from the scar tissue that forms within the spine canal after the surgeries that can also cause compression and pulling on the nerves that cause symptoms.

Q Doctor; isn't it true that in the case of single level procedure, such as this one -- by the way, you know that this is -- well, withdrawn.

In the case of a single level cervical fusion, the chance of adjacent cervical disease is minimal; is that a fair statement?

A Actually it's not. It's per year. Could be in Mr. Hansraj's case, it's a 4 to 7 percent chance of developing.

Q Over a lifetime?

A No, yearly. It increases every year you have an increased risk of developing the adjacent segment disease.

Q So isn't that adjacent segment disease really a phenomenon, that is more likely to occur in multilevel cervical fusions, which we do not have here; correct?

A Depends on what levels are fused.

Q This level the one we're talking about?

A In this case the one level was C5-6; that's where you get about 20 percent of your flection extension, just from that segment, so it takes that away and you put more stress above and below, if you have multilevel fusion, you can, it does go up and, there is an increasing risk of the adjacent segment but in this particular case; he had a risk for developing it.

Q Electrodiagnostic studies of the limbs every 3 and 5 years and you gave a cost to that?

A Yes.

Q He hasn't done any of those; why do you think he will need those in the future?

A Well, he did have them initially. He had studies.

Q They were negative?

A Correct.

Q They showed that he was okay?

A That was at that time period it didn't show that it was okay. It showed that there was no electrical evidence of the radiculopathy at that time that the study was done. Now we have different circumstances postoperative where as I stated you get more compression on the nerve scars tissue that forms, he still has symptoms of the nerve issues, so in order to evaluate and the expected exacerbations or worsening, it's appropriate to have that study.

Q Doctor, why would you recommend that Mr. Hansraj have three epidurals steroid injections per year if he doesn't have complaints of pain?

A First part is up to three in a year is what's appropriate, not stating every year he is going to require three. It's up to three. In terms of the symptoms, he has symptoms now with the pain limitations and the symptoms into his arm at this point.

(Whereupon, the following was recorded and transcribed by Official Court Reporter Victoria Bifulco.)

(Continued on next page.)

* * * * *

Q What do you mean at this point? You mean today, Doctor?

A No. When I saw him in October he was still having pain and numbness into the nerve root distribution and, again, with adjacent segment disease and compression on the nerve from scar tissue. Cervical epidural injections are appropriate management of his pain condition.

MR. TOWNSEND: Just give me one moment, Judge.

I am at the end of this examination.

THE COURT: All right.

Q I'm sorry.

Your sources for coverings, can you please tell the jury again what are your sources?

A Yes. That's my experience through the billing and knowing what the costs of these procedures are. This is an expected out-of-pocket cost.

Q I'm sorry. This is an expected out-of-pocket cost?

A This would be based on an out-of-pocket cost if you had to pay yourself. This is a fair and reasonable.

Q Fair and reasonable value?

A Value.

Q Where are you getting that?

A Based upon my experience with billing and seeing what's billed for these procedures.

Q So we have to just take your word for it?

A And as it was stated earlier --

THE COURT: Would you allow him to finish?

MR. TOWNSEND: I apologize.

A The website such as Fair Health which I will look at for myself also for these procedures that we are billing, and sometimes they are a lot higher than I would even think it would be, so I believe these are reasonable costs for an out-of-pocket payment.

Q Did you review the cost projections of Dr. Devi Nampriampil?

A I did see her cost projections.

Q And they seemed reasonable?

A No. They were based solely on Medicare, so in my opinion that is not an out of pocket, and I think most people know if they go to a doctor or go to the hospital, they come in with a bill and they go, wow. Bills can be very high, and what she was quoting in her report was an expected Medicare reimbursement.

MR. OCCHIOGROSSO: Your Honor, we may need to have a quick discussion outside the presence of the jury.

MR. TOWNSEND: I am almost done.

THE COURT: Can we do that later?

MR. OCCHIOGROSSO: As long as we are not asking any more questions about this.

THE COURT: All right. Let's put the jury

outside in the hall.

THE COURT OFFICER: All rise. The jury is exiting.

(Whereupon, at this time, the jury exits the courtroom.)

THE COURT: Have a seat.

Do you want to have the witness on the stand?

MR. OCCHIOGROSSO: I think it's fine, Judge.

I just --

THE COURT: You may sit down.

MR. OCCHIOGROSSO: I just think that, frankly, that counsel was incredibly cavalier and reckless in the questioning because he knows what's in his expert's report. I know what's in his expert's report and so does Dr. Vlattas.

When he starts asking about how were your cost projections compared to hers, knowing she is basing her projections on Medicare.

THE COURT: Which is an insurance provider.

MR. OCCHIOGROSSO: Right. And my intention was to make the application before his expert came in to make sure she is not going to talk about Medicare because, obviously, she didn't do that in front of the jury.

So that's why I said if we are done with this area of questioning, we are okay. I am going to ask that

references to insurance be stricken from the record, and the jury be instructed to disregard.

I think it's unfortunate. We all know what we are dealing with here, and it's, you know.

THE COURT: Counsel?

MR. TOWNSEND: The main thing I would like to respond to is I had no intention of eliciting any improper information here. It's his witness.

I didn't lead him down the road. He is an experienced witness.

MR. OCCHIOGROSSO: You sure as heck did. You walked him right up to his expert's costs and asked about are yours comparable with hers when he knows his is based on Medicare.

What else are we doing?

MR. TOWNSEND: I'm sorry counsel feels that way.

That wasn't my intention. I just wanted to know whether he agreed that Dr. Devi had reasonable costs. He agreed on it before.

It was one of counsel's questions: Do you agree with Dr. Devi defense counsel's care projection expert on the cost of physical therapy. Yes. I think her costs were reasonable.

MR. OCCHIOGROSSO: Right because --

MR. TOWNSEND: I do agree -- excuse me.

THE COURT: One second.

MR. TOWNSEND: Do you agree that Dr. Devi's costs for medication which in this case is Tylenol at one dollar a pill is reasonable? Yes, I agree.

So counsel is inviting his witness to confirm Dr. Devi, and I was simply following up on that line of questioning. I didn't elicit anything about insurance or anything else, Medicaid or anything else.

These are legitimate cost projections and legitimate bases for cost projections.

If counsel wanted to make -- and I guess we know now that he will want to make an application to the Court to limit to some extent what my expert can say, we will have that conversation.

But I didn't try to elicit anything on purpose. I haven't thought the case through that far on this point.

MR. OCCHIOGROSSO: That's a shame.

The only thing I mentioned with cost was specific dollar amount that was in her report about the pain medication. I said this is what she said the cost of Tylenol is, and I quoted exactly what she said in her own report.

You know, Judge, it's over. I just want to make sure we are careful going forward.

THE COURT: What about the issue of about Medicaid being an insurance provider?

MR. TOWNSEND: Can we take that up at a separate proceeding, Judge?

I would like to be able to respond to that. Now that it's out, I haven't worked out how we would handle that. But I had anticipated that that would be raised. I anticipated that we would discuss how best to handle that.

I do have an expert. She does have cost projections, but as counsel said, we are where we are at in the moment, so.

THE COURT: All right.

Anything else?

MR. TOWNSEND: No. But I don't think the doctor has to, you know, include a reference to insurance or any form of insurance in any further questions I ask.

I just would like to complete my examination, your Honor.

THE COURT: Do you have other questions for the witness?

MR. TOWNSEND: I was very close to the end here, Judge.

Can I just have a moment to look?

THE COURT: Yes.

While we are doing that, counsel for the plaintiff, are you seeking to ask about with regard to Medicare being the insurance provider or --

MR. OCCHIOGROSSO: You know what, I would like to think on it, Judge.

THE COURT: Okay. We'll do the same. We'll think about it.

You will continue the examination.

MR. TOWNSEND: If I could just have one moment, Judge, I think I am just about --

THE COURT: Yes. Ready?

MR. TOWNSEND: Just to let everybody know, I want to show the witness two minutes of the video surveillance and ask a question about it.

THE COURT: Okay. You have the video ready?

MR. TOWNSEND: All ready to go.

THE COURT: All right. Bring in the jury.

THE COURT OFFICER: All rise. The jury is entering.

(Whereupon, at this time, the jury enters the courtroom.)

THE CLERK: Do both sides stipulate to the presence and proper seating of the jury?

MR. TOWNSEND: Yes.

MR. OCCHIOGROSSO: So stipulated.

THE CLERK: Thank you.

Please be seated.

THE COURT: Continue, counsel for the defendant.

MR. TOWNSEND: Thank you.

Q Doctor, I am going to ask my tech assistant to show you just two minutes of a video, and then I want to ask you a few questions, okay?

A Okay.

Q Doctor, you see Mr. Hansraj in the video?

A Yes.

Q Are his movements there consistent with the person you examined in October of 2024?

A Yes.

MR. TOWNSEND: Nothing further, Judge.

THE COURT: Do you have any further redirect, counsel?

MR. OCCHIOGROSSO: Yes, quickly.

REDIRECT EXAMINATION

BY MR. OCCHIOGROSSO:

Q Doctor, one of the things you mentioned on cross examination is that you also saw a video of the accident, correct?

A Correct.

Q Having seen the video of the accident and your understanding that Mr. Hansraj was the driver of the car that

had the dash cam in it, is the force that you see in that accident, is it consistent do you believe to a reasonable degree of medical certainty capable of producing the traumatic injuries that Mr. Hansraj suffered?

A Yes, it is.

MR. OCCHIOGROSSO: Thank you very much.

Thank you, your Honor.

THE COURT: Anything?

MR. TOWNSEND: Nothing further, Judge.

THE COURT: This will complete the testimony of this doctor.

We'll dismiss you.

Thank you for coming to Part 38 in Civil Supreme Court.

(Whereupon, at this time, the witness exits the stand.)

THE COURT: Thank you.

Just bring the jury out to the hallway for a minute.

THE COURT OFFICER: All rise. The jury is exiting.

(Whereupon, at this time, the jury exits the courtroom.)

THE COURT: Counsel for the plaintiff, do you have any other witnesses?

MR. OCCHIOGROSSO: Not today.

THE COURT: So I can dismiss the jury.

MR. OCCHIOGROSSO: Yes, your Honor.

THE COURT: Tomorrow we are coming back at ten o'clock again. All right.

Bring them back in.

THE COURT OFFICER: All rise. The jury is entering.

(Whereupon, at this time, the jury enters the courtroom.)

THE CLERK: Both sides stipulate to the presence and proper seating of the jury?

MR. TOWNSEND: Yes.

MR. OCCHIOGROSSO: So stipulated.

THE COURT: Thank you very much. Please have a seat.

We have been working all day pretty hard without many breaks. Usually we get a 15 minute break, but we have not done so.

Actually, that clock is two minutes ahead. We do that to make sure we are on time, so we are a little early.

I am going to dismiss you right now. We are going to continue working on the legal issues, so when you come in tomorrow, we will be ready to proceed.

Tomorrow, again, please come in at 9:45 a.m. we'll start as soon as you come in. That gives us usually about 15 minutes to work on legalities before we actually start the proceedings.

So I just want to make sure, again, my instruction to you, please do not think about this case. Do not make a decision about the case. We still have a few witnesses to present to you, and the summations of the lawyers and my instructions on the law.

So, please, do not think about this case. If anybody asks you a question about how is it going, tell me about it, just tell them, I am a juror in Part 38 and Justice Velasquez will not allow anything else.

If you see the parties, the plaintiffs, the lawyers, the doctors, please do not speak to them. They are not allowed to speak to you.

Of course, have a wonderful day.

There is no rain outside, so this is good.

With the thanks of the Court we'll see you tomorrow.

Today you were excellent. I like that all of you have to be present in order for us to start and continue on.

Have a good day.

THE COURT OFFICER: All rise. The jury is

exiting.

(Whereupon, at this time, the jury exits the courtroom.)

THE COURT: Have a seat. Any issues by the plaintiff?

MR. OCCHIOGROSSO: No, thank you.

THE COURT: Any issues by the defense to discuss?

MR. TOWNSEND: No, your Honor. Thank you.

THE COURT: See everybody tomorrow at ten o'clock.

MR. TOWNSEND: Thank you, Judge.

Whereupon, at this time, Senior Court Reporter Victoria Bifulco was relieved by Senior Court Reporter Rivka Kaplan.)

THE COURT: So I have been warned by my court officer that juror number six has indicated she cannot come in tomorrow all day because of a family issue.

MR. TOWNSEND: Juror number six?

THE COURT: Juror number six.

MR. TOWNSEND: Not alternate number three?

THE COURT: What's the name?

COURT CLERK: Her name is Patricia Caseo.

THE COURT: What would you like to me to do?

MR. TOWNSEND: Scott?

MR. OCCHIOGROSSO: I mean my thinking is to find out from her is her challenge only with tomorrow, first of all, because then if we know that, and she says no, I'm good every other day. If it's only tomorrow, then we can consider. If she says, this is an ongoing problem, that sort of makes the decision for us.

THE COURT: All right. Counsel?

MR. TOWNSEND: I agree with that, I guess.

THE COURT: Let's bring her in. Bring in the juror.

COURT OFFICER: All rise. Juror entering.

(Whereupon, the juror entered the courtroom.)

COURT CLERK: Please let the record reflect the presence of juror number six.

THE COURT: Ms. Patricia Caseo, hello, Ms. Caseo,

I understand that there is a problem tomorrow.

THE JUROR: Yes.

THE COURT: Is it just a morning or is it like throughout the day?

THE JUROR: So it's throughout the day. My mother's home attendant can't be there tomorrow. I have to be there. I'm registered in the PCP to take care of her. So the home attendant told me to get -- my mom is swollen from her legs, so I have to call the doctor when I get home. But I can't leave her by herself at all and my siblings this is like last minute. They can't. The rest of the week I'm totally fine, because if she can't come in, then my sister is going to come. I just spoke to everybody.

THE COURT: All right. Give us a few minutes. We will come back, and call you.

COURT OFFICER: Juror exited.

(Whereupon, the juror exited the courtroom.)

THE COURT: Counsel, I understand that it's only tomorrow. Would you like to proceed by not coming in tomorrow, and then we will start Monday at 12:00, because --

MR. TOWNSEND: My feeling is that, I think I'm going to agree with counsel, that we would like to keep the juror, but if she can assure the Court that this is her

only problem.

THE COURT: Well, that's what she said.

MR. TOWNSEND: We may have other kind of problems going forward with other jurors. Hopefully they're enjoying the case, and they are going to want to come back but if --

THE COURT: So actually, instead of coming at 12:00, we will just do 2:00 on Monday morning, because it's only one hour. But it's -- and unless there are issues that come up, you want to discuss with the Court, we can do that at 12:00. I don't think that but I feel that it would be better served for us to do it unless I hear something different.

MR. OCCHIOGROSSO: Makes sense.

THE COURT: This way they have the morning off as well. We will call them and tell them to be here at 2:00. Maybe better off telling them at 12:00 on Monday to make sure that they are here. I think maybe just this way we have the full afternoon to make sure, otherwise we start at 2:00, finding out they're not here. I think that may be a better option for the Court.

MR. TOWNSEND: That's great.

THE COURT: Plaintiff, are you okay with that?

MR. OCCHIOGROSSO: I agree, Your Honor.

THE COURT: Counsel for the defendant?

MR. TOWNSEND: Yes, Judge.

THE COURT: Bring her in. So we can tell her.

COURT OFFICER: All rise. Juror entering.

(Whereupon, the juror entered the courtroom.)

THE COURT: Ms. Caseo, so we decided that I understand your family situation, we will not see you tomorrow. We will start on Monday at 12:00. We will notify everyone else to come in at that time.

THE JUROR: Thank you. I apologize.

THE COURT: I understand that. But thank you for letting us know. Now we can do something. If you learn that, you know, where you need plenty of time, so we can tell the other jurors but at this time I will proceed to make the phone calls that, remember when I asked for the phone number, that's why, because sometimes when you have to call, so don't worry. I hope everything works out with your mom.

THE JUROR: Thank you.

THE COURT: And make sure you have arrangements for the following week.

THE JUROR: I didn't see it because I leave everything over there, so I'm not distracted with anything.

THE COURT: I understand that, because you can't use your phone. Don't worry. We have plenty of emergencies like in the courthouse, but you're not actively

in trial so it's kind of difficult. I understand that.

THE JUROR: Thank you. I appreciate it.

THE COURT: We try to accommodate everyone as we can, and the lawyers are kind enough to accommodate you. So see you Monday at 12:00. So Monday morning. 12:00 p.m.

THE JUROR: Okay. Thank you.

THE COURT: And the officer is going to tell you where to go.

COURT OFFICER: All rise. Juror exiting.

(Whereupon, the juror exited the courtroom.)

THE COURT: Counsel, we will notify every single juror by phone. My court clerk will do so. Any issues, if not, see you everybody Monday at 12:00.

(Whereupon, the trial was adjourned until May 19, 2025.)

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