SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CIVIL TERM: PART IA-21

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JOSE LUIS URQUIA,

Plaintiff,

-against-

Index No.
22340/2019e

DEEGAN 135 REALTY LLC, CHESS PROPERTIES LLC, CGS BUILDERS, INC. and CHESS BUILDERS, LLC,

Defendants.

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DEEGAN 135 REALTY LLC and CHESS BUILDERS LLC,

Third-Party Plaintiff,

-against-

CAPITAL CONCRETE NY, INC.,

Third-Party Defendant.

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CAPITAL CONCRETE NY, INC.,

Second Third-Party Plaintiff,

-against-

DUNN CO. SAFETY,

Second Third-Party Defendant.

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Testimony:
Dr. A. Rubenstein

851 Grand Concourse
Bronx, New York 10451
May 23, 2025

B E F O R E:

HON. MATTHEW PARKER-RASO,
Justice of the Supreme Court

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BY: JAMES P. GILROY, ESQ.

Valerie E. Monaco
Senior Court Reporter

THE COURT: Good morning. The jury is out of the room. We're just going to take care of some scheduling issues as well as any type of applications.

So today is Friday the 23rd and we have one defense witness scheduled today; correct, counselors? Mr. Showers and Mr. Gilroy?

MR. GILROY: Yes.

MR. SHOWERS: Yes, Your Honor.

THE COURT: Okay. Now, originally when we had done our roadmap of scheduling before starting trial, we -- I did have a witness scheduled for Tuesday the 27th at 2:00 p.m. But it appears we do not have a witness on that date; correct, defendants?

MR. GILROY: Yes, Your Honor.

THE COURT: Okay. So we will not take testimony on Tuesday but we will be back up on Wednesday the 28th at 9:30. And you have one defense witness scheduled for that morning; correct?

MR. GILROY: Dr. Lerner. Yes, Your Honor.

THE COURT: Dr. Lerner on the 28th starting at 9:30.

MR. GILROY: Yes.

THE COURT: My anticipation is that that questioning, direct and cross, shouldn't take much more than the morning if it goes into the afternoon. Is that

fair depending on what it is?

MR. GILROY: Yes.

MR. BRENNAN: Yes.

THE COURT: So what I would like to do is since -- and that's the last witness for defendants; correct?

MR. GILROY: Yes, Your Honor.

THE COURT: So since we won't need testimony all day, we're going to do the charge conference and discuss the verdict sheet in the afternoon on the 28th or right after the testimony ends, whatever it is. Okay.

And then we are down on June -- I'm sorry, on May 29th and 30th, because I'm away. So then we'll come back on June -- actually, I'm sorry. Mr. Showers, you're right. So would we be okay with doing summations and charges in the afternoon on June 2nd? Because we did have that day cleared.

MR. BRENNAN: Yes, I would like to keep as small gap in between the evidence and summations as possible.

THE COURT: Yes, I agree.

So we'll do the summations and charges on June 2nd after lunch at 2:00 we'll start. Hopefully, they can start deliberating for a little bit. And then they can deliberate -- you know, we have the 3rd and 4th and we can go past there. Is that fair for everybody

and everybody is now aware of the schedule?

MR. BRENNAN: Yes, Your Honor.

MR. GILROY: Yes.

MR. SHOWERS: Yes, Your Honor.

And on Wednesday after Dr. Lerner, I have a small reading of testimony of Mr. Patino from Capital. So that will squeeze in very quickly.

THE COURT: Okay. But, again, for purposes of -- and, again, I apologize for over a holiday weekend to give some homework, but I'll need any changes in the proposed verdict sheet -- I'm sorry, any changes in the request to charge and then the proposed verdict sheets all as Word documents, emailed to my court attorney, Ms. Castro, by Tuesday morning, okay, so that way we can take care of those items in chambers.

All right. So that's our new schedule and roadmap for the rest of this trial.

And I'll take care of any type of record issues before we bring the jury down.

Mr. Brennan?

MR. BRENNAN: Judge, I just wanted to note for the record in anticipation of the charge conference and request to charge, and in light of information received yesterday, that we will be requesting a missing witness charge, specifically for Dr. Andrew Bazos who's an

orthopedic surgeon who examined my client, prepared multiple reports. Dr. Bazos was scheduled to testify today and we learned yesterday that the defendants were no longer intending to call him. I'm anticipating a response but obviously they will respond. But the anticipated response, I believe from the defendants, will be that Dr. Bazos's testimony will be cumulative to specifically to the --

THE COURT: We'll hear their arguments. I'm not going to rule on this now. We'll take care of this during the charge conference. But my understanding is you're just putting them on notice that that's going to be amended in the charge request.

MR. BRENNAN: I just wanted to -- as soon as I knew, I want everyone to be aware that I will request that.

THE COURT: Okay. That's fair.

Any response for now or we'll hold off for the charge conference?

MR. GILROY: I'd like to respond at the charge conference.

MR. SHOWERS: I will just say that we oppose it and we'll respond at the charge conference. Thank you.

THE COURT: Sure. So I'll anticipate your amended request to charge in line with the schedule that we just discussed before that notice on the record. Okay.

Any other items before we get the jury down here?

MR. BRENNAN: Not from plaintiff, Judge.

THE COURT: Defendants?

MR. SHOWERS: I don't think so, Judge.

MR. GILROY: No.

THE COURT: Off the record.

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

THE COURT: Let's get the jury down.

COURT OFFICER: All rise; jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: All right. Welcome back members of the jury. We could all take our seats.

Good Friday morning to everybody and we will continue with the -- oh, wait, we actually -- plaintiff, are you calling any more witnesses or are you resting?

MR. BRENNAN: No, Your Honor. At this time the plaintiff rests.

THE COURT: Thank you.

And so members of the jury, you recall from a little earlier this week, so we've already heard from one of the defendants' witnesses, just because they had already been scheduled. So now the plaintiff has rested. There's no more presentation of their case until cross examination and summation at the end. And we turn to the defendants' case formally now.

So defendants, you want to call your next witness?

MR. GILROY: Yes, Your Honor. With the Court's permission, the defendants may have certain motions to make outside of the presence of the jury with respect to their resting, the plaintiff resting.

THE COURT: We'll take care of that after presentation.

MR. SHOWERS: I join, Your Honor.

MR. GILROY: Thank you.

Your Honor, Third-party Defendant calls Dr. Allen Rubenstein.

(Whereupon, the witness enters the courtroom.)

COURT OFFICER: Please raise your right hand.

A L L E N R U B E N S T E I N M D, a witness called on behalf of the Third-Party Defendant after having been first duly sworn and having stated his address as 1365 York Avenue, New York, New York 10021, took the witness stand and testified as follows:

COURT OFFICER: In a loud clear voice please state your name and address for the record.

THE WITNESS: Allen E. Rubenstein, 1365 York Avenue, New York, New York 10021.

COURT OFFICER: You may be seated.

THE COURT: Okay. Thank you, sir.

Just during the examination if you could just speak towards the microphone so our court reporter can pick it up and you can pull that towards you.

And my understanding is, Mr. Gilroy, you'll be engaging in direct first today?

MR. GILROY: Yes.

THE COURT: Okay. Counsel, the witness is sworn. You may inquire.

MR. GILROY: Thank you.

DIRECT-EXAMINATION

BY MR. GILROY:

Q. Good morning, Doctor.

A. Good morning.

Q. If you can't hear me or have any trouble, you know, making out what I'm saying, just stop me and ask me to repeat it. Okay?

A. Okay.

Q. Are you a physician licensed to practice in the state of New York?

A. Yes.

Q. And could you give us a resumé of your educational background beginning with your college education and bringing us forward by date?

A. I graduated from Cornell University. I received my M.D. from Tufts University Medical School in Boston.

Q. What year was that, Doctor?

A. 1970.

I then -- I did my internship in neurology residency training at Columbia Presbyterian Medical Center in New York Neurologic Institute. I received some post-graduate training in genetics. And I then joined the faculty at Mount Sinai Medical Center in New York. I was there for many years. And then in 1999 I moved to NYU Medical Center where I am currently clinical professor of neurology and pediatrics.

Q. Are you still a clinical professor at NYU?

A. Yes, I am.

Q. And that's the medical school of NYU?

A. That is correct.

Q. And could you explain to us what the field of neurology is, Doctor?

A. So neurology is the study of the brain neurology, the functioning and diseases of the brain, spinal cord, the neuros which exit the spinal cord and go into the arms and legs. It also includes study of the junction between the nerves and the muscles and the muscles themselves.

Q. And have you been board certified by any national board in the field?

A. I am board certified by the American Board of Psychiatry and Neurology in neurology and I am a former examiner for this board.

Q. And the American Board of Psychiatry and Neurology, could you explain what that is?

A. It's a professional organization which licenses both psychiatrists and neurologists separately.

Q. And did you have to pass some kind of test in order to be board certified?

A. Yes.

Q. Could you explain that, please?

A. There's a -- it's two parts. Historically there have been two parts to the board certification process which requires you to have completed a neurology residency training and be in practice for two years or be in post graduate activities for two years after that, and that includes a written examination on all aspects of neurology, and then an oral examination which you do an examination which at the time that I took it, it was done in person. Much of that has been replaced by interactive video.

Q. And have you recertified, in other words, kept your certification active?

A. My certification is active. I am grandfathered in to not have -- am not required to recertify.

Q. And you mentioned that you are a professor at NYU Medical School. Do you teach medical students in that connection?

A. I do.

Q. And how do you break down your time at the present

time?

A. Two days a week I see patients. I am involved with a number of research projects of clinical trials and basic research. And I advise several companies in the medical device by a technology area. One month a year I supervise residents and medical students at Bellevue Hospital, part of the NYU complex. And I also participate in a specialty clinic for a rare genetic disorder which I have a particular interest in it.

Q. And have you published any articles in peer reviewed journals during your career?

A. Yes.

Q. And what is a peer reviewed journal?

A. Peer reviewed journal means that in order to get published and appear in the journal there are other scientists and doctors who have to review the art -- or are assigned to review the article for accuracy and appropriateness and so on.

Q. Okay. And what area or field have you published in?

A. Well, neurology, neurology research. Many of my publications are in neurogenetics and a rare disease I have a particular interest in but I've published in a variety of areas of neurology. And I have over 55 peer reviewed publications and I have additionally edited three textbooks and presented at numerous international meetings.

MR. GILROY: Your Honor, Third-Party Defendant offers Dr. Rubenstein for qualifications in neurology and

asks that the Court recognize that he is an expert witness.

THE COURT: Any objection?

MR. BRENNAN: No, Your Honor.

MR. SHOWERS: No.

THE COURT: Okay. The witness is qualified.

Thank you.

Q. Dr. Rubenstein, in connection with this case, were you asked at one point to conduct a medical examination of Mr. Urquia the plaintiff?

A. I was. Yes.

Q. And did that medical exam take place?

A. Yes.

Q. Was it a general medical exam or a neurologic exam?

A. Neurologic.

Q. Would you tell us what a neurologic exam is as you teach your students?

A. Okay. Well, prior to doing a neurologic examination, I typically review all the medical records available to me and I make a case summary. And if I notice any issues or concerns about the history, I bring them up in an interview with the person I'm doing the examination or evaluation for. And I review the entire medical record with such patient.

The neurologic examination consists of testing the entire nervous system from mental status, head and functioning cranial nerves, the nerves which involve primarily the face,

eyes, hearing, taste, swallowing, facial function. Deep tendon reflexes which are very important in assessing function of the spinal cord and the nerves extending to the spinal cord which is done with a reflex hammer, which I suspect you're all familiar with. Motor testing, which starts with examination of people's arms and legs and whether or not there's any wasting or abnormality and then strength testing, in addition to range of motion of testing which is typically done to determine whether or not there's any difficulty, typically of an orthopedic type, meaning joint problem, but also pain on movement for many cause.

Sensory testing a variety of types is done to test the sensory functioning in the arms and legs. Also, its ability to extend through the spinal cord through the brain. And lastly, coordination and gait testing which is testing a part of the brain, the cerebellum which is involved with coordination.

So that's the neurologic examination which is typically done.

Q. How many times have you conducted a neurologic exam of the type that you described for us in your career?

A. Thousands.

Q. And Doctor, do you have an independent recollection, without looking at a record, of meeting or examining Mr. Urquia?

A. I do. Yes.

Q. This occurred back on August 3, 2021; is that correct?

A. Correct.

Q. Okay. And did Mr. Urquia come to your office or did you go to him; how did that work?

A. He was seen in my office.

Q. Okay. And was he accompanied by anybody when you examined him?

A. He was accompanied by a representative from an -- the defense law firm and by a translator.

MR. BRENNAN: Judge, I just note the witness keeps looking down at something.

THE COURT: I noticed.

MR. BRENNAN: Testifying that he independently recollects.

THE COURT: Yes, Doctor. If you're referring to any notes, you just have to let us know. If you're referring to any report that you've generated when you're answering the questions. Okay.

THE WITNESS: Okay. Well, I was looking at my summary of the visit.

THE COURT: Okay. So that you brought that with you from your office; correct?

THE WITNESS: That is correct.

THE COURT: Okay. So we'll just note for the record that the witness is consulting the notes from his office.

MR. BRENNAN: Thank you.

Q. Okay. And with respect to -- do you speak the Spanish language?

A. A little. Not much.

Q. And was there somebody available there to interpret for Mr. Urquia?

A. Yes, there was a qualified translator.

Q. Okay. And was there another representative there from a law office?

A. There was a representative from a company called IME Watch Dog which typically represents plaintiffs in this type of examination.

Q. Okay. And when -- could you tell us what your examination of Mr. Urquia consisted of and what your findings were? And if you need to refer to your record, the notes that you have regarding specific findings, please do so.

A. Okay. So we went over the different parts of the neurologic examination already. My finding was -- my examination was surprisingly that there were no objective findings on neurologic examination.

Q. Now, did you have a history? In other words, a background of what had happened to this person and why he was there in your office?

A. I do. And I'm going to refer to my examination history which summarizes the medical records --

Q. Okay.

A. -- to do so.

Q. You may do so.

A. So Mr. Urquia claimed that he sustained trauma to his neck, right wrist, both shoulders, left knee and hip in a work related accident on December 27, 2018.

Q. Is this something that Mr. Urquia -- this information something that Mr. Urquia told you?

A. That's what he told me. When he was seen at Lincoln Hospital emergency room, he was seen only for a laceration, which is an injury, usually with open skin, of his right hand. There was no complaint of any other problem involving his neck or his back or, in fact, his shoulders, left knee or hip at the time that he made at the emergency room.

Q. And Doctor, I'm sorry to interrupt you. Were you finished responding to that question?

A. Well, about initial visit, yes.

Q. Okay. And would you anticipate, and I ask -- when I ask you for an opinion, I ask that you express all your opinions to a reasonable degree of medical certainty. Okay?

A. That is fine.

Q. Okay. And when you examine a patient whose had an acute rupture or slippage of a cervical disc, do you typically -- what kind of symptoms do you typically encounter?

A. Typically pain which may or may not be accompanied by muscle spasm and result in loss of motion of the areas that

involved loss of motion, range of motion, inability to actually function properly.

Q. And you indicated you reviewed Mr. Urquia's Lincoln Hospital record.

A. That is correct.

Q. Is that from the date of his accident?

A. Yes.

Q. Okay. And that would have been when?

A. 12/27/2018.

Q. Okay. And did you see any indication of complaints of the type that you just described to us in general, any indication of complaints of neck pain?

A. No.

Q. From Mr. Urquia?

A. No.

Q. Okay. And did you just -- moving onto your examination of Mr. Urquia. Could you go through the steps of the examination that you performed and tell us what your findings were?

A. Okay. Well, first of all, I examined his neck for range of motion, that was normal. I examined him -- and I should say that this was in the context of Mr. Urquia claiming that he had severe pain in his neck and his low back persistent despite having had surgery previously on his neck. And the rating scale was one to ten. Ten being -- one being minimal and

ten being the absolute worst which usually means that you are in acute and severe pain. That's the absolute worst that anybody can describe.

Mr. Urquia stated to me that he had ten out of ten pain in his neck and his low back. I was surprised at hearing somebody stated they had such severe pain because he was walking normally, walking in normally, and wasn't bent over, had no ability walking. And I explained to him, again, that what the ratings meant and he insisted that his pain was ten out of ten. So I was quite surprised then to find that he had no difficult moving his neck in all ranges normally. He had no spasm, he had no tenderness of those cervical muscles.

Same with his low back. He was able to flex to 50 degrees, which is about two-thirds of the way. Most adults don't do much better unless they're athletes or exercise regularly. So that was pretty good.

And there's a very important test called straight leg raising that one uses to assess for irritation of the spinal cord called straight leg raising test. And his was negative. He had no pain in straight leg raising which is practically impossible if, in fact, you're claiming ten out of ten pain. It just doesn't happen.

In addition, he had no spasm. He had no tenderness.

So going onto the rest of the examination. His deep tendon reflexes were symmetrical and normal.

His sensory examination, if you have significant compression of the nerves in your arms and legs, typically you will complain or have numbness or abnormalities in a -- in the area where the nerve exits the leg or the arm in a specific distribution. So --

Q. Excuse me. I don't mean to interrupt. But you're using some medical terms and I'd just like to make sure we're all on the same page so to speak.

A. Okay.

Q. All right. In general, Doctor, would it be fair to say that the arms, both power and sensation in the arms, comes from nerves that exit the spine in the neck?

A. Correct.

Q. And with regard to the nerves in the lower back, meaning below the level of the ribs, that's called a lumbar area; is that fair?

A. Yes, lumbosacral area.

Q. And do the nerves that emerge from the spine in the lumbosacral area provide sensation and strength to the legs?

A. Correct.

Q. Okay. And is that the reason why you looked at Mr. Urquia's arms and legs?

A. Yes.

Q. And specific nerves that leave the spine at specific levels, do these create or do these supply sensation to a

particular part of the limb?

A. Correct.

Q. If you could give us an example.

A. Well, for example, the commonest nerve that gets compressed in the leg is the one which runs between the fifth lumbar nerve and the first sacral -- fifth lumbar vertebra and the first sacral vertebra. It's L5-S1. And that runs down the side of the leg and down to the top of the foot of the big toe. So if you have compression of that, which is the commonest situation for an actual real compressed nerve, you will either see sensory dysfunction of some sort or loss of sensation in the lateral aspect of the leg running down to the toe.

Q. And how do you test for that? In other words, as a neurologist examining a patient in an office, how are you able to tell if somebody has those diminished sensations due to a compressed nerve?

A. We use a sharp object, plastic pin.

Q. Okay. And what do you do?

A. Basically test sensation around the leg, both sides for asymmetry. And then if there is any abnormality whether -- what's very important is to determine whether or not it's an actual -- a real nerve root distribution.

Q. Okay. So you -- you're aware of what parts of the leg receive nerve impulses and sensation from the spine; is that fair?

MR. BRENNAN: Judge, I'm just going to object. Leading. There's been a lot of it here.

THE COURT: There's been a lot throughout the trial.

MR. BRENNAN: Sure.

THE COURT: But, okay, I will ask that you rephrase counsel. Okay.

Q. Doctor, just as a general matter, could you explain to us with what the --

MR. GILROY: I'll withdraw that question.

Q. Are you familiar with a term anatomic distribution?

A. Correct. Yes.

Q. And is the anatomic distribution what you've just been describing to us?

A. Yes.

Q. And could you tell us about the sensory findings you made with respect to Mr. Urquia?

A. Well, Mr. Urquia claimed that he had no sensation at all to pin in his entire left leg.

Q. And did you believe him?

A. The answer is that that is not an anatomical distribution and as far as I'm concerned it's not real.

Q. Okay. And just to be clear, what would you expect if, for example, the nerve at the level of L5-S1 were compressed?

A. If there were any sensory loss, it would be in the

distribution of the L5-S1 nerve roots which, again, are on the lateral aspect, the side of the leg running down to the big toe.

Q. And how many nerve roots exit the spine at that -- in the lumbar area?

A. Four, five. Four or five.

Q. And does each have a specific area of distribution in the legs?

A. Yes.

Q. And when you say Mr. Urquia's sensory findings were not in an anatomical distribution, did you test him for that?

A. That's exactly what I mentioned, yes.

Q. Okay. I interrupted you a bit. I think you were telling us or taking us through your physical examination of Mr. Urquia.

A. Okay. So I mentioned that his reflexes were normal. His -- I found no evidence for weakness. He did claim to have pain on moving his shoulders and his left knee. His sensory examination we discussed, which I did not think was real. His coordination testing was normal. His higher mental function mental status was in tack and his cranial nerves were in tack other than for the fact that he was blind in the left eye.

Q. And with regard to -- you've told us a bit about how you examined the person for sensation in the legs. Did you also examine his arms for sensation?

A. Yes.

Q. And are there patterns of distribution in the arms as well as the legs?

A. Yes.

Q. In other words, as you explained some areas -- specific areas are known to a doctor to be supplied by certain nerves?

A. Correct.

Q. And in doing the -- in doing the testing, did you also test his reflexes?

A. I mentioned that; yes. And they were normal.

Q. How did you do that? How did you go about that?

A. The deep tendon reflex is a stretch reflex and it involves -- in order to be present, it has to have -- for each joint that's tested, the sensory component of the nerves and the motor component have to be present.

Typically in people who have spinal cord nerve root compression, there is a loss of reflex. It's either dampened or absent and that's a significant finding and leads one to believe or conclude that there likely is nerve root compression. This patient had normal reflexes noted by me and by every other single doctor he's ever been examined by, including his own neurologist.

Q. And, again, you're using some medical terms that I'm not entirely familiar with. You talked about motor component. What do you mean by a motor component and a sensory component

that these nerves have?

A. Well, when you tap, for example, a knee jerk with a hammer, you get -- you get -- it jumps. And there is -- in order to do that, it has to be felt. So you have to have a sensory -- you have to feel the tapping which is the sensory part. And then you have to have enough motor strength to actually see the muscle jump. So it measures a tendon reflex which has a sensory and motor component, those two components.

Q. So did you test for the motor function of his arms and his legs?

A. Yes.

Q. And that was the reflex testing that you described?

A. No, that's separate. Deep tendon reflexes is one component of the neurologic examination. Then a separate examination is functional muscle testing.

Q. And describe what functional muscle testing is?

A. Well, first of all, there's observation of the muscles, are any of the muscles atrophied. I mean, do they have the -- are there any difference from one side or the other. There are certain aspects of muscles which have -- have nerve root compression which shows specific signs. None of which he had. He had no atrophy. And then just testing strength against my hand. He was able to do strength testing normally for all four extremity -- for all four, two arms and two legs.

Q. And Doctor, could you continue with your exam of

Mr. Urquia.

A. Yeah. So his gait was examined. He had a normal gait.

Q. What is gait?

A. Gait means what it looks like when you're walking.

Q. Okay.

A. So I asked him to walk. He walked normally, despite claiming that he was in such severe pain that anybody that I've ever seen who claimed ten out of ten, neck or back pain, could barely walk. This guy just got up and walked back and forth and he had -- didn't require any assistance, he didn't use a cane. He -- he walked -- I typically ask for them to walk on their toes and on their heels. That measures function of ability to use your lower extreme -- your legs. And he walked normally on his toes. And he said he couldn't walk on his heels because he had pain in his left knee.

Q. And did that conclude your examination of Mr. Urquia?

A. Well, I mentioned before that other things which are not as relevant to this particular examination were also examined and were normal. Coordination, higher mental function, cranial nerves, which I mentioned he is blind in his left eye.

Q. And with regard to -- with regard to the examination, did you form an opinion to a reasonable degree of medical certainty with regard to Mr. Urquia's subjective complaints that he presented to you regarding his neck?

A. That despite having surgery a year-and-a-half previously on his neck, he continued to complain of extremely severe neck pain and -- which was entirely subjective. There were no objective findings, meaning findings that I actually saw, to support that claim.

Q. Did he indicate to you that he was taking anything for that ten out of ten pain that he complained about?

A. He said he was taking Naprosyn which is an over-the-counter pain medication.

Q. And Doctor, did you come to an opinion, with a reasonable degree of medical certainty, as to his complaints of lower back pain?

A. Yes.

Q. And please tell us what your opinion was?

A. I found no evidence for any objective findings to support the claim of ten out of ten low back pain.

Q. And did that conclude your examination of Mr. Urquia?

A. Yes.

Q. Okay. Now, you reviewed a number of records. I think we have many of the medical records in evidence here.

A. Yes.

Q. You've also reviewed something called a life care plan?

A. Yes.

Q. Okay. Was that prepared by Dr. Vicki Seidenberg?

A. Yes.

Q. Do you know Dr. Seidenberg?

A. I do.

Q. And with regard to Dr. Seidenberg's life care plan, she indicated that extensive follow-up examinations and procedures and medications would be necessary for injuries that Mr. Urquia sustained in the accident of December of 2018. Do you have an opinion, with a reasonable degree, regarding whether these procedures and medications and examinations that Dr. Seidenberg has proposed are necessary?

A. I did come to a conclusion. Which was --

Q. Go ahead.

A. As far as I was concerned, he didn't have any real pain. He had not bothered to see a doctor for a while taking only over-the-counter medication and complained of extraordinary severe paint without any objective findings on examination. So as far as I'm concerned, he doesn't have real pain. He doesn't need any of this extensive follow-up medications, diagnostic testing, further surgery, anything.

Q. Thank you, Doctor.

MR. GILROY: I have no further questions.

MR. BRENNAN: I just ask the portion about future surgeries be stricken. No foundation was laid for his opinion about what kind of surgical interventions, he's not a surgeon, none of that was testified to.

THE COURT: I'm going to overrule.

Mr. Showers, are you engaging in direct with the witness?

MR. SHOWERS: Briefly, Your Honor.

THE COURT: Okay. You may inquire.

CROSS-EXAMINATION

BY MR. SHOWERS:

Q. Good morning, Doctor.

My name is Andrew Showers. I represent the defendants in this case. I just have a few follow-up questions for you.

A. Okay.

Q. Were you retained by the defendants in this case to perform an independent examination of the plaintiff?

A. Yes.

Q. Okay. And have you ever been retained by our firm before?

A. You'll have to repeat the name of the firm.

Q. McMahon, Martine & Gallagher.

A. I believe I have. Yes.

Q. Okay. And are you being compensated for your time away from your practice to be in court today?

A. Yes.

Q. And do you know the amount?

A. $5,000.

Q. Okay. And how about when you examined Mr. Urquia and

drafted reports, were you compensated for your time as well?

A. Yes.

Q. Okay. And do you recall what those fees were approximately?

A. Approximately $2,500.

Q. For the examination and report?

A. Correct.

Q. And then what about for an addendum report to review additional medical records, did you receive compensation for that?

A. Yes.

Q. Do you know the amount?

A. I don't offhand.

Q. And have you ever testified in court before?

A. Yes.

Q. And do you know what the frequency over the course of the years you have testified in court?

A. I have testified over the 20 plus years that I've been doing this, about 125 times.

Q. Okay. Do you know the percentage that you've testified over those occasions as between plaintiffs, defendants, or you don't know?

A. About half those cases were medical malpractice cases. And about 60 percent of the cases I see are for -- I testify on behalf of the defense, and 40 percent for plaintiff.

For personal injury, which is the other half of the testimonies, I've given 90 percent have been for defense.

Q. Doctor, can you just -- in the medical usage of subjective and the medical usage of objective, can you just explain how those terms are used in medicine?

A. Well, that's an important question because people have complaints. And they come in and tell you what's bothering them. And those are subjective complaints. And many of the parts of the examination are subjective. Range of motion, for instance, can you move your arm? That's really subjective for the most part. Sometimes people have fixed contractures in which it's very obvious. But most of the time it's subjective.

What I'm asked to do as a neurologist is in addition to recording and taking a history of the subjective complaints, is determining whether or not there are any objective complaint -- findings, meaning loss of reflexes, loss of sensation and appropriate distribution. Those are objective findings.

And as I said before, there's a substantial difference between Mr. Urquia's significant subjective complaints and absolutely lacking objective complaints which was why I concluded that his complaints are not real.

MR. SHOWERS: Thank you very much, Doctor.

THE COURT: Mr. Brennan, cross?

MR. BRENNAN: Yes, please.

CROSS-EXAMINATION

BY MR. BRENNAN:

Q. Good morning, Dr. Rubenstein.

A. Good morning.

Q. You and I never met; correct?

A. As far as I know.

Q. Okay. I think you told us a moment ago that 90 percent or so the testifying you do on personal injuries cases is for defendants; is that right?

A. That is correct.

Q. And over what period of time have you performed these kinds of physical examinations in personal injury cases?

A. Twenty plus years.

Q. And on average how many examinations and reports do you prepare a year?

A. Probably about 100.

Q. Is that still your rate to this day, the frequency I mean?

A. It's gone up and down over the years. There was a period when I ran a biotechnology company when I was very busy and did few of them. But I ended that in 2011.

Q. So then would it be fair to say that you've done more examinations and reports since you stopped running that biotech company in 2011?

A. Yes.

Q. Because you have more time to do it?
A. Well, that is correct.
Q. Just out of curiosity, this is more for me. What is the crest on your jacket?
A. That is a -- that's my family crest.
Q. Oh, okay.
A. Which I made up, by the way.
Q. But did you trademark it or everything?
A. You asked so I'm responding.
Q. No, it's just interesting.
Is it registered?
A. No, I haven't registered it but it's -- I did make it up.
Q. Okay. Thanks for satisfying my curiosity, Doctor.
A. That's quite all right.
Q. But you're testifying here today based on a physical examination you performed of my client in August of 2021; correct?
A. Correct.
Q. And everything you've said today that basically you don't believe my client's complaints is based on what you observed on that particular day; correct?
A. Correct.
Q. You're not making an opinion, you're not telling this jury about what injuries you think he may or may not have

sustained in the accident from December 27, 2018, are you?

A. No.

Q. You're just saying that when you examined him on August 3, 2021, from an objective standpoint, everything was resolved?

A. Everything was resolved -- well, when I say everything was resolved, he may have had some true symptoms but they were not represented by any focal neurologic dysfunction and they certainly weren't severe if they were present. So there may have been some real symptoms. But if they were, they were grossly exaggerated and/or not real.

Q. Well, that's -- I just want to ask you about this line you have in your original report, Doctor. Do you have that in front of you?

A. I do.

Q. This would be on page nine I think -- sorry, of your actual report it's going to be five. Under impression and diagnosis. Are you there, Doctor?

This would be on your first report.

A. Uh-huh.

Q. All right. And you wrote in that report it is your opinion -- and this is what I want to focus on -- that some or all of Mr. Urquia's spinal complaints are not real.

A. Uh-huh.

Q. Is it some or is it all?

A. It's one or the other. And if it if there's -- any symptoms that are real, they are not anywhere near what would be represented to me by his claims.

Q. Okay. But you're here to offer your opinion; right?

A. That is correct.

Q. So I'm trying to get that opinion from you. Is it some or is it all, Doctor?

A. It's what I said in my report was that some or all of his spinal complaints are not real and represent malingering.

Q. Right. I know that's what you wrote. But I'm trying to get some clarity because "some" and "all" you would agree with me are very different things; correct?

A. Only to the extent of degree.

Q. Sure. I mean, if you were to be paid $0 of your appearance fee here today, that would be far different than being paid some of your appearance fee; correct?

A. Yes.

Q. And you wouldn't appear here at all if you got none of your appearance fee; right?

A. Probably not.

Q. So that's what we need to know. This jury needs to hear from you. Is it "some" or is it "all" of the symptoms that you're claiming that my client was making up in your presence?

A. Well, I found no objective evidence for any real findings. So as far as I'm concerned, none of them were real.

Q. Why didn't you just write that then, Doctor? Own your opinion. You don't think he was telling you the truth at all; right?

A. I think that's likely. But I'm allowing for -- I was being generous.

Q. Okay. Okay. Doctor, let's talk about objective evidence; right.

A. Okay.

Q. Particularly in your field of neurology; all right.

A. Yup.

Q. You're aware that my client came under the care of two separate neurologists in the course of his treatment; correct?

A. Dr. Hausknecht. And who was the another?

Q. Dr. Kwan?

A. Oh, yes, he saw him once, I think. Yeah.

Q. Is your recollection he only saw him once?

A. I'll have to check on that.

Q. Okay. Take my representation that the records reflect that he saw him on a couple of occasions but more than once. All right, Doctor.

A. Okay.

Q. And you had those records when you were preparing this original report?

A. On my original report, let's see. I did not.

Q. Well, you had Dr. Hausknecht's records; correct?

A. Yup.
Q. You just didn't have Dr. Kwan's?
A. I believe so; yes.
Q. And the records that you had at that examination only went up until December 23rd of 2020?
A. Correct.
Q. You know that my client was still seeing doctors in January, February, March, April, all the way up until your examination in August of 2021; right?
A. And I was asked to do an update review which I did.
Q. Okay. But you didn't know that at the time of your examination in August of 2021?
A. Didn't know what?
Q. That he was still seeing doctors and treating actively in the year 2021 even though you had no records for it?
A. No, I did know.
Q. How did you know that?
A. He told me he was continuing to see doctors.
Q. Oh, so you believed him when he told you that?
A. Believed him?
Q. Yeah.
A. I had -- I had no reason not to believe that he was continuing to see doctors.
Q. Even though you had no records for it, no objective evidence that he continued to see doctors at that time?

A. That was correct.

Q. Okay. You said something on direct. I just want to clarify because I didn't really understand it.

One of the reasons you came to your conclusion is you said that he hadn't bothered to see a doctor for a while. Remember that testimony on direct examination?

A. He hadn't bothered to see -- to get what -- I meant by that actually was that he hadn't bothered to get any further cervical epidural injections.

Q. From when?

A. Well, let's see.

Q. Just injections? That's the only thing you were -- when you so flippantly said he hadn't bothered, you're just referring to epidural injections?

MR. GILROY: Objection, Your Honor.

MR. BRENNAN: I'll rephrase.

THE COURT: Thank you.

Q. So when you're saying he didn't bother to see any doctors, what you really meant was that it had been some time since he had an epidural injection?

A. Yes.

Q. What information did you have about how many epidural injections he had undergone when you prepared this report in August of 2021?

A. Well, I had the medical records from Dr. Perez who I

believe was the pain management doctor who was giving him the injections.

Q. Right. And but you can agree with me you didn't have all the records at the time you performed that examination; right?

A. When you say "all the records", prior to his being seen you mean?

Q. Correct?

A. Or subsequent too?

Q. I'm talking about before you prepared this report in August of 20 --

A. No, there were subsequent records that I did not see.

Q. That's not what I'm asking. Because you made opinions and you formed conclusions in this report; correct?

A. That is correct.

Q. And you haven't changed them since you looked at additional records; right?

A. That is correct.

Q. We'll acknowledge that, Doctor.

But I want to talk about what you knew and what you reviewed before you made this report calling my client a liar. All right.

What information did you have about how many injections Mr. Urquia had undergone when you prepared this report?

A. Well, let's count them up. There's a record of him having two on the chart.

Q. To what part of his body?

A. Cervical.

Q. Okay. Do you have the records about his lumbar injections specifically epidural?

A. Yes.

Q. Okay. How many did he have there?

A. Looks like one.

Q. Did you also read the records about what he reported in terms of relief from those injections?

A. Yes.

Q. What did you learn from reviewing those records?

A. That he had temporary relief.

Q. And that it came back; right?

A. Yes.

Q. So when you say that it was important to you that he hadn't gone for more injections when they hadn't worked in the past, that's part of the reason you formed your conclusion that he didn't really have pain?

A. No, I didn't say that.

Q. Well, you told us that when you said he hadn't bothered to see a doctor, it was because he hadn't gone specifically for more epidural injections. Didn't you testify to that?

A. No, not because it didn't work. I didn't say that.
Q. But you would have wanted my client to go get additional injections under general anesthesia with a needle to his spine even though he said that it didn't report any relief?
A. He didn't say it didn't report any relief --
Q. That it was temporary.
A. -- he said it was temporary.
Q. Right. But in your opinion, he should have gone for more injections?
A. In my opinion, if you have ten out of ten pain, certainly over-the-counter pain medication is not going to help you. So further assessment and treatment would be appropriate to seek.
Q. So now is your answer different? Is it beyond just injections?
A. Well, he was previously getting injections and they helped temporarily. There are other possibilities none of which were, as far as I'm aware, were ever sought out.
Q. Right. But you didn't have all the records, did you, when you made that original opinion?
A. Again, I did not have all the records. I subsequently received a significant amount of records and my opinion did not change.
Q. Well, one of the things that you concluded in your original report was that one of the reasons you don't believe my

client is that you thought that it took him three weeks to seek follow-up treatment for any complaints to his neck or his back?

A. That was an issue about causality not necessarily -- there was an issue about causality of whether or not there was any evidence that he actually hurt his neck or his back at the time of the alleged accident.

Q. But you noted right in the first paragraph of your impression and diagnosis that it took him three weeks to seek any follow-up treatment; you saw that?

A. Let's see.

Q. Still sticking in the same --

A. Yes, that is correct.

Q. And that was wrong; right? You had bad information when you pointed that out?

A. That he sought?

Q. He sought medical attention on January 8, 2019, you're aware of that now because you got additional records later; right?

A. January 8th of '19? That would be two weeks instead of three weeks.

Q. Well, twelve days actually, less than two weeks.

A. Okay. Well, I might give you a couple of days if you'd like. If that --

Q. I'm not asking you to give me. What I'm asking you to make your opinions based on actual facts, Doctor.

A. Okay.
Q. Not incorrect information.
A. Okay. Well, then -- then subsequent information which did not change my opinion.
Q. Did you look at films in this case?
A. Did I look personally at the films?
Q. Right.
You're aware that radiologists did?
A. Obviously.
Q. Yeah. You're also aware that surgeons did?
A. Obviously.
Q. And you talk about objective findings; correct?
A. Yes.
Q. And you're aware that my client had a herniated disc at the C5-6 level; correct?
A. I am, yes.
Q. Read by a radiologist at Lennox Hill Radiology; correct?
A. Correct.
Q. Read by doctor -- his surgeon Dr. Ashley Simela; correct?
A. That is correct.
Q. Read by another doctor who recommended his cervical fusion, Dr. Macagno, you're aware of that as well?
A. I'm not sure if I'm aware of that, but...

Q. Was that one of those records they didn't send you, Doctor?

A. It wasn't in my original assessment. No.

Q. You're also aware that my client had MRIs taken of his lower back; correct?

A. That is correct.

Q. That he had a herniation and has a herniation at the L5-S1 level; right, Doctor?

A. Let's look at that. Because that's what the report said, yes.

Q. Right. But you can't tell us what the film looks like in your opinion because you never looked at them; right?

A. In my opinion?

Q. No, no, no.

You cannot give your opinion about what the film shows because you never looked at them; right?

A. I didn't offer an opinion about the films.

Q. Fine. But the answer to my question is yes, you couldn't offer an opinion because you never looked at them?

A. That's correct.

Q. Do you ever read MRIs in the course of your practice, Doctor?

A. If I'm asked to, yes.

Q. Okay. You've done it for -- how long have you been a licensed medical physician?

A. Over 40 years.

Q. So you looked at what? Hundreds of thousands of MRIs over the course of your career?

A. Yes.

Q. And you're capable of reading those?

A. Yes.

Q. You didn't in this case?

A. I was not asked to.

Q. But you're aware that not only did the radiologist see that there was a herniated disc at the L5-S1 level but that the protrusion impacting his nerve root?

A. I saw the report, yes.

Q. And that's what the radiologist reviewed and concluded; right?

A. That is correct.

Q. That's also what Dr. Simela reviewed and concluded?

A. That's correct.

Q. There were multiple doctors who have not -- whose records are in evidence that you reviewed; right? You're aware of that?

A. Yes.

Q. Now, herniation would be considered an objective finding, wouldn't it, doctor?

A. Well, radiology findings in general are objective.

Q. Is that a yes?

A. Yes.

Q. If you can just answer yes or no, I'd appreciate it.

A. If I can, I will.

Q. Right.

A torn labrum, that would be considered an objective finding if it was observed on an MRI?

A. The answer to that is yes, but that's in the field of orthopedics. That is not my area of specialty.

Q. Okay. When you said on direct examination you described some symptoms of a herniated disc; do you remember that testimony?

A. Yes.

Q. You listed pain as one of the symptoms of a herniated disc; correct?

A. Correct.

Q. And you're aware that when my client did go see Dr. Abramov on January 8th of 2019 he complained of pain to his neck and his back?

A. Yes.

Q. You also described herniation -- symptom of herniation as spasm; right?

A. Yes.

Q. You're aware that my client was observed to have spasm all along his spinal canal with Dr. Abramov?

A. Not by me.

Q. Fine.

You're aware that within close proximity to the accident he was spasming in his back?

A. That's correct.

Q. You're aware that he had spasms in his back of February of 2019 as well?

A. Yes.

Q. March of 2019?

A. Uh-huh.

Q. Is that a yes?

A. Let's see. March of '19. Where are we looking?

Q. Dr. Hausknecht, March 22nd.

A. Yes.

Q. You're also aware that other doctors were hired by the defendants to examine my client; right? Orthopedists specifically.

A. Oh, yes.

Q. Let me just tell you that yesterday we heard from Dr. Brandoff who actually examined my client after you. Okay?

A. Okay.

Q. I want you to assume that he testified that when he physically examined my client, months after your examination, my client had severe -- sorry, significant spasming in his neck.

A. Okay.

Q. Okay. Not one of his treating doctors, one of the

defendant doctors, okay?

A. Okay.

Q. Can someone have spasming and then not be present at every moment of a waking day?

A. Yes.

Q. And you consider spasming an objective finding; correct?

A. Yes.

Q. And if he had spasming in his neck on the day that you examined him, what would your conclusion have been about whether he was making it all up or not?

A. I would have taken him much more seriously.

MR. BRENNAN: Okay. I've got no further questions for this witness.

THE COURT: Mr. Gilroy, any redirect?

MR. GILROY: No, Your Honor.

THE COURT: Mr. Showers?

MR. SHOWERS: No, Your Honor.

THE COURT: Okay. Doctor, you may step down.

THE WITNESS: Okay.

THE COURT: Thank you.

THE WITNESS: Thank you.

(Whereupon, the witness exits the courtroom.)

THE COURT: Counsels, will you approach, please.

Sidebar.

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

THE COURT: Okay. Members of the jury, that's the testimony that we have for today in this case. I want to go over the schedule for next week because it's shorter than the schedules that we've had in the past.

For next week, obviously the court is closed on Monday. I hope you have a wonderful Memorial Day. And on Tuesday we will be down as well. I need you to report back here on Wednesday at 9:00 or 9:15 so we can get started at 9:30 in the knowing.

Wednesday of next week is the only day that we will be taking testimony where we need the members of the jury present. Counselors and the Court will be doing some other things to proceed in this trial. Okay. So when I see you on Wednesday, I will give you the schedule going forward after that. But, again, the only time you need to report back to court is Wednesday the 28th at 9:15 so we can get going at 9:30.

I hope you all have a wonderful weekend and I just remind you of the rules that we read in the beginning of the trial. Okay.

The jury is excused.

COURT OFFICER: All rise; jury exiting.

(Whereupon, the jury exits the courtroom.)

THE COURT: All right. So the jury has been excused as we know. And earlier on the record I had indicated that I would entertain any motions by defendants, you know, upon plaintiff resting.

But Mr. Gilroy, you want to be heard?

MR. GILROY: We respectfully request that we be permitted to place our motion to dismiss at the close of plaintiff's evidence on the record at the time that we hold a charge conference. The reason I'm asking is there's a substantial amount of record testimony that we have that we need to go through.

THE COURT: Okay. And you join, Mr. Showers?

MR. SHOWERS: I join in that request, Your Honor.

THE COURT: I just want to make sure. So you don't want to do it when we're back on Wednesday morning or do you want -- you mentioned charge conference. So that's after the testimony of your next witness on Wednesday. Oh, yeah, we're doing that all on the same day.

MR. GILROY: Yes.

THE COURT: Any objection to that?

MR. BRENNAN: I'd prefer to get it over with. But I understand.

THE COURT: I understand.

MR. BRENNAN: Yeah.

THE COURT: I understand as well.

I will grant the application. I'll hear the motion when we reconvene on Wednesday and we'll take care of all the charge conference and all of those items as we discussed earlier.

And I will just say to clarify the deadlines for the verdict sheets, I need those by 11:00 in the morning emailed to my court attorney. You've all been emailing with her throughout the trial. So you should have her email address, so that's any amended requests to charge and the proposed verdict sheets all in Word document. Please and thank you.

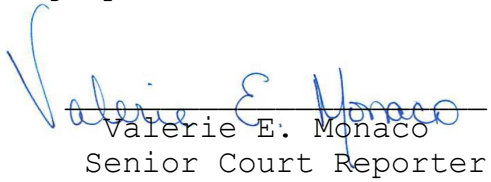
All right. Have a wonderful weekend.

(Time noted: 11:39 a.m.)

(Whereupon, Court is recessed and the case adjourned to Wednesday, May 28, 2025.)

* * * *

I, Valerie E. Monaco, certify that the within proceedings are a true and accurate transcript of the original stenographic record.



Valerie E. Monaco
Senior Court Reporter

COURT OFFICER: [5] 764/9 765/14 765/20 765/24 806/24
MR. BRENNAN: [19] 761/3 761/18 762/2 762/21 763/13 764/1 764/16 770/3 772/8 772/11 772/25 779/1 779/5 785/22 788/25 795/16 805/13 807/21 807/24
MR. GILROY: [20] 760/7 760/14 760/19 760/22 761/2 761/7 762/3 763/18 764/4 765/3 765/10 766/6 766/9 769/24 779/10 785/21 795/15 805/16 807/6 807/19
MR. SHOWERS: [10] 760/8 762/4 763/20 764/3 765/9 770/4 786/4 788/23 805/18 807/13
THE COURT: [44] 759/18 760/9 760/15 760/20 760/23 761/4 761/8 761/20 762/8 763/8 763/15 763/22 764/2 764/5 764/8 764/11 764/18 765/7 765/25 766/7 770/2 770/5 772/10 772/13 772/19 772/22 779/3 779/6 786/1 786/5 788/24 795/17 805/15 805/17 805/19 805/21 805/24 806/3 807/1 807/12 807/14 807/20 807/23 807/25
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