

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CIVIL TERM: PART 91

3 -----X

4 EL-SAYED M. GHONEIM,

Plaintiff,

Index #:

517861/2016E

5

-against-

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7 DAVID A. POLINSKY,

T R I A L

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Defendant.

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360 Adams Street
Brooklyn, New York 11201
June 18, 2019

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12 B E F O R E: HONORABLE DEVIN COHEN, Justice, And a Jury

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

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CHERNY & PODOLSKY, ESQS.
2681 E 14th Street
Brooklyn, New York 11235
BY: STEVEN V. PODOLSKY, ESQ.

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CARTIGLIA, CONNOLLY & RUSSO, ESQS.
1010 Franklin Avenue
Garden City, New York 11530
BY: LYNNE M. NOLAN, ESQ.
BY: JAMES S. McMAHON, ESQ.

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Shanasia Ilgner
Senior Court Reporter

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Proceedings

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1 THE CLERK: Continued case on trial, El-Sayed M.
2 Ghoneim versus David Polinsky, index number 517861 of '16.
3 Counsels, please state your appearances, for the reporter.

4 MR. PODOLSKY: For the plaintiff, El-Sayed
5 Ghoneim, Steven Podolsky with the law firm of Cherny and
6 Podolsky. Good morning, your Honor.

7 THE COURT: Good morning.

8 MR. McMAHON: For the defendant, Mr. Polinsky,
9 James McMahon, the law firm of Cartiglia, Connolly and
10 Russo, associated with my partner, Ms. Nolan, who will
11 introduce herself.

12 MS. NOLAN: Good morning. Lynne Nolan from
13 Cartiglia, Connolly and Russo for the defendant David
14 Polinsky. Good morning, Judge.

15 THE COURT: Good morning.

16 MS. NOLAN: I'm seeking to preclude plaintiff's
17 expert Chirag Shah from testifying today. The basis of my
18 objection to his testimony is that it's speculative and
19 it's based upon injuries and future medical expenses
20 pertaining to his neck, his low back and his knee. It has
21 been placed on the record that plaintiff has withdrawn the
22 injuries claimed to the knee and low back and I, therefore,
23 argue that the experts' numbers which include life care
24 planning for injuries and future treatment to the neck --
25 to the neck, back and left knee are inconclusive and

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1 incorrect.

2 THE COURT: Just so I'm clear, while I do think
3 you've said that you are not focusing on the low back, that
4 you believe those injuries are resolved, I haven't heard
5 you say that you withdrew the claims for the knee only,
6 that you are not making a big deal out of them.

7 MR. PODOLSKY: That's correct, your Honor.

8 THE COURT: Secondly, for better or worse, the
9 plaintiff, although I don't think this was in your plan Mr.
10 Podolsky, that for better or worse the plaintiff did say
11 yesterday that he has ongoing complaints in his lower back,
12 it just wasn't something that was talked about the expert,
13 right. But in any event why don't you say what you want to
14 say about the motion.

15 MR. PODOLSKY: First of all, Dr. Shah is here
16 today. Counsel knew about his testimony for months. It's
17 the first time that they are raising an objection to him.
18 They've never raised an objection to him before today. I
19 believe the objection is late and unfounded.

20 THE COURT: So it's less complicated than that.
21 As with most not all testimony of this type the question is
22 what assumptions was the expert asked to make and whether a
23 change in assumptions changes his testimony, that goes to
24 the weight of his testimony rather than the admissibility.
25 This isn't a Frye question really, this is a question about

Proceedings

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1 that you believe his number is inflated based on the fact
2 that you believe it represents future treatment he won't
3 have. I think that's a totally legitimate concern to have
4 about his testimony. And I would say two things, one,
5 let's see whether he includes all those numbers. I think
6 it's prejudicial to you if he adds stuff that didn't exist,
7 but I don't think it's prejudicial to you if he takes out
8 things that he did originally put in, because he's, you
9 know, because he's expecting to adjust his numbers based on
10 how the testimony goes in.

11 So if it turns out that Dr. Shah gets on the stand
12 and talks about -- talks about expenses that the plaintiff
13 is not -- that we don't expect the plaintiff to have then I
14 would expect you to rough him up about it, you know,
15 verbally, not physically. Other than that, it's a question
16 of degree. It's not a question of admissibility of his
17 testimony. For that reason, your motion is denied.

18 MR. McMAHON: Thank you, Judge.

19 THE COURT: Obviously, you're welcome to cross him
20 about things that he says that are incorrect. This isn't a
21 -- question, it's a numbers question. You had something
22 else too, right? Off the record.

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

25 THE COURT: Ms. Nolan, I know you have a question

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Proceedings

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1 about Dr. Shah's qualification in the field, I just want to
2 let you know that's reserved and you are entitled to make
3 that objection once we hear his qualifications. We have to
4 call you, so just wait for the jurors to come in.

5 (Whereupon, the jurors entered the courtroom.)

6 THE COURT: The plaintiff I understand is asking
7 to call a witness out of order today, correct?

8 MR. PODOLSKY: Yes, your Honor.

9 THE COURT: Who is that witness?

10 MR. PODOLSKY: At this time I'd like to call Dr.
11 Shah to the stand.

12 THE COURT: Call Dr. Shah.

13 THE CLERK: Raise your right hand, please.

14 C H I R A G S H A H , called by and on behalf of the
15 Plaintiff, having been first duly sworn, was examined and
16 testified as follows:

17 THE CLERK: In a loud, clear voice please state
18 your name and address for the record.

19 THE WITNESS: Dr. Shah and I work at 333 East 38th
20 Street, New York, New York 10016.

21 THE CLERK: And the spelling is S-h-i-r-a-g?

22 THE WITNESS: C-h-i-r-a-g.

23 THE CLERK: Last name S-h-a-h.

24 THE WITNESS: Correct.

25 MR. PODOLSKY: Thank you, your Honor.

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Plaintiff - Direct - Dr. Shah

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1 DIRECT EXAMINATION

2 BY MR. PODOLSKY:

3 Q Good morning, Dr. Shah.

4 A Good morning.

5 Q Would you please tell the jury where you went to
6 school?

7 A So for medical school I went to the University of
8 Illinois, for under graduate school I went to the University of
9 Illinois as well, I also went to graduate school at John
10 Marshall law school, received my master's there as well, in
11 regards to residency training after medical school I went to
12 Ross University where I had specified training in physical
13 medicine rehabilitation, upon completion I went to fellowship at
14 Mount Sinai for interventional spine and sports medicine.

15 Q How long have you been working in that field?

16 A Currently as an attending physician, roughly one year.

17 Q Have you read any articles on the subject of spines?

18 A Correct. Yes, I have written several book chapters as
19 well as articles too.

20 Q And how many?

21 A I've roughly written three book chapters I believe
22 somewhere in the ballpark of maybe three to five articles as
23 well.

24 Q Have those publications been accepted by the medical
25 community in your field in your expertise?

Plaintiff - Direct - Dr. Shah

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1 A Yes, they have.

2 Q Have you been given any honors or distinctions?

3 A I have gotten several honors and distinctions as chief
4 resident at Ross University, I've also, you know -- and probably
5 one of the major distinctions as well.

6 Q Have you given any lectures?

7 A Several lectures throughout my career including to
8 residents to other attending physicians, to physical therapists,
9 occupational therapists, other people in our department as well.

10 Q In what field?

11 A That would be in orthopedic spine surgery as well as
12 physical medicine and rehabilitation and neurology, as well as
13 internal medicine.

14 Q Do you practice medicine?

15 A Yes, I do.

16 Q And where do you practice medicine?

17 A New York University Langone Medical Center.

18 Q Is that a teaching hospital?

19 A It is.

20 Q Are you involved in teaching at all?

21 A I am.

22 Q How are you involved in teaching?

23 A Currently on faculty as well as a clinical instructor.

24 MR. PODOLSKY: I'd like to qualify Dr. Shah as an
25 expert witness in the field of medicine.

Plaintiff - Direct - Dr. Shah

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1 THE COURT: In medicine?

2 MR. PODOLSKY: For now.

3 THE COURT: In medicine I see no objection.

4 MS. NOLAN: Oh, okay.

5 THE COURT: But he is not here -- specifically --

6 MR. PODOLSKY: That too --

7 THE COURT: Okay, go ahead. In the field of
8 physical medicine and rehabilitation I accept him as an
9 expert.

10 MR. PODOLSKY: Thank you.

11 Q What else are you -- what else do you do?

12 A I'm also a certified life care planner as well.

13 Q Tell the jury about that.

14 A So as a certified life care planner I basically will
15 assess patients or individuals who have sustained an injury.
16 When they've sustained an injury I will evaluate them based on
17 the type of injury, where it's located, what types of symptoms
18 they have as well. And then based on those I do a physical
19 examination as well as looking at all of their medical history,
20 other medical evaluation about other physicians, other surgeries
21 they have had, as well as other treatment modalities, based on
22 statistical evidence anecdotal evidence within our field as well
23 as literature I'll compile an assessment or a predictive value
24 to see what those -- what that person, what the individual with
25 the head injury, so I guess the patient, what kinds of things

Plaintiff - Direct - Dr. Shah

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1 they might require in the future to help them be functional
2 members of society as well as decrease their pain and improve
3 their mobility as well.

4 Q Are you licensed in that field?

5 A I am.

6 Q When were you licensed in this field?

7 A That was in 2016.

8 Q Have you worked ever since you became licensed in this
9 field?

10 A I have, yes.

11 Q Please tell the jury what's involved in the type of
12 work that you do as a life care planner.

13 A Sure, based on what I had mentioned already, I'll also
14 create a report, a narrative report outlining the patient, you
15 know, situation with their history, what their assessment of
16 their condition is, their functional abilities, their social
17 impacts and then I will also compile a list of tables of
18 different modalities of treatments that they will require, also
19 as well as they will require evaluation by other specialties,
20 devices that they might need as well as social services that
21 they might need as well.

22 Q Did you go to school to learn how to do this?

23 A It is a course, correct.

24 Q And are you -- you said you're certified. Who are you
25 certified by?

Plaintiff - Direct - Dr. Shah

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1 A Certified life care planning.

2 MS. NOLAN: Objection.

3 THE COURT: Overruled.

4 MS. NOLAN: He said licensed he didn't say
5 certified.

6 THE COURT: Are you licensed or certified?

7 THE WITNESS: Certified, I suppose. Certified,
8 yeah.

9 Q Is there a particular body that gives these
10 certifications out?

11 A The associate certified life care planners.

12 Q Have you performed life care plans in the past?

13 A I have.

14 Q Now, what is the basis of your life care plans? Are
15 they based on scientific information? Is the information
16 acceptable in the community of life care planners?

17 A Yes, they are, so it's based on literature, as well as
18 what's accepted within the field as well, as well as statistical
19 evidence as well as predictive values.

20 MR. PODOLSKY: At this time I'd offer this witness
21 as an expert witness in the field of life care planning.

22 MS. NOLAN: Objection. Can I inquire?

23 THE COURT: You want to voir dire, sure.

24 MS. NOLAN: Thank you, Judge.

25 VOIR DIRE EXAMINATION

Defense - Voir Dire - Dr. Shah

11

1 BY MS. NOLAN:

2 Q You're not licensed you're certified, right?

3 A Correct, there's no licensure for it. It's a
4 certification.

5 Q Nobody can be licensed in life care planning, correct?

6 A Correct.

7 Q And what does it entail to get that license, you just
8 take a course?

9 A You take a course. It's roughly a 100-hour course, you
10 also are required to take six -- within each module there are
11 six modules, six parts to the course and then within each course
12 you take a test at the end of it. Finally at the end of the
13 entire course you have an in-person course or an in person I
14 guess weekend course with another attorney, with other certified
15 life care planners, with individuals and other students as well
16 and that's also roughly 20 hours and finally at the end of it
17 you take a full final examination that was developed by the
18 certified life care planners association.

19 Q You don't have to prepare a life care plan in order to
20 pass the course?

21 A So you have two options, one is that you can create a
22 life care plan that you've already been practicing as a life
23 care planner but not a certified one, you can submit one of
24 those as review, if you have not been then they give you a mock
25 life care plan that you create, that you write and then you

Defense - Voir Dire - Dr. Shah

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1 submit it to them as well, they go through that with you as well
2 to make sure that it's appropriate and passes, it's part of the
3 homework assignment that you have to do.

4 Q What did you do in order to become licensed -- I'm
5 sorry -- in order to become certified?

6 A In terms of that I used a mock, the one that they
7 offered to me.

8 Q And you haven't previously done one?

9 A Previous to that, no.

10 Q How many have you done?

11 A Roughly since being certified?

12 Q Yes.

13 A Roughly 10 to 15.

14 Q Have you ever testified in court?

15 A No.

16 MS. NOLAN: My objection stands.

17 THE COURT: Okay, it's overruled. Thanks. I'll
18 accept the witness as an expert in life care planning. He
19 holds the appropriate certification. It sounds as though
20 you can testify without having certification anyway and
21 everybody has to be accepted for a first time so I'll
22 accept him.

23 MR. PODOLSKY: May I proceed, your Honor?

24 THE COURT: Yes.

25 MR. PODOLSKY: Thank you.

Plaintiff - Direct - Dr. Shah

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1 DIRECT EXAMINATION

2 BY MR. PODOLSKY (Continued):

3 Q Dr. Shah --

4 THE COURT: Sorry, and your individualized
5 objection is obviously with respect to his methodology,
6 those still stand.

7 MS. NOLAN: Thank you, Judge.

8 Q Dr. Shah, are you familiar with Mr. El-Sayed Ghoneim?

9 A Yes.

10 Q Can you tell the jury what your familiarity is with Mr.
11 Ghoneim, how do you know him?

12 A So I met with him, I evaluated him, I discussed his
13 injury as well as his symptoms, what treatments he's had and
14 then did a physical examination with him as well.

15 Q As part of your exam with Mr. Ghoneim did you review
16 any medical records?

17 A I did, yes.

18 Q Tell the jury what records you reviewed.

19 A In regards to his medical records I evaluated his
20 imaging studies, which included a cervical spine MRI, lumbar
21 spine MRI, and then the cervical spine MRI, as well as a left
22 knee MRI, also operative reports and progress notes by his spine
23 surgeon, as well as progress notes and operative reports by his
24 orthopedic knee surgeon as well as -- I believe that's mostly it
25 -- progress notes from his internal medicine physician.

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1 Q What MRI did you have to review?

2 A The MRI that I reviewed was the lumbar spine MRI, the
3 cervical spine MRI and the left knee MRI.

4 Q Do you recall the date on the cervical MRI?

5 A Let me check here.

6 Q If you have to check your notes that's okay.

7 A I'll check my notes.

8 MS. NOLAN: On the report or on the actual film?

9 THE WITNESS: My note.

10 THE COURT: You're asking whether he looked at the
11 film or the report?

12 MS. NOLAN: That's what you asked, right?

13 THE COURT: He asked the date of the study that
14 the doctor looked at.

15 MS. NOLAN: So the actual MRI film?

16 THE COURT: He didn't ask that yet, he asked the
17 date of the study. That's all he asked.

18 A The date of the lumbar -- I'm sorry. Which MRI?

19 THE COURT: The cervical spine.

20 A The cervical spine MRI was 6/30/2016.

21 Q Can you say that in a loud voice?

22 A 6/30/2016.

23 Q And that was for the neck, correct?

24 A Correct.

25 Q Were there any MRIs, that you know of, other than that

Plaintiff - Direct - Dr. Shah

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1 date for the cervical neck?

2 THE COURT: MRIs not x-rays, right?

3 MR. PODOLSKY: MRIs.

4 Q Just for the neck?

5 A Just for the neck, correct. Yeah, it's the only MRI
6 that I have seen.

7 Q Are you aware of any other MRIs that Mr. Ghoneim might
8 have had for his entire life other than this one?

9 THE COURT: In the neck?

10 MR. PODOLSKY: In the neck.

11 A Of the neck there's mention in I think Dr. Lerman's
12 report -- that did not have the report for another MRI.

13 Q So as far as you know there's only one MRI from that?

14 A Correct.

15 Q That's dated June 30, 2016?

16 MS. NOLAN: Objection. Asked and answered.

17 A Yes.

18 THE COURT: Overruled. He is just trying -- he is
19 just getting us back on track.

20 Q What were the findings in that MRI?

21 A So the findings on that MRI included, he had several
22 disk bulges from C-3 to C-7 as well as some of those mentioned
23 disk bulges also effecting the ventral thecal sack of the spine.

24 Q What does that mean?

25 A That's basically touching the spinal cord.

Plaintiff - Direct - Dr. Shah

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1 Q What's the significance of that?

2 A The significance of that is that if you have a disk
3 herniation or a disk bulge that's effecting the spinal cord
4 itself then you can have neurologic symptoms including pain,
5 numbness, tingling, as well as weakness.

6 Q What are radiculopathy symptoms?

7 A Sure, radicular symptoms are basically when you have
8 pain that generates from roughly your neck or the area where the
9 injury is, and it goes all the way down in to your arms in to
10 your finger tips.

11 Q Did Mr. Ghoneim have any of those symptoms?

12 A He did, yes.

13 Q Can you tell the jury about that?

14 A Sure, so after having the accident he did complain of
15 having neck pain as well as -- he had mentioned radicular
16 symptoms, the pain radiating down in to his fingertips, he
17 stated that the one side -- there were both sides, the right
18 side was worse than the left side, he also had changes in his
19 sensation in that same area as well.

20 MS. NOLAN: Judge, I'm sorry. Would you mind if
21 we shut the door?

22 THE COURT: I don't mind.

23 MS. NOLAN: Thank you.

24 Q Dr. Shah, are those subjective symptoms, complaints or
25 are they objective complaints, symptoms?

Plaintiff - Direct - Dr. Shah

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1 A So the pain would be subjective, so that the symptoms
2 of having pain going down in to the arms would be subjective
3 symptoms.

4 Q Is there a way to figure out whether those subjective
5 complaints correlate to objective testing?

6 A Sure, so in regards to pain it would be unable to do
7 that, but in regards to numbness, tingling as well as weakness
8 or strength those would be objective findings that we can truly
9 test.

10 Q What tests can you do that are objective to a person
11 like Mr. Ghoneim to confirm whether or not his subjective
12 complaints are actual?

13 A Sure, so in regards to strength we can do a manual
14 motor exam, which is basically testing the different muscles in
15 your arms and each muscle group has an associated nerve that's
16 attached to it, so essentially your brain is sending a signal
17 through that nerve and the nerve attaches to the muscle, by
18 attaching to the muscle we know if, for example, that muscle is
19 not moving the way it should be then we can say it is likely
20 coming from the nerve that's getting irritated, pinched or
21 damaged resulting in that weakness and then you can also do a
22 sensation exam where you are testing the true sensation of the
23 skin because each part of your arm has, again, an associated
24 nerve to that part of your arm. So what we'd call that is
25 dermatomes, and by testing each dermatome in your arm you can

Plaintiff - Direct - Dr. Shah

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1 test to see if there's changes in sensation, true numbness,
2 tingling in those areas of your arm.

3 Q Did you do any of those tests for Mr. Ghoneim?

4 A I did, yes.

5 Q What were the results of those tests?

6 A So he had weakness in his upper extremities, he had
7 weakness in regards to his triceps, which correlates to certain
8 nerves in his neck which also correlate with some of the MRI
9 findings as well.

10 Q What did it correlate with?

11 A It correlated with having disk bulges in his cervical
12 spine.

13 Q Was there a particular level that effected his motor
14 strength?

15 A Sure, so that would be probably his C-5/C-6 as well as
16 his C-6/C-7 level.

17 Q Why is that?

18 A Because the nerves that attach to those muscle groups
19 stem originally from the C-5/C-6 and the C-6 levels in your
20 spine and so when those nerves get irritated they cause -- or
21 damage to the nerve they can cause weakness to that muscle
22 group, and when you have muscle weakness in that muscle group
23 then it correlates with the disk bulges that he had on the MRI.

24 Q Now, was Mr. Ghoneim on any kind of medication when he
25 came to see you?

Plaintiff - Direct - Dr. Shah

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1 A He was taking Naproxen, Ibuprofen.

2 Q What does Naproxen do?

3 A It basically is, as I mentioned, it's an
4 antiinflammatory, it decreases inflammation in your body.

5 Q People use it for pain control?

6 A You can use it for pain control. So it has both
7 properties, it has pain control as well as inflammatory or
8 swelling control, so both.

9 Q Would a medicine like that mask a person's symptoms?

10 A It can diminish or decrease the symptoms, yes.

11 Q Is that the purpose for the medicine?

12 A Partly, yes.

13 Q Now, when you did the exam was Mr. Ghoneim on this
14 medicine?

15 A Yes, he was.

16 Q So do you have an opinion to a reasonable degree of
17 medical certainty whether or not the medicine made his range of
18 motion better or worse?

19 A I would believe that based on having that type of
20 medication, which is commonly prescribed for this condition does
21 improve your pain level as well as your ability to move on that
22 medication so, yes, I do believe with a reasonable degree of
23 medical certainty that it was improved based on being on that
24 medication.

25 Q Did you do a range of motion test on Mr. Ghoneim?

Plaintiff - Direct - Dr. Shah

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1 A I did.

2 Q What were your findings?

3 A So my findings, just reviewing here as well, so in
4 regards to his left upper extremity he had limited range of
5 motion for flexion as well as abduction, as well as extension.
6 In regards to his right upper extremity he also had limited
7 range of motion in all three of those planes or those motions.
8 In regards to his lower back he also had limited range of motion
9 with flexion, lateral rotation, some bending, as well as
10 extension. And in regards to his neck he also had decreased
11 range of motion as well in those three planes, extension,
12 flexion and rotation.

13 Q In terms of percentages how much was the neck decreased
14 in range of motion?

15 A In regards to his neck --

16 MS. NOLAN: Objection.

17 THE COURT: Why, is it not in the report?

18 MS. NOLAN: It's not in the report.

19 A I don't have the specific number, I just have it as
20 decreased range of motion.

21 Q Did you do any other kind of tests like a Spurling's
22 test or a head compression test on your exam?

23 A Yes, I did.

24 Q What are those tests? Can you tell the jury?

25 A So those are tests where we're essentially putting

Plaintiff - Direct - Dr. Shah

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1 extra pressure or stress on the spine and on certain disks as
2 well as certain nerves. So by putting extra stress or tension
3 on those things which, you know, in theory if you had no issues
4 or no injuries they -- you wouldn't have any pain, they are part
5 of your body's ability to adopt to, you know, different
6 movements and bending and flexing, however, when you do those
7 extra stresses in those certain positions if there is an injury
8 then you will irritate or aggravate the nerve as well as the
9 muscles and the disk in that area.

10 Q What were the results of those test?

11 A He had a positive Spurling's test.

12 Q Was there any radiation from the Spurling's test?

13 A He had radiation on both sides so he had radiation on
14 the right as well as the left.

15 Q Now, these tests were performed after his cervical
16 surgery, correct?

17 A Correct.

18 Q Is there any significance in that?

19 A So after the surgery there's two possibilities, one
20 possibility is that the damage that was originally done prior to
21 the surgery became permanent and even though we relieved
22 pressure off of the spine the nerves themselves were damaged and
23 are likely permanently damaged and will continue to have pain in
24 that area. The other possibility is that once you've had a
25 surgery you're very likely to have deterioration or changes

Plaintiff - Direct - Dr. Shah

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1 above and below that surgery because you're putting more stress
2 on the rest of your spine. By putting more stress on the rest
3 of your spine you can also end up irritating, damaging those
4 nerves and those disks as well.

5 Q So what happens in that event if there's damage to the
6 nerves?

7 A If there's damage to the nerves above and below the
8 area of the injury then essentially what you will have to do is
9 go through treatment again for that which includes medications,
10 injections or potentially surgery again extending the surgery.

11 Q Would that be a revision surgery or another surgery?

12 A That would be -- well, if it's the nerves above and
13 below the surgery that are getting damaged it would be an
14 extension of the surgery.

15 THE COURT: So it's an additional surgery?

16 A An additional surgery.

17 Q What is the cost of that?

18 A The cost can range but roughly between 70 to \$100,000.

19 Q 100,000?

20 A Correct.

21 Q Did you come to a conclusion whether or not Mr. Ghoneim
22 will require future surgery?

23 A So based on his medical records, based on the fact that
24 he's continuing to have injury -- pain, symptoms going down both
25 of his arms, has decreased range of motion, has weakness in his

Plaintiff - Direct - Dr. Shah

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1 arms as well as MRI findings that correlate with, you know,
2 continued damage and disk bulges above the level of the surgery
3 that he had as well as evidence based on Dr. Lerman who is also
4 a spine surgeon agree that there's a high likelihood that he is
5 going to need an additional surgery.

6 Q What in Dr. Lerman's records did you review that
7 supports your conclusion that Mr. Ghoneim will need a further
8 surgery to his neck?

9 A I reviewed a narrative report that was done by Dr.
10 Lerman who stated that based on his symptoms as well as his
11 additional findings on his neck, MRI, he will likely need a --
12 an extension surgery to the level above where he had it
13 originally. So he originally had it at a C-5/C-6 level, he also
14 has damage to his C-4 and C-5 level, which is the level above
15 and it will likely require surgery within the next five years
16 for that.

17 Q Do you agree with that conclusion?

18 A I do.

19 Q Are these types of injuries permanent?

20 A They can be, yes.

21 Q With regard to Mr. Ghoneim do you have an opinion
22 whether or not his particular condition is permanent or not?

23 A I do believe that his condition is permanent.

24 Q What is the basis of your opinion?

25 A In regards to damage to your neck including your disks,

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Plaintiff - Direct - Dr. Shah

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1 your nerves, they have a spectrum or a timeline of how quickly
2 they heal and they don't heal so quickly. The nerves once they
3 get damaged they take a very long time to heal in the spectrum
4 of one, sometimes two years. If you do not have healing or
5 resolution within that time frame then there's a very high, very
6 high likelihood that that is permanent at that point if you
7 don't have any improvement in your condition after roughly one
8 to two years, it's a very likely scenario that it's permanent.
9 When you have damage to your disks themselves or bulging of your
10 disks once they are out they don't go back in. You can have
11 some small resorption, small scarring of some of the damage
12 there, but once it's happened they essentially will be there
13 forever.

14 Q And is that the case with Mr. Ghoneim?

15 A It is.

16 Q For the rest of his life?

17 A Yes.

18 Q Did you review the operative report of Dr. Lerman?

19 A Yes, I did.

20 Q And what were the findings in Dr. Lerman's operative
21 report?

22 A So in his operative report he had disk disease at
23 C-5/C-6 and based on that condition as well as symptoms that
24 correlate with the same disease process he underwent an anterior
25 cervical discectomy and fusion at that level.

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1 Q What does that mean?

2 A So basically what that means is when you have a disk
3 that's damaged or bulging in his scenario and it's pressing on
4 the spinal cord and the spinal nerves the goal is to relieve
5 that pressure. So what they will do is they will go in in to
6 the neck and they will shave off part of that disk, so relieving
7 the pressure that's on the spine itself, they will also trim
8 some of the bone to open up the space for the nerves and the
9 spinal cord to travel, and not get irritated and pinched and
10 then if by doing that he believes that the spine itself is
11 unstable basically that if he let it alone and didn't stabilize
12 it the neck would basically flop around, it wouldn't stay, you
13 know, structured or stable, then he has to put in metal hardware
14 to stabilize the spine so that it stays in place.

15 Q Was that done for Mr. Ghoneim?

16 A It was, yes.

17 Q Now, is the purpose of this particular procedure to
18 relieve pain or to do something else?

19 A Well, two things , it's mainly -- a large part of it is
20 pain, so if you're in significant amounts of pain it relieves
21 pressure off of the spine and off of the nerves, which relieves
22 the pain itself or stops the pain, but also can prevent from
23 nerve damage, so if you already have -- if you have pressure on
24 the spine the goal is that it doesn't further escalate or make
25 the damage worse, so relieving pressure off of the damaged

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1 nerves. So it can also improve sometimes weakness as well as
2 sensation.

3 Q I'm going to ask you to assume the following facts as
4 true, Dr. Lerman testified in this case and he told the jury
5 that the purpose of this particular procedure was to take away
6 the pressure on the nerve roots, or the spinal cord that Mr.
7 Ghoneim had, he also testified that although it relieved some of
8 the radicular symptoms by removing that compression, it did not
9 relieve the pain that Mr. Ghoneim will have. Do you agree with
10 those conclusions?

11 A I do.

12 Q What is the basis of your agreement to those
13 conclusions?

14 A So same thought process as I mentioned before, once
15 you've got damage to a nerve as well as pressure on the nerve
16 alleviating or pulling off of the pressure from those nerves
17 will prevent the damage to getting worse or the symptoms from
18 getting worse, but it doesn't, you know, necessarily mean that
19 you will have full recovery once the pressure is gone the pain
20 is gone. That damage is still there.

21 Q So in regular terms like the nerves are like --

22 THE COURT: She's right.

23 Q Dr. Lerman testified that nerves are like electrodes or
24 like the brain is a -- is the hub and then the nerves run out.
25 Are you familiar with how that works?

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1 A Yes.

2 MS. NOLAN: I'm going to object to this whole line
3 of questioning. It's cumulative. Dr. Lerman already
4 testified about the surgery and all of this and he's
5 exchanged as a life care planner.

6 THE COURT: Is what he is saying contained within
7 his report?

8 MS. NOLAN: Not really, no. And since he is just
9 a hired expert --

10 THE COURT: Time out. So if it's contained within
11 his report then I'm going to let him testify; if it's not
12 within his report then I agree with you 100 percent.

13 MS. NOLAN: No, it's not within his report.

14 MR. PODOLSKY: He did a physical medical exam.

15 THE COURT: I don't have his report.

16 MR. PODOLSKY: I have it.

17 THE COURT: You can hand it up. I will agree with
18 Ms. Nolan on the proposition though that we need to get to
19 the part where he talks about how this all impacted his
20 life care planning rather than -- he is a different medical
21 specialty than Dr. Lerman, which is why I've given you some
22 latitude about it and he performed his own physical exam,
23 which is why I've given you some latitude about it, but he
24 is here as a life planner and so even if it is in the
25 report for time purposes we need to keep it moving.

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1 MR. PODOLSKY: Fair enough.

2 THE COURT: You both can have a seat.

3 (Whereupon, the record was read back.)

4 THE COURT: I don't see that specifically in the
5 report. I think in general terms that subject area would
6 fall within Dr. Shah's area of medical expertise but I
7 agree that to just ask Dr. Shah to comment on the
8 description of another expert it is cumulative. So the
9 objection is sustained. Do you need this back?

10 MR. PODOLSKY: Yes.

11 Q Dr. Shah, did you reach conclusions to a reasonable
12 degree of medical certainty whether or not Mr. Ghoneim's injury
13 is related to the accident of November 12th of 2015?

14 A I did.

15 Q And what is your conclusion?

16 A My opinion or conclusion is that the injury sustained
17 is a consequence, is a result of his injury from November 12,
18 2015.

19 Q What is the basis for your conclusion or opinion?

20 A Well, prior to the injury he had no symptoms, he was
21 functioning at a normal self, 100 percent self, had no
22 complaints, no weakness, no change in sensation, no pain.
23 Subsequent to the injury he continued to have reported
24 functional impairment as well as pain, as well as weakness, at
25 imaging that corroborated with those findings as well. And a

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1 physical exam that corroborated with that as well.

2 Q And is the basis of your opinion something that's
3 accepted in the medical community?

4 A Yes.

5 Q And tell the jury about that.

6 A So, generally speaking, in terms of how we evaluate a
7 patient it's based on our, you know, experience, treating these
8 conditions, medical literature, as well as physical evidence
9 showing that, you know, based on what type of injuries sustained
10 and I suppose symptoms that you will have afterwards all those
11 correlate to types of -- specific types of injuries or to
12 diagnoses I suppose, and based on those diagnoses there are
13 certain treatment options that are available as well as things
14 that you need to do that help alleviate those symptoms.

15 Q What is required under the standard of care in your
16 medical field in order to diagnose an injury like Mr. Ghoneim
17 and figure out whether it's related to the accident as stated by
18 Mr. Ghoneim?

19 MS. NOLAN: What type of injury are we talking
20 about?

21 THE COURT: Sustained.

22 MR. PODOLSKY: The neck injury. Only the neck
23 injury for now.

24 A So in regards to the neck injury things that I would be
25 looking for are things that are accepted in terms of how we

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1 diagnose these issues are --

2 MS. NOLAN: I'll object again, Judge. It's not
3 within his report.

4 THE COURT: Can I have the report back? Meaning
5 an opinion as to causation is not in the report is what
6 you're saying? Counsel? You got up to say it --

7 MS. NOLAN: I'll withdraw the objection. Sorry.

8 THE COURT: Thanks.

9 Q Please continue.

10 A I'm sorry. Can we re ask the question?

11 (Whereupon, the record was read back.)

12 THE COURT: Referring to the neck.

13 A Sure, in regards to the neck, things that we would be
14 looking for are symptoms, basically symptoms that he had prior
15 to the injury, so including any neck pain, any pain going down
16 in to the arms like the radicular symptoms, weakness in the
17 arms, change in symptomatology prior to the injury and then
18 after the injury essentially is asking those same types of
19 questions, so medical history, so history asking questions -- so
20 after the injury some questions regarding his neck pain, pain
21 radiating down in to the arms, weakness, changes in sensation,
22 and then based on those -- basically getting a history asking
23 those questions, doing a physical examination to find objective
24 answers whether there's true weakness, true changes in
25 sensation, using provocative test maneuvers to test the nerves

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1 and see if any of those nerves are getting irritated, and
2 specifically where they might be, testing reflexes to see if
3 there has been damage to the nerves from a permanent basis, and
4 where that might be as well, and then doing -- and then imaging
5 findings as well, so imaging findings like MRIs, CT scans, those
6 types of things.

7 Q Okay. Are all of those things required to do a proper
8 exam?

9 A To do a proper and thorough exam, yes.

10 Q So you wouldn't leave any of those out in order to come
11 to a proper conclusion, would that be correct?

12 A Correct.

13 Q On your physical exam did you note any scarring on Mr.
14 Ghoneim?

15 A I did, yes.

16 Q Where did you note the scarring?

17 A He had a scar over his anterior front of his neck from
18 a prior surgery.

19 Q When you say prior what do you mean by that?

20 A So from a surgery that had already been completed.

21 Q Would that mean prior to his visit with you?

22 A Sorry, prior to his visit with me, yes.

23 Q Not before the accident?

24 A Not before the accident.

25 Q The scar is from the accident?

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1 MS. NOLAN: Objection.

2 THE COURT: Sustained.

3 Q Would the scar be from the surgery related to the
4 accident in question?

5 A Yes.

6 Q Okay. And then upon your physical exam were there any
7 objective findings when you did a palpitation test or things of
8 that nature?

9 A Yes. So in regards to the physical exam palpation over
10 his cervical perispinal muscles as well as his -- let me double
11 check here as well -- cervical perispinal muscles, his neck
12 muscles, his trapezius muscles near his shoulders, as well as
13 his rhomboid, upper back if you were close to the spine, all of
14 those are very tender to palpations, meaning pushing on those
15 areas, reproduce a lot of his pain and he had some weakness as
16 well in his muscle groups on his motor exam, he had positive
17 provocative maneuvers as well, so the Spurling's exam or nerve
18 recompression tests.

19 Q These are all objective tests?

20 A Yes.

21 Q When you say objective does that mean that the patient
22 can't take them?

23 A Correct.

24 Q Did Mr. Ghoneim tell you what his pain was in relation
25 to his pain scale? And if you can tell the jury what that

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1 means.

2 A Sure. He did.

3 MS. NOLAN: Objection.

4 THE COURT: Apparently he did. I'm going to let
5 him answer. If it turns out he can't answer then I'll
6 entertain your objection.

7 MS. NOLAN: Thank you.

8 A He -- so he rated his neck pain as an eight to nine out
9 of ten on the pain scale.

10 THE COURT: Just for counsel's benefit what page
11 are you looking at?

12 THE WITNESS: Page two. That would be third
13 paragraph last line.

14 THE COURT: Withdraw your objection? It doesn't
15 matter, it's overruled anyway.

16 MS. NOLAN: Thank you, Judge.

17 Q Go ahead.

18 A It's an eight to nine out of ten on the pain scale, and
19 what the pain scale is, your subjective opinion of how bad that
20 pain is. Generally when I ask this question I state from zero
21 to 10 how bad do you feel that the pain is and a ten would be
22 the amount of pain that you would need to go to, you know, an
23 emergency room.

24 MS. NOLAN: Objection, Judge. We're talking about
25 the neck or the lumbar spine?

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1 THE WITNESS: The neck.

2 THE COURT: The neck.

3 MS. NOLAN: The pain scale that you're referring
4 to refers to his low back, correct?

5 THE WITNESS: Well, there's another one for his
6 low back but the neck --

7 THE COURT: The paragraph above that is the neck,
8 upon information and belief.

9 MS. NOLAN: I'm sorry.

10 A So, yes, so that's generally how I ask the question so
11 that I can delineate how bad or how severe they find their pain
12 to be, so ten would be something like taking you to the
13 emergency room for treatment. He rated his roughly as an eight
14 to nine.

15 Q Was that generally or just on the day of the visit?

16 A He said that on the day of the visit it was an eight to
17 nine out of ten, as well as in general his baseline pain is
18 roughly that high.

19 Q And did you take other history from Mr. Ghoneim such as
20 weight gain or activities or things of that nature?

21 A I did. So I did ask him a set of functional as well as
22 social, functional and social history includes as well as
23 nutritional questions.

24 THE COURT: I'm just going to ask you, it's merely
25 impossible we've put stuff on the bottom of the chairs to

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1 keep them from making that scraping noise, but every time
2 you move the chair she can't hear.

3 A And so in regards to nutritionally he stated that he's
4 gained roughly 50 pounds since the injury due to a lack of
5 mobility in regards to some of his functional -- the functional
6 questions that I asked him, most of these questions relate to
7 his ability to care for himself, things like brushing his teeth,
8 shaving, showering, toileting, going grocery shopping, throwing
9 away the garbage, household chores, those kinds of activities
10 and he has stated that he's had a decreased ability to complete
11 many of those tasks and requires assistance for a large
12 proportion of all of those tasks, which all happened after the
13 injury.

14 Q Okay. Why is that important in your field as a life
15 care planner?

16 A So that's important for me because asking those
17 functional and social history questions helps dictate -- dictate
18 things that he might require whether that's treatment, whether
19 that's devices, whether that's house or home modifications,
20 whether that's assistance from housekeeper, a handyman, a
21 personal care attendant, nurse, case manager, you know, all of
22 those things are essentially the treatments or the assistance
23 that he needs to complete basic living essentially.

24 Q You did a functional history exam as well, right?

25 A Functional history, yes.

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1 Q Where is that?

2 A Functional history is a list of questions outlining
3 what he can and cannot do and what he requires assistance for,
4 many of the things that I mentioned before like bathing,
5 dressing, toileting, grocery shopping, those kinds of things.

6 Q Are those findings consistent with an injury that Mr.
7 Ghoneim sustained from this accident?

8 A Yes.

9 Q Tell the jury why.

10 A Sure, so in many of the things that he complained about
11 or had difficulty doing included brushing or leaning over a
12 sink, so things just like bending forward, when you're bent
13 forward you're putting an increased pressure on your low back
14 and when you have pain in your low back from disks or disk
15 bulges or any of those things, you're essentially squeezing
16 those disks more, so sitting for long periods of time, bending
17 forward, standing, bending forward -- sorry -- are things that
18 might aggravate his pain, so things like standing in the shower
19 and then bending over to clean your legs or put soap on your
20 legs, clip your toenails, putting on your shoes, those all
21 become far more difficult as well as changing positions and
22 toileting, so, for example, sitting down at a toilet, going from
23 sitting to standing, being able to reach behind and clean
24 yourself, all of those things are things that will get
25 aggravated with his type of injury.

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1 Q So are his complaints consistent with someone who has a
2 cervical fusion?

3 A Some of them, yes.

4 Q Which ones are consistent with the cervical fusion?

5 A With the cervical fusion it would include brushing,
6 shaving, dressing, taking out the garbage, throwing the trash
7 away, grocery shopping, doing the laundry, those would all be
8 consistent, the difficulty doing those tasks.

9 Q Did you discuss with Mr. Ghoneim how to get those tasks
10 accomplished?

11 A So many of the times he requires assistance, so he has
12 a home health aide who helps take care of many of those tasks,
13 grocery shopping, sometimes dressing, sometimes, you know,
14 household chores or cleaning up in the house, throwing away the
15 garbage, those activities.

16 Q Did he tell you his brother was helping him out?

17 A Yes, his brother is helping him.

18 Q Did you discuss his social history with regard to his
19 condition before the accident?

20 A Yes, I did.

21 Q And what was discussed?

22 A He stated that he was completely independent with all
23 of those activities of daily living, he was able to do
24 everything for himself, he did not require any assistance from
25 anyone.

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1 Q Since the accident did you discuss with him how he
2 spends his days?

3 A I did. So I did ask things that he enjoyed before the
4 injury as well as things that he is able to do now, and things
5 that he's not able to do now include things like baby-sitting
6 his nieces and nephews, taking them out to the park, going out
7 with his friends to cafes and dinners, he finds that leaving the
8 home in general is a difficult task so he has to make sure that
9 his pain level is at a low enough level for him to be able to go
10 out and do those things as well as to be with his friends.

11 Q Now, in your field is that consistent -- are those
12 complaints consistent or limitations consistent with someone who
13 has had a fusion surgery to their neck?

14 A They can be, yes.

15 Q What is the basis of that conclusion?

16 A So based on, you know, evaluating patients anecdotally
17 based on evidence from other patients that have treated as well
18 as literature stating that often times patients who had these
19 types of injuries also have a social component that gets
20 effected, meaning that they don't want to go out because they
21 are in pain, they don't feel the desire to interact with other
22 people because they are in pain. We've all felt pain before and
23 sometimes when we're in those pain crises we don't have the
24 desire to talk to other people, we just want to you know, bubble
25 up or stay in hope.

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1 Q Why is taking that social history important in your
2 field?

3 A So in general we're looking at the patient
4 holistically, so just one issue is not -- one issue can effect
5 many other issues, when you're in pain it can effect your mood,
6 your ability to go out and to do other things, and when your
7 mood is low, you're unlikely to, you know, exercise, you're
8 unable to go out, you're unable to do a lot of the normal tasks
9 that you'd want to do, and it perpetuates kind of a vicious
10 cycle, if you will, and when that happens you need treatment for
11 those things, that can sometimes include speaking with somebody
12 like a psychologist, a psychiatrist, sometimes it getting
13 involved in the community and try to make friends, discussing
14 your injury with other individuals who also have the same type
15 of injury or the same type of symptoms, so community groups and
16 having -- giving the patient that kind of literature, that kind
17 of resources so that they can access that also improves their
18 condition, rather the goal is that it improves their condition
19 but those are treatments for that.

20 Q And that's part of your analysis of future life care
21 costs?

22 A It is, correct.

23 Q By the way, did Dr. Ghoneim tell you what he did before
24 the accident?

25 A Yes, he --

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1 THE COURT: What he did, what, for a living?

2 MR. PODOLSKY: For a living.

3 A He worked as -- initially worked as a limousine driver
4 and a taxi car -- a green cab driver.

5 Q How long did he do that type of job?

6 A He was working as a limousine driver for 20 years and
7 then a green cab driver for three years.

8 Q When did he stop working?

9 A After the accident.

10 Q Was that as a result of the accident?

11 A Yes.

12 Q Do you have an opinion within a reasonable degree of
13 medical certainty whether or not Mr. Ghoneim's pain is
14 adequately treated?

15 A I do not believe that his pain is adequately treated at
16 this time.

17 Q What is the basis of that opinion?

18 A The basis is based that he cannot function the way that
19 he should be able to do, he still has a very high level of pain,
20 he still has weakness on exam and -- yeah.

21 Q Do you have an opinion to a reasonable degree of
22 medical certainty whether or not Mr. Ghoneim's injuries are
23 related to the accident of November 12, 2015?

24 MS. NOLAN: Objection. Asked and answered.

25 A I believe that they are related.

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1 THE COURT: Sustained.

2 Q Do you have an opinion to a reasonable degree of
3 medical certainty whether or not Mr. Ghoneim -- whether or not
4 the injuries Mr. Ghoneim sustained on November 12, 2015 cause a
5 significant limitation of use of a body or function?

6 MS. NOLAN: Objection.

7 THE COURT: Objection to form for sure. Do you
8 want to re ask the question?

9 MR. PODOLSKY: I'll re ask the question.

10 Q Dr. Shah, do you have an opinion to a reasonable degree
11 of medical certainty whether or not the accident of November 12,
12 2015 caused Mr. Ghoneim to sustain a significant limitation of a
13 use of a body function or system?

14 MS. NOLAN: Objection.

15 THE COURT: What's your objection?

16 MS. NOLAN: Outside the scope of his report.

17 THE COURT: If you can save some time and show me
18 where it is in the report.

19 MR. PODOLSKY: It's in his conclusions.

20 THE COURT: I think it's close enough, sure.

21 Meaning he has commentary about --

22 Q You can answer.

23 A I do.

24 Q Do you have an opinion to a reasonable degree of
25 medical certainty whether or not -- as to whether or not the

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1 accident of November 12, 2015 caused Mr. Ghoneim to sustain a
2 permanent consequential limitation of use of a body, organ or
3 member?

4 A Yes, I do.

5 Q What is your opinion?

6 A My opinion is that the injury -- or the accident
7 resulted in a permanent injury to his neck as well as his upper
8 extremities.

9 Q And for the first question I'm not sure if I asked you,
10 I think I asked you do you have an opinion but I didn't ask you
11 what is your opinion.

12 A What was the question? Sorry.

13 THE COURT: The permanency question.

14 Q The permanency question. What is your opinion with
15 regards to Mr. Ghoneim sustaining a significant limitation of a
16 use of a body function or system?

17 A Within a reasonable degree of medical certainty I do
18 believe that that is a permanent injury to his neck and his
19 upper extremities.

20 Q And the basis of your opinion is what?

21 A The basis of it would be based on his physical exam,
22 his history, literature within the field, yeah.

23 Q Okay. Now, let's talk about the life care analysis.

24 A Mm-hmm.

25 Q Okay. Did you reach a conclusion with regard to what

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1 Mr. Ghoneim would require in terms of healthcare going forward?

2 A I did, yes.

3 Q And please tell the jury what your conclusion is.

4 A Sure. So based on his history and physical exam and
5 functional and social history I believe that he's going to
6 require services from several different specialties, I think
7 he's going to need treatment -- or evaluation and continued
8 follow up by physiatrist or physical medicine and rehab
9 physician who would specialize in musculoskeletal medicine so
10 basically trying to get him as functional and as mobile as
11 possible, improve his neck pain, his upper extremity pain, as
12 well as oversee treatment with the physical therapist and
13 occupational therapist, a physical trainer, getting involved
14 with aquatic programs, aquatic therapy.

15 In regards to modalities this would be evaluated by an
16 occupational therapist and that would include certain types of
17 assistive devices, so that's going to require a cane, a walker
18 for longer distances, whether it requires a scooter for longer
19 distances, which he will require since he can only walk about
20 half a block or a block before taking a break, as well as
21 carrying different things, he has difficulty carrying more than
22 roughly five pounds so that would be something that can also be
23 utilized, he will also require services --

24 THE COURT: A scooter you mean?

25 THE WITNESS: Like a basket with a scooter.

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1 THE COURT: I got it.

2 A And then also requiring treatment, evaluation and
3 potential treatment by an orthopedic spine surgeon for potential
4 future surgery, orthopedic knee surgeon for possible knee
5 issues, as well as a nonsurgical spine specialist, the reason
6 being is that there are other treatment options that can be
7 utilized regarding pain medications, injections, as well as
8 device implants, devices meaning like a spinal cord stimulator,
9 which is a device you can put in to your spine to help diminish
10 the pain that you are feeling, so those are all evaluations that
11 can be done, his living situation, his ability to care for
12 himself, I think that he'll need services to help care for
13 himself as well as his home, so that would include housekeeper
14 services, possible handyman services for routine maintenance of
15 his home, if anything breaks down that he would be able to fix
16 himself, it would also include certain things in his home that
17 would help him be more functional at home and be able to sleep
18 better.

19 So he has a difficulty staying in any particular
20 position for long periods of time, he requires frequent movement
21 as well as off floating of his body, which would be benefited by
22 like an electric bed or motorized bed to help move from side to
23 side, other things would be going from a sit to stand position,
24 having a sit to stand desk, something that allows you if you're
25 sitting for a long time or working on a computer or working on a

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1 desk, being able to sit to stand will improve pain flare ups or
2 decrease pain flare ups, you know, shower chairs so that he can
3 sit in the shower, clean his lower extremities, he will require
4 podiatrist services roughly every year, every six months to a
5 year to make sure that he's not having any changes in his toes,
6 between his toes just because he can't bend over easily enough
7 to inspect them and check them, and clip his toenails, he will
8 also need transportation services, so being unable to drive at
9 this point now, being unable to utilize public transportation
10 very easily, he -- he requires an application for something like
11 Access-A-Ride, a car service program within New York to help him
12 get from point A to point B for medically-necessary appointments
13 or even getting in to the community and community-based
14 programs.

15 And going forward, I know he lives in a walk up, has 15
16 stairs to get in to his home, if this becomes far more difficult
17 for him to actually get up those stairs which will continue to
18 happen he will likely require -- you will need to either move to
19 a first-floor apartment where everything is on the first floor
20 or an elevator type building. So those would be things that he
21 will probably like require going forward.

22 Q Can you tell the jury the costs involved in Mr.
23 Ghoneim's future life care?

24 A Total costs are --

25 Q Not total --

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1 THE COURT: Item by item, please.

2 Q Let's break it down.

3 MS. NOLAN: I'd ask that he'd tell us where he is
4 reading from.

5 THE WITNESS: I'm reading from my life care plan
6 report, the table section.

7 MS. NOLAN: Table one?

8 THE WITNESS: Starting at table one. So starting
9 from table one, as I mentioned, he's going to need a
10 physical medicine and rehabilitation specialist to help
11 guide his treatment, so the initial comprehensive
12 evaluation costs roughly \$350 and the follow up will be
13 \$225, this will be the initial one followed by two
14 quarterly -- sorry, by quarterly evals (sic) for two years,
15 and --

16 THE COURT: The quarterly evals are 225?

17 THE WITNESS: No, the initial evaluation is 350
18 and the quarterly follow ups are 175.

19 THE COURT: So that's times eight visits?

20 THE WITNESS: Correct. And then after the first
21 two years he will require semiannual visits.

22 THE COURT: Same price?

23 THE WITNESS: So these are -- yes, \$225 actually.

24 THE COURT: Twice a year?

25 THE WITNESS: Yes. And then he will require

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1 continued follow up or evaluation of the pain management
2 specialist, and so pain management specialist is on table
3 two, so we'll just go to table two real quickly. Table
4 two, the initial evaluation is again \$350 for a
5 comprehensive evaluation as well as \$175 for -- 175 for
6 follow-up visits, and for a comprehensive pain management
7 specialist initially I'd want him doing that monthly for
8 roughly three visits essentially, so in a three-month
9 period he will have three visits.

10 THE COURT: Three at 350?

11 THE WITNESS: One would be 350 and the follow ups
12 are 175. And then for an additional three months he will
13 also require that, so a total of six visits for a six-month
14 period and then after that it would be a semiannual basis.

15 THE COURT: At 175?

16 THE WITNESS: Semiannual after the initial six
17 months, after that it will be semiannual and that would be
18 250. And then he -- in regards to pain there are potential
19 costs. I have not included this as a likely scenario, but
20 potential costs would be for therapeutic injections which
21 would be epidural injections, facet injections, and
22 trigger-point injections, and the total cost or annual cost
23 for that would be somewhere -- would be around \$313 to
24 \$469, but that's a potential cost. And in regards to --

25 MS. NOLAN: Are we back to table one?

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1 THE WITNESS: Still on table two. In regards to
2 pharmaceutical trials, also looking at at the kind of costs
3 of medications, trying the different types of prescription
4 medications, all of those costs will also be on that same
5 four to six-month period and that would be roughly \$750 or
6 \$2,000. A therapeutic tens unit, which is a device which
7 would be a trial, a trial for that to see if that improves
8 his pain would be roughly \$100. And then -- that would be
9 it. So going back to table one, he would require an
10 evaluation by a spine surgeon and then ongoing maintenance
11 for that as well. So one extended follow-up visit within
12 the first three-month period would be \$300, and then I
13 would anticipate roughly every six months to one year
14 follow up.

15 THE COURT: At \$300?

16 THE WITNESS: That would be at \$300. And then the
17 orthopedic's knee surgery it would be the same thing, it
18 would be anticipated one follow up, one evaluation with
19 periodic follow up, so roughly six to eight follow-up
20 sessions within his life span or 16 -- from now until his
21 life span and that would be at a annual cost of 113 to
22 \$150. Having an internal or primary care physician guiding
23 his nutrition, his weight gain, those things I have an
24 annual visit and that would be \$175. And then a
25 podiatrist, as I mentioned the cost of the podiatrist,

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1 would be a semiannual to annual basis and that would be
2 roughly 200 to \$350 annually. Imaging that he will require
3 for the rest of his life including MRIs, CT scans, EMGs,
4 x-rays, ultrasounds will be roughly, will be \$469 to \$625
5 annually. Laboratory testing, so blood work testing for
6 the rest of his life annually would be roughly \$125. And
7 then --

8 THE COURT: Forever or per year?

9 THE WITNESS: Annually, per year. And then in
10 regards to if he ultimately requires pain medications
11 including opioid medications to treat his pain then based
12 on -- he will require frequent monitoring including urine
13 drug testing, however, we normally use this as a potential
14 cost but that potential cost could be between 50 and \$100
15 per test.

16 THE COURT: How often would you expect that?

17 THE WITNESS: The test would likely be every six
18 months. Going to table three. In regards to table three
19 we are looking at specialized therapeutic evaluation, so
20 physical therapists, I'd anticipate him requiring
21 resurgence in his physical therapy since he hasn't been in
22 physical therapy in roughly over a year now. So it would
23 be two to three times per week for a six-week period, and
24 that would be total cost for the year would be \$2,375 to
25 \$3,125.

sai

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1 THE COURT: Sorry. What was the first number?

2 THE WITNESS: 2,375.

3 THE COURT: Thanks.

4 THE WITNESS: Mm-hmm. And then after that it
5 would be weekly sessions for an additional six months and
6 that total cost per year is 3,250. And then upon
7 completion of that six-month period I would anticipate that
8 he will need monthly sessions with physical therapy just to
9 monitor, maintenance and improve his progress, and that
10 would be -- cost per year would be 1,500. In regards to
11 occupational therapy, occupational therapist is somebody
12 that will help with his activities of daily living, so
13 bathing, dressing, grooming, as well as looking to see if
14 he needs any assistive devices or any changes in his home
15 and I would think that he would also need a repeat
16 resurgence of that which would be two to three times per
17 week for six weeks and that's at \$125 per session.

18 Q What's the cost per year?

19 A The cost per year is 1,500 to 2,250.

20 THE COURT: Every year or just this year?

21 THE WITNESS: Just for that year. And then after
22 that we would anticipate that he will need roughly 12
23 sessions throughout the rest of his lifetime and that would
24 be at a cost of \$125 per session. And then in terms of
25 complimentary medicine, so that would include things like

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1 acupuncture, massage therapy, biofeedback, that type of
2 treatment, he will require three months of therapeutic
3 trials with it, 24 sessions and that would be at roughly
4 \$1,800 for the year. And then after that would be 12
5 sessions roughly for the rest of his lie and that would be
6 900. It would require benefit from a membership at a
7 fitness center so that he can continue his home exercise
8 program as well as -- and doing a -- an exercise program at
9 a fitness center and that would be like at something like
10 the YMCA and their cost for membership is \$64, so for the
11 rest of his life that would be roughly \$768.

12 And then in terms of his aquatic therapy program I
13 would anticipate at least two times per week for the first
14 six weeks and that would be 1,200 to 1,500 total costs for
15 that year and then after that it would be additional
16 monthly sessions one time per month at 50 to \$60 a session
17 which equates to about \$600 to \$720 for his lifetime.

18 I included that he join a paint support group,
19 which would be at no charge, a nutritional weight loss
20 program as well, which would be in his first year would be
21 \$350 and then continuing onwards from his second -- in his
22 second year would be roughly \$400 and then in terms of
23 counseling, dieting, medication, exercises, all of those
24 things would be a projected cost after 1,885 to \$2,588.
25 And then maintenance will be 100 to \$200 for the rest of

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1 his life.

2 And then in regards to table four this includes
3 potential surgical interventions going forward, additional
4 surgery, as we had mentioned before, Dr. Lerman believes
5 that this is an anticipated surgical surgery which will
6 happen within the next five years and that would be at a
7 cost of roughly \$100,000, post rehab costs after the
8 surgery would be between 3,500 and \$5,000, so those are
9 anticipated costs. Additional potential costs which have
10 not been calculated or added in to this but that can also
11 include issues of falls, gait changes and mobility, changes
12 in his knee, knee pain requiring other interventions like
13 surgery as well.

14 THE COURT: But you didn't include that number in
15 your totals?

16 THE WITNESS: Correct, no.

17 THE COURT: Got it.

18 THE WITNESS: Currently he is taking, and this
19 goes on to table five, medications and assistive devices,
20 medications include Naproxen, which he is on right now
21 which is an antiinflammatory medication and that cost for
22 life will be \$2,880, and then the potential cost which I
23 have not included in his projected dollar figure would be
24 trials with other medications, other types of pain
25 medications, other topical ointments, creams, things of

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1 that nature. I have included a device, a tens unit which
2 is to help alleviate his pain.

3 THE COURT: Did you give us the scooter price?

4 THE WITNESS: Not yet. In terms of -- in terms of
5 an electric or a motorized bed with inner spring and memory
6 foam that cost would be 2,778 to \$3,124, and they have
7 roughly a ten-year life span. So we'd anticipate him
8 having to buy that twice in his life span. A sit to stand
9 desk, that would be \$520 to \$970, an ergonomic seating with
10 lumbar support, that would be 1,150 to \$2,550, and
11 antifatigue floor mat that would be \$140, and then basic
12 home exercise equipment would be \$688 to \$960, the
13 motorized scooter will be at a cost of \$1,198 to \$3,398,
14 this also has a ten-year life span, maintenance and repair
15 for the scooter over the lifetime will be roughly 1,200 to
16 \$1,600, assistive devices for his hygiene, so completing
17 toileting, showering, bathing, things of that nature will
18 be roughly \$650 to \$850.

19 THE COURT: That includes the shower chair?

20 THE WITNESS: That includes the shower chair,
21 yeah. Well, no, this includes -- no, bathing, aids, those
22 kinds of things, like brushes and what not, not the chair.

23 THE COURT: 600 how much?

24 THE WITNESS: 650 to 800.

25 THE COURT: Okay. Doctor, I've got to ask you to

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1 speak up a little.

2 THE WITNESS: Sorry, I apologize. Also, a water
3 temperature and pressure valve system to prevent any
4 scalding changes if you're sitting down and can't move out
5 of the shower that's an additional \$250 to \$300 to the
6 actual shower itself, then looking at table six,
7 housekeeper costs, so housekeeper costs are two times per
8 week for four hours -- for four hours per session from 67
9 to 68, his age 67 to 68 will be \$2,496. His housekeeper
10 from 68 to 75 will also be two times per week for four
11 hours per session and that duration is \$9,984 and then his
12 housekeeper duties will decrease from 75 to life and that
13 would be \$4,992.

14 THE COURT: Per year or period?

15 THE WITNESS: Period. From 75 to life. And then
16 personal care attendant from now until 68 would be one to
17 two sessions at four hours per week, that is 1,300 to
18 2,600, and then from 68 to 75 that will also be one to two
19 sessions for four hours each will cost 5,200 to 10,400 and
20 then a personal care attendant from 75 to life will
21 increase and that will be two to three sessions for four
22 hours per session and that is one 10,400 to 15,600. A
23 private case manager would be from now until 68 cost \$400
24 from; 68 to 75, which will be two times per year, will be
25 \$200; 75 to life will be 400.

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1 And then a private nurse, a visiting nurse
2 initially will be from now until 68 will be 235, from 68 to
3 75 it will be two times per year which will be \$235, from
4 75 to life it will be quarterly, which will be 470. And
5 then adult day programs, community-based programs for
6 social interaction, mental stimulation, all of those kinds
7 of things will cost roughly from now until 75 will be 9,360
8 as well, and then from 75 to life is 4,680. Transportation
9 costs are --

10 THE COURT: Hold on one second. Why doesn't
11 everybody stand up, shake your arms out, shake your legs
12 out. Thanks. You could be seated. Go ahead.

13 THE WITNESS: Sure. And then starting at table
14 seven, this is for transportation costs. Generally
15 speaking, we've included Access-A-Ride as his main use of
16 transportation as well as using the public transportation
17 which is 275 per ride, so it's the same cost. From now
18 until 68 is \$176 to \$209 --

19 THE COURT: That's over and above what he would
20 have spent if he didn't have the injury?

21 THE WITNESS: Correct, just the
22 medically-necessary appointments, and community-based
23 appointments. From 68 to 69 would be \$440, from 69 to 70,
24 388 to \$531. From -- I've got them per year, 70 to 71 is
25 360 to \$503; from 71 to 75 it is \$358 to \$495; from 75 to

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1 80 it is \$209 to \$352; from 80 to life is \$209; and then
2 once he ages periodically he might require instead of
3 public transportation or an Access-A-Ride he might require
4 a taxi service or a car service, so from now throughout the
5 rest of his life this might be a cost of \$120 to \$180.

6 Table eight is in regards to housing changes.

7 So as I mentioned before, he lives on a second
8 floor walk up. It's roughly 15 stairs for him to enter.
9 As he ages this will become a difficult task for him to do
10 in order for him to require to be able to move to a
11 ground-floor apartment or an elevator building or even
12 substantially changing the home that he lives in to be able
13 to have the access to go up those 15 stairs, and that cost
14 would be 5,000 to \$10,000. And so the projected lifetime
15 costs for all of those things is roughly 601,000 --

16 THE COURT: That's for all the categories
17 together?

18 THE WITNESS: All the categories together.

19 A \$601,717 to \$717,616.

20 Q What is the cost per year, Doctor?

21 A Per year --

22 THE COURT: Can I ask, what life expectancy are
23 you using to calculate --

24 THE WITNESS: 84.25. 14 -- 13.5 years, so I guess
25 this total cost divided by 13.5 would be the annual.

sai

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1 Q If he lives more years would the cost go up?

2 A Yes.

3 Q If he lives less years the cost would go down?

4 A Correct.

5 Q So on the low end your conclusion is that it would cost
6 \$601,717?

7 A Correct.

8 Q And on the high end your conclusion is that it would be
9 \$717,616?

10 A Correct.

11 Q And that's over 13 and a half years?

12 A Mm-hmm.

13 Q And are these present day values?

14 A These are present day values, yes.

15 Q So could the numbers change if the cost of the services
16 changed?

17 A Correct, yes. So if the cost of services changed, he
18 changes location, doesn't live here anymore like in New York or
19 if -- in regards to inflation or other types of costs they would
20 change.

21 Q Are you aware of what the costs are to date for Mr.
22 Ghoneim's medical expenses?

23 A Not aware.

24 Q But you're aware of what things were done for him,
25 correct?

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1 A Correct.

2 Q Can you give an approximate cost?

3 MS. NOLAN: Objection.

4 THE COURT: Sustained.

5 MR. PODOLSKY: Withdrawn.

6 Q Do you know how much a fusion surgery costs today?

7 MS. NOLAN: Objection.

8 THE COURT: What it costs today?

9 MR. PODOLSKY: Yes.

10 THE COURT: Meaning if he needed to have it done

11 tomorrow instead of five years from now?

12 MR. PODOLSKY: Correct.

13 MS. NOLAN: He's already testified to it.

14 Objection.

15 THE COURT: He testified to what it would cost in

16 five years.

17 MS. NOLAN: Okay.

18 A Currently it would be somewhere in between 75 and
19 100,000 based on hospital stay, anesthesia, the hardware that's
20 placed as well as the surgery, the facility, the operating room,
21 as well as the post op care would be about 75 to 100,000.

22 Q Do you know if that number would have been the same or
23 different in 2015?

24 A It would have been roughly the same.

25 Q The same?

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1 A Mm-hmm.

2 Q Are you familiar with what WAD is, whiplash,
3 acceleration, deceleration injuries?

4 MS. NOLAN: Objection. Again, it's cumulative.

5 THE COURT: The question is, is it in the report.

6 MS. NOLAN: I don't think so but -- Counsel, will
7 you direct me so I don't waste time.

8 MR. PODOLSKY: Sure. I'll withdraw that question.

9 THE COURT: That's fine. Thanks.

10 MR. PODOLSKY: I'll ask a different one.

11 Q Dr. Shah, do you know how Mr. Ghoneim sustained his
12 injury?

13 A Yes.

14 Q Can you tell the jury what your knowledge is?

15 A So based on what he -- what he told me he said it was a
16 motor vehicle accident, was struck from behind. So essentially
17 he had a left knee pain; left knee injury was sustained after
18 hitting the inside of the driver's side door, he also sustained
19 neck and low back pain or injuries to his neck and low back from
20 essentially whiplash from his neck, so going forward and going
21 backwards. He's unsure if he struck the steering wheel or not
22 and then in terms of his low back, the same concept is that he
23 accelerated forward, the seat belt held him back and then he
24 fell backwards, forward, acceleration and deceleration and
25 torsion injury.

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1 Q When the seat belt held his chest and shoulders did
2 anything hold his head from moving?

3 A No.

4 Q So what happened is when the chest is held in place and
5 the head moves?

6 A You have a forward movement, so you have a forward
7 acceleration as well as then a whipping back of your neck going
8 backwards and so that's also like a deceleration movement so you
9 have both a forward flexion and extension movement and then
10 going back to your normal so you're going forward, backwards and
11 then back forward again.

12 Q Can that cause an injury like a herniated disk in the
13 C-5/C-6 area like Mr. Ghoneim has?

14 A Yes, it can.

15 Q Is that a standard mechanism for causing this type of
16 injury, to your knowledge?

17 A It is one possibility, yes.

18 Q Do you know how old Mr. Ghoneim is?

19 A When I evaluated him he was 67.

20 Q That was about a year ago?

21 A Correct.

22 Q And you looked at the MRI too, correct?

23 A Correct.

24 Q And you're familiar with his medical history, correct?

25 A Correct.

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1 Q Do you have an opinion to a reasonable degree of
2 medical certainty whether or not Mr. Ghoneim would have been
3 more susceptible to receiving this type of injury based on his
4 age, physical composition, medical history, et cetera?

5 A Based on his age, his medical history, he is at a
6 higher likelihood of sustaining that type of injury. As we age,
7 we are more susceptible to any kind of injury. At an older age,
8 even lower mechanisms of action or lower types of injury -- I
9 don't know how to phrase this -- lower, less impactful (sic)
10 things can cause severe injuries. So you're prone to injury as
11 you get older or more prone to injury as you get older.

12 Q Are you familiar with epidemiological studies for low
13 impact whiplash injuries?

14 MS. NOLAN: Objection.

15 THE COURT: Sustained.

16 MR. PODOLSKY: Withdrawn.

17 Q What is epidemiology, Doctor?

18 A It's looking at basically your age, your condition,
19 your medical history and then kind of assessing the statistical
20 basis of that on other people in the same age group determining
21 what things can happen from them.

22 Q Is that something you use in your evaluation of
23 patients?

24 A Yes.

25 Q And what conclusion did you reach based on that

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1 analysis?

2 MS. NOLAN: Objection. Asked and answered.

3 THE COURT: Is it outside of the scope of his
4 report? Can you point out to me where it is?

5 MR. PODOLSKY: It is related to the accident.

6 THE COURT: Lots of things are related to the
7 accident and not within the scope of this report. Are you
8 about done?

9 MR. PODOLSKY: Yes, I'm pretty much done at this
10 point. I'll withdraw that question and I'll ask a
11 different one.

12 THE COURT: Okay.

13 Q Do you know if Mr. Ghoneim's vehicle was stop or moving
14 when the incident happened, when the crash happened?

15 A I was told that it was stopped.

16 Q Do you know if his body was at rest or tight when the
17 incident happened?

18 MS. NOLAN: Objection. Outside the scope of his
19 report.

20 THE COURT: Sustained.

21 MR. PODOLSKY: It's not, it's in here, the first
22 page.

23 THE COURT: By the way, next time spend on the
24 copies and give the Court a copy of your report. Objection
25 sustained. It doesn't say whether or not he was relaxed.

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1 He's already testified to that.

2 Q I'm going to ask you to assume the following facts as
3 true, Mr. Ghoneim testified in front of this jury that before
4 the crash happened he was stopped at a red light, his right arm
5 was on the steering wheel, his body was at a relaxed position
6 and then when the contact happened his head went forward and
7 back, he felt a crack in his neck and then after that he felt
8 sensation and tingling running down to his fingers, okay. Under
9 that scenario is someone -- would Mr. Ghoneim have been caused
10 this injury?

11 MS. NOLAN: Objection.

12 THE COURT: Sustained. It's outside the scope of
13 this report. Unless you really got something that's core
14 to the life care planning questions let's call it, let's
15 take five, let Ms. Nolan do her cross. Ladies and
16 gentlemen, take five. I remind you, sir, that you remain
17 under oath. Enjoy the break. Five minutes.

18 THE COURT OFFICER: Ladies and gentlemen.

19 (Whereupon, the jurors exited the courtroom.)

20 (Whereupon, a brief recess was taken.)

21 THE COURT: Mr. Podolsky, counsel joins us. We
22 have a new court reporter. If you would state your name on
23 the record, sir.

24 THE CLERK: Personal attorney for the defendant.

25 MR. ROSENBERG: So I've lost track --

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1 THE COURT: State your name on the record.

2 MR. ROSENBERG: Robert Rosenberg. I represent Mr.
3 Polinsky, the named defendant in this case personally. And
4 this is -- I lost track of how many times I've been on the
5 record already, however, as an update I ran in to the
6 insurance carrier Plymouth Rock that insures my client, I
7 ran in to their attorney who has been monitoring this case
8 as well, Mr. Gould, and I've been advised that there is
9 absolutely no change whatsoever in any negotiations with
10 the plaintiff's attorney. As we all know, my client only
11 has a \$500,000 policy of insurance.

12 I know that the direct testimony has been taken
13 from a life care planner that is already well above my
14 client's insurance policy limits, the numbers that have
15 been bandied about. So even if this jury were to give the
16 plaintiff nothing for pain and suffering for both past and
17 ~~future just, if they just compensate him for numbers that~~
18 have been discussed by the life care planner that will
19 exceed my client's insurance policy. Once again, the
20 defendant Plymouth Rock has failed again to negotiate this
21 case. In fact, since the date of the liability verdict
22 they have not increased their offer one penny. They've
23 offered \$200,000 to the plaintiff on a \$500,000 policy with
24 cervical fusion and post liability verdict, which was 100
25 percent against Mr. Polinsky they've offered a high/low

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1 that is less than 200 that being 100,000, 500,000 expecting
2 the plaintiff's attorney to agree to that, why would they
3 ever think he would ever agree to a high/low that is less
4 than what they are already offering him is beyond me. So
5 this is another example, a continuation of bad faith
6 causing my client the pain and aggravation of having to be
7 here for weeks on end and have to worry about this.

8 An insurance company, once again, has orally told
9 Mr. Polinsky not to worry about being indemnified if it
10 exceeds his policy, but refusing to put that in writing and
11 refusing to go on the record if they didn't want to put it
12 in writing to agree to it on the record that they will
13 indemnify him if there is a verdict in excess of his
14 \$500,000 policy which appears extremely likely to happen in
15 this case. That adding to all the other points that I had
16 made up until now on the record this is really in my
17 ~~opinion I've never seen an insurance company in 33 years of~~
18 practicing negotiate or not negotiate on a cervical fusion
19 with a man that has a \$500,000 insurance policy and with
20 assets that this will cause financial ruin to Mr. Polinsky
21 if there is a verdict in excess of 500 which will happen in
22 this case.

23 I don't know what trial that Mr. Gould is
24 attending or the -- the insurance carrier who has a claim
25 rep here who has been here almost the entire trial I don't

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1 know what trial they are watching. I'm watching the trial
2 and I'm saying to myself oh, my God, this jury is going to
3 award the plaintiff I don't know how much money but I know
4 it's going to be a lot more than 500,000.

5 THE COURT: There's nothing for you guys to say in
6 response, but just because this is pointless if the
7 plaintiff won't take the policy I know you've already spent
8 your money -- spent the money for your experts and I know
9 you had said that you were not guaranteed to take the
10 policy after you did that, but I'm asking you point blank
11 outside the presence of the jury, this is directed to
12 plaintiff's counsel now, if the \$500,000 policy is tendered
13 today will you accept it?

14 MR. PODOLSKY: If it's tendered today before the
15 jury starts deliberation --

16 THE COURT: They're not going to start
17 deliberation today.

18 MR. PODOLSKY: Right, I'm just making a record, if
19 it's today and before we sum up and before we take defense
20 experts then I would accept the policy.

21 MR. McMAHON: And I just wanted to note on the
22 record my earlier statement on behalf of my firm Cartiglia,
23 Connolly and Russo representing Mr. Polinsky that we fully
24 are in accord with Mr. Rosenberg's comments here about the
25 position of the carrier and everything. The only question

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1 I have, as the Court knows, the carrier is represented here
2 by a coverage counsel, insurance counsel and in matter of
3 fair play I think he should be present when this matter is
4 put on the record so we have an opportunity to respond in
5 any way he wishes --

6 THE COURT: Well, there's nothing for him to
7 respond to. The carrier has to respond. He's told us that
8 he is here to monitor the trial if -- I mean, I'll ask you,
9 Mr. Rosenberg, but I think you've already answered this,
10 you said you've spoken to Mr. Gould today, correct?

11 MR. ROSENBERG: I have, in person.

12 THE COURT: Based on what you said I assume that
13 means that you've repeated your request for the carrier to
14 settle within the policy limits.

15 MR. ROSENBERG: 100 percent.

16 THE COURT: So there's no foul play here. Mr.
17 Rosenberg is here, he is entitled to make a statement on
18 the record, he represents your client just like you do. He
19 is entitled to speak on the record certainly outside of the
20 presence of the jury. It's fine that you're here but we do
21 need to move on to finish this witness and I thank you for
22 your time.

23 MR. ROSENBERG: I invite Mr. Gould -- I would love
24 to hear a response to this.

25 THE COURT: As to why the carrier is not settling

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1 the case.

2 MR. ROSENBERG: Exactly.

3 THE COURT: If he asks particularly outside of the
4 time that we need for this witness I'm happy to give it to
5 him.

6 THE COURT OFFICER: Jury entering. Ladies and
7 gentlemen.

8 (Whereupon, the jurors entered the courtroom.)

9 THE COURT: You can all be seated. Doctor, I
10 remind you that you remain under oath.

11 CROSS-EXAMINATION

12 BY MS. NOLAN:

13 Q Good afternoon, Dr. Shah.

14 A Good afternoon.

15 THE COURT: I'm just going to ask both of you to
16 keep your voices up.

17 ~~Q You have quite an impressive CV.~~

18 A Thank you.

19 Q You have quite an impressive CV. That's the same thing
20 as a resume, right?

21 A Similar.

22 Q What's the difference?

23 A A resume might have essentially everything that you
24 have included in to it a full on -- everything from starting
25 your educational -- from high school maybe but a CV might have

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Defense - Cross - Dr. Shah

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1 some extra, smaller things related to it, it's more abridged.

2 Q And your CV is four pages, right?

3 A Sure.

4 Q Well, you have it in front of you? You wrote it?

5 A Yes. Yes, four pages.

6 Q And it talks about your educational background, quite

7 impressive, you're a doctor, you're a lawyer. Is your Juris

8 Doctor and your master's in science in patent law the same?

9 A No, the master's in patents was in addition to the
10 Juris Doctor.

11 Q So after you got your Juris Doctor which is what?

12 A So we had, it was kind of a combined program with it,
13 so in addition to taking my Juris Doctor my regular law classes
14 I was also taking particular classes in patent law that allowed
15 me to do both simultaneously.

16 Q And then your CV goes on to talk about and outline

17 ~~leadership roles that you've had, distinctions and honors,~~
18 correct?

19 A Correct.

20 Q Your current research activities, correct?

21 A Correct.

22 Q Your abstracts and poster presentation s, correct?

23 A Correct.

24 Q Academic lectures?

25 A Yes.

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1 Q Which are quite a few, correct?

2 A Correct.

3 Q And continuing education that you have and then
4 professional society memberships, right?

5 A Correct.

6 THE COURT: Are you trying to hire him or do you
7 have a question for him?

8 MS. NOLAN: I'm getting there.

9 Q In all these four pages how many references are there
10 to life care planning?

11 A One.

12 Q So life care planning is not really your specialty,
13 correct?

14 MR. PODOLSKY: Objection.

15 THE COURT: Sustained.

16 Q In all of your -- the first part of your CV, your
17 ~~medical/legal work, education and training there's nothing in~~
18 there about being a life care planner, right?

19 A Correct, in the education and training portion.

20 Q And then in the medical/legal licensure and
21 certification that's where it says you're a certified life care
22 planner, right?

23 A Correct.

24 Q You already told us what you had to do to become a
25 certified life care planner, correct?

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1 A Correct.

2 Q I actually don't remember and he will object or you
3 will correct me if I'm wrong but was it an online course or a
4 place where you went?

5 A Both.

6 Q How much online, how much in person?

7 MR. PODOLSKY: Objection. This is really --

8 THE COURT: This was appropriate for voir dire.
9 It's not cross exam material, I agree. Meaning you were
10 given an opportunity to voir dire, you did voir dire, the
11 Court ruled on its expertise, it's time to move on.

12 Q Once you became certified in life care planning did you
13 have any further education or training in it?

14 MR. PODOLSKY: Same objection.

15 THE COURT: Sustained.

16 Q There's no professional society or membership for a
17 life care planner?

18 MR. PODOLSKY: Same objection.

19 THE COURT: Sustained. And he's already testified
20 that he is a member of the society or the association, I
21 guess.

22 Q What do you consider as your area of expertise?

23 THE COURT: In what field?

24 MS. NOLAN: In medicine.

25 A In medicine, my specialty would be physical medicine

1 rehabilitation as well as a subspecialty in interventional spine
2 and sports medicine.

3 Q Physical medicine and rehabilitation?

4 A Correct.

5 Q How long have you been practicing in that field?

6 A From medical school I suppose it was, graduated 2013 so
7 six years.

8 Q And you've been at NYU for approximately a year?

9 A Correct.

10 Q Is that your first job following your fellowship?

11 A Correct.

12 Q How many patients do you have at NYU?

13 A Per day, it's hard to --

14 Q I would say per day, if that's the easiest way.

15 A Per day it's an average of roughly 20 patients per day.

16 Q Was Mr. Ghoneim your first patient?

17 A No.

18 Q So he was your first interview?

19 A Sure, yes.

20 Q What would you call him?

21 A First certified -- first life care planning client, I
22 suppose.

23 Q So he is a client not a patient, right?

24 A Not a treating physician for him, no.

25 Q And that was in October -- what was it -- October 23,

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1 2018?

2 A Yes.

3 Q And the same day that you saw him did you create your
4 report?

5 A Yes.

6 Q He was referred to you by his lawyer?

7 MR. PODOLSKY: Objection.

8 THE COURT: For a life care planner, overruled.

9 MR. PODOLSKY: The question was first medical
10 doctor then life care planner.

11 THE COURT: He said he is not a treating
12 physician.

13 MR. PODOLSKY: Fair enough.

14 THE COURT: As to the life care planning was he
15 referred to you by his attorney?

16 THE WITNESS: Yes.

17 ~~Q Do you know his lawyer personally?~~

18 A Professionally?

19 Q Personally.

20 A No.

21 Q But you know him professionally?

22 A Well, yes.

23 THE COURT: Now he does.

24 Q Only because of this case or did you have other cases
25 with him?

1 A I had known of him, I suppose. I don't know how to
2 answer this question.

3 THE COURT: Again, if you have voir dire
4 questions, voir dire already happened. If you have
5 questions about this life care plan let's do those.

6 MS. NOLAN: Yes, this life care plan or his
7 relationship with the plaintiff's office --

8 THE COURT: You've asked that already.

9 MS. NOLAN: I didn't actually get an answer.

10 THE COURT: He said he doesn't know how to answer
11 your question. He doesn't understand your question.

12 MS. NOLAN: Okay, so I'll rephrase my question.

13 Q Do you have other clients that are also represented by
14 Cherny and Podolsky?

15 MR. PODOLSKY: Objection.

16 THE COURT: No, that's overruled.

17 A Yes.

18 Q How many?

19 A Three, four.

20 Q You're not sure?

21 A I'd have to double check, but three or four, yeah.

22 Q How many life care plan reports have you prepared for
23 Cherny and Podolsky?

24 A About three or four.

25 Q How much do you get paid for each life care plan report

1 that you prepare?

2 A 3,850.

3 Q 3,000 --

4 A -- 850.

5 Q And how much do you get paid to come to testify in
6 court?

7 A To testify in court for my time is 5,000.

8 Q Have you already been paid for your time in court?

9 A Yes.

10 Q Are you paid before or after you issue your life care
11 report?

12 MR. PODOLSKY: Objection. As to what?

13 THE COURT: Paid for the report or paid for
14 everything?

15 MS. NOLAN: For the report.

16 A For the report, it's before.

17 Q So you require the money upfront?

18 A Correct, the retainer.

19 Q And who pays for it?

20 A The firm.

21 Q The law firm?

22 A The law firm.

23 Q Are you aware of when the plaintiff went to a doctor
24 immediately after the accident?

25 A Was I aware -- sorry. Can you repeat the question?

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1 Q Are you aware if the plaintiff went to a doctor
2 immediately after the accident?

3 A Well, he told me that he did not immediately go to the
4 emergency room but the following day he saw a physician, so if
5 that's what's immediate then --

6 Q Who did he see?

7 A His primary care physician.

8 Q Who's that?

9 A I'm unsure.

10 Q You don't know?

11 A I don't know.

12 Q Did you ask for those records?

13 A I asked the patient who he saw, he said he wasn't sure
14 who it was.

15 Q He's sure that he went to the doctor the next day but
16 he's not sure who he was?

17 A The name, correct.

18 Q So in order to prepare your report you were given
19 documents to review?

20 A Correct.

21 Q Which included some medical records?

22 A Yes.

23 Q Who gave you the documents?

24 A The documents I received from the law firm.

25 Q And did you ever reach out and have a conversation with

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1 any of the treating doctors?

2 A Conversation, no.

3 Q Do you know Dr. Lerman?

4 A No.

5 Q Now, when you reviewed the records and you spoke to Mr.
6 Ghoneim in preparation for this report that you prepared did you
7 ask him if he had ever treated with the physical medicine and
8 rehabilitation doctor before?

9 MR. PODOLSKY: Before as to when?

10 MS. NOLAN: Before the accident. I'm sorry, after
11 the accident.

12 A If he had seen a physical medicine rehab doctor?

13 Q Right.

14 A I did not ask if he had seen a specific physical
15 medicine rehab doctor, no.

16 Q So are you independently aware if he ever went to a
17 physical medicine and rehabilitation doctor from the date of the
18 accident up until the time that he came to see you?

19 A Unaware if he had seen one, no.

20 Q And in your life care plan you have a lot of
21 projections to start treating with a physical medicine and
22 rehabilitation doctor; is that correct?

23 A Correct.

24 Q And that's your specialty, correct?

25 A Partially, yes.

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1 Q Are you hoping that he will become your patient?

2 MR. PODOLSKY: Objection.

3 THE COURT: Sustained.

4 Q You have all these amounts that you're calculating for
5 the future. Are you aware that Mr. Ghoneim has not paid a dime
6 in any of his medical treatment?

7 MR. PODOLSKY: Objection.

8 THE COURT: Sustained, unless you want to start
9 talking about the sources of payment for his treatment.

10 We've addressed this objection I think at least twice since
11 you came in to the case.

12 Q Assume that the plaintiff testified that he hasn't paid
13 a dime for his medical treatment.

14 MR. PODOLSKY: Objection.

15 THE COURT: Sustained. That's exactly the context
16 in which we had this conversation.

17 Q Does insurance play a part in the projections that you
18 have?

19 A No.

20 THE COURT: The jury will disregard any reference
21 to insurance or collateral sources of payment.

22 MR. PODOLSKY: At this time, your Honor, I think
23 she opened the door.

24 THE COURT: Well, I just -- we'll have a
25 conversation about that separately.

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1 MR. PODOLSKY: Okay, thank you.

2 Q Have you been given any indication that Mr. Ghoneim
3 will be responsible from any collateral source to pay for the
4 future medical that you are projecting?

5 MR. PODOLSKY: Objection.

6 THE COURT: Sustained. The jury is directed that
7 if -- whether or not some other source will pay -- now you
8 have opened the door -- whether or not some other source
9 may pay for these treatments, many of these sources may be
10 entitled to get reimbursed for those treatments, and,
11 therefore, it is the rules of this Court and the rules
12 throughout the State of New York that you may not discuss
13 what the other sources of payment are because the jury is
14 not expected to make determinations about who will or won't
15 be reimbursed at the end of the case, what bills are
16 outstanding and what outside sources of payment may have
17 ~~paid previously and be required to be paid back and that's~~
18 the last time actually that I'll admonish you about that.

19 Q The records that you got from plaintiff's attorney did
20 you review them before your meeting, during your meeting, after
21 your meeting or any other way you can tell us?

22 A All of the above. So before as well as after.

23 Q Did you review everything before coming here today?

24 A I have reviewed, yes.

25 Q Did you bring with you today all of the records that

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1 you reviewed?

2 A I brought my narrative report or my report as well as
3 my summary of the medical records, but I have not brought all of
4 the medical records with me.

5 Q When Mr. Ghoneim came to you did you have him fill out
6 any kind of paperwork?

7 A Just a copy of his license, no.

8 Q That's it?

9 A Yes.

10 Q Was his license current?

11 A I don't have a copy of that in front of me, but I'm not
12 sure.

13 Q So you didn't bring your whole file?

14 A Correct, just my narrative report and the summary of
15 the medical records.

16 Q Did you actually review the MRI film or the reports or
17 a combination or any other way you can describe it?

18 A The reports.

19 Q And did you bring those reports with you?

20 A Just a summary of it.

21 Q What do you mean?

22 A I summarized the report for my interpretation of it and
23 that's what I have. So I don't have the radiologist report, the
24 full report.

25 Q And in the summary of your report -- can I see it?

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1 A Sure. I mean, it's part of the report itself.

2 Q Oh, it's part of your narrative?

3 A Yes.

4 Q So what did you say? You brought your narrative and
5 what else?

6 A The narrative including the tables and the medical
7 summary, those things.

8 Q That's all you brought?

9 A Correct.

10 Q Just so I'm clear, the narrative and the tables?

11 A The narrative, the tables, what's included in those,
12 yes.

13 Q So none of the things that you are relying on in your
14 report you brought with you today?

15 MR. PODOLSKY: Objection.

16 THE COURT: Asked and answered. Sustained.

17 ~~MR. PODOLSKY: Asked and answered.~~

18 Q But you relied on the MRI reports in formulating your
19 opinion, right?

20 A Correct.

21 Q Do you have any independent recollection as you sit
22 here today about the MRI report of the cervical spine?

23 A Independent of what's in here, no.

24 Q Do you recall or do you have any independent
25 recollection as you sit here today on what the date of the

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1 accident was that was indicated in the MRI report?

2 A I don't know how to answer that question.

3 Q You said you reviewed an MRI report?

4 A Yes.

5 Q And on that report did it have a date of accident?

6 A Yes.

7 Q And do you remember what the date of the accident is?

8 A I will double check, but I believe it was --

9 Q I'm actually asking if you have an independent
10 recollection, because I know that you wrote your notes and --

11 MR. PODOLSKY: Objection. He is allowed to
12 review --

13 THE COURT: He is allowed to review his notes,
14 she's also allowed to ask him if he remembers without --

15 MR. PODOLSKY: Without looking.

16 THE WITNESS: Well, I mean, I kind of looked
17 already. It was November 30, 2016.

18 Q And I'm pretty sure that on direct examination you were
19 asked about knowledge of any prior MRIs; is that correct?

20 A Correct.

21 Q And you said -- actually, you were asked about any
22 other cervical MRIs, right?

23 A Correct.

24 Q And at that point did you answer that there may have
25 been reference to another MRI in Dr. Lerman's report?

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1 A Dr. Lerman's report mentioned an MRI, it didn't state
2 anything else besides that in there. I don't have a date or any
3 evidence of another MRI. I don't even know if that's accurate
4 or not, it's just in a report.

5 Q It's just in your report or --

6 THE COURT: In Lerman's report.

7 Q It's fair to say you're not -- sorry, I'm going to
8 withdraw that. It's fair to say that you haven't seen Mr.
9 Ghoneim since that date of your evaluation, right?

10 A Correct.

11 Q And you haven't provided any treatment to him?

12 A No.

13 Q When you interviewed him did you ask him about his
14 prior treatment?

15 A Yes.

16 Q And it's fair to say that you didn't have all the
17 records of all the treatment that he got, right?

18 A Yeah, I suppose that's true.

19 Q Did he tell you about treatment that he got that was
20 outside of the records that you were given?

21 MR. PODOLSKY: Objection to form.

22 THE COURT: Sustained.

23 MR. PODOLSKY: What time frame are we talking

24 about --

25 THE COURT: Other than his primary care physician

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1 you're saying?

2 MS. NOLAN: Yes.

3 THE COURT: Does that resolve your objection?

4 MR. PODOLSKY: Post accident or --

5 THE COURT: Post accident, other than his primary
6 care doctor did you have -- forgive my jumping in so we can
7 get back on track -- post accident records other than the
8 primary care physician do you believe that you had all the
9 records of his treatment from then forward, accident
10 related treatment I would assume.

11 THE WITNESS: I don't believe I have all of them
12 because they don't have physical therapy notes or therapy
13 notes or any of those nature. I just have the notes that I
14 mentioned from his orthopedic spine surgeon, his orthopedic
15 knee surgeon, the MRIs that I mentioned to you before,
16 operative reports and the progress notes from those
17 orthopedic surgeons as well.

18 Q And before writing up your report in coming to your
19 plan did you think that it was prudent to get all those records?

20 A Physical therapy notes, no; occupational therapy notes,
21 no, it wouldn't effect the outcome of this.

22 Q So the kind of physical therapy or the amount of
23 physical therapy he had contemporaneous with the accident plays
24 no part in what he may need in the future?

25 A It plays a part that he had it, that he's undergone

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1 treatment with the physical therapist, but in terms of it
2 effecting what I'm going to continue to prescribe based on his
3 current condition and the symptoms that he has wouldn't effect
4 that.

5 Q So what if he had one failed physical therapy
6 treatment?

7 A I would still be prescribing physical therapy.

8 Q Even if you had a pretty good idea he was never going
9 to go?

10 A Even if he doesn't go doesn't mean that I shouldn't
11 prescribe it; that's his decision.

12 Q Well, you would agree that physical therapy has its
13 benefits, right?

14 A Of course.

15 MR. PODOLSKY: Objection.

16 THE COURT: No, overruled. You asked him his
17 opinion about these things.

18 MR. PODOLSKY: Withdrawn.

19 Q And is physical therapy the kind of conservative
20 treatment that you would recommend before a patient would
21 undergo a surgery?

22 A Yes.

23 Q Is that a medically accepted -- is that accepted in the
24 medical field that you should have conservative treatment before
25 you go for a surgery?

1 A Not in every situation, but in large proportion
2 situations, yes.

3 Q In terms of a major trauma no time for physical therapy
4 you have to have surgery, correct?

5 MR. PODOLSKY: Objection; not the facts in the
6 case.

7 THE COURT: Correct, not the facts that he had
8 only one -- visit and not the fact that he had a
9 catastrophic trauma that required him to have immediate
10 surgery. Obviously that's it. It's the jury's
11 recollection of the record and the testimony that controls
12 and not the Court's, but with respect to responding to the
13 objection both of those statements are true.

14 MS. NOLAN: And my question was hypothetical on
15 the one PC visit, I wasn't saying that he said he only had
16 one PC visit.

17 ~~Q You were speaking in general terms, right, Doctor?~~

18 A Yes.

19 Q So you took a past surgical history?

20 A Yes.

21 Q And what did he tell you about that?

22 A Past surgical history he mentioned his neck surgery so
23 the cervical fusion, he mentioned a left knee arthroscopy as
24 well as a left elbow fracture --

25 MR. PODOLSKY: Objection. In terms of the past

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1 are we talking about post accident or pre accident?

2 THE WITNESS: So the two surgeries that are
3 mentioned the neck surgery and the knee surgery were post
4 accident --

5 MR. PODOLSKY: My objection is for anything pre
6 accident.

7 THE COURT: So let him finish answering the
8 question.

9 A So those are two post accident, the neck surgery and
10 the knee surgery, the elbow fracture and repair was prior to the
11 accident.

12 Q Did he ever tell you that he had shoulder surgery?

13 MR. PODOLSKY: Objection.

14 THE COURT: Sustained -- overruled, I'm sorry.

15 A No.

16 Q Do you remember seeing that in Dr. Lerman's records?

17 A ~~I'd have to look at it, but I don't remember seeing~~
18 that, no.

19 Q So you don't have it here with you?

20 A Correct.

21 Q What was his other past medical history?

22 A Past medical history I have is for high blood pressure.

23 MR. PODOLSKY: I have an objection, Judge. Dr.
24 Lerman's records are in evidence. The doctor can look at
25 them.

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1 THE COURT: That wasn't the question. The
2 question was whether he looked at them before coming to his
3 opinion is what I think I understood.

4 MS. NOLAN: I'll give him Dr. Lerman's records.

5 THE COURT: That wasn't the question. The
6 question, as I understand it, you asked him about whether
7 he reviewed those records prior to coming to his opinion,
8 so the objection is overruled and it has nothing to do with
9 Dr. Lerman's current records.

10 MS. NOLAN: Can I have Dr. Lerman's records which
11 are Exhibit 12?

12 MR. PODOLSKY: Officer, that CV is part of it.

13 THE COURT OFFICER: I know. But she's not going
14 to be able to play it.

15 MR. PODOLSKY: But it's got a date on it.

16 THE COURT OFFICER: Fine.

17 MS. NOLAN: Do you want me to put it back
18 together?

19 THE COURT OFFICER: Put it back together once
20 you're finished with it.

21 Q If you would take a look at those.

22 A Mm-hmm.

23 Q Thank you.

24 THE COURT: Just so you understand, the backs of
25 these pages are scrap paper.

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1 THE WITNESS: Oh, okay.

2 Q Do those records reflect what you reviewed?

3 A Yes.

4 Q Prior to coming to your determination?

5 A Yes.

6 Q I direct your attention to July 25, 2016, the first
7 time you saw Dr. Lerman. That would be the first one in order.

8 A Mm-hmm.

9 Q And if you go down on the second page, tests and
10 procedures performed in the past.

11 A Mm-hmm.

12 Q Do you see that?

13 A Yes.

14 Q And you see that there was an MRI of the cervical spine
15 dated August 28, 2015 --

16 MR. PODOLSKY: Objection.

17 THE COURT: That there was one or that there's a
18 note?

19 MS. NOLAN: He references a note of an MRI of the
20 cervical spine date August 28, 2015.

21 MR. PODOLSKY: Objection.

22 THE COURT: Sustained to the extent that the
23 witness who created those records has already indicated
24 that it's a typographical error and he doesn't believe
25 there's any such MRI, so I'd ask the witness to --

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1 Q You testified that there was reference to another

2 MRI --

3 MR. PODOLSKY: Asked and answered.

4 THE COURT: Sustained.

5 Q Okay, so you can put those down.

6 A Okay.

7 Q Thank you, Doctor.

8 A Mm-hmm.

9 Q Past medical history you said only high blood pressure,
10 right, Doctor?

11 A Yes.

12 Q That's the same thing as hypertension?

13 A Correct.

14 Q Because it's noted in your record as hypertension?

15 A That would be a medical diagnosis for what I was just
16 trying to be a little more understanding of what that is.

17 Q And you reviewed the records from Beth Israel, right?

18 A Yes.

19 Q And you don't have them here today, right?

20 A Correct.

21 MS. NOLAN: Can I have those, Officer? I'm sorry.

22 Q So I don't know that mine is in the same order of
23 yours, but what I'm looking for to show you is the Mount Sinai
24 Beth Israel heading, anesthesia/pain management record.

25 MR. PODOLSKY: Objection, not in his report.

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1 MS. NOLAN: He reviewed the records.

2 MR. PODOLSKY: Not in his report.

3 THE COURT: He -- does the report say that he
4 reviewed that record?

5 MR. PODOLSKY: No.

6 MS. NOLAN: He just answered that he did.

7 MR. PODOLSKY: He reviewed 11 items, Judge, none
8 of them are Beth Israel records.

9 A Other than the operative report.

10 MR. PODOLSKY: He reviewed the operative report.

11 THE COURT: The other way around.

12 Q So you only reviewed the operative report you didn't
13 review all the records that --

14 A Correct.

15 Q -- that were generated from Beth Israel?

16 A Correct.

17 Q And you never asked to see them?

18 A No.

19 Q What if I told you that plaintiff had been diagnosed
20 with --

21 MR. PODOLSKY: Objection.

22 Q -- gout?

23 MR. PODOLSKY: Objection.

24 THE COURT: Sustained.

25 MR. PODOLSKY: Objection.

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1 Q You don't know how much Mr. Ghoneim weighed at the time
2 of the accident, right?

3 A No.

4 Q Are you aware of any hospitalizations Mr. Ghoneim ever
5 had from the date of the accident up until he saw you other than
6 for the cervical fusion?

7 A No.

8 Q Would it be relevant to your evaluation to know that he
9 had been hospitalized for pneumonia?

10 A No.

11 THE COURT: As a life care planner?

12 Q Would it be relevant to your evaluation to know that he
13 had pleural effusion?

14 MR. PODOLSKY: Objection.

15 THE COURT: Sustained.

16 Q Is his medical history --

17 THE COURT: Post accident medical history?

18 MS. NOLAN: Any --

19 THE COURT: Well, there's two different questions.

20 Q Is his medical history in totality relevant to your
21 evaluation of what this man will need in the future?

22 MR. PODOLSKY: Objection. Outside the scope of
23 his expertise.

24 THE COURT: Well, I don't think that that's true.

25 MR. PODOLSKY: It's also beyond --

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1 THE COURT: Hold on. Time out. Time out. Let me
2 rule on one objection at a time, if you don't mind.

3 MR. PODOLSKY: Sorry.

4 THE COURT: His medical history and life
5 expectancy are not outside of this doctor's field of
6 expertise if he purports to make a life care plan that's
7 based on a certain life expectancy, so that's overruled.
8 Your objection with respect to -- or the objection I
9 thought you were making earlier which was with respect to
10 distinguishing his pre accident condition from his post
11 accident condition that's sustained, because I think it's
12 already been testified that his post accident medical
13 condition has changed as a result of what he and apparently
14 Dr. Shah believed to be his post accident accident-related
15 weight gain.

16 Q So the question then is was Mr. Ghoneim's medical
17 condition prior to the date of the accident relative --

18 THE COURT: Relevant.

19 Q -- relevant in your determination of what his future
20 medical costs are?

21 A It can be. So it depends on what we're discussing.

22 Q It depends on?

23 A It depends on what we're discussing. So medical
24 history prior to the accident can be relevant but it can also
25 not be relevant; depends on what we're discussing, I suppose.

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1 Q How about disease?

2 A Again, it depends on what kind of disease we're talking
3 about.

4 Q Hypertension?

5 A Hypertension can effect his -- his condition because if
6 he has high blood pressure it can effect his cardiac issues,
7 cardiac issues can relate to, you know, basically his ability to
8 function and so that can be relevant, however, if it's
9 controlled then it's not going to be relevant.

10 Q How about gout?

11 MR. PODOLSKY: Objection to counsel interrupting
12 the witness while --

13 THE COURT: She didn't interrupt the witness. She
14 didn't interrupt the witness. He finished the sentence, he
15 put a period, she asked him the next question.

16 Q How about gout?

17 THE COURT: Is that pre or post accident?

18 MS. NOLAN: Pre, all pre accident.

19 THE COURT: All pre, okay.

20 A Gout, no.

21 Q That wouldn't effect your -- how about obesity?

22 A It can, yes.

23 Q How?

24 A If you have significant -- if you're obese and you have
25 significant weight then you're putting extra stress on your

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1 joints which predisposes them to certain conditions like
2 arthritis or basically puts more stress on all of the joints in
3 your neck, your facet joints, your disks, those kinds of things,
4 which makes it a higher likelihood that you might injure them
5 when you have an injury in which case obesity could, you know,
6 effect his overall outcome going forward.

7 Q So when he came to see you how much did he weigh?

8 A I don't have that number.

9 Q When he came to see you did you determine that he was
10 obese?

11 A I wouldn't be able to do that without his weight.

12 Q Well, you saw him?

13 A Correct. But I don't have his weight.

14 Q You don't just -- you can't evaluate by look?

15 A No. It's based on BMI.

16 Q Okay. What if I told you -- what's the BMI for obesity
17 in a male age 67?

18 A I believe it's -- well, there's different versions of
19 obesity but essentially once you're above 30, 35 BMI you're
20 essentially obese.

21 Q So if his BMI was 41 that would make him obese?

22 A Correct.

23 THE COURT: At the time of the exam you're talking
24 about? Counsel, at the time of the exam?

25 MS. NOLAN: Yes, Judge.

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1 Q Did he tell what you kind of medication he was on?

2 A He did.

3 Q And I think you described Naproxen, like Ibuprofen?

4 A It's a similar family, it's an antiinflammatory.

5 Q Is that something you can get over the counter?

6 A Naproxen, the dose that he has is a prescription.

7 Q How about smoking, prior history of smoking?

8 THE COURT: Prior to the accident?

9 MS. NOLAN: Yes.

10 Q Would that effect your projection on the kind of care
11 that he would need in his future?

12 A Unlikely, no.

13 Q Really?

14 A It depends on if it's going to effect his life
15 expectancy, so if his life expectancy is going to change based
16 on that then that would change my motto. But if it's not
17 changing life expectancy then it wouldn't effect his
18 musculoskeletal condition, other than the fact that it can in
19 theory increase the amount of time that is going for post op
20 care, surgery, all of those things can be effected. So I guess
21 it depends on -- I guess it depend s on your question.

22 Q Does smoking decrease your life expectancy?

23 A It can.

24 Q Whether you're a present smoker or a past smoker?

25 A It changes, so if you're a present smoker it can; if

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1 you're a past smoker, it can rebound back, you can recover in
2 terms of the damage that you've done to your lungs.

3 Q In terms of years how many years of being a past
4 smoker --

5 THE COURT: You mean how many years in the past or
6 how many years of smoking?

7 MS. NOLAN: No, how many years of smoking.

8 A I wouldn't be able to answer that. I'd have to discuss
9 that with a pulmonologist.

10 Q So that's outside of your specialty?

11 A Outside of my scope.

12 Q Actually, your report -- withdrawn. I'm sorry. Let's
13 go to your report.

14 A Sure.

15 THE COURT: Can I take the other record back?

16 MS. NOLAN: I'm sorry, yes, Judge. Thank you.

17 Q You testified on direct that he told you the mechanism
18 of how his body moved in the accident?

19 A He didn't tell me the mechanism of how he moved, he
20 just told me how the accident happened.

21 Q So he didn't tell you that it moved forward, back or
22 anything came in contact with anything in the car?

23 A He's unsure. He told me that his left knee hit the
24 door.

25 Q Where is that in your report?

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1 A I think it's from the first page. He had left knee
2 pain from hitting the inside of the driver's side door.

3 Q And where does it say about how his neck moved?

4 A I don't have that. It just says immediate neck pain
5 with radiation in to his arms.

6 Q So when you testified earlier on direct that his neck
7 moved forward and back you don't know that, right?

8 MR. PODOLSKY: Objection. That was a
9 hypothetical.

10 THE COURT: Sustained.

11 MS. NOLAN: I don't think it was a hypothetical.

12 THE COURT: It was, he was asked based on the
13 reported direction of impact that -- I think that counsel
14 said he wanted him to assume a certain reported direction
15 of impact and to extrapolate from that the patient's neck
16 movement but again the jury's recollection of the record
17 controls.

18 Q When you're hit from behind which way does your body
19 move?

20 A Your torso moves forward.

21 Q Say that again.

22 A Your torso moves forward.

23 Q What about your neck?

24 A Extension, so you'd have initially moved back.

25 Q And then you move forward?

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1 A Then you move forward.

2 Q So it's back and forward not forward and back?

3 A It will be back and forward, yeah, back and forward.

4 Q Referring to the functional history portion of your
5 report.

6 A Mm-hmm.

7 Q Now, this is based upon what he told you when he met
8 with you, right?

9 A Correct.

10 Q And he told you that he needs help going from standing
11 to sitting and sitting to standing?

12 A Yes, he did.

13 Q What if I told you that he has been here, we're on day
14 number three and he's sitting in the courtroom and he gets up
15 and goes to the witness stand and then goes back to sitting in
16 the courtroom without any assistance?

17 A I'm not saying he is not unable to do it, he just has
18 difficulty doing it, it's painful, causes difficulty.

19 Q Well, actually you don't say difficulty you say that he
20 needs help doing it, right, in parentheses?

21 A Well, he mentioned to me that he needs sometimes help
22 going from the bathroom seats to a toilet from sitting to
23 standing and toilet seats can often times be low, so low chairs,
24 low toilet seats. If you have low toilet seats that can
25 sometimes be harder to stand up rather than like a bar stool or

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1 a higher chair, so depends on the chair. I agree I did not
2 specify specifically where all the time, but the point being is
3 that he sometimes needs help going from sitting to standing
4 position.

5 Q You don't know how often because you only saw him once,
6 right?

7 A Correct.

8 Q And he states that he has a home health aide?

9 A Yes.

10 Q Is his brother a certified home health aide?

11 A I'm presuming so. I don't know, but that's what he
12 told me.

13 Q What if I told you his brother was a driver?

14 MR. PODOLSKY: Objection.

15 THE COURT: Sustained. They are not mutually
16 exclusive. I'm not saying that the brother is a home
17 health aide, by the way, I'm just saying that one doesn't
18 eliminate the other.

19 Q And he told you that he sometimes uses a rolling walker
20 or a cane to help ambulate?

21 A Yes.

22 Q Would it be significant to know that he's never come in
23 to court with a rolling walker or a cane?

24 A Well, it depends on how long he is walking, so I'm not
25 sure if the distance in the courtroom requires one or not, but

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1 this was his subjective opinion that if he goes long distance he
2 sometimes uses one to help assist.

3 Q When he came to see you did he have one?

4 A No.

5 Q And he came from Brooklyn to Manhattan to see you?

6 A Correct.

7 THE COURT: Not on foot I assume, right?

8 Q At some point it had to be on foot, right?

9 A Sure.

10 Q Do you know how he got to your office?

11 A I'm not sure how he got there.

12 Q How long was he at your office?

13 A Maybe an hour and a half, two hours.

14 Q Was he sitting the whole time?

15 A No, a mixture.

16 Q Did he get on and off the examining table by himself?

17 Do you have an independent recollection of he got on and off the
18 examining table by himself?

19 A I believe he was able to, yeah. He did have a
20 stepstool though.

21 Q Were you finished?

22 A Yes.

23 Q Were you -- you testified also on direct that he can
24 only carry five pounds?

25 A That's what he said.

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1 Q And when you reviewed Dr. Lerman's records do you
2 remember Dr. Lerman telling him that he could carry ten pounds?

3 A I'd have to double check but from what I thought I
4 believe it was that you shouldn't carry more than ten pounds
5 post procedure post operatively. I think that was --

6 Q He's got two nieces and one nephew that he has that he
7 can't baby-sit for. How old are they?

8 A I don't have the date how old they are.

9 Q Now, he told you that he doesn't drive anymore?

10 A He told me that he does not drive professionally, yes,
11 he doesn't work as a taxi driver or a limousine driver.

12 Q What if I told you that there's testimony in documents
13 admitted in to evidence that he was working in 2017, 2018 and
14 2019 --

15 MR. PODOLSKY: Objection.

16 Q -- who that change your --

17 THE COURT: Hold on. That's in the record that he
18 worked up until February.

19 MR. PODOLSKY: But the amount is 75 percent
20 less --

21 THE COURT: That wasn't the question. The
22 question was whether he works in that capacity and he says
23 that it was reported to him that the witness -- that the
24 plaintiff doesn't.

25 MR. PODOLSKY: Fair enough.

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1 Q So knowing that he's actually worked and what he told
2 you wasn't the truth would that change your projections on the
3 future care that he would need?

4 A Yeah, it could, actually.

5 Q Because you're relying that everything he told you was
6 the truth, right?

7 A Correct.

8 Q So if some of what he told you was not the truth then
9 your projections are not necessarily accurate?

10 A It could be, it depends on what it is.

11 Q Especially in light of the fact that you're talking
12 about Access-A-Ride and not being able to take public
13 transportation. Knowing that he's a taxi driver during the time
14 that he saw you, the year before he saw you and during some
15 period of time after he saw you that would change your
16 projections, correct?

17 A Well, Access-A-Ride and training services are the same
18 cost so that wouldn't change. So public transportation that
19 would be the same cost so that wouldn't change at all.

20 Q Well, the need for it would change if he could drive?

21 A It depends on the distance that he can drive. So if he
22 is driving from point A to point B, for example, if it requires
23 15 minutes, 20-minute, sure, he would be able to do it. If it's
24 something that's going to require him getting to his medical
25 appointments that are 45 minutes away, or New York traffic, an

1 hour away, whatever it might be, then even if he could drive
2 short distances he would still need public transportation or an
3 Access-A-Ride so he doesn't have to be doing that -- I suppose
4 he could take frequent breaks, he could take, you know, a break
5 every 15 minutes to get to those appointments but it would be
6 far more difficult.

7 Q How many green cab drivers do you know only drive 15
8 minutes at a shot?

9 A Not that often -- not that many.

10 Q And he also told you that he stopped working when the
11 accident happened, right?

12 A Yes.

13 Q So you're under the impression based upon what he told
14 you that he hasn't worked since 2015, correct?

15 A Yes.

16 Q And when I tell you that that's not accurate that will
17 change your opinion, correct?

18 A Yes.

19 Q You also said that when people have injuries like this
20 and they stop going out so much they become sad and down. Did
21 you refer him to a psychiatrist?

22 A I asked if he had seen anyone or -- I mentioned that he
23 could see a psychologist but he felt that his mood was not to
24 the level or extreme level where he would want to see one.

25 THE COURT: We're going to recess because I've got

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1 a conference call at 1 o'clock. We're going to recess
 2 until 2:15. Please try to be back exactly 2:15 because we
 3 have another witness after Dr. Shah. Sir, you remain under
 4 oath.

5 THE COURT OFFICER: Ladies and gentlemen.

6 (Whereupon, the jurors exited the courtroom.)

7 THE COURT: All right, folks, enjoy your lunch.

8 See you at 2:15.

9 (Whereupon, a luncheon recess was taken.)

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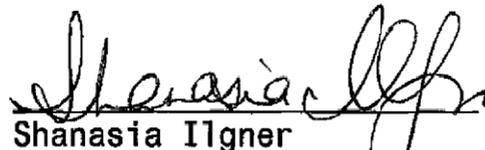
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 Shanasia Ilgner
 Senior Court Reporter

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