

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF KINGS: CIVIL TERM: PART LL1

3 ----- -X

4 ERION BELLI :  
5 PLAINTIFF, :

6 - against - :

7 MACQUESTEN CONSTRUCTION MANAGEMENT, :  
8 LLC and VAN SINDEREN PLAZA HOUSING :  
9 DEVELOPMENT FUND CORPORATION, :

10 DEFENDANTS. :

11 ----- -X

12 Supreme Court  
13 360 Adams Street  
14 Brooklyn, New York 11201  
15 April 23, 2026

16 B E F O R E :

17 HONORABLE DEVIN P. COHEN,  
18 Justice of the Supreme Court

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

20 THE DAUTI LAW FIRM, P.C.  
21 Attorneys for the Plaintiff  
22 39 Broadway - 14th Floor  
23 New York, New York 10006  
24 BY: YILBER ALBERT DAUTI, ESQ.

25 BERSON & BUDASHEWITZ, LLP  
Attorneys for Plaintiff - Second Chair  
15 Maiden Lane  
New York, New York 10038  
BY: JEFFREY A. BENSON, ESQ.

(Appearances Continued on the next page.)

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

2

GARTNER & BLOOM, ESQS.  
Attorneys for the Defendant -  
MACQUESTEN CONSTRUCTION MGT, LLC  
801 Second Avenue - 15th Floor  
New York, New York 10017  
BY: BRIAN FRANKLIN, ESQ.  
BY Y. GAIL GOODE, ESQ.

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7

ALSO PRESENT:

8

KAHANA FELD  
Appellate Counsel for the Defendant  
800 Third Avenue - 16th Floor  
New York, New York 10022  
BY: MICHAEL J. CURTIS, ESQ.

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KAUFMAN & DULOWICH, LLP.  
40 Exchange Place - 20th Floor  
New York, New York 10005  
BY: CATHERINE RANSOM, ESQ.

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LAURA DELVAC  
SENIOR COURT REPORTER

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COURT OFFICER: All rise, Labor Law Part 1 is now  
in sessions. The Honorable Devin P. Cohen presiding.

19

20

THE COURT: Good morning, I was told you needed a  
knew minutes; is that still true?

21

22

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

23

24

THE COURT: All right, we're on the record, I  
understand counsel has a stipulation to put on the record.

25

## Proceedings

1 MR. FRANKLIN: Yes, your Honor, both sides have  
2 spoken previously and we have demonstratives, blowups of  
3 Dr. Babu and Dr. Shiau's operative report, the defense also  
4 has some radiological images of both the back and the knee  
5 from 2019 --

6 THE COURT: Great.

7 MR. FRANKLIN: -- and 2020.

8 THE COURT: And some of those are actual evidence  
9 not demonstrative?

10 MR. DAUTI: Yes, they're already in evidence, the  
11 originals anyway.

12 MR. FRANKLIN: I have a blowup that the Plaintiff  
13 has of the radiological as well.

14 THE COURT: No problem.

15 MR. BENSON: Just correcting the record, we had  
16 Hudson Regional first set of records marked as 17, it should  
17 have been marked as Plaintiff's Exhibit 18.

18 THE COURT: Okay.

19 MR. BENSON: And we have a second set of records  
20 that came in also from Hudson Regional, that will be 19 and  
21 two boxes of the Worker's Comp records that will be  
22 Plaintiff's 20.

23 THE COURT: Okay. Great. Okay. Are we ready to  
24 go?

25 MR. DAUTI: Yes.

## Proceedings

1 MS. GOODE: Yes, your Honor.

2 THE COURT: Great, let's get the jurors.

3 (Pause in the proceedings.)

4 COURT OFFICER: All rise, jury entering.

5 (Whereupon, the jury entered the courtroom.)

6 THE COURT: You can all be seated, thanks.

7 Let me see counsel for one second.

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

10 THE COURT: Plaintiff, ready to put your next  
11 witness on the stand?

12 MR. DAUTI: Your Honor, Plaintiff calls Dr. Shiau.

13 (Whereupon, Dr. Shiau entered the courtroom and  
14 took the witness stand.)

15 THE CLERK: Raise your right hand. Do you swear or  
16 affirm that the testimony you're about to give will be the  
17 truth and the whole truth and nothing but the truth?

18 THE WITNESS: Yes.

19 THE CLERK: In a you a loud clear voice, state your  
20 name and address for the record?

21 THE WITNESS: My name is doctor John J-O-H-N,  
22 S-H-I-A-U. Hold on I never remember the address in Staten  
23 Island.

24 Office in Staten Island is 554 Tompkins Avenue,  
25 T-O-M-P-K-I-N-S Avenue, Suite 100, Staten Island, New York,

1 10305.

2 THE CLERK: Thank you.

3 THE COURT: Thank you.

4 Are you M.D., D O or something else?

5 THE WITNESS: M.D.

6 THE COURT: Thank you.

7 Can I ask that you use microphone, I know it's more  
8 convenient not to.

9 MR. DAUTI: What was that?

10 THE COURT: Make sure you're using microphone so  
11 everybody can hear you, and I will do the same for you.

12 DIRECT EXAMINATION BY

13 MR. DAUTI:

14 Q Dr. Shiao, are you a physician licensed to practice  
15 medicine in the State of New York?

16 A I am.

17 Q When were you licensed?

18 A 1991.

19 Q And can you tell the jury a little bit about your  
20 educational background, please?

21 A Sure, I -- I went undergrad and medicine school at  
22 University of Michigan in Ann Arbor, Michigan. After medical  
23 school I graduated in 1990, and then from 1990 to 1991, I did  
24 research on spinal cord injuries in rats, I published a paper  
25 off of that, after that one year of lab work, I started my

1 internship at Mount Sinai Medical Center in Manhattan in  
2 surgery, and then I spent the next five years, five years, doing  
3 my neurosurgical residency at Mount Sinai Medical Center, and  
4 that was, I finished in 1997.

5 Then in 1997, after my residency, I spent six months in  
6 Germany doing a fellowship in minimally invasive neurosurgery.

7 Q Doctor, what is neurosurgery?

8 A So a neurosurgeon is a doctor that specializes in both  
9 the surgical or nonsurgical treatment of brain and spinal  
10 diseases, and also peripheral nerves like carpal tunnel, that  
11 sort of thing.

12 Q Are you board certified in the field of neurosurgery?

13 A I am.

14 Q And what does that mean?

15 A So after neurosurgery -- well, during neurosurgery  
16 residency, you take a written test, and you have to pass the  
17 written test before you can graduate from your residency.

18 After residency, you typically operate for two years  
19 with follow-up on your patients, and then when you're finished  
20 with those two years, you're eligible to sit for the oral  
21 boards, and the oral boards, you're just put in front of a bunch  
22 of neurosurgeons, and you know, top neurosurgeons in academic  
23 world, and they will present you cases and you have to tell them  
24 how you would treat them, and they grade you. If you pass, you  
25 become certified.

1 Q Do you have any special interests in the field of  
2 neurosurgery?

3 A So I did my fellowship in neurosurgery in minimally  
4 invasive neurosurgery, so that was my main interest, so I did  
5 quite a bit of minimally invasive brain surgery for quite a  
6 while, but then I became really well known for minimally  
7 invasive spine.

8 So currently I do mostly minimally invasive spinal  
9 surgery, I have written some papers, I've invented devices to  
10 put in the spine with, you know, small little opening in the  
11 spine, that's what I'm known for now.

12 Q Can you please explain to the jury what you mean by  
13 "minimally invasive surgery"?

14 A So, you know minimally invasive surgery, you've always  
15 seen spinal surgery where there's incisions in the back, like  
16 this big (indicating), so I don't do that, I do the same type of  
17 surgery through little openings about the size of a quarter, so  
18 I can do fusions, I can do, you know, laminectomies,  
19 discectomies through little portals in the, little portals in  
20 the back or even the front sometimes.

21 So and the main advantage of that is that you don't  
22 disrupt all of that good muscle and tissue, and the healing  
23 process is faster, recovery is faster.

24 Q And could you tell us about your current hospital  
25 affiliations?

1           A       So from 1998 to 2020, right before Covid start, I was  
2 mostly a New York practice and so I have an affiliation with  
3 Lenox Hill in Manhattan, that's where I did a bit of my surgery  
4 and then Staten Island University Hospital, in Staten Island,  
5 those were my main hospitals up until 2020, and then I went off  
6 on my own, I was in a big group and now I'm mostly in New  
7 Jersey, in New Jersey, I have affiliations with Hudson Regional  
8 in Secaucus, Bayonne Medical Center, CareWell in East Orange.

9           Q       Are you currently actively involved in the field of  
10 neurosurgery?

11          A       Yes, I mean, spinal surgery is part of the field of  
12 neurosurgery, so, like I said, I predominantly do minimally  
13 invasive spine surgery for you.

14          Q       For how long have you been practicing neurosurgery?

15          A       I finished my residency in 1997, finished my fellowship  
16 in 1998, so I have been an attending since 1998.

17          Q       And approximately how many surgeries have you performed  
18 in one year?

19          A       Up until 2020, when I was with a big group, I was doing  
20 about 300 cases a year. After 2020, on my own, you know when  
21 I'm in a different insurance type of situation, I do probably  
22 125 cases a year.

23          Q       And when was the last time you performed a surgery?

24          A       Monday.

25          Q       And when is the next time you're scheduled to perform a

1 surgery?

2 A Monday.

3 Q Are you actively involved in treating patients?

4 A Yes, I work six to seven days a week, I see patients  
5 probably three days a week, operate three to four days a week.

6 Q And have you ever testified in court before?

7 A I have.

8 Q And have you been accepted as an expert by the courts  
9 where you've testified?

10 A I have.

11 Q And has that been in the courts of New York State or  
12 New York City?

13 A Yes.

14 MR. DAUTI: At this point, your Honor, we would  
15 like to offer Dr. Shiau as an expert in the field of  
16 neurosurgery.

17 MS. GOODE: No objection.

18 THE COURT: Without objection, your Honor.

19 Q Doctor, as part of your responsibilities to treat  
20 patients, do you review imaging films?

21 A I do.

22 Q And can you tell us what type of imaging films you  
23 review?

24 A Typically I will get, I will review an MRI, if -- if  
25 available, I will review X-rays. If not available, I will order

1 X-rays, I always get X-rays, and then depending on the  
2 circumstances, sometimes I will get a CAT scan.

3 Q And what purpose do those imaging studies serve?

4 A So in terms of the MRI, an MRI is good for imaging soft  
5 tissue, so anything in your body that's soft, MRIs are good for,  
6 anything with water in it, MRIs are good for.

7 So MRIs will show you your discs, your nerves, your  
8 spinal fluid, your brain, your muscles, so anything soft in  
9 your -- is good for, for MRIs, and I'll get an X-ray mostly  
10 because I want to see what kind of motion the spine has, so I  
11 typically will get something called flexion/ extension films,  
12 for instance, if it's the lower back, if you were doing it, you  
13 would try to touch your toes, that's flexion, and then try to  
14 extend your back as far as you can, that's an extension, that  
15 way I can compare movements and see if there's any inability,  
16 and I can also measure angles of the spine there.

17 A CAT scan is basically a bunch of X-rays, you know, it  
18 uses radiation, takes a bunch of X-rays, and then the computer  
19 puts all of these X-rays and makes a big, a bigger image, a more  
20 precise image, and that's good for looking at basically bone,  
21 because that's what X-rays are good looking for.

22 A CAT scan will show me the bone details, sometimes  
23 it's good to use all three, MRIs will show you soft tissue, and  
24 your X-rays and CAT scans will show you your bone, bone density  
25 -- bone anatomy.

1 Q And doctor, when you make recommendations for  
2 treatment, to your patients, do you rely on your own  
3 interpretation of those imaging studies, or do you rely on the  
4 reports of the radiologists that reviewed the studies?

5 A So typically what I do, I will look at the studies  
6 myself, interpret it myself, see the patient, and see how it  
7 correlates with what I read and then lastly, I will look at the  
8 radiologist's interpretation and see if, there's any  
9 discrepancies between what the radiologist read and what I read.

10 Q Doctor, you're qualified to read those images and  
11 interpret them yourself; correct?

12 A Yeah, I mean that's part of the residency, part of  
13 being a neurosurgeon is you never trust -- you don't trust  
14 anyone else except yourself.

15 Q Doctor, if you were not in court today, in what  
16 activities would you be involved, what would you be doing?

17 A Today I was scheduled to see patients in my office.

18 Q And are you being compensated for the time away from  
19 your practice?

20 A I am.

21 Q And at what rate?

22 A For today, \$11,000, a lot, I know.

23 Q Doctor, what medical records did you bring with you  
24 today?

25 A I just brought my office notes, and those office notes

1 include my notes from my operative notes, and then some, some  
2 medical records from prior to when I first saw Mr. Belli.

3 Q Were those records prepared in the regular course of  
4 business?

5 A Everything is EMR now, meaning it's everything is on my  
6 computer, in cases like this, I bring a -- I print it out and  
7 get a hard copy.

8 Q Are these records maintained in the regular course of  
9 business?

10 A Yes.

11 MR. DAUTI: Your Honor, we would like to have them  
12 admitted in evidence.

13 MS. GOODE: May I take a look first, your Honor?

14 THE COURT: Of course.

15 (Pause in the proceedings.)

16 THE COURT: Do you have a copy, is this a copy of  
17 records?

18 MS. GOODE: Your Honor.

19 THE COURT: I'm asking Plaintiff's counsel.

20 MR. DAUTI: I think those are the last pages from  
21 what I see from here.

22 MS. GOODE: I will keep them outside of the  
23 envelope since he's going to be referring to it.

24 THE COURT: Thank you.

25 COURT OFFICER: Do you have an objection to him

1 stapling it?

2 MR. DAUTI: No, I don't.

3 THE COURT: These are printouts of things that are  
4 already in the EMR?

5 THE WITNESS: Yes.

6 THE COURT: Just if you don't mind cutting in one  
7 question, doctor, this exhibit has been marked, let me see  
8 the Exhibit Number, has been marked Plaintiff's Exhibit 21,  
9 is it safe to say that this is a printed version of what is  
10 otherwise already stored in your records as an EMR as you  
11 described it, as an electronic medical record?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: Thanks, it's admitted in evidence  
14 without objection; correct?

15 MS. GOODE: Yes, your Honor.

16 THE COURT: As Exhibit 21, subject to whatever  
17 redaction may be necessary.

18 MR. DAUTI: Thank you, your Honor.

19 THE COURT: You're welcome.

20 Q Doctor, feel free to look at the records to refresh  
21 your recollection.

22 Can you tell us when was the first time you examined or  
23 you saw Plaintiff Erion Belli?

24 A I -- he saw me for initial neurological consultation on  
25 September 28, 2023.

1 Q And at that appointment, did you get a history from the  
2 patient?

3 A I did.

4 Q By the way, could you explain to us, what is, what does  
5 that history mean?

6 A A history just, basically the story of whatever a  
7 patient comes to you to be seen for.

8 Q And what history did you receive at that initial  
9 consult?

10 A He told me in the records that I had shown that he was  
11 injured at work on June 29, 2019, he slipped on oil landing on  
12 his left knee and side, and since then he has had had persistent  
13 low back pain and left knee pain. He did undergo -- I'm sorry,  
14 he did undergo left knee arthroscopy in 2020, with some  
15 improvement, and before he saw me on August 12, 2022, Dr. Babu  
16 performed an L4-5 laminectomy.

17 Before that surgery, he had low back pain, and what I  
18 saw leg paresthesias, continuing again down the legs, numbness,  
19 but he had a lot of low back pain, and he had some initial  
20 improvement, I think after surgery, but, it came back and now,  
21 by the time he saw me, he stated that his low back pain and  
22 tingling down the legs had gotten much worse and it had  
23 returned.

24 Q Doctor, can you explain to the jury what does it mean  
25 "tingling in the legs"?

1           A     The best I can say is like numbness, and feeling down  
2 the legs, you know, that kind of thing.

3           Q     And during this initial appointment, did you perform a  
4 clinical examination?

5           A     I did.

6           Q     And what did the examination consist of?

7           A     Well, when I do any initial consultation, I do a pretty  
8 full exam of the musculoskeletal system, I will palpate all  
9 areas of the body, and of course, I will focus on the area of  
10 pain, so I examine, and when you examine the spine in the lower  
11 back, of course, you have to examine the legs, you know, the  
12 power in the legs, the sensation, that sort of things, range of  
13 motion of the back, that's what I did for, for Mr. Belli.

14          Q     And what were the findings from that examination?

15          A     I saw that, on exam, he had, he had moderate to severe  
16 pain, to palpation of the lumbosacral region, and there was  
17 moderate spasm, his range of motion, was very limited, ten  
18 degrees on flexion, meaning bending forward and 20 degrees on  
19 extension, just so you know the normal flexion should be 90, he  
20 was ten, and on extension he was 20, and normal is 30.

21          Q     During that visit, did you review any imaging studies?

22          A     I did review his MRIs, from September 17, 2019, and  
23 August 5, 2022.

24          Q     And do you have those, I don't know, we're going to try  
25 to use with the permission of the Court, the technology here and

1 hopefully succeed, but if it doesn't work, I think you told me  
2 that you may access those in your computer?

3 A If it doesn't show up, Standup, one of them is Standup  
4 MRI, so I can try.

5 MR. DAUTI: And at this point, your Honor, we would  
6 like to have the technology people hopefully show us the CD  
7 with the films from 9/17/2017.

8 THE COURT: That's being shown, what exhibit is  
9 that?

10 MR. DAUTI: It's not that one, I think we have is  
11 in evidence, anyway, so you can remove that one,  
12 September 17th, go all the way down.

13 THE COURT: The question is what Exhibit Number is  
14 this in the actual exhibit?

15 MR. DAUTI: That should be Exhibit Number 5, your  
16 Honor, the Glen Oaks Hills radiological records.

17 THE COURT: That's not the question.

18 MR. DAUTI: Sorry.

19 THE COURT: That's okay, just the record reflect  
20 both the witness and the jurors are being shown Plaintiff's  
21 Exhibit 5 or a portion there of, on court's monitor.

22 MS. GOODE: Your Honor, may I stand over there?

23 THE COURT: Yes.

24 MR. DAUTI: It's 4, the name Lenox Hill Hospital  
25 Radiology, I'm wrong.

1 THE COURT: Let the record reflect the witness and  
2 jurors are being shown portions of Plaintiff's Exhibit 4 in  
3 evidence on consent.

4 MR. DAUTI: It's the top one.

5 Q Doctor, could you give any suggestion to us as to which  
6 one of those would be more easy for the jury to understand?

7 THE WITNESS: Can I?

8 THE COURT: You may.

9 Even, as a reminder, when you step off the stand,  
10 you're still under oath.

11 THE WITNESS: Yes.

12 (Whereupon, Dr. Shiau exited the witness stand and  
13 approached the monitor.)

14 A So the one above where you are now, yep, and then you  
15 can use your scroller to, your mouse scroller to move that image  
16 in the middle, yep, you can scroll it, or up here you can scroll  
17 it, use that little dial thing, I don't know what you call  
18 that -- sorry, well, you don't have a mouse, so do, I think page  
19 down yep, can you do page down, there you go, there we go.

20 MR. DAUTI: I think we have some progress here,  
21 doctor.

22 A Just keep going, right there, up, you went past, one  
23 more, right there.

24 Q So, doctor, what do you see in this film?

25 A So this is what we call a sagittal image, so MRIs, CAT

1 scans can slices through your body in different dimensions, and  
2 like a slice of cake, you slices through a cake, so this is a  
3 side view, and this -- this type, this MRI sequence, anything  
4 with water shows up as white, so this is like the belly, there's  
5 water in the belly, this is the back, the back shows up as  
6 white. The white down the middle are the spinal fluid, spinal  
7 fluid is like white, that shows up as white, the little strands  
8 of spaghetti, those are the nerves that run down your spinal  
9 canal.

10           So there are two things that I see on the sequence,  
11 Number one, these are your discs, alright, the little bands  
12 right across, those are the discs, they work like shock  
13 absorbers for the spine.

14           The thing I notice, these are all white, but this one  
15 is a little darker and what's on that image, water is white, so  
16 that means this has lost some water, hydration and it's, I  
17 think, the report says it's desiccated, meaning it's lost some  
18 hydration.

19           The other thing I noticed is that the disc height is  
20 pretty normal compared to the others, when we say, you can read  
21 this as if it has a disc bulge, sometimes people would even call  
22 it a small herniation, but a disc is like a doughnut, and it is  
23 bulging, that means the doughnut dough is kind of bulging --

24           Q     Doctor, if you --

25           A     -- squished down.

Dr. Shiau - Plaintiff - Direct

1 Q Doctor, I might have something that --

2 THE COURT: Can you show it to everybody, can you  
3 say on the record what it is?

4 MR. DAUTI: I'm sorry, your Honor, this is for  
5 demonstrative purposes, we would like if the doctor thinks  
6 it's useful to show it to the jury.

7 THE COURT: Did you assign a number to it yet?

8 MR. DAUTI: We can mark it as 4-A for demonstrative  
9 purposes.

10 THE COURT: 4-A?

11 MR. DAUTI: Correct, because it's part of the 4 or  
12 we can --

13 THE COURT: Why don't you give it its own number.

14 MR. DAUTI: Plaintiff's for demonstrative purposes  
15 Number 1.

16 THE COURT: No, we're not -- let's get this squared  
17 away, I thought we did this before, we're going to number  
18 sequentially not two number's one or two numbers of two's.

19 The only time if we have an image of a page or an  
20 image of a film or something, and then we have that same  
21 image over again blown up on board or something like that,  
22 you can give it a sub-number; otherwise, if it's an  
23 independent thing, it should get an independent number, you  
24 just numbered 21, I believe.

25 MR. DAUTI: Correct, this would be 22.

Dr. Shiau - Plaintiff - Direct

1 THE COURT: 22 for demonstrative purposes, hold on  
2 a second, so ladies and gentlemen, you're going to be shown  
3 what I take to be a model of the lumbar spine, and it's just  
4 a model, it's safe to say this is not some sort of 3-D  
5 rendering of the Plaintiff's actual spine, doctor?

6 THE WITNESS: Correct, your Honor.

7 THE COURT: It's essentially just an exemplar model  
8 of what a human lumbar spine might look like?

9 THE WITNESS: Correct.

10 THE COURT: Great. With that understanding, ladies  
11 and gentlemen, you can look at it, it's for essentially  
12 instructional purposes not to tell you what this Plaintiff's  
13 spine looks like now or looked like at the time of the  
14 accident.

15 Great.

16 MR. DAUTI: We will have that one as 23, please.

17 THE COURT: I want to just as a reminder make sure  
18 we stay in the habit of showing things to each other and my  
19 clerk before we let the jury see it, these are not  
20 controversial, but we have to make sure we stay in the habit  
21 of not showing anything to the jury until it's marked in  
22 evidence.

23 MR. DAUTI: Yes, your Honor, my apologies.

24 Q Doctor, doctor, would it be more helpful first to start  
25 with Plaintiff's Exhibit 23?

1 A This is 23?

2 Q Correct.

3 A So this is 23, so this is a model of your spine and in  
4 the lower back, as you know, there are five lumbar bone, one  
5 two, three, four, five, and then the bottom of your spine is a  
6 sacrum, and we call that, so L1/2/3/4/5 and sacrum is S1, and if  
7 you look at, so this is a nice representations, if you look at  
8 it, it's a side view and you can see bone, bone in between are  
9 the discs, discs, discs, and the sacrum is at the bottom, right,  
10 so that's the overview, each individual --

11 Q So now you're showing to the jury what has been marked  
12 as Plaintiff's Exhibit 22.

13 THE COURT: 22 for demonstrative purposes.

14 A So this is an individual segment of the spine, of the  
15 spine, and you can see this is the bone, this is the disc, it's  
16 supportive, it's spongy, this is the back part, down the middle  
17 runs your nerves.

18 So the problems come about it, for whatever reason, I'm  
19 squeezing down a little bit, but if the disc bulges in, now  
20 what's the difference between a bulge and a disc herniation,  
21 well, and again, I would like to use analogies of a disc like a  
22 doughnut, if you squeeze a doughnut down, the dough bulges out,  
23 you know, the dough of the doughnut bulges out, that's a bulge.

24 A disc herniation, means that the dough itself is open  
25 just a little bit, and the jelly has come out, and that jelly

1 part is the herniated disc.

2 Now, in big disc herniations that's super obvious, but  
3 in small disc herniations, it's sometimes hard to say is it  
4 really the jelly coming out or is it just a bulge.

5 So I can read, when I read this first when I first read  
6 it, I saw it was a bulge, and I would even call down here a  
7 bulge, you can see how flat these discs are and hear it kind of  
8 sticks out, is that a disc herniation, where it's tiny or is it  
9 a bulge, hard to say, here, you can see it's bulging out also,  
10 is it a herniation or a bulge, hard to say.

11 Clinically, as a neurosurgeon, I really don't care, I  
12 mean, whether it's a bulge or a small disc herniation. If it's  
13 irritating a nerve or causing problems with the disc, they can  
14 do the same thing, they can cause back pain, they can cause  
15 pressure on the nerve and you can have leg pain or  
16 paraesthesias, numbness down the leg, because a bulge or  
17 disc herniation can do the same thing, they can press on vital  
18 structure in the spine.

19 In my view the two things, the two things that I really  
20 see here, there's a bulge there or a small disc herniation, and  
21 also that this disc has lost some water it in it.

22 Q And after reviewing the films and examining Erion, did  
23 you have an opinion, and a diagnosis about his condition?

24 A Yeah, so there are many reasons why you can have back  
25 pain, you know, it's funny, I think, I run a lot, so every

1 single one of my discs look like that, but I have no back pain,  
2 why is that? I don't know.

3           There's a famous study in The New England Journal of  
4 Medicine, they took 100 people off the street and 90 percent of  
5 them had disc bulges, herniations and something wrong with their  
6 spine but not 90 percent of the people have back problems, so,  
7 yeah, so you got to correlate with the patient's symptoms.

8           So what's the problem with having a disc bulge, and  
9 make some loss of hydration, well, if you think about it, again,  
10 I will use a doughnut, a doughnut you squash it down and when  
11 you squash it down, the dough opens up or it spreads out a  
12 little bit and maybe the jelly is kind of pressurized to the  
13 back towards the bulge, right, so imagine that whatever caused  
14 this disc bulge pushed the inside out that way, and now the  
15 middle of the disc has less disc to hold your weight, and I  
16 think that's what happened with our patient here, that, whatever  
17 trauma occurred, in this isolated disc, it pushed the disc,  
18 inside the disc towards the outside, towards the nerves, and  
19 then it left the inside with less disc, less, what we call  
20 nucleus pulposus and that's going to show up as darker, there's  
21 less healthy disc in there now.

22           Q       So, doctor, is it your opinion that this bulge or small  
23 herniation you saw on the films and based on your clinical  
24 diagnosis of Erion was as a result of the slip and fall accident  
25 of June 29, 2019?

Dr. Shiao - Plaintiff - Direct

1 MS. GOODE: Objection, your Honor.

2 THE COURT: I think the doctor has already -- what  
3 is your objection?

4 MS. GOODE: As far as foundation.

5 THE COURT: As far as foundation, I think that's  
6 overruled, the doctor testified that the pertinent medical  
7 history presented to him on the first visit related to these  
8 symptoms that started following the date of the Plaintiff's  
9 accident, I thought you had a different objection, but that  
10 objection is overruled, but the doctor will need to explain  
11 how they connect.

12 THE WITNESS: Sure.

13 A So a history, you know, in my history, when I, one of  
14 the important things you need to ask is, okay, before this slip  
15 and fall, what was the patient like, so before the slip and fall  
16 he's working as a plumber, crawling around, doing all sorts of  
17 things, stuff that's really active without any back pain, and  
18 then slip and fall and all of a sudden, two days later he's like  
19 oh, my God, my back is starting to hurt.

20 So to me if I correlate that history with what I see on  
21 MRI findings, what I clinically find during examination, to me,  
22 a slip and fall caused damage to that disc, and caused the bulge  
23 or small herniation, and made that disc a little bit unstable,  
24 because there's just not as much disc in the middle now to  
25 support the spine.

1           So yes, in my opinion, it's pretty obvious that the  
2 slip and fall caused an injury to the spine that caused the back  
3 pain and feelings down the legs.

4           Q     At that point, doctor, you were aware of the fact that  
5 Plaintiff had already undergone lumbar spine surgery with  
6 Dr. Babu?

7           A     Yes.

8           Q     What type of surgery was that?

9           A     He did a laminectomy. The reason to do laminectomies  
10 is let's say, there's pressure on the nerves, and you want to  
11 create more room for the nerves.

12                    To me I love using analogies with my patients it's like  
13 turning your car into a convertible, more head room, that's what  
14 we're doing, so a laminectomy if you look at the model --

15                   MS. GOODE: Which is 22 for the record?

16                   MR. DAUTI: Yes, Plaintiff's Exhibit 22.

17                   THE COURT: Thanks, counsel.

18           A     -- the bone you feel in your back when you feel your  
19 back with these things sticking out, that's called the spinous  
20 process, the spinous process leads to the laminae, that's the  
21 roof of your spinal canal, so a laminectomy which is what  
22 Dr. Babu did, was to take off all, take off this bone, and, you  
23 know, his goal was to give the nerves more room so the feeling,  
24 so the paresthesias, the numbness and tingling down the leg  
25 would go away.

1           Why would he do that is because there's a bulge there  
2 encroaching into the canal, because it's bulging towards the  
3 nerves, and he didn't want to touch the disc, but he still  
4 wanted to make room, so he just took the roof off.

5           Q     Based on the history he got from Erion, during that  
6 meeting, did this surgery work out for him?

7           THE COURT:   Which surgery?

8           MR. DAUTI:   The surgery.

9           THE COURT:   Whose surgery?

10          MR. DAUTI:   The surgery that Dr. Babu did.

11          THE COURT:   Got it.

12          A     Yeah, so, he didn't think long-term he benefitted from  
13 the surgery.

14          Q     Because he presented with pain in your office; correct?

15          A     Yes, he felt that his pain was getting worse despite  
16 the surgery, and he was miserable, and his pain was like ten out  
17 of ten.

18          Q     After reviewing the films, reviewing the operative  
19 report from Dr. Babu, regarding the laminectomy that he had done  
20 in August of 2022, and speaking with Erion, did you recommend  
21 any treatment for him, if you need to look at your notes, with  
22 the permission of the Court, you can go back there and look at  
23 your notes.

24                           (Whereupon, Dr. Shiau resumed the witness stand.)

25          A     So on the first visit, I -- well, I, I came up with a

1 treatment plan, my thought was the disc itself was, was damaged,  
2 wasn't supporting, he's a fairly big guy, it wasn't supporting  
3 his weight that well anymore, that disc, and that he would need  
4 stabilization.

5           The other thing is although we don't want it to happen,  
6 sometimes taking all of that bone from a laminectomy, which  
7 will further destabilized spine sometimes, not all the time, but  
8 sometimes, and he's a big guy, and maybe he needed that bone to  
9 give him some stability, and maybe that's why he's getting  
10 worse.

11           So my plan was to stabilize the spine and with a  
12 fusion, but before I did that, I wanted to get a new MRI,  
13 because the MRI that I saw was, you know, was outdated, and I  
14 got those X-rays that we talked about where he bent forward and  
15 backwards to see if there was any instability.

16           Q       And after that appointment, did you see him again and  
17 did you have a chance to review the MRIs that you had ordered  
18 yourself?

19           A       Yes, two months later in November, I did a telemed, a  
20 telemed consultation with him, even though it says, even though  
21 it's labeled "telemed," it's really a video-med, I used a video  
22 connection and then saw him that way.

23           Q       And during that telemed video conversation, did your  
24 opinion that he needed surgery remain the same or change?

25           A       It remained the same, the new MRI that was dated

1 10/27 -- October 27, 2023, I reviewed again and I again, I saw  
2 basically that same image, disc bulge, loss of, loss of  
3 hydration in that disc.

4 Q And what type of surgery did you recommend for him?

5 A I recommended a -- well, a fusion of L4-5, that's L4-5,  
6 basically when I say L4-5, that's the disc between the fourth  
7 bone and the disc bone, so I recommended a fusion of L4-5, and  
8 there are many ways to do that, but I chose to go from the  
9 front.

10 Q So, please, by using, as much layperson's terminology  
11 as you can, can you describe to the jury the surgery that you  
12 ultimately performed on Erion?

13 A Sure, can I use the -- that one, yes?

14 Q That one?

15 A Yes.

16 MR. DAUTI: With the permission of the Court.

17 MS. GOODE: Plaintiff's exhibit, small exhibit.

18 COURT OFFICER: (Handing.)

19 A Let's make sure this is L4-5, fourth bone, fifth bone,  
20 bad disc, so what I did was I put him on the side, from here,  
21 and I approached the disc from the side, and when I go through  
22 the side, I can take out the whole disc or most of the disc and  
23 then I have to replace it with something; otherwise, it will  
24 collapse down, so I replaced with a cage, the cage is made of,  
25 it almost looks like plastic, but inside, I put in donated bone,

1 kind of like bone paste, and I put it in the middle of that  
2 cage, and then that cage is put into here.

3 The whole goal is that bone paste becomes his own bone,  
4 gets integrated and it's called a fusion, because you're fusing  
5 4 and 5 together, it no longer moves, because it's fused, but it  
6 gives stability, and that's what we're looking for.

7 At the same time, I put a plate over that cage to keep  
8 it from popping out, and then also in the back, through a small  
9 incision, I put screws across the joint to keep the joint from  
10 moving, so it's like a 360 scaffolding, like, he probably could  
11 heal without the screws in the back, but he's a big guy, I  
12 wanted to make sure everything was nice and stiff and stable for  
13 it to heal.

14 It's kind of like when you fracture your arm, yeah, you  
15 can leave it alone, maybe it will heal. If you put a cast on  
16 it, it keeps it from moving, so that's what I'm doing inside the  
17 spine.

18 Q And doctor, when was this surgery done, feel free to  
19 look at your notes, please?

20 A Surgery was done February 19, 2024.

21 Q And is that the day that he initially was planned to do  
22 but he had complications with anesthesia and ultimately was done  
23 on the 20th?

24 MS. GOODE: Objection to leading, your Honor.

25 THE COURT: Sustained, leading, yes.

1 A I'm sorry, you know, I forgot.

2 THE COURT: You actually -- hold on, he has to ask  
3 a question rather than leading you to a question.

4 MR. DAUTI: Thank you, your Honor.

5 Q When was he admitted to the hospital for surgery?

6 A He was admitted February 19, 2024.

7 Q Which hospital was this?

8 A This was at Hudson Regional.

9 Q Was the surgery done on February 19, 2024?

10 A No, it was not, there were some issues with intubation.

11 Q So when was the surgery done, if it was not done on  
12 February 19th?

13 A Yeah, they had trouble putting the tube in, so I had to  
14 get some consults, and then they gave me the go ahead on the  
15 following day on February 20th, I did the surgery.

16 Q Do you know how long the surgery lasts?

17 A I do not recall, but typically this type of surgery  
18 will take about three hours.

19 Q After the surgery, were any imaging studies ordered by  
20 you and done by Erion for the area where the surgery was  
21 performed?

22 A Well, the surgery is done under fluoroscopy.  
23 Fluoroscopy is basically mobile X-rays that are in the  
24 operating room, so that I know that I'm at the right level, I  
25 know where my cage is going in, where my screws are going in, so

1 there are intraoperative X-rays, which I don't have in my files,  
2 but they are in the hospital files.

3 MR. DAUTI: Your Honor, with the permission of the  
4 court, the parties have stipulated to the X-ray films that  
5 are enlarged here, we would show --

6 THE COURT: Do they have exhibits numbers yet?

7 MR. DAUTI: Not yet, we will have them marked as  
8 Plaintiff's Exhibits 24 and 25.

9 THE COURT: Great, why don't you bring those over  
10 to the officer.

11 (Pause in the proceedings.)

12 THE COURT: We will have other exhibits for the  
13 witness.

14 Will we have exhibits for the witness on cross?

15 MS. GOODE: Yes, it's cross.

16 THE COURT: I'm trying to figure out we will take a  
17 break and mark everything else today that we need for the  
18 day, so we don't stop every time with the witness.

19 Q Doctor, with the permission of the court I would like  
20 to show you what has been marked Plaintiff's Exhibit 24 and  
21 Plaintiff's Exhibit 25 in evidence, with the permission of the  
22 Court, I would like to ask you where do you think is best to  
23 show them from where I am or to bring them to you or whatever?

24 A Either way.

25 Q Okay, so that we move fast, I will just show you an

1 exhibit here, we're showing, for the record, your Honor,  
2 Plaintiff's Exhibit 24.

3 MS. GOODE: May I see it also?

4 MR. DAUTI: (Displaying.)

5 MS. GOODE: That's 24.

6 MR. DAUTI: Correct.

7 Q Doctor, do you see Plaintiff's Exhibit 24?

8 A Yes.

9 Q What do we see here, can you explain to us?

10 A It might be easier for me to hold it, if you don't  
11 mind, your Honor.

12 MR. DAUTI: Your Honor.

13 THE COURT: Without objection.

14 COURT OFFICER: (Handing.)

15 THE COURT: We actually, stay where you are, he  
16 will come to you, also we have an easel, we will set up an  
17 easel, so we're not standing holding an exhibit.

18 (Whereupon, Dr. Shiau exited the witness stand.)

19 A So everyone can see? So this is actually not the  
20 intraop pictures, this is a postop that I got in my office just  
21 to make sure that everything is looking good, but this is  
22 essentially, it hasn't moved since surgery, and I was wrong, the  
23 cage was made of titanium, not of plastic, so plastic you  
24 wouldn't be able to see, titanium, you can see, so basically as  
25 you can see in this X-ray, the disc has been taken out

1 completely, and replaced with a titanium cage.

2           What I did was put a plate with two screws into four  
3 and five, to make sure that thing doesn't pop out, and then to  
4 fix it 360 degrees, I made a little incision in the back and  
5 then put in one screw across each joint, that's why there are  
6 two of them, so through the joints, and this is all done  
7 percutaneous, like tiny incisions, so that's that.

8           Q     Doctor, before you go away, I would like with the  
9 permission of the Court to show you what has been marked  
10 Plaintiff's Exhibit 25 in evidence.

11                   Can you please explain to the jury what you're looking  
12 at here?

13           A     Basically, this is a front view, so, so you're looking  
14 straight ahead, these are little, these little things here are  
15 the spinous process, the bones you feel in the back, you can see  
16 I took out the disc, that's the cage, this is the plate and  
17 screws that are on the side, so you can see it's coming from the  
18 side, and then the two screws going through the joint.

19                   So if you use 22, you, this is the front view, and you  
20 can see that that was replaced with a cage, and then if you're  
21 looking from the back -- and then a plate on the side and then  
22 the screws going through the joints, to keep everything stable  
23 and fixed.

24                                   (Whereupon, Dr. Shiau resumed the witness stand.)

25                   THE COURT:   Are you done with this exhibit?

1 MR. DAUTI: Yes.

2 Q Doctor, as a result of the two surgeries that Erion  
3 underwent to his lower spine, what are the ramifications of  
4 those surgeries for his lower back?

5 A Yeah, so my surgery is an imperfect solution to back  
6 pain, I mean, I'm changing a -- a segment of the spine that used  
7 to move, and now it's fixed, it doesn't move anymore, it takes  
8 away the pain, but you're going to lose some range of motion of  
9 the back, because it's fixed.

10 The problem with fixing the spine like this with a  
11 fusion is that, for instance, this level doesn't move anymore  
12 that's 4/5, it's fixed, the levels above and below are going to  
13 get stressed, because now they're acting like pivot points and  
14 fulcrums, and so the levels above and below, are stressed, and  
15 there are studies that show that there's a, you know, a 30 to  
16 40 percent chance that those levels will degenerate, become  
17 arthritic, and maybe get disc herniations, because 30 to  
18 40 percent will degenerate and may need surgery in the future.

19 Q And what type of surgery may be needed in the future?

20 A Well, I mean, if we're using current techniques, it  
21 would be either artificial discs, he wasn't really a candidate  
22 for an artificial disc, but you can sometimes put in an  
23 artificial disc or have to do another fusion above or below,  
24 wherever he was affected.

25 Q Doctor, why wouldn't he be a candidate for an

1 artificial disc?

2 A The problem is once you do a, with a laminectomy,  
3 you've taken out bone and part of the joint, and even though you  
4 replaced the disc, you're not replacing the joints and the bones  
5 in the back, and the results for that type of patient, and I've  
6 done it before are never very good.

7 Q This future surgeries, are they causally related to the  
8 accident?

9 A Correct, because if it were not for the accident, he  
10 would not have needed a fusion and would not have caused stress  
11 to the discs above and below or the segments above and below.

12 Q Is that within a reasonable degree of medical  
13 certainty?

14 A Yes, it's proven.

15 Q So that we are clear, that fusion surgery that he may  
16 need in the future is the type of surgery you performed, because  
17 you already performed fusion surgery on him; correct?

18 A Correct, or if a candidate may be consideration of an  
19 artificial disc, it's the same surgery, just what you put in to  
20 replace the disc.

21 Q What are the ramifications of additional fusion surgery  
22 for Erion's spine?

23 A Hopefully it doesn't happen, once you fuse the level  
24 above, another 30 to 40 percent the disc above that will go bad  
25 or below, whichever disc is being taken care of.

1 Q And since you performed surgery on him on February 20,  
2 2024, have you seen Erion again?

3 A I have, yeah.

4 Q And approximately how many times, if you can could  
5 estimate for us, feel free to refer to your records?

6 A If I didn't miss a count, seven times.

7 Q And doctor, just because we don't have to go through  
8 every visit, I would appreciate overall, could you tell us  
9 whether the surgery provided relief for Erion?

10 A Yeah, I mean prior to surgery, I mean I think he was  
11 pretty miserable, he could not do his daily activities, he  
12 couldn't, he couldn't, he couldn't, you know, clean himself, I  
13 mean he could, he had difficulty, I mean he was just miserable,  
14 terrible pain, ten out of ten.

15 After surgery, when it's warm weather, his pain ranges  
16 from zero to four, so he had, you know, almost, you know, like a  
17 60 to 100 percent improvement, depending in warm weather.

18 When the weather gets colder, it can go up to nine out  
19 of ten, but it wasn't constant like it was before. He still has  
20 postoperatively, he had a little weakness of his right leg, I  
21 think because of scar tissue, when I put in the cage, I, when I  
22 put in the cage, it's -- it elevates the disc up, and as you  
23 elevate the disc up, it gives the nerves room, but if there had  
24 been prior surgery and there's scar tissue, you can imagine as I  
25 lift up the disc, it can pull on the nerve a little bit, it gave

1 him a little weakness in his right thigh quadriceps, I think he  
2 still has a weakness there, a little bit, I mean if you look at  
3 him not really, but he does feel subjectively weaker in the  
4 quadriceps on the right.

5 Q Doctor, can you tell this Court and jury?

6 A I'm sorry.

7 Q You're not done, I'm sorry?

8 A One last thing and the other thing is like before  
9 surgery, he could sit maybe for five minutes at a time. Now, he  
10 can sit for about 30 minutes and then he has to shift positions,  
11 which is markedly better than it was before.

12 Q Thank you, doctor.

13 Now, can you tell this Court and jury, within a  
14 reasonable degree of medical certainty, as to whether the two  
15 lower back surgeries that Erion underwent, the one with  
16 Dr. Babu, on August 12, 2022, and the surgery with you, on  
17 February 20, 2024, are causally related to the accident of  
18 June 29, 2019?

19 A They both are, yes.

20 Q And doctor, I'm going to ask you a hypothetical  
21 question and the question that's based on the facts testified in  
22 court. I am going to ask you to base all of your medical  
23 opinions, within a reasonable degree of medical certainty. If  
24 you can do not do so, please you will let us know, and this is  
25 the hypothetical, and you're going to bear with me, it will be a

1 lengthy one, before you need to provide an answer, because as  
2 you can see, I'm a slow speaker and you will not know when I'm  
3 done.

4 I would like you to assume that Erion testified that  
5 June 29, 2019, he was walking at the job site when he slipped  
6 and fell in a large pool of oil and liquid next to forklift, he  
7 fell down on his left knee and left side struck the ground.

8 I would like you to assume that Erion was lying down on  
9 the floor, covered in oily substance and he was trying to stand  
10 up, but he could not, because he could not bend his knee, so he  
11 stayed there until someone came to help him.

12 I also want you to assume that the next day Erion went  
13 to Staten Island Hospital emergency room, where he complained of  
14 severe knee pain and also told ER personnel that whenever I try  
15 to bend my knee, my left hip also hurts.

16 I also want you to assume that Erion testified that  
17 several days after the accident as he tried to return back to  
18 work, his lower back pain got worse and worse and the next time  
19 he managed to see a medical care provider, which was Dr. Hassan,  
20 he complained of severe back pain.

21 I would also like you to assume that Erion never  
22 injured his lower back before and never saw a doctor before this  
23 accident for treatment of any lower back pain and he had no back  
24 pain, injuries or complaints.

25 I would also like you to assume that before the

1 accident of June 29, 2019, Erion was able to go on with his  
2 activities of daily living, and he was regularly working as a  
3 plumber and a plumber foreman for almost 20 years.

4           After assuming all of the above and based on your  
5 examination and treatment of Erion and your review of the  
6 medical records, doctor, do you have an opinion, within a  
7 reasonable degree of medical certainty, as to the cause of lower  
8 back injuries and pain that Erion sustained?

9           MS. GOODE: Objection, this was a narrative.

10           THE COURT: It was a long hypothetical, he warned  
11 us a head of time, and the record itself is what controls,  
12 not my recollection, but for the purpose of ruling on your  
13 objection, I don't recall anything being said in this long  
14 hypothetical that isn't in the record, meaning isn't in the  
15 testimony.

16           You can answer.

17           A I think the question was can I? Yes, I can.

18           Q You have an opinion, can you please, so what is your  
19 opinion, are they causally related to the accident of June 29,  
20 2019?

21           A So, yes, it is with a reasonable medical certainty that  
22 the slip and fall on oil resulted in an injury to L4-5, a disc  
23 bulge or herniation resulting in instability of that segment of  
24 the spine, and that instability disc bulge herniation caused  
25 severe back pain and sensations down the leg, paresthesias.

1 Q The same hypothetical, doctor, I'm not going to repeat  
2 it again, just based on the same hypothetical.

3 Is it your testimony, within a reasonable degree of  
4 medical certainty, that the two surgeries that he underwent for  
5 the lower back are causally related by the accident of June 29,  
6 2019?

7 A Yes, it is with reasonable medical certainty, that the  
8 injury resulted, subsequently resulted in two surgeries for his  
9 spine.

10 Q The same hypothetical, doctor, the injuries that he  
11 sustained in this accident, of June 29, 2019, are they  
12 permanent?

13 A Yes, they are permanent.

14 Q What is your basis for your opinion for permanency,  
15 doctor?

16 A Is last time I saw him was February 27, 2026, his  
17 surgery was February 20, 2024, so, almost exactly two years  
18 since his surgery, he still has, he still has deficits, and pain  
19 and you know, two years. If he were to get better, it would  
20 have happened by now, so what he has is what we get, or what we  
21 see is what he has.

22 Q And doctor, you referred to the last visit of February,  
23 I believe 27th --

24 A Yes.

25 Q -- of 20026, and did you, when you examined him for the

1 last time, what was your opinion regarding the status of his  
2 disability?

3 A What I would tell you he still had mild spasm decreased  
4 range of motion improved from preop, but still diminished, he  
5 had weakness because of his left knee, and he had weakness of  
6 his right quadriceps, his quadriceps when compared to the left,  
7 he was still walking with a limp, needed a cane for support, and  
8 I put him out at a 100 percent disabled.

9 Q So that means he cannot go back to work the job that he  
10 has as a plumber; correct?

11 A Correct.

12 Q And is it your opinion, that absent this accident, we  
13 would not have complaints of lower back pain?

14 MS. GOODE: Objection, your Honor.

15 THE COURT: As to form you mean?

16 MS. GOODE: As speculation, your Honor.

17 THE COURT: I don't think you can say it's  
18 speculation, it's just giving an opinion based on the  
19 history.

20 But as to form, rephrase the question.

21 Q Doctor, if it were not for this accident of June 29,  
22 2019, would Erion be in the pain that he's in now?

23 THE COURT: You can --

24 MS. GOODE: Objection.

25 THE COURT: You rephrased it and made it more

1 objectionable, sustained. We don't know what would have  
2 happened to him after this, you know, if he hadn't had this  
3 accident, somebody could have dropped a piano on his head.

4 As to your original question whether this accident  
5 caused these injuries, that question is not objectionable,  
6 and it has been answered.

7 MR. DAUTI: That's fine, I can move on, your Honor.

8 Q Doctor, what is, what does the word "prognosis" mean?

9 A I'm sorry.

10 Q What does the word "prognosis" mean?

11 A Prognosis is what, what is his condition anticipated to  
12 be in the future.

13 Q And what is your opinion, regarding Erion's future?

14 A I think he has a fair prognosis, meaning that he's much  
15 more comfortable right now, and he can do his daily activities,  
16 but he will have chronic pain and decreased range of motion, and  
17 you know, it's not just his spine, he has significant disability  
18 from his left knee also.

19 Q In terms of disability, do you have an opinion if he  
20 can go back to working as a plumber?

21 THE COURT: He already answered that.

22 MS. GOODE: Objection.

23 MR. DAUTI: I have no further questions.

24 THE COURT: Let's take five and let you stretch  
25 your legs, and the doctor stretch your legs, and you can

1           come back in five.

2                       Sir, you remain under oath, please don't discuss  
3 your testimony with anyone.

4                       (Whereupon, Dr. Shiau exited the witness stand.)

5           COURT OFFICER: All rise, jury exiting.

6                       (Whereupon, the jury exited the courtroom.)

7                       (Whereupon, a short break was taken.)

8                       (Pause in the proceedings.)

9           THE COURT: Dr. Shiau, the jurors are standing in  
10 the hallway, please take the stand.

11                      (Whereupon, Dr. Shiau resumed the witness stand.)

12           COURT OFFICER: All rise, jury entering.

13                      (Whereupon, the jury entered the courtroom.)

14 CROSS-EXAMINATION BY

15 MS. GOODE:

16                      THE COURT: All right folks, thanks for your  
17 patience you can all be seated, sir, you can be seated,  
18 you're reminded you're under oath. It is your witness.

19                      MS. GOODE: Thank you.

20           Q       Good afternoon, Mr. Shiau, Dr. Shiau, how are you?

21           A       Good.

22           Q       My name is Gail Goode, I represent the Defendants, I'm  
23 going to be asking you a series of questions. I want you to  
24 respond yes or no; do you understand that, doctor?

25           A       Yes.

1 Q And if you don't understand my question, please let me  
2 know, I will rephrase the question; understood, doctor?

3 A Yes.

4 THE COURT: Please turn your mic around s  
5 Miss Goode can be heard to the extent possible, stand it  
6 straight up.

7 MS. GOODE: Is that good, Judge?

8 THE COURT: Yes.

9 Q Now, doctor, you told us on direct examination that  
10 once you received the patient, you review records, earlier,  
11 beforehand records, correct?

12 A Yes.

13 Q From the other treating doctors; correct?

14 A Yes.

15 Q Because you want to make sure you have a clear idea of  
16 what is bothering the Plaintiff or what complaints they have;  
17 correct?

18 A No.

19 Q Okay. You don't review because you want to see what  
20 complaints the patient has?

21 A I don't think I need to review prior records to know  
22 what the patient is complaining of.

23 Q But you review the records to see if you agree with  
24 your findings?

25 A No.

1 Q But you do review the records, don't you, doctor?

2 A I do.

3 Q And one of the things you told us, there were MRIs that  
4 were taken on 9/17 of '19; correct, doctor?

5 A Yes.

6 Q And you indicated that your custom and practice is to  
7 not look at the reports, you look at the film first, you make  
8 your own findings; correct?

9 A Yes.

10 Q And then you'll read whatever the radiologist findings  
11 were; correct?

12 A Yes.

13 Q And then you also said you never just rely on the  
14 radiologist's report, you make sure you look at the records  
15 yourself; correct?

16 THE COURT: The films?

17 MS. GOODE: The films, I'm sorry.

18 Q You look at the films yourself?

19 A Yes.

20 Q In this particular case, you said you didn't agree with  
21 the doctors findings; correct?

22 A I don't think I said that.

23 Q You said that you didn't agree with the images of  
24 9/17/19?

25 MR. DAUTI: Objection, your Honor.

1 THE COURT: Sustained, he didn't agree with the  
2 images.

3 MS. GOODE: No.

4 Q That you didn't agree with the findings?

5 THE COURT: You said images.

6 MS. GOODE: Sorry.

7 Q Findings?

8 MR. DAUTI: Still objection.

9 THE COURT: Well, the witness, right the witness  
10 just said he didn't say that.

11 A I mean I just -- if I said I'm not saying I didn't  
12 disagree, I'm just saying I don't recall, but if we look it up  
13 and I said it, that's fine also.

14 Q But is that your custom and practice, doctor, to look  
15 at the films first, and then read the reports and base your  
16 decision on what you read, your findings of the films, not  
17 necessarily the radiology report; is that correct?

18 A That is correct.

19 Q Doctor, I ask you to take a look at --

20 THE COURT: That's Northwell?

21 MS. GOODE: Yes.

22 THE COURT: There you go.

23 Q Now, doctor, you know what -- doctor, let's step back,  
24 before we start looking at that, let's step back.

25 The Plaintiff was injured on June 29, 2019; correct?

1 A Yes.

2 Q And he didn't go to the hospital on June 29, 2019;  
3 correct?

4 A You're correct, yes.

5 MS. GOODE: Your Honor, this is Plaintiff's  
6 Exhibit 7, I have pages so the doctor can refer to, so he  
7 doesn't have to fumble through pages, it's already marked in  
8 evidence.

9 MR. DAUTI: I have no objection.

10 THE COURT: What?

11 MR. DAUTI: I have no objection.

12 THE COURT: Without objection.

13 MS. GOODE: Those, this is different, these are  
14 particular pages I'm going to refer to, so the doctor  
15 doesn't have to fumble through.

16 MR. FRANKLIN: Copies.

17 MS. GOODE: That way it will save you time, doctor.

18 Q Looking at page 29, do you see that, doctor, the first  
19 page?

20 A Oh, yes.

21 Q You see the little numbers, I even numbered them, so  
22 you don't have to fumble through.

23 So page 29, this is the chart copy report, correct, for  
24 June 29, 2019?

25 A June 29, 2019, correct.

1 Q And this is where the Plaintiff went, he went to  
2 Northwell in Staten Island on June 30, 2019?

3 A Correct.

4 Q And that was the day after the incident; correct?

5 A Yes.

6 Q So Plaintiff's claimed he slipped on oil in the  
7 hospital; correct?

8 A He slipped on oil but not in the hospital.

9 Q Excuse me, he claimed while he was in the hospital, he  
10 said he slipped on oil; correct?

11 MR. DAUTI: Objection, your Honor, this is beyond  
12 the direct exam, the witness never testified that he  
13 reviewed the ER records from Staten Island Hospital.

14 THE COURT: Let's ask the question.

15 Sir, did you ever review the emergency records as  
16 part of your own record review?

17 THE WITNESS: No.

18 THE COURT: Okay. So then you need some  
19 foundation.

20 MS. GOODE: Sure.

21 Q Doctor --

22 THE COURT: I -- well, that's fine, leave it as  
23 that for now.

24 Q Doctor, those are the records, correct, that Plaintiff  
25 indicated that Plaintiff went to the hospital on June 30, 2019;

1 correct?

2 A Yes.

3 THE COURT: Sustained.

4 Q Doctor --

5 THE COURT: Stop, if there's an objection, sir, I  
6 would ask that you don't respond to the question, the  
7 objection is sustained. The doctor has indicated he never  
8 saw these records before, and so he can't characterize, he  
9 can't be asked questions about those records, and he can't  
10 characterize those records unless you're able to lay some  
11 foundation.

12 MS. GOODE: Sure, Judge.

13 Q Now, doctor, as his surgeon, you would look at his  
14 treatment records prior to your surgery; correct?

15 A I -- I look at what records are available.

16 Q And are you saying, doctor, that the first treatment  
17 records for June 30, 2019, were not made available to you?

18 A No, the Northwell emergency room visits were not part  
19 of my records.

20 Q So you don't know what complaints he made on June 30,  
21 2019?

22 A No.

23 Q Doctor, would that help if you had an opportunity to  
24 review the records before June, the records before you treated  
25 him?

1           A     I think if you are to tell me that he went to the  
2 emergency room the following day, it may or may not help, I  
3 don't think, I don't think it's an absolute that it would help  
4 me.

5           Q     It's not an absolute, but doctor, you have been  
6 practicing since 1997, wouldn't be it your practice to see what  
7 the Plaintiff's chief complaints were the day after the  
8 accident?

9           A     I think the chief complaint the day after the accident  
10 is irrelevant to my care of my patient to tell you the truth.

11          Q     So, doctor, hypothetically speaking, if the Plaintiff's  
12 complaints the day after the accident has nothing to do with the  
13 back, that's not relevant?

14          A     No, because you can twist your ankle and not feel it  
15 until two days later.

16          Q     And doctor, hypothetically speaking, well, this is the  
17 next day, this is, he got injured on June 29, 2019, he waited  
18 until the 30th, on the 30th.

19                 Doctor, hypothetically speaking, would you say knowing  
20 the X-rays you said you review, what X-rays were taken at  
21 Northwell hospital on June 30th of 2019?

22          A     I don't know.

23          Q     You don't know because you didn't review the records?

24          A     I did not have those records available.

25          Q     Would that assist, you doctor, to know what parts of

1 his body were X-rayed the day after the incident?

2 THE COURT: Would it assist him?

3 MS. GOODE: You and your treating --

4 THE COURT: I'm sorry, are you asking him whether  
5 looking at the record would assist him to know what studies  
6 were done, or are you asking whether looking at the studies  
7 that were done would assist him in his treatment assessment?

8 Q In your treatment, doctor, what X-rays were taken the  
9 day after the incident, would that assist you in your treatment  
10 of the Plaintiff?

11 A Every patient is individual, and in this case, no.

12 Q And in this case, no?

13 A No.

14 Q No, doctor, why is that, doctor?

15 A Because it's irrelevant to me.

16 Q Okay, doctor, so you're telling me, you saw this  
17 patient the first time in 2023?

18 A Yes.

19 Q And you're telling me that from June 30th of 2019 up  
20 until the time you saw him, his first medical records are  
21 irrelevant; is that what you're telling us?

22 A Yes, as you say --

23 Q That wasn't the question, yes or no?

24 THE COURT: He answered yes.

25 MS. GOODE: Thank you.

1 THE COURT: Actually -- well, he answered yes, do  
2 me a favor, don't put your hand up, if you're trying --

3 MS. GOODE: I'm sorry.

4 THE COURT: Not you, counsel. Counsel, if you're  
5 trying to object, stand up but don't raise your hand and  
6 assume I'm going to know you're objecting rather than need a  
7 bathroom break.

8 MR. DAUTI: No, I'm trying to be nonobjective.

9 THE COURT: The whole point of objecting is to be  
10 disruptive, you need to stop the pace of what's going on  
11 before the question gets answered which I think is why the  
12 witness keeps answer over your objections, because you're  
13 raising your hand or you're tilting your head or whatever  
14 else, just say objection, loudly and then we will now you  
15 object.

16 MS. GOODE: May I have the last question read back?

17 THE COURT: I'm trying to clarify if he had an  
18 objection from raising his hand.

19 (Whereupon, the question was read back by the  
20 reporter.)

21 THE COURT: Don't read the answer.

22 MR. DAUTI: Objection, your Honor.

23 THE COURT: For what?

24 MR. DAUTI: Form.

25 THE COURT: Form, okay. Strike the answer, and let

1 counsel reask the question and let's see what happens.

2 Q Doctor, are you telling this jury that the records for  
3 June 30, 2019, the first time the Plaintiff was seen by medical  
4 professional after the incident of June 29, 2019, is irrelevant;  
5 yes or no?

6 THE COURT: To his treatment you mean?

7 Q To your treatment, yes or no, doctor?

8 A Yes.

9 Q It's irrelevant?

10 THE COURT: Asked and answered, honestly, I think  
11 that's the fourth time you asked that same question.

12 MS. GOODE: I just want to make sure, your Honor.

13 THE COURT: Okay, but --

14 Q Now, doctor, hypothetically speaking, if there was  
15 desiccation on an X-ray shown on June 30, 2019, desiccation is  
16 part of the aging process; correct?

17 A It can be.

18 Q Because you showed us a film of the spine; correct?

19 A Yes.

20 Q And that was a side view; correct?

21 A Yes.

22 Q You showed this white, white, white, until we got do  
23 L4-L5; correct?

24 A Yes.

25 Q And that was gray?

1 A Yes.

2 Q And that was the film from 9/17 of '19?

3 A Yes.

4 Q That would have been the first film performed on his  
5 back?

6 MR. DAUTI: Objection, your Honor.

7 THE COURT: Sustained.

8 MS. GOODE: I will rephrase it, your Honor, no  
9 problem.

10 Q Doctor, you agree that it showed that there was  
11 seepage, not seepage that it was dry, the L4-L5; correct?

12 A I'm not sure "dry" is the proper term for it.

13 Q But there was no water in there; correct, doctor?

14 A Less water.

15 Q Yes, less water.

16 And desiccation is something that develops over time;  
17 correct?

18 THE COURT: Which question, can develop or does  
19 develop?

20 Q Desiccation is something that develops over time; is  
21 that correct, doctor?

22 A It can.

23 Q It can also indicate part of the aging process,  
24 correct, doctor?

25 A It can.

1 Q And the lumbar spine is a weight bearing joint;  
2 correct?

3 A The lumbar spine bar, incorrect.

4 Q Well, your knees are weight bearing joints; correct?

5 A Correct.

6 Q Ankles are weight bearing joint; correct?

7 A Correct.

8 Q And your lower back, it also carries weight of the  
9 front of you; correct?

10 A Yes.

11 Q And you described the guy, you said the guy is a big  
12 guy, you said that several times, didn't you, doctor?

13 A Yes.

14 Q And "a big guy" meaning that he weighed approximately  
15 300 something pounds on June 30, 2019?

16 A I don't know about 2019.

17 Q But when you saw him, doctor, he weighed at least  
18 279 pounds; correct?

19 A No, 273.

20 Q Sorry, a few pounds off.

21 And he's only six-feet tall; correct, doctor?

22 A Yes.

23 Q And now he carries the majority of his weight --

24 A Six-feet-four.

25 MS. GOODE: No, Judge.

1 THE COURT: Not no.

2 MS. GOODE: I'm sorry, I will rephrase it.

3 THE COURT: Not rephrase, don't testify for the  
4 witness. If the witness tells you no, you can't say no,  
5 that is not the answer, that is his answer, that doesn't  
6 mean he can't be wrong, you don't get to tell him no.

7 Q Doctor, hypothetically --

8 THE COURT: I want to stop hypothetically, ask  
9 questions about this patient. If you're posing a medical  
10 hypothetical or you want the witness to assume things that  
11 you know are in evidence or about to be in evidence, that's  
12 fine. If you're talking about this specific patient, let's  
13 ask about this specific patient.

14 Q Doctor, I want you to assume that the records indicate  
15 Plaintiff is six-feet tall?

16 A My records says six feet four, I don't know.

17 Q I want you to assume the records say he's six-feet  
18 four?

19 MR. DAUTI: Objection.

20 THE COURT: Sustained.

21 Q Now, doctor, you would agree you've seen the Plaintiff  
22 he carries the majority of his weight upfront; correct?

23 MR. DAUTI: Objection, sustained.

24 THE COURT: The majority of his entire body weight.

25 Q No, his lower body, the abdomen, it's in the front;

1 correct, doctor?

2 A Yes.

3 Q Because of that, that can put excess weight on the  
4 lumbar spine; correct?

5 A Among other parts, yes.

6 Q Particularly the lumbar spine; correct, because  
7 let's -- you have below the chest, you have your abdomen;  
8 correct?

9 A Yes.

10 Q And then your lumbar spine is the lower back; correct?

11 A Yes.

12 Q And if you carry excess weight in the front of your  
13 abdomen, that can cause desiccation and pain to your lower back;  
14 correct?

15 MR. DAUTI: Objection, your Honor.

16 THE COURT: I'm -- no, overruled as to whether it  
17 can cause, whether carrying excess abdominal weight can  
18 cause pain and desiccation to the lower spine, that's not a  
19 question about this patient, that's just a question about  
20 whether it can.

21 MS. GOODE: Yes.

22 MR. DAUTI: Your Honor, I just ask that counselor  
23 describe what she is pointing so we have a clear record.  
24 She's making gestures with her hands in front of her  
25 abdominal area, we're not having a clear record of what the

1 question is.

2 THE COURT: Okay, I think the bigger issue is,  
3 that's overruled, I think, I mean I don't mind if you  
4 characterize, it's not objectionable she characterized or  
5 didn't characterize it.

6 I would say my bigger concern is there were several  
7 questions in there. I would just like you to ask one  
8 question at a time, that goes for everybody, to just ask one  
9 question at a time when you get to a question mark stop, so  
10 the witness can answer and so we know what question each  
11 answer was intended to respond to.

12 So I will ask that you reask whatever portion of  
13 that question --

14 MS. GOODE: Sure.

15 THE COURT: -- multipart question you wanted the  
16 witness to answer.

17 Q Now, doctor, as I indicated, if a patient is carrying  
18 weight, and I'm indicating below the chest area, and to the  
19 thigh area, if they're carrying their weight, the majority  
20 there, and your lumbar spine, you would agree, doctor, is behind  
21 where the lower abs are; correct?

22 THE COURT: That's two different questions,  
23 sustained.

24 MR. DAUTI: Objection.

25 THE COURT: Sustained.

1 Q Doctor --

2 THE COURT: Please, sustained, I think we, I  
3 thought we already got past this question of whether, any  
4 patient is carrying the majority of their body weight in the  
5 front of their abdomen, meaning, if someone weighs, you  
6 know, 110 kilos or 120 kilos, whether we're suggesting that  
7 61 of that 120 kilos in any person that we can identify is  
8 being carried in their abdomen, so I don't know what you  
9 mean by "majority," and it's been objected to twice and it's  
10 been answered on it twice.

11 MS. GOODE: Okay, your Honor.

12 THE COURT: If that's your actual question if  
13 you're asking a whether a patient who carried the actual  
14 majority of the weight in their abdomen can have lower back  
15 problems, I'm not aware there's anything in the records to  
16 indicate that applies to this Plaintiff, but you can ask  
17 that question, where somebody hypothetically carried the  
18 majority of their body weight in their belly whether that  
19 would, or could cause them lower back problems.

20 MS. GOODE: I thought I wasn't allowed to ask  
21 hypothetical questions.

22 THE COURT: You're allowed to ask hypothetical  
23 questions. You can't talk about this specific patient and  
24 say hypothetically.

25 MS. GOODE: Thank you, Judge.

1           THE COURT: You can ask him to assume things about  
2 this Plaintiff that you believe are in the records or going  
3 to be in the record. You can ask about records already in  
4 evidence. If you're asking hypothetical questions, they  
5 have to be couched in a certain way.

6           Q     Now, doctor, again, hypothetically speaking, if a  
7 patient is carrying a large portion of weight in the front of  
8 them, in their abdomen, that can affect the back; correct?

9           A     It can.

10          Q     And if you are overweight, it can affect your knees;  
11 correct?

12           MR. DAUTI: Objection.

13           THE COURT: Sustained. He's not here as an  
14 orthopedic surgeon, he's here as a neurosurgeon.

15          Q     But it's a weight bearing joint, the knees and the  
16 ankles you told us is a weight bearing joint?

17          A     Yes.

18          Q     So, doctor, you didn't review any records from  
19 Northwell, you didn't review the records from July 28th of '21,  
20 that would be two years after the incident; correct?

21           THE COURT: Those are two different records whether  
22 you reviewed any Northwell record or whether you reviewed  
23 specific dates record, would you please tell us which  
24 question you want answered?

25           MS. GOODE: Sure.

1 Q Doctor, doctor, did you review any of the Northwell  
2 records before you, take a look at the packet you have before  
3 you?

4 THE COURT: His own or the Northwell?

5 MS. GOODE: The ones I provided.

6 THE COURT: The Northwell packet.

7 Is that the entire chart you handed him or you  
8 handed him selected pages?

9 MS. GOODE: Selected pages I asked him to refer to.

10 THE COURT: Hold on, don't put your hand up, either  
11 object or don't object.

12 MR. DAUTI: I'm not raising my hand, your Honor, I  
13 want to clarify, the question was I believe, July 28th.

14 THE COURT: No, she asked two different questions.  
15 First, she asked if he reviewed any Northwell records.  
16 Before that was answered, she said did he review a specific  
17 date in July, so I was trying to get to which question she  
18 was asking, and I believe Miss Goode clarified for us she  
19 was first asking whether he reviewed any Northwell records  
20 which would not be in and of itself an objectionable  
21 questions.

22 Then she asked him to refer to an incomplete copy  
23 of the Northwell records which is when you started to put  
24 your hand up, which is why I thought you were objecting.

25 MR. DAUTI: Your Honor, as long as the question is

1 clear as to whether counsel is asking for the entire  
2 Northwell record, whether the witness has reviewed it.

3 THE COURT: We just clarified it.

4 MR. DAUTI: Okay.

5 THE COURT: As to the entire Northwell record if  
6 there's any portion he reviewed, then she asked him to look  
7 for reference at a -- at an incomplete copy of the Northwell  
8 record, I think that's problematic.

9 MR. DAUTI: That is my objection.

10 THE COURT: That is why you put your hand up.

11 MR. DAUTI: That is my objection.

12 THE COURT: Can we get a witness a copy of the  
13 complete Northwell record, if you ask whether he seen any  
14 portion of this.

15 Q May I ask him this, your Honor, do you have a memory of  
16 looking at any of the Northwell records?

17 THE COURT: Without looking at your selected  
18 pieces.

19 Q Without looking at my slides, do you have a memory of  
20 looking at any Northwell records?

21 A I have never reviewed any Northwell records.

22 Q So when you --

23 THE COURT: For this patient?

24 MR. DAUTI: For this patient.

25 Q Yes, for this patient?

1 A Yes.

2 Q That's obviously what we're talking about.

3 THE COURT: I know but --

4 Q So you didn't review the records on July 18, 2021, for  
5 Northwell?

6 MR. DAUTI: Objection.

7 THE COURT: Sustained, if he says he didn't review  
8 any records, he didn't review a specific date of records  
9 either.

10 MS. GOODE: Okay.

11 Q Now, you told us, doctor, that you first saw Mr. Belli  
12 September 28th of 2023; correct?

13 A Correct.

14 Q As it is your custom and practice, you talked to the  
15 patient; correct?

16 A Yes.

17 Q Also as your custom and practice, you have the patient  
18 fill out a new patient registration form; correct?

19 A Yes.

20 Q And as your custom and practice, you had the patient  
21 sign the form; correct?

22 A Yes.

23 MS. GOODE: Your Honor, I would ask --

24 Q Do you have that with you today, doctor?

25 A Actually, I don't.

1 MS. GOODE: Your Honor, may I give the doctor a  
2 copy of the --

3 THE COURT: Is it marked?

4 MS. GOODE: It's marked for ID, Defendant's Exhibit  
5 A.

6 THE COURT: Okay, you can let the officer give it  
7 to him.

8 COURT OFFICER: (Handing.)

9 THE COURT: Is the document in English?

10 MS. GOODE: Yes.

11 THE WITNESS: Thank you.

12 Q Look through the whole thing, doctor?

13 A Yes.

14 Q Now, is that new patient registration form, is that  
15 familiar to you, doctor?

16 A Yes.

17 Q And this form was filled out by the Plaintiff,  
18 Mr. Belli?

19 A Yes.

20 Q And he signed that form, doctor, look at the last  
21 pages, doctor, page five and before that, there is page four, do  
22 you see that, doctor, it's toward the rear?

23 A Yeah.

24 MS. GOODE: Your Honor, may I approach the witness?

25 THE COURT: No, let's get it straight.

1                   What are you asking him to look at?

2                   MS. GOODE: I'm asking if he signed it.

3           A       He did sign a number of documents, but none of them  
4 relate to the intake form, the registration form.

5           Q       But this intake form was filled out by the Plaintiff;  
6 correct?

7           A       Yes.

8           Q       Doctor, let's turn to page two.

9           A       (Witness complies.)

10          Q       And we look at "please list any previous surgeries," he  
11 lists a knee surgery in 2020; correct?

12          A       Yes.

13          Q       Left knee surgery; correct?

14          A       Yes.

15          Q       He also has lower back also in 2022; that would be the  
16 surgery that was performed, the laminectomy, that was performed  
17 before you did your fusion; correct, doctor?

18          A       Yes.

19          Q       And the third page, he was asked to list medications;  
20 correct?

21          A       Yes.

22          Q       And he only listed one medication; correct?

23          A       Yes.

24          Q       And what was that medication, doctor?

25          A       Metformin.

1 Q What is that for?

2 A Diabetes.

3 Q And the Plaintiff has diabetes also; correct?

4 A Yes.

5 Q And diabetes, doctor, you would agree can affect your  
6 healing process; correct?

7 A Yes.

8 Q And Plaintiff has Type II diabetes; correct?

9 A Yes.

10 Q That's more serious diabetes, correct, because there's  
11 Type I and Type II?

12 A No, then --

13 Q Let's move on, doctor, we're still looking at page  
14 three.

15 A Okay.

16 Q And now, let's look under "allergies," he doesn't have  
17 any allergies to medication; correct?

18 A Correct.

19 Q He's not allergic to contrast dye; meaning, if he had a  
20 CAT scan and they put some sort of dye, he's not allergic to  
21 that; correct?

22 A Correct.

23 Q And he's not allergic to latex, meaning if someone has  
24 gloves on, he will not break out on a rash if a medical  
25 professional is talking to him; correct?

1 A Yes.

2 Q You also did a social history?

3 A Yes.

4 Q And the social history is do you smoke; correct?

5 A Yes.

6 Q And he said yes, correct?

7 A Yes.

8 Q And he circled three to four packs, is that 40 years?

9 A Correct.

10 Q Now, doctor, you would agree that smoking affects the  
11 healing process for bones?

12 THE COURT: He was 36 years old, how could he have  
13 been smoking for 40 years?

14 MS. GOODE: Your Honor, that's what it says in the  
15 report, I'm not making this up. I will tell you something  
16 later when we're off.

17 THE COURT: Okay.

18 Q So you would agree now, do you know how many cigarettes  
19 are in one pack of cigarettes?

20 A No idea.

21 MS. GOODE: Your Honor, do you know how many  
22 cigarettes there are in a pack the cigarettes?

23 THE COURT: I don't know, and let me say I'm not  
24 here to be a fact witness of anything. If you want me to  
25 take judicial notice of something that's a commonly accepted

1 fact that water boil at 212 degrees Fahrenheit or that the  
2 rate of descent with gravity is 9 point 8 meters were second  
3 squared on earth, those are basic sort of understanding  
4 facts I'm willing to stipulate to issues. I'm not here to  
5 be a fact witness about smoking for sure.

6 MS. GOODE: I understand, your Honor, would you  
7 take judicial notice there are 20 cigarettes in one packet?

8 THE COURT: Is it stipulated to?

9 MR. DAUTI: Objection.

10 THE COURT: I just said I don't purport to know.

11 Q So, doctor, you would still agree smoking three to four  
12 packs of cigarettes a day is excessive; correct?

13 A You shouldn't smoke at all.

14 Q And smoking does affect the small bony structures, for  
15 example, of the lower back; correct?

16 A It can.

17 Q And also it can affect your ability to heal after  
18 surgery; correct?

19 A It can.

20 Q For example, the Plaintiff had a laminectomy and he  
21 said that he felt worse after the surgery; correct?

22 A Yes.

23 Q And if he continued to is smoke at the time he had the  
24 laminectomy, and after he had the laminectomy, that would affect  
25 his healing process; correct?

1 A Would?

2 THE COURT: Would or could?

3 MS. GOODE: Would, your Honor, I'm sorry.

4 A It didn't.

5 Q I didn't ask you that, doctor.

6 A But it didn't.

7 Q I didn't ask you that, doctor.

8 THE COURT: That's his answer. We have a half an  
9 hour left in the morning, we talked about latex allergies  
10 that aren't part of the case, let's try to keep moving.

11 Q Doctor, let's go to the next page.

12 Now it indicates, and I will spell it out for you,  
13 "O-W-E-S-T-R-Y Local Back Disability Questionnaire"; correct,  
14 doctor?

15 A Yes.

16 Q And this is a questionnaire that's filled out by the  
17 patient; correct?

18 A Yes.

19 Q And this is what it says, "instructions, this  
20 questionnaire has been designed to give us information as to how  
21 your back pain has affected your ability to manage everyday  
22 life. Please answer every section and mark in each section only  
23 the one box which applies to you at the time. We realize you  
24 may consider two of the statements in any section may relate to  
25 you, but please mark the box which most closely describes your

1 current condition."

2 Is that -- did I read that correctly?

3 A Those are the instructions.

4 Q Now, first one is pain intensity; correct?

5 A Yes, correct.

6 Q That's checked off; correct?

7 A Yes.

8 Q And it's checked off, "I can tolerate the pain, I

9 have -- without having to use painkillers"; correct?

10 A Correct.

11 Q And then the second question is, "personal care washing  
12 and dressing"; do you see that?

13 A Yes.

14 Q And he checked off box Number two, "I can look after  
15 myself naturally -- normally but it causes extra pain," correct,  
16 that's what he checked off?

17 A Yes.

18 Q Meaning, that he can bathe, he can shower, it may hurt,  
19 but he can do it; correct, doctor?

20 A That's what he checked off.

21 Q Now, "lifting, I can lift heavy weights without extra  
22 pain"; correct?

23 A Correct.

24 THE COURT: Wait, are you saying that's what he  
25 wrote?

1 MS. GOODE: That's what he checked off, your Honor,  
2 and I asked the doctor.

3 THE COURT: I will say the documents speak for  
4 itself, if you want to ask him.

5 MS. GOODE: Thank you.

6 Q Now, number four was walking; correct, doctor?

7 A Yes.

8 Q It says "pain does not prevent me walking any  
9 distance"; correct?

10 A Yes.

11 Q And it says sitting, is number five, "I can sit in my  
12 chair as long as I like -- excuse me, Number two, I can only sit  
13 in my favorite chair as long as I like"; correct?

14 A That's what he checked off.

15 Q Now, as to "standing," that was number six, "I can  
16 stand as long as I want without extra pain"; is that what it  
17 says?

18 A There's what he checked off.

19 Q And it says "sleeping, pain does not prevent me from  
20 sleeping well"; correct?

21 A That's what he checked off.

22 Q And then "social life," number eight, "my social life  
23 is normal, and gives me no extra pain"; correct?

24 A Correct.

25 Q And then it says "traveling, I can travel anywhere

1 without extra pain"; correct?

2 A Correct.

3 Q And then it says "employment homemaking," and for that  
4 he says "my normal homemaking job activities do not cause pain";  
5 correct?

6 A That's what he checked off.

7 Q Now, let's look at the second page, page four, and it's  
8 a review of, it says "review of systems"; is that what the top  
9 says, do you see the column, doctor?

10 A Yes.

11 Q On one side it says "system," on the left side and the  
12 second side says "symptoms"; correct?

13 A Yes.

14 Q On the second column, we have the same thing on the  
15 right-hand side it says "system" and then next to that it says  
16 "symptoms"; correct?

17 A Yes.

18 Q Then you can check of yes or no; correct?

19 A Correct.

20 Q If we look at the right-hand side it says "bones and  
21 joints," that's checked off yes, "right and left, knee pain";  
22 correct?

23 A Correct.

24 Q Alright. He also checks off "hip right and left";  
25 correct?

1 A Correct.

2 Q Now, is there anything here that indicates back pain?

3 A No, I mean it's a review of systems.

4 Q You reviewed, doctor, certain MRI reports before the  
5 surgery?

6 THE COURT: Reports or films?

7 Q Films, I'm sorry?

8 A Yes.

9 Q Did you also review the reports?

10 A I did.

11 Q And which reports did you review, doctor?

12 A I reviewed all of them, well, all of the MRIs.

13 Q All of the MRIs, okay. And so the first MRI would have  
14 been September 17, 2019?

15 A Yes.

16 Q That's the one you showed us up on the screen; correct?

17 A Yes.

18 Q And you reviewed the reports also for that?

19 A I did.

20 Q And to see if you agreed or disagreed; correct?

21 A Correct.

22 Q And did you agree that desiccation was at C5-6 of  
23 Plaintiff's cervical spine?

24 A I did not review the cervical studies, because he  
25 wasn't complaining of neck pain to me.

1 Q Did you review the report for the lumbar spine?

2 A I did.

3 Q And do you agree, doctor, the impression was L4-L5  
4 desiccation; do you agree with that; correct?

5 A Do I agree that was written or do I agree --

6 Q Do you agree with that finding?

7 A Or with the interpretation?

8 Q Do you agree with that finding?

9 A Yes.

10 Q Now, did you review MRI from December 30th of the  
11 lumbar spine?

12 A December 30th of what year?

13 Q 2020, I'm sorry.

14 A I did not document that I reviewed the films, and I do  
15 not have the report.

16 Q Okay. Thank you, doctor.

17 And these films would have been performed before you  
18 performed your surgery in 2024; correct?

19 A Correct.

20 Q And did you review MRI of the lumbar spine, MRI with  
21 contrast, without contrast for August 5, 2022?

22 A I did.

23 Q Did you agree with that finding?

24 MR. DAUTI: Objection, your Honor, are we talking  
25 about the report or the film?

1 MS. GOODE: He indicated that he reviews the films  
2 and then he reviews the reports.

3 THE COURT: So the question is, are you asking  
4 whether he agreed, whether he agreed with the findings  
5 stated in the report?

6 MS. GOODE: Correct, your Honor.

7 A Can we just go backwards to the one I said I didn't  
8 have the report on, what date was that?

9 Q That was December 30th.

10 A Okay, I don't have that, okay.

11 Q That's okay, doctor.

12 A So we're looking at 8/5/2022.

13 Q Yes, that would have been before you did your surgery?

14 A I do not have that report in my chart, but I do recall  
15 reviewing the report.

16 Q And did you agree with the findings, doctor?

17 A I don't recall.

18 Q Okay, that's fine.

19 Now, Plaintiff also, doctor, you had an MRI done before  
20 you performed surgery; correct?

21 A Yes.

22 Q And you had one for December 1, 2023 -- excuse me, you  
23 requested -- let me rephrase.

24 You requested an X-ray on 12/1/2023; correct?

25 A Yes.

1 Q And you told us that you will ask for an X-ray to look  
2 at the bones; correct?

3 A Yes.

4 Q And you reviewed the films yourself?

5 A Yes.

6 Q And then you reviewed the report; correct?

7 A Correct.

8 Q And did you agree with the report's findings?

9 A Well, yes, relatively.

10 Q So you agreed there was no scoliosis, curvature of the  
11 spine?

12 A Correct.

13 Q You agreed there was no fracture?

14 A Correct.

15 Q And you agreed that vertebrae varied by heights, are  
16 maintained, meaning the vertebrae you showed us, one wasn't  
17 bigger or smaller than the other, they were maintained in the  
18 correct order?

19 A Yes, correct.

20 Q You agree that stable degenerative changes at L4-L5 with  
21 facet A-R-T-R-O-S-I-S; now?

22 THE COURT: Wait, wait, wait. Now, you asked a  
23 question, you didn't actually give him a chance --

24 MS. GOODE: I said did you agree with.

25 THE COURT: You said did you agree with and start

1 asking the question.

2 Q Did you agree with that?

3 A In all intents and purposes, yes.

4 Q Now, when they talk about degeneration, again, that's  
5 something as far as wear and tear; correct?

6 A Not always.

7 Q But, doctor, the Plaintiff was a plumber; correct?

8 A Correct.

9 Q And as a plumber, you're on your feet all the time?

10 A Yes.

11 Q Also you're twisting and bending, that can cause wear  
12 and tear on the lumbar spine; correct?

13 A Yes.

14 Q Also, when we talk about facet arthrosis, I'm not  
15 pronouncing it properly, it's common degenerative wear and tear  
16 especially on small joints; correct, doctor?

17 A Yes.

18 Q And that was your report on 12/1/23.

19 Did you review an MRI report for March 20th of 2023, it  
20 was also done by Lenox Hill?

21 A I did not review a study from March 2023.

22 Q Now, you told us that you performed surgery on  
23 February 20th of 2024?

24 A Yes.

25 Q And he was released from discharge from the hospital on

1 February of 2022; correct?

2 A Correct, he was discharged the same month.

3 Q Now, doctor, you dictated a surgical report; correct?

4 A Yes.

5 Q And this would have been your findings; correct?

6 A Yes.

7 Q And now, do you have that surgical report, progress  
8 notes with you?

9 A Yes.

10 Q And I'm looking, it says on the left-hand side,  
11 "medical records, status completed"; do you see that?

12 A Yes.

13 Q It says in a note dated 2/20/24 - 2003, which is about  
14 8 o'clock; correct?

15 A Correct.

16 Q Now, one of the things that you did, you made diagnosis  
17 of what you thought it was, that Plaintiff suffered from, and  
18 what he actually suffered from; correct, did a preop diagnosis?

19 A I did.

20 Q Okay. And you said L4-L5 disc; correct?

21 A Yes.

22 Q And then you said degenerative disc disease, L4-L5;  
23 correct?

24 A Yes.

25 Q And degnerative disc disease is something that develops

1 over time; correct?

2 A No.

3 Q Doctor, let's go to postop, again, you put L4-L5  
4 herniated disc; correct?

5 A Correct.

6 Q And you put degenerative disc disease L4-L5, that's  
7 something that developed over time; correct?

8 A No.

9 Q Now degeneration, that means that wear and tear;  
10 correct?

11 A No.

12 Q No.

13 It doesn't mean wear and tear?

14 A No.

15 Q Degeneration doesn't mean wear and tear?

16 THE COURT: Ma'am, you can only ask each question  
17 one time; incidentally, it's quarter to one.

18 MS. GOODE: What?

19 THE COURT: Quarter to one.

20 I wouldn't care except I know you folks have a  
21 witness of your own coming in the afternoon and I want to  
22 make sure we get to him.

23 MS. GOODE: Okay, Judge.

24 Q Now, doctor, after you performed the surgery, you have  
25 the Plaintiff go in for additional MRI studies or X-rays;

1 correct?

2 A Yes.

3 Q And you had one done on June 7th of 2024; correct?

4 A What study are we talking about?

5 Q June 7, 2024.

6 A X-ray or MRI.

7 Q It says "exam, X-ray lumbar spine, memo four views"?

8 A Yes.

9 Q And you see that, doctor?

10 A Yes.

11 Q And your impression, or the impression on the report,  
12 doctor, is "good alignment following L4-L5 fusion"; do you agree  
13 with that, doctor?

14 A Yes.

15 Q Okay. Then the next study that you ordered was a CAT  
16 lumbar spine without contrast, that would be a CAT scan;  
17 correct?

18 A Correct.

19 Q And that was on July 30, 2024; correct?

20 A Correct.

21 Q And you found that there was, if we -- excuse me, if we  
22 look at the bottom of the first page, doctor, do you see that  
23 where it says "discs"?

24 A Yes.

25 Q You find mild diffuse loss of height and associated

1 with degenerative changes; do you see that, doctor?

2 A Yes.

3 Q You agree with that?

4 A Mild, yes.

5 Q Again, that would be part of the aging process;  
6 correct, doctor?

7 A No.

8 Q Now, doctor, let's look at the second page, and this is  
9 after the Plaintiff had the laminectomy, that's what it's  
10 looking at, correct, and look at L4-L5; do you see that?

11 A It's after my surgery.

12 Q But it says here "L4-L5, status post laminectomy and  
13 fusion"; correct?

14 A Yes.

15 Q It says "osteophyte ridging," that indicates part of  
16 aging; correct?

17 THE COURT: The osteophytes does, do you mean?

18 MS. GOODE: Yes.

19 A No.

20 Q Now, doctor, let's take a look, you ordered an exam,  
21 X-ray, on 12/26 of 2024; correct?

22 A Yes.

23 Q And your impression was the status post L4-L5 with no  
24 change; correct?

25 A Correct.

1 Q Doctor, you not only did post X-rays, but you also did,  
2 you had the Plaintiff come into your office; correct?

3 A Yes.

4 Q And you saw him several times; correct?

5 A Yes.

6 Q Now, doctor, the first time you saw Plaintiff it was  
7 March 14, 2024?

8 MR. DAUTI: Objection, post surgery?

9 MS. GOODE: March 3rd, I just said that.

10 THE COURT: No, didn't.

11 MS. GOODE: I said --

12 THE COURT: You said after the first time you saw  
13 him. I want to stop doing this, can we have the question  
14 read back as stated by counsel?

15 (Whereupon, the question was read back by the  
16 Reporter.)

17 THE COURT: So you don't mean that, you mean the  
18 first time you saw him post surgery?

19 MS. GOODE: Yes, your Honor.

20 Q Post surgery was March 14, 2024?

21 THE COURT: That's fine, if you adopt that version  
22 of the question, the objection to the question is withdrawn;  
23 I assume, correct?

24 MR. DAUTI: Yes.

25 Q Correct, doctor?

1 A Yes.

2 Q You did an examination, you see that at the bottom of  
3 your report?

4 A Yes.

5 Q And you indicated that Mr. Belli is in no acute  
6 distress; correct?

7 A Correct.

8 Q And this is a month after the surgery; correct?

9 A Yes.

10 Q And you also said he is well developed and well  
11 groomed?

12 A Yes.

13 Q Now, you indicated he's six-foot-four and 273 pounds;  
14 correct?

15 A Yes.

16 Q Now, you also, the next page you said the incisions  
17 have healed well and anteriorly and posteriorly.

18 Now, doctor, did you make small holes or big holes when  
19 you did the surgery?

20 A The incision in the front is about that big  
21 (indicating).

22 Q Indicating how many inches?

23 A Four inches.

24 Q And in the back?

25 A As I recall, maybe about an inch.

1 Q Okay. Because you believe in not making large  
2 incisions in people's bodies; correct, doctor, noninvasive?

3 A Minimally invasive.

4 Q Minimally invasive, now he was wearing a bone external  
5 stimulator?

6 A Yes.

7 Q That was to help the bones grow back, because you had  
8 some put some bone inside where the vertebra was; correct?

9 A Yes.

10 Q And you touched the cervical spine, and you found that  
11 it was mild to moderate pain on touching; correct?

12 A Yes.

13 Q And then you did a motor exam, now motor means his  
14 strength; correct?

15 A Yes.

16 Q And arms and legs; correct?

17 A Yes.

18 Q And the highest score you can get for motor strength is  
19 five out of five; correct?

20 A Yes.

21 Q And Plaintiff had five out of five in all muscle  
22 groups, correct, upper and lower extremities?

23 A No. Because I said but, there's a but after that.

24 Q Yes, but, that was quadriceps of the left knee, I'm  
25 just asking you the first sentence you indicate motor exam in

1 all muscle groups in the upper and lower extremities?

2 MR. DAUTI: Objection.

3 THE COURT: Sustained.

4 Q Now, let's go to his gait; do you see that?

5 A Yes.

6 Q Oh, no, let's go to sensory exams, unremarkable to  
7 light touch, pain; correct?

8 A Yes.

9 Q And sensory is touching his skin, doctor, explain that?

10 A Yes.

11 Q Now, gait, gait is, means walking; right?

12 A Yes.

13 Q And gait and stance, standing; correct?

14 A Yes.

15 Q And you say slightly antalgic gait, that means he rocks  
16 a little bit; correct?

17 A Yes.

18 Q Slight, it's not heavy, it's slight?

19 A Yes.

20 Q And you say favoring the left leg because of the knee?

21 A Yes.

22 Q And he uses a cane as added support?

23 A Yes.

24 Q And your impression on that day a month afterwards was  
25 Mr. Belli has improved since surgery; correct?

1 A Yes.

2 Q And he does have an improving neuropathy into the right  
3 leg, so that nerve damage, it's improving; correct?

4 A Yes.

5 Q And he will continue his Gabapentin?

6 A Yes.

7 Q And that's to help him; correct?

8 A That's for nerve pain.

9 Q Right, and he will start at this point, you had him  
10 start physical therapy?

11 A Yes.

12 Q Okay. Now, the next time you saw Plaintiff, after the  
13 surgery was 8/22/24?

14 A Yes -- no, no.

15 Q Yes.

16 A I have 6/13/2024 as my next visit.

17 Q On that, doctor, you also checked the Plaintiff's, you  
18 did a physical and observation of the Plaintiff; correct?

19 A Yes.

20 Q And did the Plaintiff indicate that he had no back pain  
21 in June?

22 A No.

23 Q He did not indicate that he had no back pain?

24 A He says his low back pain is minimal.

25 Q Right, but when he stands for ten minutes, he will

1 experience some pain in his right buttocks?

2 A Yes.

3 Q And that's associated with the right leg quadriceps;  
4 correct?

5 A Correct.

6 Q Now, and he also indicated that the right leg will  
7 buckle at sometimes; correct?

8 A Yes.

9 Q But he also says that he has no trouble sitting, lying  
10 down, or sleeping; correct?

11 A Yes.

12 Q And he didn't indicate that he was using any sort of  
13 sleep aids to help him sleep; correct?

14 A Correct.

15 Q Now, doctor, let's go to the next page, you indicate,  
16 doctor, that that his lower back pain has improved since  
17 surgery; correct?

18 A Yes.

19 Q And he continues to have neuropathy and weakness into  
20 the right leg in the L4 distribution; right?

21 A Yes.

22 Q And that was present preop operation; correct, that's  
23 what you say preoperatively and has improved?

24 A I don't think I meant preop, I think I meant  
25 postoperatively.

1 Q Okay, but it does say "pre"; right?

2 A It says preop, but he did not have it preop.

3 Q Okay. Now, you also looked at his range of motion?

4 A Yes.

5 Q Before that you looked at the incision and it was well  
6 healed; correct?

7 A Yes.

8 Q As far as the spine, there is some slight pain to the  
9 cervical spine, that means around the neck; correct, doctor?

10 A Yes.

11 Q And as far as the lumbosacral pain upon touch, it's  
12 moderate spasms; correct?

13 A Correct.

14 Q So that means the back going, seizing up, but it's not  
15 significant, it's moderate?

16 A Correct, it's moderate.

17 Q The range of motion for the spine, you measured it, and  
18 normal flexion is 90; correct?

19 A Yes.

20 Q And he had 20 when you saw him?

21 A No, 60.

22 Q 60, I'm sorry, which is improvement --

23 A Yes.

24 Q -- from what he had before, because he only had, what,  
25 at the first time?

1 A Ten.

2 Q Right, so that's a marked improvement after physical  
3 therapy; correct, doctor?

4 A Yes.

5 Q And his extension is 20; correct?

6 A Yes.

7 Q And normal is 30?

8 A Yes.

9 Q And you also looked at his gait again; correct?

10 A Yes.

11 Q And his gait and stance are slightly antalgic; still,  
12 nothing changed, favoring the right leg and he uses allowing for  
13 added support, just says for added support; correct, doctor?

14 A Yes.

15 Q And again, his motor strength was five/five, but he has  
16 weakness in his right quadriceps, but five/five means the  
17 strongest strength you can have?

18 A Yes.

19 Q And the motor, meaning upper and lower --

20 A Except for weakness of his right --

21 Q -- as I indicated.

22 After that, you saw him in August?

23 A No, October.

24 Q August 22nd?

25 THE COURT: Stop saying no, ma'am, you can ask him

1 the question.

2 MS. GOODE: Sorry, sorry.

3 THE COURT: But we don't correct the witness's  
4 testimony.

5 Q Do you have the note from August 22, 2024?

6 A I thought we just went over it.

7 Q No, we went over June.

8 A Then August 22, 2024.

9 Q And in that one, doctor, again, if we look at the  
10 bottom paragraph, of the first page, you know "today he states  
11 he has low back pain is minimal"; correct?

12 A Yes.

13 Q And so that would mean your surgery was working;  
14 correct, doctor?

15 A Yes.

16 Q Okay.

17 THE COURT: Ma'am, we're at one o'clock, we're  
18 going to go ahead and recess for lunch.

19 MS. GOODE: Okay.

20 THE COURT: Sir, we will see you back at 2:15.  
21 Please don't discuss your testimony with anyone.

22 Ladies and gentlemen, please don't discuss the case  
23 among yourself or with anyone else, don't have any outside  
24 contact about the case and don't have contact with the  
25 attorneys, the parties, their staff or any of the witnesses

Dr. Shiau - Plaintiff - Cross

1 in this case, enjoy your lunch.

2 COURT OFFICER: All rise, jury exiting.

3 (Whereupon, the jury exited the courtroom.)

4 (Whereupon, Dr. Shiau exited the witness stand.)

5 (Whereupon, a lunch break was taken.)

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

7 COURT OFFICER: Come to order, remain seated.

8 THE COURT: Are we ready to go?

9 MR. DAUTI: Yes.

10 MS. GOODE: Yes.

11 THE COURT: How long do you have on cross?

12 MS. GOODE: Maybe about 20 minutes, 30 minutes, not  
13 a lot.

14 THE COURT: Your witness is here?

15 MS. GOODE: Yes.

16 MR. FRANKLIN: Yes.

17 THE COURT: Okay. Let's get the jurors.

18 (Whereupon, Dr. Shiau resumed the witness stand.)

19 (Pause in the proceedings.)

20 COURT OFFICER: All rise, jury entering.

21 (Whereupon, the jury entered the courtroom.)

22 THE COURT: Thanks, you can all be seated. Your  
23 witness.

24 CONTINUED CROSS-EXAMINATION BY

25 MS. GOODE:

1 Q Now, doctor, let's just go back to the new patient  
2 registration form.

3 Now, Dr. Shiau, you would agree that this is a  
4 document, the new patient registration form that you maintain in  
5 the regular course of your business as a doctor; correct?

6 A Yes.

7 Q And there have been no changes or alterations to this  
8 document; correct?

9 A Correct.

10 Q And you record this on the day that the patient speaks  
11 to you; correct?

12 A Yes.

13 Q And it's -- you're in the business of making sure you  
14 maintain this document as part of your practice; correct,  
15 doctor?

16 A Yes.

17 MS. GOODE: Your Honor, at this time I would like  
18 to move in Defendant's Exhibit A into evidence.

19 MR. DAUTI: Objection, your Honor, subject to  
20 redaction.

21 THE COURT: I thought this doctor's chart was  
22 already in evidence.

23 MS. GOODE: Correct, he didn't have that part.

24 THE COURT: No problem, without objection.

25 MS. GOODE: Thank you, your Honor.

1 Q Now, doctor let's look --

2 THE COURT: Let me back up and say I haven't seen  
3 the document yet; of course, subject to redaction.

4 MR. DAUTI: Yes, your Honor.

5 Q Doctor, let's look at the consultation after the  
6 surgery in 2024, October 17th, I think you had it in your file?

7 A I have --

8 THE COURT: All of the exhibits were taken off the  
9 stand during lunch to keep them safe.

10 MS. GOODE: I think it's in the brown envelope.

11 COURT OFFICER: 21.

12 THE COURT: Plaintiff's Exhibit 21 or is it --

13 THE CLERK: The doctor's chart, yes.

14 MS. GOODE: Yes.

15 THE CLERK: (Handing.)

16 Q We're looking for October 17, 2024, doctor?

17 A Yes.

18 Q That would have been eight months after the Plaintiff's  
19 surgery?

20 A Yes.

21 Q Now, let's look at the bottom paragraph; do you see  
22 that doctor?

23 A Yes.

24 Q "Today he states that his low back pain is minimal";  
25 correct?

1 A Yes.

2 Q "And the right leg will occasionally buckle, so he  
3 continues to use a cane"; correct?

4 A Yes.

5 Q But he didn't have surgery on the right leg; correct,  
6 doctor?

7 A No.

8 Q He had surgery on the left knee; correct, doctor?

9 A Yes.

10 Q Now he had increased pain with lifting, but he is  
11 lifting, correct, doctor, same, we're looking at the bottom  
12 paragraph?

13 A Yes.

14 Q And he also indicated that he has no trouble sitting,  
15 lying down or sleeping; correct?

16 A Yes.

17 Q Now he does take, I will spell it for you,  
18 T-R-A-M-A-D-O-L, Tramadol, and that's an opioid for pain?

19 A I don't think technically it's an opioid, but it's a  
20 pain --

21 Q Overall, he says he feels much improved, it says "much  
22 improved compared to prior surgery"; correct?

23 A Yes.

24 Q So you did a good job, correct, doctor?

25 A I guess so.

1 Q So know, let's look at the examination, and we're  
2 looking at the second paragraph, it says "the incisions have  
3 healed well," correct, the front and the back have healed?

4 A Yes.

5 Q Now, you point out that there's mild pain on palpation  
6 of the posterior of the cervical spine.

7 Now the cervical spine is the neck; correct, doctor?

8 A Yes.

9 Q There is a mild spasm, that's to the neck; correct?

10 A Yes.

11 Q And he didn't have surgery to the neck; correct, only  
12 to the lumbar spine?

13 A Correct.

14 Q Now, as to the lumbar spine, it says "there is minimal  
15 pain to palpation of the lumbosacral region with no spasms";  
16 correct?

17 A Correct.

18 Q So with the lumbar spine, the area where you operated,  
19 there is minimal pain to touch; correct, doctor?

20 A Yes.

21 Q And he has no spasms where you did the surgery on the  
22 lumbar spine; correct, doctor?

23 A Yes, correct.

24 Q Let's go to his range of motion, again, the lumbosacral  
25 spine, you used a measuring, goniometer, and it revealed that

1 his flexion was 80, now the last report we read it was 60, but  
2 on this report, in October, now, it's 80, so it's improved;  
3 correct?

4 A Yes.

5 Q In the flexion -- extension, excuse me, the extension  
6 remains the same, normal is 30, and his extension is 20;  
7 correct?

8 A Yes.

9 Q Again, we will go to the motor exam, which we know from  
10 this morning it's the extremities, the arms, the legs, the  
11 strength, and the highest you can get for strength is five over  
12 five, and Plaintiff had five over five on October 17, 2024;  
13 correct?

14 A He never --

15 Q But I didn't finish.

16 A The sentence continues, the sentence continues. You  
17 asked a question.

18 MS. GOODE: Okay, Judge.

19 THE COURT: Let me finish what I'm saying, you  
20 asked a question, it ended with a question mark, you have to  
21 let him answer, you can't while he's answering to interrupt  
22 him and say you didn't finish, you can tell him you want to  
23 withdraw the question.

24 MS. GOODE: No.

25 THE COURT: If you ask a question and you stop, you

1 have to let him answer.

2 Q Continue, doctor.

3 A So no, his strength is not five over five in all muscle  
4 groups the end of the sentence says but he has weakness of his  
5 right quadriceps.

6 Q Correct, his right, but he had surgery on the left;  
7 correct?

8 A But it is --

9 MR. DAUTI: Objection.

10 THE COURT: Sustained, sustained.

11 Is the weakness on the right related to his knee  
12 injury?

13 THE WITNESS: No.

14 THE COURT: What is it related to, if you know?

15 THE WITNESS: A postop deficit.

16 THE COURT: Postoperative his spinal surgery you  
17 mean?

18 THE WITNESS: Yes.

19 THE COURT: Is it fair to say it's a neurological  
20 weakness rather than an orthopedic weakness.

21 THE WITNESS: Correct.

22 THE COURT: Okay.

23 Q But that still doesn't decrease the strength from the  
24 extremities, it's talking about his quadriceps, right, doctor,  
25 quadriceps are the front of the thigh?

1 A But that is --

2 MR. DAUTI: Objection.

3 A -- that is the right lower extremity.

4 THE COURT: The objection is sustained and the  
5 witness clarified for you anyway, counselor.

6 Q Let's go to his gait, now, his gait and stance are  
7 slightly antalgic; correct?

8 A Yes.

9 Q And he's favoring the right leg; correct?

10 A Yes.

11 Q And he uses a cane just for support, added support;  
12 correct?

13 A Yes.

14 Q And again, when we say "slightly antalgic," that means  
15 he just rocks a little bit; correct, doctor?

16 A Yes, or limps a little bit.

17 Q Your impression, "Mr. Belli's axial lower back pain has  
18 improved since surgery"; correct?

19 A Yes.

20 Q And the physical therapy that you had him perform  
21 increased his healing; correct, doctor?

22 A It improved his recovery, I'm not sure it had anything  
23 to do with healing.

24 Q Well, doctor, we looked at your records, your records  
25 from October 17, 2024, he has minimal low back pain; correct?

1 A Well, that wasn't your question.

2 Q But my question is, so the PT helped him; correct?

3 A Yes.

4 Q And the surgery you performed helped him; correct?

5 A Yes.

6 Q He's in much better condition now than he was when you  
7 saw him; correct?

8 THE COURT: When you saw him for the first time?

9 MS. GOODE: Yes, sorry, your Honor.

10 A Yes.

11 Q He's in much better condition since the surgery you  
12 performed on February 20th of 2024?

13 A Correct.

14 Q Doctor, do you have your Hudson Regional Hospital  
15 records?

16 A The only records that I have is the operative note from  
17 Hudson Regional.

18 MS. GOODE: Can we have Plaintiff's Exhibit 3,  
19 then?

20 Q While they're doing that, your operative note as I  
21 indicated or you indicated this morning, said disc desiccation  
22 disease; correct, doctor?

23 A The term I used was degenerative disc disease  
24 somewhere.

25 Q And you used the word disease; correct?

1 A Yes.

2 Q And disease is something that usually develops over  
3 time; correct?

4 A Not at all.

5 Q Doctor let's take a look at your records, it's  
6 Plaintiff's Exhibit 3?

7 MR. DAUTI: Objection, is his records from Hudson  
8 Regional?

9 MS. GOODE: Yes, they're in evidence.

10 MR. DAUTI: But you referred to them as his own  
11 records, they're from Hudson Regional Hospital.

12 MS. GOODE: The signature is on there.

13 THE COURT: The question are they Hudson Regional  
14 records or his own personal records?

15 MS. GOODE: His, Hudson Regional records with his  
16 signature.

17 THE COURT: Can we stipulate we will refer to them  
18 as Hudson Regional records?

19 MS. GOODE: No problem, your Honor.

20 THE COURT: Great.

21 Q Do you have your records?

22 A Yes.

23 Q It's Plaintiff's Exhibit 3.

24 Now, doctor, would you turn to page nine, it says  
25 history and physical?

1 A (Witness complies.)

2 Yes.

3 Q And now, doctor, Hudson Regional Medical Center was  
4 aware you performed the surgery; correct?

5 A Yes.

6 Q The surgery on Plaintiff on February 20, 2024?

7 A Yes.

8 Q And on the history and physical, as you said you'll  
9 take a history from a patient; correct?

10 A Yes.

11 Q And before you perform surgery, there's also history  
12 taken; correct?

13 A Yes.

14 Q Now you see social history?

15 A Yes.

16 Q And it says "stopped smoking two weeks ago"?

17 A Yes.

18 Q Now, let's turn to page 11, it has the patient's name  
19 on top and says page one of two; do you see that doctor?

20 A It's not numbered well, but hold on.

21 Q It's one of nine, sorry, it says at the top?

22 A Is it labeled anything?

23 Q That's the thing, it's not, I would say it says  
24 internal medicine, history and physical?

25 A Yes, I see that.

1 Q Okay, thank you.

2 Doctor, if you look at past medical history, because  
3 you want to know what the person's past medical history is  
4 before you perform surgery; correct?

5 A Yes.

6 Q And it says that the Plaintiff has Type II diabetes;  
7 correct?

8 A Yes.

9 Q And also, he has hyperlipidemia, which is high  
10 cholesterol?

11 A Yes.

12 Q And it also indicates if we look on the right-hand  
13 side, what kind of medications he's taking because the Plaintiff  
14 is going to be undergoing anesthesia?

15 A Yes.

16 Q You want to know what kind of medication he's taking  
17 before you put the Plaintiff under anesthesia; correct?

18 A Yes.

19 Q So if we look on the left-hand side, it says that he is  
20 taking Metformin; do you see that?

21 A Yes.

22 Q And that's to, for his Type II diabetes; correct?

23 A Yes.

24 Q And the second medication he's taking, I will spell it,  
25 A-T-O-R-V-A-S-T-I-N calcium, correct?

1 A Yes.

2 Q And that's a statin to lower his bad cholesterol;  
3 correct?

4 A Yes.

5 Q One of the side effects of the statin is it can cause  
6 muscle pain, tenderness or weakness; correct?

7 A Yes.

8 Q Doctor, this one is page 15, and it says at the top,  
9 intraoperative record.

10 It has your signature on the left-hand side where it  
11 says "surgeon"?

12 A Yes.

13 Q It says "medical history"; do you see that, doctor,  
14 right before your signature?

15 A Yes.

16 Q And it indicates that he has high cholesterol, that he  
17 has diabetes, obesity and chronic back pain, that's what's  
18 listed, doctor?

19 A I thought we were talking about the immediate  
20 postoperative note.

21 Q I said intra -- intra, page 15, intraoperative record.

22 A That's not my record, I did not sign that.

23 Q Well, is that your signature?

24 A I don't think so, because I don't sign intraoperative  
25 records.

1 Q Would you look on the left and see if it's your  
2 signature?

3 A You may have to point out where you think my signature  
4 is.

5 MS. GOODE: Your Honor, may I approach?

6 THE COURT: Let's just, you can step up.

7 Q This is the page I'm looking at, doctor, page 15, I  
8 think it's a different page, no, it says at the top --

9 A But in any case you can show me where my signature is,  
10 that's not my signature, that's someone filling out my name as  
11 the surgeon.

12 Q The surgeon who performed the procedure?

13 A Yes.

14 Q But this was part of the Hudson Regional records;  
15 correct?

16 A Yes.

17 Q And that's the hospital you performed the surgery;  
18 correct?

19 A Yes.

20 Q Why don't we take a look at page 16, it would be the  
21 next page; do you see that?

22 A I don't have pagination on my --

23 MS. GOODE: Can I just show him what it looks like,  
24 your Honor?

25 THE COURT: Yes.

1 Counselor, if you need to see?

2 MR. DAUTI: It's fine.

3 A That's what I had before.

4 Q So we're good now, doctor?

5 A Yes.

6 Q And we know that's not your signature, but this is the  
7 hospital that you performed the surgery in; correct?

8 A Yes.

9 Q And it says that the patient tolerated the procedure  
10 well; correct?

11 A Yes.

12 Q And you wouldn't disagree with that; correct, doctor?

13 A No.

14 Q The next page says "PAT checklist," I assume that's  
15 patient checklist, like this, doctor?

16 THE COURT: Is it a form you filled out, doctor?

17 THE WITNESS: No.

18 Q But it's part of the Hudson Regional?

19 THE COURT: It doesn't mean, I want to back up to  
20 Plaintiff's counsel earlier objection, this whole record may  
21 be part of the Plaintiff's record, but it's not all part of  
22 this physician's record. You can only, I mean unless he  
23 knows, has reason to know, you should only be asking about  
24 records he prepared or were prepared at his direction. You  
25 can't ask him what other people thought or wrote or did, you

1 know.

2 MS. GOODE: I understand, your Honor.

3 Q Doctor, at the time of Plaintiff's admission, he was  
4 taking Mounjaro.

5 Doctor --

6 THE COURT: You have to stop approaching.

7 What do you need him to do?

8 MS. GOODE: I'm sorry, his signature, it's at the  
9 bottom.

10 THE COURT: You can't say it, he hasn't identified  
11 it. You can ask him if it's his signature, you've  
12 identified as his signature several times and had him say no  
13 to you.

14 A I don't sign anything other than my brief op note, and  
15 then everything else is on EMR, I don't sign anything on paper.

16 Q Now, doctor, at the time that the Plaintiff was  
17 admitted, he was using a nicotine patch, if you take a look at  
18 page 56?

19 MR. DAUTI: Objection.

20 THE COURT: Relevance, sustained. Is this, we are  
21 at a quarter to 3:00 with another witness to go.

22 Is any of this related to Plaintiff's injuries?

23 MS. GOODE: Yes, it is, your Honor.

24 THE COURT: Let me finish, or to this doctor's  
25 treatment of those injuries?

Dr. Shiau - Plaintiff - Cross

1 MS. GOODE: Yes, your Honor.

2 THE COURT: We established it's stipulated he was  
3 listed on the chart as a smoker.

4 MS. GOODE: Yes.

5 MR. DAUTI: So stipulated, your Honor.

6 Q Also since he was a smoker, doctor, you agree that  
7 smoking reduces bone density; correct?

8 A It can, but he's -- listen, you want yes or no, it can  
9 yes, in certain people.

10 Q And it can increase risks of osteoporosis; correct?

11 A He's not even in the age group to be at risk for  
12 osteoporosis.

13 THE COURT: I will back up, I'm sorry, is there any  
14 claim in this case that the Plaintiff suffered osteoporosis  
15 as a result of the accident.

16 MR. DAUTI: No, your Honor?

17 THE COURT: Doctor, do you have any evidence from  
18 the several, maybe more than several images you've seen of  
19 this Plaintiff's bones he shows signs of osteoporosis?

20 THE WITNESS: No, certainly intraoperatively his  
21 bones were not soft. He has no osteoporosis.

22 Q Doctor, it can also slow the -- if you smoke, you  
23 agree, that it can slow the healing process?

24 THE COURT: That's been asked and answered,  
25 sustained.

1 Q Doctor, would you take a look at page 85.

2 A Like I said, it's not paginated.

3 Q It says preop, doctor?

4 A Okay.

5 Q It says H-U-D-S-C, the hospital where you performed the  
6 surgery, it says page two of nine, small print?

7 A I don't know, it's not paginated, so.

8 MS. GOODE: May I show him, your Honor, what page  
9 I'm referring to?

10 MR. DAUTI: May I look at it? I think we're  
11 getting, all over the place, let me see.

12 THE COURT: I would like to grab a quick side bar  
13 with all four of you.

14 Doctor, just bear with us.

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

17 Q Did you find the page, doctor?

18 A Yes.

19 MS. GOODE: Can I show it to him?

20 THE COURT: I'm going to ask that we stop doing the  
21 back and forth thing. Let's just --

22 MR. DAUTI: Your Honor, I respectfully request at  
23 this point in time that counsel ask the witness is this a  
24 document that you prepared, is it signed by you before we  
25 spend time going through entries that apparently turn out to

1 be not applicable and he has no knowledge about.

2 THE COURT: That's fine. I would agree with that,  
3 I think I already suggested that in response to your last  
4 objection on the topic if it's not a document this doctor  
5 prepared or, wider than you wanted me to rule but too bad,  
6 if he didn't prepare it or direct its preparation like  
7 meaning tell a staff member to prepare it, then, then I  
8 agree with you at this point.

9 With the caveat if he says I totally know about the  
10 nursing chart or I totally know about, I'm making this, you  
11 know, preoperative anesthesia consult. If he said I had a  
12 conversation I know about it, it's my record, no problem.  
13 If it's not his record and he didn't prepare it, and he  
14 doesn't know its contents, then we should keep moving.

15 Q Now, doctor, the records that you're reviewing, those  
16 are the records of the hospital that you performed the surgery;  
17 correct?

18 A Yes.

19 Q And you have looked at their records before, prior to  
20 the surgery of February 9th -- excuse me, February 24th;  
21 correct?

22 A No, I don't look at every single, I mean look at how  
23 big this, I don't look at every single page when I'm operating  
24 on a patient.

25 Q Now, you said this morning, doctor, in your record that

1 the patient was six-foot-four; correct?

2 A That that's what my record said.

3 Q And the records in that says he's only six feet?

4 A I don't know, but --

5 THE COURT: The document speaks for itself, and  
6 again, stop putting your hand up, either stand up or --

7 MR. DAUTI: It's okay, your Honor, I'm not  
8 objecting.

9 THE COURT: Put your hand down.

10 MR. DAUTI: My glasses, I'm sorry.

11 THE COURT: If you keep doing this, and then you  
12 put your hand on your face, it's like you're trying to psych  
13 us out, either object or don't object.

14 MR. DAUTI: I need glasses, sorry.

15 Q As we have to move this along, doctor, it also  
16 indicates 270 pounds and at 270 pounds he has the body mass  
17 index of 35.6; correct, doctor?

18 A Yes, you have to figure.

19 Q That would be considered obese Class II; correct,  
20 doctor?

21 A Yes, definitely.

22 Q Doctor, today, did you see the patient outside?

23 A Yes.

24 Q And did you see him sitting?

25 A Sitting?

1 Q Sitting.

2 A Yes.

3 Q Sitting?

4 A Yes.

5 Q Did you observe his body as he sat?

6 A Yes.

7 Q And did you see that his stomach rested on his thighs?

8 MR. DAUTI: Objection.

9 A That I didn't see.

10 THE COURT: And I'm not clear where we're going  
11 with that.

12 MS. GOODE: That's the question that's it, as far  
13 as that.

14 THE COURT: Great.

15 Q Doctor, you said you were paid \$11,000 today; correct?

16 A Yes.

17 Q And were you paid for any preparation for this case?

18 A I reviewed for an hour.

19 Q How much did you charge for that?

20 A That, I don't know, my office bills that.

21 Q Well, did you bill?

22 THE COURT: He just said his office billed it, so  
23 he doesn't know.

24 MS. GOODE: Right.

25 Q Do you know what the billing is, doctor?

1 A That, I don't know.

2 Q Doctor, you were also asked about, you were given a  
3 long hypothetical, and part of that hypothetical was that there  
4 was a large spill of oil, and you were asked within a medical  
5 degree of certainty, was that a causation to Plaintiff's  
6 injuries; do you remember that, doctor?

7 A Yes.

8 MR. DAUTI: Objection, your Honor.

9 THE COURT: Sustained. It doesn't matter, this  
10 liability was previously determined in this matter. We're  
11 not here about liability, and I will say that unless this  
12 witness is a fact witness to the size of the oil spill, that  
13 any testimony he gave about the size of the oil spill would  
14 be either hearsay or irrelevant or both.

15 MS. GOODE: Correct, your Honor, I agree.

16 Q So that hypothetical that you were given, you didn't  
17 know anything about the oil spill; correct?

18 MR. DAUTI: Objection.

19 THE COURT: Sustained. The question was whether  
20 the slip and fall of that date, and I don't know the answer  
21 to the question by myself, but the question that I believe  
22 was posed to the witness was whether the slip and fall of  
23 that date was the competent producing cause of his injuries  
24 or words to that effect.

25 MS. GOODE: He described it, the circumference

1 also.

2 THE COURT: He described the circumference of the  
3 oil spill?

4 MS. GOODE: He described it as a large spill.

5 THE COURT: I'm still speaking.

6 MS. GOODE: I'm sorry.

7 THE COURT: I don't remember anybody describing in  
8 the record the circumference of the spill.

9 Two reminders I've already given the jurors.  
10 Number one, it is your recollection of the testimony that  
11 controls and not mine.

12 Number two, the transcript, the transcript controls  
13 over your recollection and my recollection. Whatever is in  
14 the transcript is deemed to have been what was said unless  
15 there's a specific objection by counsel to the transcript,  
16 that's Number two.

17 And Number three, as you were instructed in the  
18 opening charges of this case, any description of how the  
19 accident happened, the materials involved or anything else  
20 are not part of this phase of this case, not part of the  
21 damages trial, and they're to be accepted by you only for  
22 the purposes of determining what damages the Plaintiff may  
23 have suffered.

24 No one is asking you and no one should ask you, not  
25 me, not counsel or anyone else should be asking you to

1 reevaluate liability or to characterize the liability  
2 portion of this case only to make a determination about  
3 whether and how the Plaintiff was injured, meaning whether  
4 and to what extent the Plaintiff was injured and what  
5 damages the Plaintiff is entitled to as a result.

6 Q Now, this is my last questions, at the time of the  
7 incident, the patient had high cholesterol; doctor; correct?

8 THE COURT: Asked and answered, you asked him  
9 before whether he had hyperlipidemia and whether that meant  
10 he already had high, you already asked the question.

11 Q We will go with what the Plaintiff had before the  
12 incident he had high cholesterol, he was obese, he smoked, all  
13 of those three factors, doctor, have an effect on your healing;  
14 correct?

15 MR. DAUTI: Objection, your Honor, is this a  
16 statement.

17 THE COURT: It is a statement, and each of these  
18 questions have been asked in components already.

19 Q And doctor, all of those three elements, all of those  
20 three things I listed before the incident, that affects your  
21 quality of life, correct, you're obese, you smoke and have high  
22 cholesterol?

23 MR. DAUTI: Objection.

24 THE COURT: Sustained, sustained, argumentative,  
25 this doctor is not an epidemiologist to my understanding;

1 correct?

2 THE WITNESS: Correct.

3 THE COURT: Not an endocrinologist to my  
4 understanding despite having been asked several questions  
5 about diabetes and its progression?

6 THE WITNESS: I am not.

7 THE COURT: Yes, so your objection is sustained,  
8 let's keep moving.

9 Q Doctor, you did go to medical school; correct?

10 THE COURT: Ma'am, I already sustained the  
11 objection, it's not an appropriate inquiry whether this will  
12 affect the Plaintiff's enjoyment of his life to be a  
13 diabetic or former smoker or anything else is not about this  
14 witness's expertise and he's not in this context qualified  
15 to testify about.

16 Is that it?

17 MS. GOODE: Yes.

18 THE COURT: Redirect?

19 MR. DAUTI: Yes, very quick.

20 REDIRECT EXAMINATION BY

21 MR. DAUTI:

22 Q Doctor, you were asked about your notes and counselor  
23 specifically asked you about the range of motion on certain  
24 visits, and I believe one of those that she mentioned during  
25 this was a note from October 17, 2024, however, the note from

1 August 21, 2025, was skipped.

2 I would like you to look at that note, August 21, 2025?

3 A Yes.

4 Q Could you, by looking at your record, could you tell  
5 us, please, what was the range of motion at that examination?

6 MS. GOODE: Objection, your Honor.

7 THE COURT: Overruled. It's part of the record in  
8 evidence.

9 MR. DAUTI: Correct.

10 THE COURT: It's part of the record in evidence,  
11 it's being read for context, the objection is overruled.

12 A The August 21st, 2025, examination showed flexion of  
13 50 degrees, and extension of 30 degrees.

14 Q And what is the normal for the 50 degrees?

15 A Flexion is normally 90, and it was 50 that day,  
16 extension is normally 30, and I found it to be 30 that day.

17 Q So when you compare the note of October 17, 2024, the  
18 range of motion from that date, with your note from August 21,  
19 2025, did the range of motion on flexion become better or worse?

20 THE COURT: Or stay the same.

21 A It got worse, it was 80 degrees before, which is almost  
22 near normal and on, in August of 2025, it was 50, so it went  
23 from 80 to 50.

24 Q Is that an indicator that pain and his physical  
25 abilities may change from day-to-day, your Honor -- I mean

1 doctor, sorry?

2 A I mean I just -- it just reflects the fact that he,  
3 yes, you feel different, different days, and I'm trying to do a  
4 good exam, so I document exactly what I see each time I examine  
5 him.

6 Q And doctor, speaking of that, on your note from  
7 January 9, 2025, under your history, please, could you tell us  
8 what was his pain level?

9 A I'm sorry, which date?

10 Q January 9, 2025.

11 A January 9, 2025, I -- "today he states his low back  
12 pain is minimal in warm weather, three to four out of ten, but  
13 in the colder weather the pain ranges from five to seven out of  
14 ten."

15 Q Now, could you compare this with your note from  
16 August 21, 2025, which is seven months later, and how does it  
17 describe the level of pain in cold weather?

18 A August --

19 Q August 21, 2025?

20 THE COURT: The same note he just had him read  
21 from?

22 MR. DAUTI: Correct.

23 A "Today he states his low back pain is, again, minimal  
24 in warm weather, three to four out of ten in the colder weather,  
25 the pain ranges from five to nine out of ten."

1 Q So is it fair to say that's higher than five to seven  
2 than it was from the previous note; correct?

3 A Yes.

4 Q From your final visit of February 27, 2026, could you  
5 explain to the jury what was the range of motion during that  
6 last visit?

7 A On that last visit, flexion was 45 degrees, with pain  
8 and 30 degrees on extension.

9 Q So 45 and the normal is 90; correct?

10 A Yes.

11 Q And in August of 2025, the range of motion was better,  
12 it was 50 out of 90; correct?

13 A Yeah, but, I mean I think that's within range of error.

14 MR. DAUTI: I have no further questions.

15 THE COURT: Any recross?

16 MS. GOODE: I just want to see the reports, the  
17 latest once.

18 THE COURT: Sure.

19 MS. GOODE: Thank you.

20 THE COURT: Do you have that copy of the record?

21 MS. GOODE: No, Judge.

22 THE COURT: Doctor, can we have that record back  
23 just for a second?

24 COURT OFFICER: (Handing.)

25 RE CROSS EXAMINATION

1 BY MS. GOODE:

2 Q On your note 2/27/26 you indicate, doctor,  
3 "postoperatively, Mr. Belli has had marked improvement of his  
4 low back pain," that's your report; correct?

5 THE COURT: On which date, I'm sorry?

6 MS. GOODE: That is 2/27 of '26, this year.

7 THE COURT: You will have to give it back to him,  
8 that's the copy I just took from him.

9 MS. GOODE: But I --

10 THE COURT: You have to hand him the thing back if  
11 you want him to say what you're talking about the things in  
12 the record.

13 MS. GOODE: Okay.

14 A Yes.

15 Q May I see it?

16 A (Handing.)

17 Q Thank you.

18 It says here "initially he had significant neuropathic  
19 pain into the right lateral quadriceps," we had discussed that  
20 before; correct, doctor?

21 A Yes.

22 Q And you have on the second page, "gradually his pain  
23 has resolved and he underwent postoperative physical therapy";  
24 do you have that, doctor, in your report from 2/27/26?

25 A Yes.

1 Q On this examination, you also find that "Mr. Belli is  
2 in no acute distress, he is well developed and well groomed";  
3 you wrote that, that's in your report from 2/27/26?

4 A Yes.

5 Q You did indicate here he had a decreased range of  
6 motion in 2/27/26, however, his motor exam in all muscle groups  
7 in the upper and lower extremities, but you talked about all  
8 along, his mild weakness of the right quadriceps when compared  
9 to the left, but it still five/five as you wrote before, in  
10 October of 2024; correct?

11 A His, it cannot be five out of five, which is perfect  
12 strength if there's weakness in the quadriceps, I just didn't  
13 grade it, because it was mildly weaker.

14 Q Doctor, this is your report; correct?

15 A Right, and that's exactly what I mean.

16 Q And you wrote this consistently, motor exam is  
17 five/five in all muscle groups in the upper and lower  
18 extremities, then you put the comma; correct?

19 MR. DAUTI: Objection.

20 THE COURT: Sustained, exactly, the comment is  
21 deemed to modify the statement that came before it, if he  
22 says it's five out of five but except for, then the except  
23 for is something different.

24 I mean it is not a legal conclusion, but it is  
25 certainly a grammatical conclusion.

1 Q Now, look at it here, it says "gait and stance are  
2 slightly antalgic," that's what you have always written;  
3 correct, doctor?

4 A Yes.

5 Q In October that was the same thing; correct?

6 A Well, but now it's because of the knee on the left.

7 Q But it doesn't matter he has --

8 THE COURT: Ma'am.

9 MS. GOODE: Sorry, your Honor.

10 THE COURT: Hold on, just show him what you want to  
11 look at and step back where lawyers stand, and don't stand  
12 over him when he's testifying.

13 Q In October 17th of 2024, you also said he had a slight  
14 antalgic gait; correct?

15 A But at that time I attributed to his weakness in the  
16 right leg.

17 Q I didn't ask you what you attributed, I asked had  
18 you --

19 A Yes, I used exact same words in the exact same  
20 sequence.

21 Q Thank you.

22 And you also indicated he's favoring his left leg;  
23 correct?

24 A Yes.

25 Q And that he uses a cane, or support, you indicated that

1 in your, when you saw him in March of 2024 until now --

2 MR. DAUTI: Objection.

3 THE COURT: Sustained, beyond the scope of  
4 redirect.

5 MS. GOODE: Thank you, doctor.

6 THE COURT: Anything else?

7 MS. GOODE: No, Judge, I think I'm good.

8 MR. DAUTI: We're good.

9 THE COURT: I'm giving her a chance, it looks like  
10 she wants to talk about one more note.

11 (Pause in the proceedings.)

12 Q You also doctor, indicated that "Mr. Belli's axial  
13 lower back" -- this is 2/27/26 -- "has improved since surgery  
14 with residual permanent pain in the lumbar spine; right leg  
15 neuropathy and decreased range of motion"; you wrote that;  
16 right, that his lower back has improved and you indicated the  
17 other ranges?

18 A Yes, he's improved since surgery.

19 MS. GOODE: Thank you.

20 THE COURT: Okay.

21 MR. DAUTI: Could you finish reading that  
22 paragraph?

23 THE COURT: Hold on, there's no re-redirect.

24 MR. DAUTI: Judge.

25 MS. GOODE: I did read the whole thing.

Dr. Shiau - Plaintiff - Recross

1 THE COURT: She read the entire paragraph.

2 MR. DAUTI: No, the last sentence, "he remains".

3 THE COURT: We have to keep moving. I see what  
4 you're saying, that's fair.

5 So this is in response to your objection, I'm  
6 reading now from the page that was shown to the witness just  
7 so we can keep moving as to know create re-redirect  
8 testimony.

9 This is, I'm reading now the last page in full,  
10 "Mr. Belli's axial lower back pain has improved since  
11 surgery with residual permanent pain in the lumbar spine  
12 right leg neuropathy and decreased range of motion. He  
13 remains 100 percent disabled and unable to work." I agree  
14 with you that the context was required.

15 Sir, you are excused, I thank you for being here  
16 and thank you for your patience.

17 THE WITNESS: Thank you, your Honor.

18 THE COURT: We're going to take literally three  
19 minutes, step out, I just want to make sure what we're doing  
20 next, I want to give anybody who needs to use the restroom,  
21 three minutes, it's now seven minutes after 3:00, I want to  
22 be back ten past 3:00. Thank you very much.

23 COURT OFFICER: All rise, jury exiting.

24 (Whereupon, the jury exited the courtroom.)

25 (Whereupon, a short break was taken.)

Dr. Kim - Defendant - Direct

1 (Pause in the proceedings.)

2 COURT OFFICER: All rise, jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: You can all be seated, ladies and  
5 gentlemen, as I mentioned what might happen, occasionally we  
6 need to take witnesses out of order in order to accommodate  
7 the schedule of those witnesses and on consent of all sides  
8 we've agreed that the Defendant is going to call one of  
9 their expert witnesses now, in order to accommodate that  
10 witness's scheduling.

11 Mr. Franklin, call your witness.

12 MR. DAUTI: The defense calls Dr. Yong H. Kim.

13 THE COURT: Dr. Kim, you can come around this way.

14 (Whereupon, Dr. Kim took the witness stand.)

15 THE CLERK: Raise your right hand. Do you swear or  
16 affirm that the testimony you're about to give will be the  
17 truth, the whole truth and nothing but the truth?

18 THE WITNESS: I do.

19 THE CLERK: In a loud clear voice, state your name  
20 and address for the record?

21 THE WITNESS: Sure, last name K-I-M, Kim, first  
22 name Y-O-N-G. The address is 145 East 32nd Street, fourth  
23 floor, New York, New York 10016.

24 DIRECT EXAMINATION BY

25 MR. FRANKLIN:

Dr. Kim - Defendant - Direct

1 THE COURT: Sir, you can be seated.

2 THE WITNESS: Thank you.

3 THE COURT: Your witness, sir.

4 Q Alright, Dr. Kim, are you a practicing physician?

5 A Yes, I am.

6 Q And where do you practice?

7 A At NYU Langone School of Medicine.

8 Q And can you just briefly tell the jury your educational  
9 background?

10 A I will start with my college education. I attended  
11 Columbia University School of Engineering, graduated in 1989,  
12 then I attended NYU School of Medicine, graduated in 1993. I  
13 did a year of general surgical training as a part of my  
14 orthopedic surgical training, and then I did four years of  
15 orthopedic surgical training at NYU Hospital for Joint Diseases.  
16 My training ended in 1998, then I moved down to Texas, and then  
17 did an additional year of spinal surgical fellowship training at  
18 a place called Texas Back Institute.

19 Moved back to New York in 1999, and I have been  
20 practicing since then.

21 THE COURT: I'm sorry, your medical school and  
22 residency were both at NYU?

23 THE WITNESS: The residency back then was  
24 affiliated with NYU, but it was a freestanding institution.

25 THE COURT: Great, okay.

1 Q And, doctor, are you licensed in any states?

2 A Yes, I am.

3 Q What states?

4 A I'm licensed to practice medicine in the State of New  
5 York, as well as in New Jersey.

6 Q And you're board certified?

7 A Yes, I am.

8 Q What other certifications, if any?

9 A I'm board certified in orthopedic surgery.

10 Q Okay. And is that your area of specialty, orthopedic  
11 surgery?

12 A Yes.

13 Q And are you published in this field?

14 A Yes, I am.

15 Q Does that include peer reviewed articles?

16 A Yes.

17 Q Does it include book chapters?

18 A Yes.

19 Q Do you have any academic appointments?

20 A Yes, I do.

21 Q Where are your academic appointments?

22 A At NYU Langone School of Medicine, I'm a clinic  
23 professor of orthopedic surgery.

24 Q Alright.

25 And, doctor, if you weren't here today, what would you

1 be doing?

2 A I would be seeing patients in my office or will be  
3 operating in the operating room.

4 Q You're being compensated?

5 A Yes, I am.

6 Q How much are you being compensated?

7 A \$10,000.

8 Q Now, doctor, were you engaged to perform work in regard  
9 to the case of Mr. Belli?

10 A Yes.

11 Q And is that referred to as an Independent Medical  
12 Evaluation?

13 A Yes.

14 Q And can you explain to the jury what that is?

15 A So when a case such as this occurs, the defense  
16 attorney needs clinician, that's an expert in that field to  
17 review the case, the merits of the case. From there, upon the  
18 review the treatment that has been rendered has been  
19 appropriate, and also to render an opinion as to the diagnosis  
20 of the injury, as well as the casualty of the injury and the  
21 treatment that had occurred.

22 Q And doctor, as part of your work in regard to this  
23 case, did you physically meet with Mr. Belli?

24 A Yes, I did.

25 Q On how many occasion?

1 A On two occasions.

2 Q Okay.

3 Did you review medical records?

4 A Yes, I did.

5 Q And specifically Mr. Belli's medical records?

6 A Yes.

7 Q And did you review films?

8 A Yes, I did.

9 Q EMG reports?

10 A Yes.

11 Q Did you review testimony from other treating doctors?

12 A Yes, I did.

13 Q And now, did you prepare reports in connection with  
14 your work here?

15 A Yes, I did.

16 Q And how many reports did you prepare?

17 A Two reports.

18 Q And do you have your reports with you?

19 A Yes, I do.

20 Q And to make things as expeditious as possible, if you  
21 need to refer to it, please let us know.

22 A Yes.

23 Q I'm sure the Judge I will allow you to do so.

24 A Yes, thank you.

25 Q Can you tell me when was first time you met Mr. Belli?

1 A That was in April 28, 2023.

2 Q Okay. So that would have been about three years ago?

3 A Yes.

4 Q When you met Mr. Belli, did you speak to him?

5 A Yes, I did.

6 Q Did you have a conversation?

7 A Yes, I did.

8 Q What was the purpose of that conversation?

9 A To collaborate what's been written on the record and  
10 also to hear from first-person basis and to verify some of the  
11 facts.

12 Q Okay, did you have any communication problems?

13 A No, I did not.

14 Q Did he speak with you in English or another language?

15 A In English.

16 Q Okay. Did he also have an interpreter with him?

17 A Yes, he did.

18 Q Okay, did you not make use of the interpreter?

19 A Well, interpreter named Miss Dusku was present,  
20 however, since Mr. Belli was seemed fluent in English, so Miss  
21 Dusku was just there as a standby in case there were some  
22 communication issues, but my recollection is that most of the  
23 conversations were carried out in English.

24 Q Okay. And during the conversations, no indications, no  
25 difficulties understanding what Mr. Belli said?

1 A No.

2 Q Now, did you take a history from the patient?

3 A Yes, I did.

4 Q And did he tell you that he had been injured on a  
5 specific date?

6 A Yes.

7 Q And what was the date?

8 A June 29, 2019.

9 Q Did he tell you what sort of treatments he had received  
10 since that date?

11 A Yes.

12 Q Did he indicate he had ever received any injections?

13 A To the lumbar, cervical or --

14 Q Yes.

15 A He indicated he did not receive any injections.

16 Q What treatments did he indicate that he had received?

17 A He indicated that he received physical therapy, which  
18 he did reported receiving minimum pain relief, and with his  
19 ongoing pain, he sought opinions of surgeons and had undergone  
20 lumbar laminectomy surgery.

21 Q Prior to undergoing back surgery, did Mr. Belli  
22 indicate that he had tried out any less invasive treatment  
23 options?

24 A He did indicate that he did have physical therapy, but  
25 denied receiving any other, what we consider nonsurgical

1 treatment options, such as pain management procedures.

2 Q Okay. And you practice in this area?

3 A Yes.

4 Q Would you, doctor, advise as a, I guess, a course of  
5 treatment, that a patient pursue less invasive options before  
6 proceeding to surgery?

7 A Yes, that's the normal.

8 Q Any indication as to why Mr. Belli didn't choose less  
9 invasive options before proceeding to surgery?

10 A It's uncertain from the records I reviewed if that was  
11 recommended or not.

12 Q Now, you had an opportunity to review some ER records,  
13 of the incident?

14 A Initially, I wasn't given the ER records, but some of  
15 the ER --

16 MR. DAUTI: Objection, your Honor.

17 THE COURT: Sustained.

18 MR. DAUTI: That's not consistent with the report.

19 Q Well, subsequent?

20 A Subsequently.

21 Q Were you given the opportunity to look at ER records?

22 MR. DAUTI: Objection.

23 THE COURT: If it's beyond the scope of the report,  
24 it can't be considered.

25 Q Doctor, let me ask you, you performed a physical

1 examination of the Plaintiff?

2 A Yes, I did.

3 Q Tell me exactly what you did?

4 A Initially, I inspected his gait, meaning his walking  
5 pattern.

6 Q Before you go there, did you take his weight?

7 A Yes, I did.

8 Q What was his weight on the day that you examined him?

9 A He was 278 pounds heavy.

10 Q And is that considered obese?

11 A Well, even, he's quite tall man, six-feet tall, but  
12 even for his weight, by definition, he's considered obese.

13 Q Okay, and his height, you took his height?

14 A Yes.

15 Q What was his height?

16 A Six-feet tall.

17 Q Okay, so please proceed and tell me what you did as  
18 part of your physical examination?

19 A So when inspecting his gait, meaning his able to walk,  
20 he was using a cane, I believe he was using it on his right  
21 hand, he exhibited a limp on his left side, complaining of pain  
22 on his left knee; otherwise, he was not wearing any spinal  
23 brace, and then once I inspected his gait, then I proceeded to  
24 inspect his scar from his previous surgery, and he had a -- what  
25 we call a midline scar, in his lower back measuring about two

1 inches in length.

2 Q Did you check for any scars on his sides?

3 A At the time, there was no history of the claimant  
4 having undergone that aspect of the surgery.

5 Q Sorry, doctor.

6 Now, doctor, as part of the physical examination, did  
7 you check his range of motion?

8 A Yes, I did.

9 Q And what did you find?

10 A With respect to his neck, he had limited range of  
11 motion in all planes, his ability to bend forward, extend,  
12 rotate and tilt, and do you want me to state the degrees?

13 Q Why don't we move on to the lumbar.

14 A In the lower back, he also exhibited significant  
15 reduction in his range of motion, particularly when I asked him  
16 to flex his spine forward, and normal degree of expected is  
17 about 60 degrees, and he was only able to bend forward ten  
18 degrees.

19 When I ask him to extend his backward, normally  
20 expected degrees is about 25 degrees, he was only able to  
21 produce about five degrees extension, and in the lateral bending  
22 is what we call when you ask someone to tilt to the side, and  
23 normally, they exhibited around 25 degrees on either side and he  
24 exhibited five degrees, and he also complained of significant  
25 pain and discomfort with those motion.

1 Q Did you perform a motor examination?

2 A Yes, I did.

3 Q Can you explain to the jury what that is?

4 A So motor examination is performed to see if  
5 neurologically if one's ability to fire up their muscle is  
6 intact or not, although he did move all of the muscles that I  
7 asked him to move, and he seemed to have full strength, there  
8 was component of what we call make/break weakness; meaning,  
9 let's say, for example, I ask you to make a fist, and you make a  
10 fist and I try to pull it apart, and normally, if you have a  
11 full strength, without pain, you should be able to maintain that  
12 grip, but if you're not trying so hard or if you're in pain,  
13 sometimes, that act in and of itself can produce pain, and so  
14 they just give up, and this is what we call make/break weakness.

15 The significance of that is that even though it may  
16 seem weakness, there was initial grip strength that was intact,  
17 so it signifies it's functioning.

18 Q Doctor, did you indicate that was poor effort on his  
19 part?

20 A Yes.

21 Q What do you mean by that, when a patient exhibits poor  
22 effort?

23 A So like I said, sometimes either with pain or when they  
24 have pain or even with their own volition, meaning they actually  
25 mean to, sometimes they may not want to follow the command.

1           For example, if I tell you to make, you know, I can  
2 flex the elbow, normally, one would expect to give up full  
3 strength, full effort, but some patients or some people need lot  
4 of prodding and say hey, listen this is what I really want to do  
5 hold strong, sometimes they don't do it, but there are movements  
6 when it clicks and do it and let go, and that's what I mean by  
7 poor effort, sometimes they don't seem to connect.

8           Q     Is it fair to say, doctor, there's a level of  
9 subjectivity with these type of tests?

10          A     Absolutely, the motor examination and range of motion  
11 exam that we just talked about before, as objective as it seems,  
12 because we put numbers on it, they're purely subjective, because  
13 it is totally up to that person doing, right, if you don't want  
14 to bend, you're not going to bend. There's no way of me  
15 actually knowing he's capable of bending further.

16          Q     Is it fair to say, doctor, when you do these range of  
17 motions tests and you ask the person to bend this way and that  
18 way, a limitations of the test is it's subjective?

19          A     Yes.

20          Q     Okay. That's true with whoever is performing the test?

21          A     Yes.

22          Q     Now, did you see I didn't go, let me ask you first, you  
23 performed a Hoffman test?

24          A     Yes.

25          Q     Can you explain what that is?

1           A       That is a part of reflex examination to see if there's  
2 any irritation to the cervical spinal cord.

3           Q       And what was the result of that test?

4           A       It was negative.

5           Q       And you indicated that long tract signs were absent,  
6 can you explain what that means?

7           A       That's also a sign, other test looking for any  
8 irritation to the brain or to the spinal cord itself.

9           Q       Okay, is the absence of any long tract signs an  
10 indication that the test was normal?

11          A       Yes.

12          Q       Can you tell the jury what a Spurling sign test is?

13          A       Spurling sign is a maneuver that I ask the patient to  
14 perform to see if there's any compression within the cervical  
15 spine, and compression of the nerve, and so the maneuver is  
16 extending your back, your neck backward and turning to the  
17 painful side, that, in effect, pinches the nerve further.

18                 So if they reproduce that pain, then it's considered  
19 positive finding.

20          Q       What was the result of that test?

21          A       It was negative.

22          Q       And can you explain what a seated root tension test is?

23          A       So the spine, if your spinal nerve is compressed as a  
24 result of disc herniation in your lower back, your ability to  
25 straighten out your leg while seated may be limited.

1           The reason for that is, the nerve is connected to the  
2 muscles in your leg, and that nerve goes into the spinal canal,  
3 so there's some kind of impingement or tethering of the nerve  
4 within the canal and the act of strengthening out your leg pulls  
5 on your nerve, so the nerve is not able to glide smoothly in and  
6 out of that area, so that produces the pain.

7           Q     And what was the result of that test?

8           A     That was negative.

9           Q     Now, you indicated negative bilaterally, can you  
10 explain what that means?

11          A     That means I did one side at a time, there was no pain  
12 on either side.

13          Q     Let me move on.

14                 Did you check for musculature atrophy?

15          A     Yes, I did.

16          Q     What did you find?

17          A     There was no evidence of any significant muscular  
18 atrophy.

19          Q     What is the significance of that?

20          A     So someone has a true neurologic damage to the muscle,  
21 and over a period of time, that muscle will not move and will  
22 atrophy, it will get smaller.

23                 So, if one actually had a neurologic damage that was  
24 significant enough to injure the -- injure the innervation to  
25 that muscle, then over a period of time, you'll see that

1 finding.

2 Q And I guess, where atrophy is present, is that an  
3 indication of a person not being physical?

4 A It means that, that limb is not firing properly, is not  
5 working properly.

6 Q Okay. Could it also indicate if a muscle atrophying  
7 that the person is just not exercising the muscle?

8 A Then we wouldn't characterize it as atrophy, we would  
9 categorize it as wasting, which is a bit different. So if an  
10 astronaut came down from the space not exposed to gravity, their  
11 muscle will atrophy, because they haven't had a chance to use  
12 it.

13 When one is actually walking around, yes, muscle can  
14 waste away, if you're not exercising, but when we talk about  
15 atrophy, we're talking relative to the contralateral side, of  
16 course, you can have both sides affected too.

17 Q And did you find any evidence of wasting?

18 A No.

19 Q Now, prior to meeting with Mr. Belli, you reviewed  
20 medical records?

21 A Yes, I did.

22 Q And can you tell me exactly what did you reviewed?

23 A When I said reviewed medical records, I mean medical  
24 records plus other records including Bills of Particulars, and  
25 transcripts that were provided for my review, they do contain

1 medical discussions and issues at happened, and so it included  
2 deposition transcripts, some of the treating physicians, also  
3 included medical records from his treating doctors, including a  
4 physiatrist named Dr. Hassan, as well as office and treatment  
5 records from various surgeons that he had seen for consultation,  
6 including Dr. Babu, Dr. Radna, R-A-D-N-A, and Dr. Vora V-O-R-A.

7 Q Now, doctor, did you also review an MRI from September  
8 of 2019 as to the lumbar back?

9 A Yes, I did.

10 MR. FRANKLIN: Your Honor, I have the MRI of the  
11 lumbar back and would help the witness's testimony if I was  
12 able to publish it to the jury.

13 THE COURT: It's in evidence?

14 MR. FRANKLIN: Yes.

15 MR. DAUTI: Yes.

16 THE COURT: Please do. Tell us the Exhibit Number.

17 MR. FRANKLIN: I have it on my documents, I will  
18 tell you once I open it up, September of 2019, it's  
19 Plaintiff's Exhibit 4.

20 THE COURT: Thank you.

21 MR. FRANKLIN: I'm going to publish.

22 THE COURT: Yes.

23 Q Doctor, are you able to see Plaintiff's Exhibit 4, the  
24 MRI image from where you're sitting?

25 A Yes.

1 Q You had an opportunity to review this image of the MRI  
2 taken in September of 2019, about three months after the  
3 accident?

4 A Yes.

5 Q Can you tell the jury what you found?

6 A You want me to discuss it from here.

7 MR. FRANKLIN: May he step down, your Honor?

8 THE COURT: You can step down.

9 THE WITNESS: So I can point better.

10 THE COURT: Doctor, you still remain under oath.

11 (Whereupon, Dr. Kim exited the witness stand.)

12 A So, this is what we call an MRI study, it's one of many  
13 pictures that you reviewed, when we review the MRI of someone's  
14 spine, this is just one of the examples, what you see here is  
15 this big structure of your spine cut from the sideways and  
16 you're looking from the side, these oval structures represent  
17 the discs the cushion, back here where you see the whites is the  
18 spinal canal, it is the pipe through which the nerve travels and  
19 then back here is your back of your spine, fatty tissue and the  
20 skin right here.

21 What we look for is the overall status of the disc and  
22 we try to see if there are changes within the disc meaning is  
23 there a herniation, is there wear and tear, things like that.

24 When the disc is healthy, and normal, they appear nice  
25 and round, such as these, (indicating), you may see some, mild

1 wear and tear, mostly white, healthy and juicy.

2           When the disc start to go through wear and tear, the  
3 color changes, because it's no longer supple and juicy, it  
4 becomes a little more stiff and that's characterized by graying  
5 of the color of the disc.

6           What also happens is when the disc degenerates, it's no  
7 longer nice and tough like a car tire when you drive it off the  
8 showroom, the wheels on the tire are strong and tight, but when  
9 you drive it for awhile, it kind of loses its shape and bulges  
10 out of the side wall and that's when we start to see, so this is  
11 a great example of a nice and strong disc where the bulges are  
12 well defined, whereas here, L5-S1 we see posteriorly it's  
13 bulging out a little in the back, and in here along with some  
14 gray, meaning degeneration, it's also bulging out slightly.

15           But bulging itself is what we call a normal wear and  
16 tear phenomena, we expect to see, as one ages, whereas  
17 herniation although it can be part of aging is considered  
18 abnormal phenomena, where actually the content of this can  
19 pierce out right through the wall and stick into the canal, and  
20 that appearance is very different.

21           So another example or analogy I can make, if you have a  
22 car, you run over a big pothole, even though it doesn't blow up,  
23 you can get a little bleep or a balloon on the side of the wall,  
24 that's not a bulge, losing air in the tire, that's a bulge but  
25 when you have a bleep, that's abnormal, the wall the integrity

1 is no longer there, that's when you have to do something about  
2 the tire, so that would be the example that I would make more  
3 consistent with herniation, but it's the bulge is more natural  
4 wear and tear.

5 Q Thank you, doctor.

6 (Whereupon, Dr. Kim resumed the witness stand.)

7 Q Doctor, as part of your review of records, did you also  
8 review the radiology report that goes with this image?

9 A Yes.

10 MR. FRANKLIN: Your Honor, I have Plaintiff's  
11 Exhibit 4-A, I would like to publish to the jury.

12 THE COURT: Okay.

13 Q Doctor, I also have a copy of that same page, if you  
14 would prefer to look at that?

15 A Yes.

16 Q Sure, or if your Honor --

17 THE COURT: Let the officer have it, she will hand  
18 it over to the doctor.

19 COURT OFFICER: (Handing.)

20 MR. FRANKLIN: It's Plaintiff's Exhibit 4 from that  
21 set page number 23.

22 Q Do you prefer to have the witness review from the  
23 official copy?

24 THE COURT: Whatever you want.

25 MR. FRANKLIN: He's fine.

1 THE COURT: I'm fine as long as counsel agrees it's  
2 a true copy, I don't have a problem.

3 MR. DAUTI: It is, is that the MRI from Lenox Hill.

4 MR. FRANKLIN: Yes 9/17/2019.

5 THE COURT: This is, if there's an objection?

6 MR. FRANKLIN: If there's no objection, I will have  
7 the witness look at the official, it's no difference to me.

8 MR. DAUTI: It's fine.

9 THE COURT: Okay.

10 Q Alright, doctor, I think you can just walk the jury  
11 through what's shown on the radiology report for this image?

12 A Sure, first it talks about what kind of machine was  
13 used to acquire the images, and then the typically compare it to  
14 a different studies if it exists before, and then overall  
15 impression. I did talk about findings on each segment and then  
16 overall impression of the spine, and so what the radiologist is  
17 saying if you look at the middle page where it says talks about  
18 disc spaces, it talks about disc desiccation, L4-5, without  
19 significant disc space narrowing, that means graying of the disc  
20 as I had indicated.

21 It also talks about preservation of normal disc signal  
22 at other levels, and it also mentions the radiologist that the  
23 radiologist does not see any disc bulge, herniation, or spinal  
24 foraminal stenosis.

25 Q I want to break each of those down.

1 Desiccation, can you just, very generic definition?

2 A So the definition desiccation is losing water content  
3 right, at the time when our skin desiccates, right, so it refers  
4 to drying up phenomena, and the disc actually does dry up.

5 As we get older, so when a person is young, when they  
6 dissect the disc as a specimen, they're literally like juicy and  
7 succulent, like an older person's disc looks like overcooked  
8 lobster meat.

9 Q How long does this take, I'm pointing L4-5?

10 A Yes.

11 Q How long does it take for a disc to desiccate, does it  
12 take years?

13 A It's very great weight, compress, it is a chemical  
14 composition change, not a structural change, takes years to  
15 develop.

16 Q If I had an injury -- I won't make it personal.

17 If someone injures their back one day, is it possible  
18 for them to have disc degeneration the next day?

19 A No, absolutely not.

20 Q Again, is ten years an average time?

21 A Not, I don't think you can say that, but it does take  
22 years to develop.

23 Q Is there any doubt in your mind what we see in this  
24 image three months after this accident is something that  
25 developed years before this accident?

1 A No doubt, yes, it is a chronic degenerative change.

2 Q And when you state chronic degenerative change, again,  
3 over time?

4 A Correct.

5 Q Next, the radiologist has indicated without significant  
6 disc space narrowing.

7 Now, is that significant for someone whose claiming,  
8 you know, like a pinched nerve?

9 A It doesn't really apply, just generally like that, you  
10 could have back pain with preserved disc space, or you can also  
11 have back pain with significantly narrowed disc space. It just  
12 means whether the disc has worn out, meaning like wearing out  
13 your shoe sole, has that disc space been worn out, on this MRI  
14 findings, because he was fairly young at that time, it doesn't  
15 seem to show that wear.

16 Q Doctor, Mr. Belli later had a laminectomy.

17 Is a laminectomy intended to widen the space between  
18 the discs?

19 A No, it's not intended to widen the space between the  
20 disc. It is intended to widen the space behind the disc in the  
21 spinal canal.

22 Q I see. According to this report, was there any  
23 indication as to that space?

24 A Yes, it talks about absence of what we call stenosis.

25 Q Okay, if you can elaborate on what foraminal stenosis

1 is?

2 A Sure, it talks about spinal or foraminal stenosis, so  
3 what the radiologist talking about is that if there was a  
4 herniation, then you can image back of the disc something  
5 sticking out, it will occupy the space normally intended for the  
6 nerve to travel.

7 So if you have a prodding of the disc by herniation, it  
8 creates a condition called stenosis. Stenosis by definition  
9 means narrowing, so what the radiologist is saying is there's no  
10 herniation, there's no bulge, there's no narrowing, the canal  
11 itself in my report is normal.

12 Q The preservation of normal intravertebral disc signal,  
13 what does that related to?

14 A So it's talking about other discs, as I mentioned out  
15 earlier, that other discs looks more well hydrated, so the  
16 signal is preserved is white.

17 Q Doctor, is the purpose of an EMG of the spine to  
18 provide a clinical correlation of what the images are  
19 indicating?

20 A So it is one of the tools that doctors utilize to try  
21 to add more information to what's going on at the time of the  
22 test.

23 Q And doctor, did you review an EMG taken around the same  
24 time period by a Dr. Hassan --

25 A Yes.

1 Q -- who was Mr. Belli's treating doctor?

2 A Yes.

3 Q What did that indicate?

4 A The EMG that was obtained by Dr. Hassan in September  
5 11, 2019, showed no evidence of significant lumbar  
6 radiculopathy.

7 Q What is lumbar radiculopathy?

8 A Meaning irritation of the nerve in your lower back.

9 Q So no herniation on the image and no radiculopathy, is  
10 that clinical correlation?

11 A Yes, it is.

12 Q Do you agree with the radiologist on this report, I  
13 believe it's a Dr. Shelton Wertheim, M.D.?

14 MR. DAUTI: Objection.

15 THE COURT: What?

16 MR. DAUTI: Objection to the form.

17 THE COURT: To the form? Overruled.

18 Q Do you agree with the radiologist's conclusions?

19 A Yeah, I mean I'm in agreement with the findings.

20 Q Based on these findings, is there any indication of the  
21 need for a surgical repair?

22 A No.

23 Q Now, doctor, did you also have the opportunity to  
24 review a follow-up MRI from August of 2020, a little over a year  
25 later -- well, August, September, just under a year later?

1 A Yes.

2 MR. FRANKLIN: Your Honor, I have that image as  
3 well.

4 THE COURT: Okay. Are we done with this report  
5 that's on the easel?

6 MR. FRANKLIN: I will take it back down.

7 Q Publishing that report or that image -- excuse me.

8 Doctor, could you step down and show the jury what  
9 you're seeing on August 27, 2020, image?

10 (Whereupon, Dr. Kim exited the witness stand.)

11 A This MRI is a follow-up MRI that was obtained about  
12 11-months since the previous MRI, and if you didn't look at the  
13 actual date of the MRI, you would think it's the same picture  
14 that was put up, because there's really no significant changes.

15 When you compare to the previous MRI, and again you see  
16 some signal change, a little bit graying on the disc here, but  
17 really the borders are well defined, and other levels, perhaps  
18 slight disc bulging here and here, but it really does, really  
19 doesn't show any significant changes.

20 (Whereupon Dr. Kim resumed the witness stand.)

21 Q Thank you.

22 Doctor, these slight disc bulges, are they age  
23 appropriate?

24 A Yes.

25 Q Are they degenerative?

1 A Yes.

2 Q Are they an indication of degenerative disc disease?

3 A Yes.

4 Q Can you explain to the jury what degenerative disc  
5 disease is?

6 A So the terminology itself is not a good one, the  
7 disease implied that you caused something, someone gave it to  
8 you, but we don't call aging a disease, right, it's a process.

9 So I think the better way to coin this terminology  
10 would be to call it degenerative disc process, because we all  
11 get older, we all age, a little bit differently, and a lot of  
12 that has to do with genetics, how you were born with, what you  
13 do for a living, what your habits are, and so, when you consider  
14 all of that, and look at this MRI, it is consistent with a  
15 degenerative changes consistent with age, and his body habitus,  
16 and his social habits, and things like that.

17 Q Now, with respect to body habitus, is this consistent  
18 with someone who might be obese?

19 A Well, not just the spinal habitus, you can see in the  
20 fatty tissues on him, but yes, a thin person can also develop  
21 degenerative disc disease, but what we know from what we do is  
22 that higher body mass are associated with equal rate of disc  
23 wear.

24 Q The type of physical activity one engages in, does that  
25 have any impact on whether one is likely to develop degenerative

1 disc disease?

2 A Yes, ones that are engaged in heavy lifting and  
3 strenuous type of activities have higher tendency to develop  
4 degenerative disc disease.

5 Q Now, you know that Mr. Belli is a plumber?

6 A Yes.

7 THE COURT: Was a plumber.

8 MR. FRANKLIN: Sorry.

9 THE COURT: Was a plumber.

10 Q Was a plumber.

11 Hypothetically, doctor, if he was doing a lot of  
12 bending, squatting, stooping and picking up heavy items, would  
13 all of those have an impact on his spine?

14 A It can, yes.

15 Q And would they increase, decrease or have no effect on  
16 his likelihood of developing degenerative disc disease?

17 A It can increase the likelihood.

18 Q Now, as you said earlier, this image is almost the same  
19 as the one from 11 months earlier?

20 A Yes.

21 Q Is that an indication of someone who has a stable  
22 condition in his spine?

23 A Yes.

24 Q As of August 27, 2020, is there any indication based on  
25 what you can see here with this imaging any indication for a

1 need for surgery?

2 A No.

3 Q Now, doctor, you mentioned the difference between a  
4 disc bulge versus a disc herniation?

5 A Yes.

6 Q Is it fair to say that there is some subjectivity  
7 between what you, between what doctor might call a bulge and  
8 another might call a herniation?

9 A Yes.

10 Q Is there any sort of peer review or consensus articles  
11 that discuss how to describe a bulge versus a herniation?

12 A There are many.

13 Q And have you had an opportunity to look at those?

14 A So in preparation for today's testimony, I did actually  
15 re-reviewed some of the -- what were considered classical  
16 articles or consensus articles.

17 Q In general, what is the difference that makes something  
18 a bulge versus a herniation?

19 MR. DAUTI: Objection, outside the scope of the  
20 report.

21 MR. FRANKLIN: It's within his area.

22 THE COURT: Yes, I would have to see the report to  
23 see, but I think general background information of the  
24 anatomy is not restricted to the scope, it's within his  
25 general expertise.

1           Questions about this particular patient or about  
2 prognoses or tendencies, would have to be contained within  
3 the report, but a general anatomic description, you know  
4 makes a radius a radius or ulnar an ulnar, I don't think  
5 that's about your report, that's about your general  
6 training.

7           MR. DAUTI: The witness just testified he had  
8 reviewed in preparation for today's testimony some  
9 particular literature to testify in this matter here, that's  
10 my objection.

11           THE COURT: Right, references to literature are the  
12 are outside the scope of the report, and therefore, cannot  
13 be used but a general description based on his general  
14 training about what a herniated disc is, the definition and  
15 what a bulging disc is the definition certainly within the  
16 Court's opinion within the general level of his training and  
17 can be defined as long as it's not with recommendation to  
18 outside source for bolstering that wasn't cited in his  
19 report.

20           Q     Doctor, before you answer that question, you have  
21 written articles regarding disc herniations?

22           A     Yes, I have, many times.

23           Q     And disc bulges?

24           A     Yes.

25           Q     And I know that you also have academic positions, do

1 you teach on this --

2 A Yes.

3 Q -- topic?

4 MR. FRANKLIN: Your Honor, just for the purposes of  
5 completeness, I would like to offer Dr. Kim as an expert in  
6 the area of orthopedic surgery.

7 THE COURT: Without objection?

8 MR. DAUTI: No objection.

9 THE COURT: Without objection, he's an expert in  
10 the area of orthopedic surgery.

11 Q Dr. Kim, can you tell the jury the difference between a  
12 disc bulge versus a herniation?

13 A Yes, so basically it is the appearance that you see on  
14 the MRI scan or other, what we call advanced imaging studies.  
15 So bulge, like I said, before, means that the wall of the disc  
16 itself is contained, it hasn't been violated, and then the  
17 content inside the disc has not migrated outward, outside of the  
18 containing wall.

19 So the disc itself can bulge out as it degenerates, but  
20 even the disc, even the disc that degenerates can sometimes  
21 rupture as it continues to degenerate, and then the walls may  
22 break, and then the content will come out, and then the way we  
23 describe actual herniation is we have specific formulas that we  
24 use.

25 If the circumference of the disc is like this, if,

1 whatever the mass is protruding out beyond the circumference,  
2 it's kind of complicated, the bulge is defined by created by  
3 25 percent of the overall diameter, it's more broad; whereas the  
4 herniation is defined by less than 25 percent of the entire  
5 circumference, meaning if this is the disc something is sticking  
6 out like that, not like that (indicating), that's bulge, this is  
7 a herniation, because it's smaller in width, but bigger in  
8 depth.

9 Q Now, doctor, we heard from Dr. Shiau that 90 percent of  
10 people off the street may have a bulge or other issue; do you  
11 agree with that?

12 A Well, that's a very general statement, it would depend  
13 on the age of the people you grab off of the street. Obviously,  
14 if you grab people that are much older, yes, you will see  
15 90 percent, but if you, let's say, go out grab a bunch of 20 and  
16 30-year-olds, I think 90 percent is a little too high.

17 Q And not every bulge needs treating; is that a fair  
18 statement?

19 A Most bulges are not symptomatic, and do not require  
20 treatment.

21 Q Doctor, based on your review, your physical examination  
22 and your consideration of all of the evidence that was presented  
23 to you, did you reach some opinions in this case?

24 A Yes.

25 Q And would you please tell us your opinions?

1           A       So based on my review of all of the records provided,  
2 including the two MRI studies that I reviewed, my assessment was  
3 that the injury that he did sustain as a result of the accident  
4 that he sustained, was more consistent with soft tissue injury  
5 like a strain, rather than a traumatic disc herniation.

6           Q       Okay. Did you see any evidence of neurological  
7 impingement?

8           A       No, I did not.

9           Q       And did you see any evidence of compression lesions?

10          A       No, I did not.

11          Q       The presence of a compression lesion be an indicator of  
12 someone who might benefit from a decompression?

13          A       Yes.

14          Q       And no evidence here?

15          A       No.

16          Q       Did you see evidence of age-related degenerative  
17 conditions?

18          A       Yes.

19          Q       Now, as far as a soft tissue injury, would that be  
20 analogous to a strain?

21          A       Yes.

22          Q       And in your opinion, what is the prognosis and the  
23 timetable for recovery from strain?

24          A       It varies.

25          Q       Okay, to the lower back?

1           A     Right, it is a soft tissue injury, one can recover  
2 within days, or sometimes some patients can suffer with it for  
3 months.

4           Q     Doctor, based on the totality of your review, did you  
5 see indicia of symptom magnification?

6           A     There was certain components of it; for example, when I  
7 try to perform -- may I just go to the report?

8           Q     Sure.

9           A     When I performed the cervical, for example, his neck  
10 examination, although the MRI findings were very nonspecific and  
11 minimal, his range of motion expected with someone that kind of  
12 MRI, you expect certain degree, he exhibited such a limited  
13 range of motion, I thought that was inconsistent.

14                    What I also noted when I performed straight leg raise  
15 examination, which is a different, also a test to look for  
16 tension on the nerve, and I expected based on the MRI certain  
17 degree of pain at certain degrees of elevation, but even when I  
18 try to lift the leg slightly off the table, he complained of  
19 severe pain, which is not really consistent with the MRI  
20 findings.

21           Q     And, again, those complaints are subjective?

22           A     Yes.

23           Q     And did you see any objective evidence of a causally  
24 related injury to the spine?

25           A     No.

1 Q Now, you had an opportunity to examine Mr. Belli a  
2 second time; right?

3 A Yes, I did.

4 Q What was the date of your second examination?

5 A That was May 26, 2024 -- I'm sorry, December 26, 2026.

6 Q And when you examined him the second time, had  
7 Mr. Belli undergone a second surgical procedure?

8 A Yes.

9 Q And what procedure was that?

10 A He had undergone spinal fusion at L4-5 level.

11 Q And first of all, did Mr. Belli indicate whether or not  
12 that fusion was good for him or bad for him?

13 A On that day, on December 26, 2024, the word he used was  
14 excellent in terms of pain relief.

15 Q Okay. Did he indicate that he was receiving physical  
16 therapy?

17 A No.

18 Q Did he indicate that he was taking any type of  
19 medications?

20 A No, I'm sorry, yes, he was.

21 Q And what medication?

22 A It was a pain medication called Tramadol.

23 Q Just one?

24 A As-needed basis.

25 Q On an as-needed basis?

1 A Yes.

2 Q Did he indicate how often he takes it?

3 A He may have, but I didn't record it.

4 Q Okay. At that time, was he ambulating with a cane?

5 A Yes, he was.

6 Q Alright. Did he have any type of gait, antalgic gait?

7 A He did exhibit antalgic gait.

8 Q Did you see any evidence of muscular atrophy at that  
9 time?

10 A No, I did not.

11 Q Was there anything -- I assume you did the flexion  
12 examination at that time?

13 A You mean the range of motion?

14 Q Yes.

15 A Yes, I did.

16 Q And you did the standard battery of tests?

17 A Yes.

18 Q Okay, any significant differences?

19 A No.

20 Q And based on that examination of the Plaintiff, on  
21 December 26, 2024, did your opinions change in any way?

22 A No it did not.

23 Q Doctor, did Mr. Belli in your opinion need the  
24 laminectomy?

25 A No.

1 Q In your opinion, doctor, did Mr. Belli need the  
2 subsequent fusion surgery?

3 A Well, he did continue to make complaint of pain. When  
4 you go with the strict criteria for someone needed fusion, he  
5 did not meet the criteria, meaning significant  
6 neurocompression, or instability.

7 So the surgery appears to be done purely based on his  
8 complaints of -- excuse me, of ongoing pain and the MRI findings  
9 of degenerative disc disease.

10 THE COURT: I want to point out we're almost five  
11 past 4:00.

12 MR. FRANKLIN: If I can wrap up in two questions.

13 Q Doctor, were both of those surgical procedures elective  
14 procedures?

15 A Yes.

16 Q And were they urgent?

17 A No.

18 MR. FRANKLIN: Thank you.

19 THE COURT: Thank you.

20 Cross-examination.

21 MR. DAUTI: Thank you, your Honor.

22 CROSS-EXAMINATION BY

23 MR. DAUTI:

24 Q Good afternoon, doctor.

25 A Good afternoon.

1 Q So, doctor you're telling this jury that Erion is a  
2 liar; correct?

3 A I don't think I said that.

4 MR. FRANKLIN: Objection, your Honor.

5 THE COURT: Overruled.

6 Q You just testified that during your examination, you  
7 noticed symptom magnification?

8 A There were a couple of instances of what I would  
9 consider symptom magnification.

10 Q So what does symptom magnification mean other than a  
11 person who's exaggerating things and making it sound like  
12 they're in pain when they're not; correct?

13 A No, that's not what it means. It can also mean someone  
14 really crying out for help, right, so if you feel like your  
15 complaints is not being heard, so if you touch it, it hurts you  
16 really want the doctor to know, you're going to say ouch.

17 I'm not calling that man a liar, but sometimes, if I  
18 slap on someone and someone screams out, that's kind of  
19 magnified response, that's what I'm saying.

20 Q Doctor, are you a psychologist?

21 A No, but it's within scope of what I practice.

22 Q Very good, did you review the Harris Psychiatric  
23 medical records?

24 MR. FRANKLIN: Objection, your Honor, beyond the  
25 scope.

1 THE COURT: Overruled.

2 Q You did review the records, it's written in your  
3 report, please look at it, your report dated December 26, 2024,  
4 I'll help you speed up things, doctor.

5 A Sure.

6 Q Look there, you have the entry you reviewed the Harris  
7 Psychiatric records from, and you give exact dates of June 27,  
8 2023, through December 11, 2024, I will help you out, page four  
9 of your report dated December 26, 2026?

10 A Yes.

11 Q So you thoroughly you stated there, those records, you  
12 reviewed those records thoroughly?

13 A I reviewed them, yes.

14 Q Let me read to you a notice from Harris Psychiatric  
15 service date September 27, 2023, that you very likely as a good  
16 doctor that you are, reviewed as part of your preparation for  
17 giving an evaluation and opinion in this case to give an opinion  
18 to the Defendant?

19 MR. FRANKLIN: Objection.

20 THE COURT: Hold on.

21 MR. FRANKLIN: My objection is can we --

22 THE COURT: The problem is, the problem is that  
23 your expert when offered the opportunity to say he's not a  
24 psychiatrist, said no, but it's all part of my training and  
25 practice. So he opened the door to it, and if he says he

1 reviewed the relevant record, then I think you're stuck with  
2 it.

3 MR. FRANKLIN: Your Honor, I would like to note --

4 THE COURT: I've overruled the objection twice.

5 First, I tried to do it without a speaking ruling,  
6 because you objected, the second time I've given a spoken  
7 rationale.

8 MR. FRANKLIN: I just want to know the document he  
9 was reading from.

10 THE COURT: The document he's reading from --

11 MR. DAUTI: Harris Psychiatric.

12 THE COURT: -- it is your expert's review of  
13 records.

14 Q Doctor, under the "History of Present Illness," it says  
15 "patient has been having a lot of back pain, patient states he  
16 has not been sleeping well due to pain and anxiety. Will  
17 provide a supply of Zolpidem" -- pardon my mispronunciations  
18 here and there -- "for patient to take, patient states, quote,  
19 the pain makes me crazy, it makes me angry, it makes me want to  
20 get up and stab myself, unquote.

21 Did you read this?

22 A I'm sure I did, as I primary review.

23 Q The patient states he has been going through this for  
24 almost five years?

25 THE COURT: Counsel.

1 Q And cannot be measured --

2 THE COURT: Counsel, the same objection you had to  
3 Miss Goode narrating from record. Do you have a question  
4 about the record based on the stated expertise that the  
5 witness has said he has, you can ask him.

6 This is not an opportunity, again, at eight past  
7 4:00 for you to just narrate into the record something you  
8 which to expect have a future witness, but if you have  
9 questions related to this witness's exam or record review,  
10 those are totally fair game, the witness opened the door,  
11 but not to read the chart into the record.

12 MR. DAUTI: They are in evidence, your Honor.

13 MR. FRANKLIN: No, they're not.

14 THE COURT: The point is we're at 8 minutes past  
15 4:00, we're going to finish on time, if you want to ask this  
16 witness questions, I don't mind, you're entitled to ask  
17 questions, the witness opened the door to his opinion.

18 Q So, doctor, based on the testimony that you are  
19 qualified to give an opinion, within a reasonable degree of  
20 medical certainty, the field of psychology and psychiatry as  
21 well, after having read this note to you, I don't know if your  
22 recollection is refreshed or not, do you believe that this  
23 patient when he says these things he's really in pain?

24 A May I respond?

25 Q Yes.

1 THE COURT: It is a yes or no.

2 Q The question is yes or no, do you believe he's in pain?

3 A I can't answer that in yes or no.

4 Q Okay.

5 A Because you --

6 Q Now, doctor, I'm going to remind you of another note,  
7 it's June 12, 2024, was part of the notes that you reviewed from  
8 Harris Psychiatric.

9 He states "patient questions whether he can live with  
10 this level of pain and states that he might do something stupid  
11 if the pain is permanent."

12 MR. FRANKLIN: Your Honor, objection, hearsay.

13 THE COURT: Hold on.

14 Q Do you remember --

15 THE COURT: Hold on. It's -- first of all, it's in  
16 evidence, second of all, it's not --

17 MR. FRANKLIN: Actually, it is not in evidence.

18 THE COURT: You just said it is.

19 MR. DAUTI: It is, your Honor, it's Harris  
20 Psychiatric, it's the certification on top of the medical  
21 record.

22 MR. FRANKLIN: It hasn't been admitted into  
23 evidence. In fact, that was a specific issue that has been  
24 preserved, it's not admitted.

25

1 MR. DAUTI: Your Honor ruled.

2 THE COURT: I'm not know it was preserved, we have  
3 to go back and look at the record, the rulings on the --

4 MR. FRANKLIN: The clerk has a copy.

5 THE COURT: But in any event, this is back to the  
6 same problem of narrating opening, which I have asked you  
7 not to do given the limited time we have left.

8 MR. DAUTI: I'm questioning the witness based on a  
9 record he claims to have reviewed.

10 THE COURT: You can ask him what he reviewed,  
11 that's not the same as narrating the entire record into the  
12 evidence.

13 Q Do you remember reviewing this?

14 A Yes, I do.

15 Q So now --

16 THE COURT: Counsel, honestly, don't start with  
17 what's going to turn into a large argument. If you have  
18 questions about his review or the extent and to the extent  
19 he opened the door about his qualifications to dabble in  
20 opinions about people's pain and certain psychiatric aspects  
21 of that, it's okay.

22 MR. DAUTI: I will move on, your Honor.

23 Q Doctor, you were shown the MRI films, you were also  
24 shown an MRI report from September 16, 2019?

25 A Yes.

1 Q And also you were shown the MRI film from, I believe,  
2 August 27, 2020; correct, the last one that you saw here?

3 A Yes.

4 Q But you were not shown the report of the radiologist  
5 who read that film, that was the last film that was shown to you  
6 on the screen; correct?

7 A On today's exam?

8 Q Correct.

9 A I wasn't, It was not produced.

10 Q And that report that you were not shown, but you are  
11 shown the first report states that the MRI of lumbar spine of  
12 August 27, 2020, indicates L4-5 herniation?

13 THE COURT: Do you have a question?

14 MR. DAUTI: Yes. He was looking through the pages,  
15 I didn't want to interrupt.

16 THE WITNESS: I was listening.

17 Q So does that report refresh your recollection that a  
18 radiologist looked at the same film you looked at here and said  
19 there was a herniation; correct?

20 MR. FRANKLIN: Objection, your Honor, there's no  
21 indication his memory wasn't --

22 THE COURT: You're correct as to form. You can ask  
23 him whether he agrees, I don't think he said he doesn't  
24 remember the report, he said he wasn't shown the report.

25 Q So do you disagree with the reading radiologist?

1           A       So the report is in the radiologist report on that 2020  
2 MRI --

3           Q       Correct.

4           A       -- is part of the records that I reviewed --

5           Q       Correct.

6           A       -- which I mentioned on my own report, and I also  
7 mentioned in my own report that I disagree with that findings.

8           Q       Now, doctor, you have written some peer reviewed  
9 articles that basically states that you can have people with  
10 herniations and bulges showing on MRIs; however, they are  
11 perfectly fine and they do not necessarily show clinical  
12 symptoms; correct?

13          A       Yes.

14          Q       You have also testified in the past that you can look  
15 at an MRI film, and you may see nothing, that indicates the  
16 clinical symptoms that a patient is suffering as far as the back  
17 pain is concerned; correct?

18          A       Maybe certainly taking it out of context of what -- if  
19 you can just --

20                   MR. FRANKLIN:  Objection, vague.

21                   THE COURT:  Hold on.  I would say, I would ask that  
22 question are you suggesting that he's previously testified  
23 that someone may have clinical symptoms that are not  
24 reflected in the results of their MRI.

25                   MR. DAUTI:  Correct.

1 THE COURT: Got it. Leave it at that, would you  
2 answer that question, sir?

3 MR. FRANKLIN: It's still generic, I will accept  
4 the question.

5 THE COURT: I'm trying to get us back on track.

6 MR. FRANKLIN: Yes.

7 A But I had to know --

8 THE COURT: Doctor, he's just asking you if you  
9 previously testified that someone may have clinical symptoms  
10 even if they have a comparatively normal looking MRI?

11 THE WITNESS: Certainly, they can have clinical  
12 complaints and symptoms, yes.

13 THE COURT: That's the question.

14 THE WITNESS: Yes.

15 Q Yes, okay. So is it not possible that regardless of  
16 what you're reading of the MRIs of Erion is here, still he has  
17 real clinical symptoms of pain; correct?

18 A He certainly can complain about the pain, yes.

19 Q And you testified during direct about him having  
20 suffered, you labeled it, as strain?

21 A Yes.

22 Q And this strain was superimposed, I think you used  
23 these words in your report, I don't want to misquote you, did  
24 you say in your report, doctor, that the strain was superimposed  
25 upon his degenerative disc condition?

1 A Let me just confirm; yes.

2 Q So is it possible that a person with a so-called  
3 degenerative disc condition encounters a traumatic event, is  
4 exposed to trauma and this trauma wakes up this silent condition  
5 or the silent spine, as you would like to refer in your  
6 articles, and then cause the patient to have pain?

7 A It certainly can, yes.

8 Q You mentioned something about the EMG studies that you  
9 reviewed here, the ones that Dr. Hassan did; correct?

10 A Yes.

11 Q And counselor read to you only one of those EMG  
12 studies; are you aware of the EMG study that was done on  
13 November 4, 2020?

14 A Yes.

15 Q And what were the findings?

16 A That he had left-sided lumbar radiculopathy.

17 Q And is that left-sided lumbar radiculopathy an  
18 indicator of clinical symptoms of pain?

19 A So that test is consistent with someone having lumbar  
20 radiculopathy, yes.

21 Q And so you cannot fake the test, can you?

22 A Well, I was never asked by the counsel.

23 THE COURT: Just answer his question.

24 MR. DAUTI: Yes.

25 THE COURT: Can you fake the results of an MRI, can

1 a patient voluntarily fake the results of an MRI?

2 MR. DAUTI: EMG.

3 MR. FRANKLIN: EMG.

4 THE COURT: EMG?

5 THE WITNESS: No, they cannot but --

6 THE COURT: Off the record.

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

8 Q Doctor, I'm trying to move fast, my apologies, also,

9 there is an EMG study done on August 11, 2021; correct?

10 A Yes.

11 Q And that one also showed radiculopathy; correct?

12 A Yes.

13 Q And can you please remind us, again lumbar

14 radiculopathy?

15 A It's the inflammation of the nerve root that's by

16 definition.

17 Q And doctor, you were asked during direct that the

18 report that you provided here are so-called Independent Medical

19 Examinations?

20 A Yes.

21 Q Don't you agree with me, that this is a defense

22 examination?

23 A Well, you can call it that if you want to.

24 Q Because you were hired by the lawyers for MacQuesten to

25 examine Erion Belli, you wrote a report for their benefit, you

1 were paid for your time, there's nothing independent about that;  
2 correct?

3 A I don't think I can answer that in yes or no format.

4 Q Now, doctor, you have testified in the past; correct?

5 A Yes, I have.

6 Q And you have been retained to serve as an expert for  
7 the defendants many times; correct?

8 A Yes.

9 Q Is it fair to say that during the last ten years, you  
10 have been retained by the defendants to serve as their expert in  
11 at least 2000 cases?

12 A Yes, you can.

13 Q And out of these 2000 cases, is it fair to say that at  
14 least 1000 of those, you were called to give an opinion as to  
15 whether the surgical procedures that Plaintiff underwent where  
16 as a direct result of the injuries suffered in the accident?

17 A At least, yes.

18 Q At least; correct?

19 A Yes.

20 Q And now, just let me ask you a bit, doctor, out of the  
21 2000 times you have been retained, is it fair to say that at  
22 least 99 percent of the time that you have served as an -- at  
23 least 99 percent of the time, out of these 2000 cases, you have  
24 been retained by the defendants; correct?

25 A Yes.

1 Q Out of these 1000 cases, where you were called to  
2 examine Plaintiff and give an opinion whether the surgeries that  
3 they underwent were as a direct result of the injuries suffered  
4 in the accident, you found causation, which is you concluded  
5 that the surgery was related to the accident out of these  
6 1000 cases, less than a handful of times; correct?

7 A I wouldn't characterize as a "handful," but very few  
8 very percentage of people that I found surgery to be causally  
9 related.

10 Q Is it less than ten or more than ten?

11 A I'm going to say, I'm going to have to say it's more  
12 than ten; however, the cases that are really causally --

13 Q Doctor, I'm asking you about the handful, not asking  
14 for an explanation.

15 MR. FRANKLIN: Your Honor.

16 THE COURT: Overruled.

17 Q Your testimony is -- withdrawn.

18 Let me ask you this question, have you testified before  
19 that out of those 1000 cases, where you were called upon to  
20 provide an opinion for the defendants as to whether the  
21 surgeries that Plaintiff underwent were causally related to the  
22 accident, you have testified in the past that only in a handful  
23 of those cases you found the surgery causally related to the  
24 accident?

25 A I lost --

1 THE COURT: You asked him whether he previously  
2 testified to that.

3 MR. DAUTI: Correct, sorry.

4 A Those cases never went to trial.

5 THE COURT: Sir, the question is only have you  
6 previously given testimony, Plaintiff's question was have  
7 you previously given testimony in court to the effect that  
8 out of the roughly 1000 cases in which you were called to  
9 offer an opinion about causation with respect to surgery,  
10 right, meaning whether it was causally related to an  
11 accident that in only a handful of cases have you said it  
12 was causally related; have you ever testified to that  
13 before?

14 THE WITNESS: Because I have never been called to  
15 testify for those cases, no, the answer is no.

16 THE COURT: You never gave that testimony in a  
17 previous case?

18 THE WITNESS: Because I have never been called to  
19 testify for those cases.

20 Q That's not the question.

21 You know what, let me try to do it again. I am not  
22 asking you whether you testified on these handful of cases,  
23 where the surgery was warranted. I'm just asking you in any  
24 case, where you gave testimony in a court of law, in the State  
25 of New York, did you ever testify not on those cases, in any

1 case at all, that out of the thousand cases that you reviewed on  
2 behalf of the defendants to give an opinion, whether the surgery  
3 was warranted, and was causally related to the plaintiff's  
4 accident, your opinion was that only in a handful of out of  
5 those 1000 cases, the surgery was as a result of the injuries  
6 suffered in the accident?

7 A That's a really long question, but no.

8 THE COURT: If you have a transcript, you have to  
9 give me a copy to look at. Let's keep moving.

10 Name the case, please.

11 Q The name of the case Kelly Burley B-U-R-L-E-Y versus  
12 Arnoff Moving and Storage, Inc.?

13 THE COURT: This is trial testimony?

14 MR. DAUTI: Yes, Judge.

15 THE COURT: One second, as I mentioned to you the  
16 other day, that when somebody gives testimony on a  
17 deposition or on an Examination Before Trial it can be read  
18 back at trial and it's to be treated with the same weight as  
19 though it was testimony given at trial.

20 Similarly, you may hear now testimony that counsel  
21 is going to tell us was given at a previous trial on a  
22 different case, and again, it would have been given under  
23 oath, and it's entitled to be treated with the same weight  
24 as though it were given under oath today, and sorry, what's  
25 the date and location of that trial?

1 MR. DAUTI: The date of the trial was March 10,  
2 2025, one year ago, it's Ulster County, Upstate New York,  
3 Supreme Court, before Judge Richard Mott M-O-T-T.

4 THE COURT: Thank you.

5 Q I'm reading from page 47, lines 16:

6 "QUESTION: Okay, so about a thousand?"

7 THE COURT: You mean question.

8 MR. DAUTI: I'm sorry.

9 Q (Continuing:)

10 "QUESTION: So about a thousand or so defense  
11 medical exams that you performed where on individuals who  
12 were involved in some type of trauma and then after the  
13 trauma necessitated surgery; true?

14 ANSWER: True.

15 QUESTION: And out of those thousand or so people  
16 that you examined, in your defense medical exams, it's true  
17 under ten of them it was your opinion was necessitated the  
18 surgery was necessitated from the trauma; true?

19 ANSWER: I don't know if I would say under ten but  
20 very few, I would say directly causally related, yes, very  
21 few.

22 QUESTION: Well, a handful?

23 ANSWER: Sure."

24 Does this refresh your recollection that you did  
25 respond with a handful; correct?

1 A Yes, and I believe that was my answer today.

2 MR. DAUTI: I have no further questions.

3 THE COURT: Any redirect?

4 MR. FRANKLIN: Yes, briefly.

5 THE COURT: You have five minutes.

6 REDIRECT EXAMINATION BY

7 MR. FRANKLIN:

8 Q Doctor, I'm just concerned with your testimony in this  
9 case and I want to ask you, have you heard hypothetically, that  
10 the Plaintiff had reported to Dr. Shiau that he had no trouble  
11 sitting, lying down or sleeping?

12 MR. DAUTI: Objection, your Honor.

13 THE COURT: Sustained as to form. We just went  
14 through this about the heard hypothetically.

15 Are you asking the doctor to assume something?

16 MR. DAUTI: It's beyond my cross, I never asked any  
17 of this during my cross. It's redirect.

18 MR. FRANKLIN: I will withdraw it.

19 THE COURT: Go ahead.

20 MR. FRANKLIN: I will just withdraw it.

21 Q Now, doctor, you were asked about whether or not you  
22 had reviewed subsequent radical images; right?

23 A Yes.

24 Q And if the goal is to determine whether or not the  
25 accident caused the injury, you want to focus on the treatment

1 that was closer to the date of the accident; right?

2 MR. DAUTI: Objection.

3 THE COURT: It's going to go back to this thing  
4 it's already to be ruled beyond the scope, then 100 percent  
5 sustained.

6 MR. FRANKLIN: I don't think it has anything to do  
7 with that, your Honor.

8 THE COURT: I don't know, that was sort of the  
9 lead-in to the earlier question for which an objection was  
10 sustained.

11 MR. FRANKLIN: Okay.

12 THE COURT: I don't know what record you're  
13 referring to yet.

14 MR. FRANKLIN: I'm not referring to any particular  
15 record.

16 THE COURT: Great, then go ahead.

17 MR. FRANKLIN: May I have the question read back?

18 (Whereupon, the record was read back by the  
19 reporter.)

20 MR. DAUTI: Objection, your Honor, beyond the scope  
21 of cross.

22 THE COURT: I don't think this one question is  
23 beyond the scope of cross. I think it depends because you  
24 did bring up this question of there was a question about  
25 whether on certain occasion he seemed to be improving, then

1 you raised this question about well on these other occasions  
2 he seemed to be doing worse.

3 MR. DAUTI: Not with this witness, your Honor.

4 THE COURT: I think it was earlier.

5 MR. DAUTI: No, it was Dr. Shiau.

6 THE COURT: That I remember, I thought.

7 MR. DAUTI: No.

8 MR. FRANKLIN: It was cross.

9 THE COURT: Go ahead. The entire cross --

10 MR. FRANKLIN: They did address this, your Honor,  
11 they asked him about the various other imaging and whether  
12 or not he had looked at the various other imaging.

13 THE COURT: If you're going to ask him questions  
14 about earlier imaging, you know, ask.

15 MR. FRANKLIN: But right now I have the one  
16 question that the witness hasn't been able to answer.

17 THE COURT: Correct, if you want to ask him about  
18 earlier imaging which is within the scope of cross, you can  
19 ask.

20 MR. FRANKLIN: Okay.

21 Q And doctor, did you look at other imaging besides just  
22 the two that we looked at?

23 A Yes, I did.

24 Q Okay. If I may, do you consider the earlier imaging to  
25 be relevant?

1 MR. DAUTI: Objection, your Honor.

2 THE COURT: Overruled.

3 A Yes, I do.

4 Q Do you consider ER records to be relevant?

5 A Yes, I do.

6 THE COURT: Sustained.

7 MR. DAUTI: Objection, your Honor.

8 THE COURT: If they were relevant, and he didn't  
9 read them, and that's why you're going to force this, now,  
10 if they were relevant and he didn't read them and he didn't  
11 request them and didn't mention them in his report, as I  
12 previously ruled, they are beyond the scope of his report  
13 and he may not testify about them, I don't think that's the  
14 road we want to go down, but fine.

15 Q When looking for radiculopathy, I think you described  
16 it as inflamed nerve root on cross?

17 A Yes.

18 Q And that inflammation, if didn't show up in the 2020  
19 imaging, the 2019, that you reviewed, but it showed up in  
20 something later, is it possible that could have been attributed  
21 to some unrelated trauma?

22 MR. DAUTI: Objection.

23 THE COURT: Sustained, sustained, it speculation,  
24 there is no evidence to my understanding in the record of a  
25 subsequent trauma.

1           If you have such evidence, you should bring it up  
2           in a side bar; otherwise, you should not ask the doctor to  
3           speculate about something you don't think is going to come  
4           into evidence.

5           Q     Doctor, you didn't see an inflamed nerve root in 2019?

6                     MR. DAUTI:  Objection, your Honor.

7                     THE COURT:  Was there any exhibited in the 2019  
8           EMG?

9                     MR. FRANKLIN:  Yes.

10                    MR. DAUTI:  But EMG, he never reviewed an EMG, he's  
11           reviewed something, your Honor, he reviewed the MRI report,  
12           your Honor.

13                    THE COURT:  Did you review an EMG report from 2019?

14                    THE WITNESS:  Yes, I did, but we were talking about  
15           MRI.

16                    THE COURT:  I thought you just said EMG, was there  
17           an inflamed nerve root in EMG?

18                    MR. FRANKLIN:  Yes, the EMG, my next question would  
19           be the MRI.

20                    THE COURT:  No, I'm asking about that question with  
21           respect to 2019 EMG, are you asking him whether he reviewed  
22           a 2019 EMG and if it showed an inflamed nerve root.

23                    MR. FRANKLIN:  Yes.

24                    THE COURT:  Okay, did you review a 2019 EMG?

25                    THE WITNESS:  Yes, I did.

## Proceedings

1 THE COURT: Did it show an inflamed nerve root?

2 THE WITNESS: No, it did not.

3 Q Did any of the imaging from 2019 show any inflamed  
4 nerve root?

5 A Inflamed nerve root is not something we would describe,  
6 sometimes we do, but the MRI findings more likely to you seeing  
7 an nerve compression.

8 Q Okay.

9 A I did not see any.

10 Q Okay.

11 MR. FRANKLIN: Thank you.

12 THE COURT: Thank you, any recross.

13 MR. DAUTI: Yes, your Honor, very quick.

14 THE COURT: No problem.

15 RE CROSS EXAMINATION BY

16 MR. DAUTI:

17 Q Doctor, can an injury that has been suffered as a  
18 result of an accident, show on an MRI or EMG smaller at the  
19 beginning but with the passage of time, progresses and becomes  
20 worse?

21 A Yes, there is such thing as traumatic degeneration.

22 MR. DAUTI: Thank you.

23 No further questions.

24 THE COURT: Thank you, sir. Thank you for being  
25 here, ladies and gentlemen, it's 4:30, we will recess for

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1 the day, it's bright and shiny, tomorrow at 9:30.

2 Don't discuss the case among yourselves or with  
3 anyone else, don't do any research or have any outside  
4 research.

5 Thank you for your work today.

6 COURT OFFICER: All rise, jury exiting.

7 (Whereupon, the jury exited the courtroom.)

8 (Whereupon, the trial was adjourned to April 24th,  
9 2026 at 9:30 a.m.)

10 \*\*\*\*\*  
11 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL  
12 MINUTES TAKEN OF THIS PROCEEDING.

12 *Laura Delvac*  
13 \_\_\_\_\_  
14 LAURA DELVAC  
15 Senior Court Reporter  
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