SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 99

- -X

DJHIERRY GOUSSE,

Plaintiff,

- against -

INDEX NUMBER:
500574/2021
TRIAL

BEDFORD 2150 LLC, LITTLELEAF PROPERTY MANAGEMENT LLC, HALT MANAGEMENT INC., ROSEWOOD REALTY GROUP INC., NIEUW AMSTERDAM PROPERTY MANAGEMENT LLC & BLACK SPRUCE MANAGEMENT LLC,

Defendants.

- -X

Supreme Courthouse
360 Adams Street
Brooklyn, New York 11201

July 16, 2026

BEFORE:

HONORABLE RICHARD J. MONTELIONE,
Justice of the Supreme Court
(And a Jury)

APPEARANCES:

LAW OFFICE OF NICHOLAS E. TZANETEAS
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One Batter Park Plaza, 34th Floor
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BY: KENNETH BUFFALOE, ESQ.

LUCILLE CRAVOTTA
Senior Court Reporter

THE CLERK: Good morning, your Honor.

This is the matter of Djhierry Gousse vs. Bedford 2150 LLC, Index 500574 of 2021.

Counsel, please state your appearances.

MR. TZANETEAS: Nick Tzaneteas for the plaintiff. Good morning.

THE COURT: Good morning.

MR. BUFFALOE: Kenneth Buffaloe for the defendants.

THE COURT: All right. Good morning.

All right, so do we have all jurors?

COURT OFFICER: Yes.

THE COURT: We do?

COURT OFFICER: Yes.

THE COURT: And you have your witness?

MR. TZANETEAS: Yes, your Honor.

THE COURT: Okay. And it's your expert, we're going to take him out of order; is that correct?

MR. TZANETEAS: Yes, your Honor.

THE COURT: So the issue of the W2's and the work records we'll deal with that at a later point in time.

MR. BUFFALOE: Understood, you Honor.

THE COURT: Do you need that for his testimony?

MR. TZANETEAS: No, your Honor, but we'll deal with it at a later time, it's fine.

I do have another issue that I want to put on the record, your Honor.

THE COURT: Is it fast? I definitely want to get your witness in now.

MR. TZANETEAS: I have to make a record because it's going to affect the way I ask my expert certain questions I would not normally ask him.

THE COURT: Which expert is it?

MR. TZANETEAS: Thomas Scilaris.

THE COURT: He's an expert in which field?

MR. TZANETEAS: Orthopedic surgery, he did the surgery to the knee and the shoulder.

THE COURT: All right. Go ahead.

MR. TZANETEAS: Your Honor, I did make a motion that your Honor denied talking about any outstanding bills and one of the avenues that they will -- that I can address it since your Honor ruled that way which is by asking my client his ability to pay which I understand is allowed, but also of insurance. Last night as your Honor did, I got charges, the charges from the defendant and two of the charges, number one, interested witnesses of all the doctors which is ridiculous, but I'll fight that another day, but since he made that. And the other one is mitigation of damages. Now, both charges are very much constructed very differently than what they say, but even

the mitigation charge says if plaintiff can show lack of insurance or financial difficulty. Now, I know these are proposed charges and I don't know how your Honor is going to rule --

THE COURT: I don't want to discuss the proposed charges at this point. Let's just get down to the nitty gritty.

MR. TZANETEAS: Being that the defendant is asking the Court to tell -- to have the doctors that have -- that might have any outstanding bills being asked as interested witnesses interested in the case.

THE COURT: All right. I am not going to discuss interested witness, that will be at a later point in time.

MR. TZANETEAS: I understand that, Judge.

THE COURT: Make your record. I think you already made a record, but make your record.

MR. TZANETEAS: Being the fact that the mitigation charge you are asking, I am not saying we're discussing it now, but in the mitigation charge it says the plaintiff can disprove it by saying lack of insurance and not being able to pay it. So that's why I want to renew my motion now, Judge, to not allow -- I can understand if you said there was open bills, but it should be no further than asking that question, no further questions about why they weren't paid or they're outstanding, because I would like to ask my

doctor why they weren't paid and why they're outstanding.

THE COURT: Your doctor has no idea why they weren't paid. All he knows is that they weren't paid. He could say they put them in for insurance, but he has no idea of the financial ability of your client to pay or not. That all comes from the testimony.

MR. TZANETEAS: That being said, your Honor, I am just making my record, because the questions I am going to ask him based on your Honor's ruling I wouldn't ask these questions, but since I have to, based on your ruling I have to proceed strategically or not.

THE COURT: What questions would you ask or not ask based on my ruling.

MR. TZANETEAS: I wouldn't ask any questions about the bills, your Honor, I wouldn't ask any questions about open bills. I wouldn't ask any questions about anything about it. I would just ask him about medicine, that's it.

THE COURT: All right. So, you reserve your right to any objection you think is improper during the course of the examination, that's it. You want to make a further record put it in papers and we could file it as a court exhibit.

All right. So what do you want to say, Mr. Buffaloe?

MR. BUFFALOE: I don't have anything to say

regarding that. The Court already ruled on this issue.

THE COURT: I am going to handout a written decision on motions in limine, they do nothing more than what is already placed on the record.

MR. TZANETEAS: Can I get my witness, Judge?

THE COURT: Yes, absolutely.

Can you give me the name and the exact spelling of the doctor so I can write it down?

MR. TZANETEAS: Thomas, T-H-O-M-A-S, Scilaris, S-C-I-L-A-R-I-S.

THE COURT: And he is an orthopedic surgeon?

MR. TZANETEAS: Yes, your Honor.

THE COURT: Thank you.

COURT OFFICER: All rise. Jury entering.

(Jury entering.)

THE COURT: Good morning, everyone. Please sit down. Thank you.

Mr. Tzaneteas, and forgive me if I am mispronouncing your name, do you have a witness to call?

MR. TZANETEAS: Yes, your Honor. As per permission of your Honor I am calling Dr. Thomas Scilaris to the stand out of turn.

THE COURT: Thank you. The Court is accommodating the doctor because of his schedule and so we're taking him out of turn. It doesn't mean anything other than

accomodation. That's all. Thank you.

THE CLERK: Good morning.

THE WITNESS: Good morning.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give there court is the truth and nothing but the truth.

A Yes.

THE CLERK: Thank you. Please be seated. In a loud, clear voice please state your name, your title and your business address.

THE WITNESS: Yes. Thomas Scilaris, orthopedic surgeon, 39 East 69the Street, New York, New York 10021.

THE CLERK: Please spell your name.

THE WITNESS: S-C-I-L-A-R-I-S.

THE CLERK: Okay, thank you.

MR. TZANETEAS: May I inquire, your Honor?

THE COURT: Yes, please.

DIRECT EXAMINATION

BY MR. TZANETEAS:

Q Good morning, Dr. Scilaris.

A Good morning.

Q Besides meeting on Zoom the first time we met was today?

A Yes.

Q Okay. I am sitting back here to keep your voice up,

talk to the microphone, talk slowly.

A Yes.

Q Are you a physician duly licensed to practice medicine in the State of New York?

A Yes, I am.

Q When were you so licensed?

A 1999.

Q Can you tell the jurors a little bit about your educational background?

A Yes, college was the University of Richmond, medical school was Georgetown University. After that Lennox Hill Hospital general surgery. Orthopedic surgeon residency at the University of Missouri in Kansas City and then a sports medicine fellowship in Perth, Australia. Then I moved to New York and I've been here since 1999.

Q What is a fellowship?

A A fellowship is an extra year following your residency where you can specialize in another field of orthopedics.

Q What field was that?

A It was sports medicine, really arthroscopic surgery of knees and shoulders and ankles and wrists.

Q And what is your field of specialty?

A Orthopedic surgery.

Q What is orthopedic surgery?

A Orthopedic surgery is the treatment of the

musculoskeletal bones, ligaments, tendons of the whole body.

Q And are you board certified?

A Yes, I am.

Q What does it mean to be board certified?

A Board certification is something that is performed, there is two parts to it, there is a part one where you take a test during your last year of residency and if you pass the written test then you go out and practice and then for two years you are keeping count of patients and surgeries that you do and then you present that to your peers, other orthopedic surgeons and then to see if you pass that then you are board certified in that field.

Q And Doctor, as part of your training do you review and examine neuroimaging taken of your patients?

A I do.

Q What type of training did you receive in that?

A I mean throughout, all the way through residency I look at patient's MRI's.

Q Let's go into a little bit about your private practice or your practice after you graduated in your fellowship, tell us a little bit about your employment history?

A Yes, I've been pretty much in the same practice since 1999 and I am in private practice. So I treat patients in my office and other offices and I treat patients, I operate on patients.

Q Do you have any hospital affiliations?
A I do. Lennox Hill which is Northwell and Mount Sinai Beth Israel.
Q Do you also perform surgeries at any surgery facilities?
A Yes.
Q What surgery facilities?
A Yes. One of them is Surgicare Manhattan, in the city, and then the other one is Health East Medical Center in Englewood, New Jersey.
Q Do you own an interest in both?
A I do.
Q What is the name of your practice, your private practice?
A Park West Surgical.
Q How many offices are there?
A I have one on the east side, one on the west side and then some satellite offices that I go see patients in.
Q How many doctors are part of your practice?
A Parkway Surgical is just me.
Q What about the other practice?
A There is another practice, Health Needs Medical Alliance that I am part of that has offices in Brooklyn, also in New Jersey.
Q And how many doctors are in that practice,

approximately?

A I would say about four doctors.

Q Doctor, as part of your practice do you come in to testify for your patients on occasion?

A Yes.

Q About how many -- how long have you been in practice?

A Since 27 years now.

Q And in the 27 years about how many times have you come to testify on behalf of your patients, approximately?

A I would say it's in the sixties, 65, somewhere around there.

Q On average per year how many times do you find yourself in court testifying like today?

A Maybe two or three times a year.

Q As part of your practice do you specialize in certain body parts as an orthopedic surgeon?

A I do treat everything, I do treat the neck and back, but I refer that to like a spine doctor. But I would say knees and shoulders is probably the predominant part of my practice.

Q About how many surgeries to shoulders have you done over your career?

A Okay. I would say if I do between 60 surgeries a month that's about 700 surgeries a year, so I've been practicing for about 25, 27 years, so quite a few.

Q What about knees?

A I would say knees are a little more common than shoulders.
Q Okay, why so?
A They're sporting injuries and whatnot, I just think knee injuries are a little more common.
Q Doctor, did you have office hours today?
A Yes.
Q Did you cancel your office hours to be here?
A Yes.
Q As a result of cancelling office hours are you being compensated for your time being here today?
A Yes.
Q At what rate?
A My usual charge, it's $10,000 for the full day, $5,000 for half a day.
Q Do you know if you got paid yet?
A That I don't know, I don't.
Q Who handles that in your office?
A My office does the billing.
Q Doctor, when is the last time you testified before today on behalf of your patients?
A I would say it's over a year to maybe two years ago, been awhile.
Q Okay. Now, did you bring your medical file of your reports today here with you?

A Yes, I did.
Q Do you have that in front of you?
A Yes.
Q And Doctor, are those reports and notes in that folder and that medical folder taken in the regular course of business of your practice in treating that particular patient, Mr. Gousse?
A Yes.
Q And the reports that you elicited in there, they are generated from your office from the examinations of Mr. Gousse?
A That's correct.
MR. TZANETEAS: Your Honor, at this time I would like to move this will file into evidence subject to redaction.
MR. BUFFALOE: I need to see it.
THE COURT: All right, why don't you.
MR. BUFFALOE: I do have an objection.
THE COURT: All right. So that's an issue I could probably deal with at a later point in time; is that correct?
MR. TZANETEAS: I didn't hear what he said.
THE COURT: What he said was he has objections to part of the record.
MR. TZANETEAS: If I know what part it shouldn't be a problem. Subject to redaction, I am not going to

admit certain reports in evidence.

MR. BUFFALOE: Okay. Well, you have --

THE COURT: Well, okay. At this point in time nothing is going to be published to the jury, why don't you proceed, the next time we have a break we'll get into the specifics.

MR. TZANETEAS: Okay, but he's going to refer to it during his testimony, Judge.

THE COURT: If he needs his memory refreshed he can refer to it. I don't understand.

MR. TZANETEAS: Some of the records are going to be in evidence and he can read from some of the records, that's why I want to --

THE COURT: I'll do it point by point; all right? You are going to ask him what he refers to, you are either going to raise an objection or not raise an objection. I will make a determination at that point.

MR. BUFFALOE: Okay. I do think what I am objecting to is relatively straightforward and plaintiff might agree.

THE COURT: You know what, let's take this outside.

(A bench conference was held outside the presence of the jury.)

THE COURT: All right. What specific part do you

have an objection to?

MR. TZANETEAS: We agreed to it.

MR. BUFFALOE: We already agreed.

THE COURT: So I don't have to make a further record. Okay. Thank you.

(Proceedings held in open court with the jury present.)

MR. TZANETEAS: Judge, can we mark it as an exhibit please?

THE COURT: Yes, I think we are up to Exhibit 5.

THE CLERK: This is plaintiff's?

THE COURT: Yes.

THE CLERK: 5.

THE COURT: All right. So Exhibit 5. It's going to be in evidence. It will be marked doctor's office file, Dr. Scilaris' office file.

Please proceed.

MR. TZANETEAS: Thank you.

Q Now, Doctor, as part of your examination of patients do you also review medical records from other doctors?

A Yes.

Q Do you also review MRI's?

A Yes.

Q And in this case do you review MRI's of the right knee and right shoulder?

A Yes.

MR. TZANETEAS: At this point, your Honor, I submit the CD of the MRI's of Mr. Gousse from Kolb Radiology dated 6/17 2020 of the right knee and the right shoulder.

THE COURT: Any objection?

MR. BUFFALOE: Yes, your Honor. No foundation.

MR. TZANETEAS: I exchanged a 4532, your Honor.

THE COURT: Let me just a take a look at. Do you have the information on the jacket of the CD?

MR. TZANETEAS: Yes.

THE COURT: Why don't you just hand it up? Show it to Mr. Buffaloe first.

All right. So what is the section of the CPLR to save me a little time?

MR. TZANETEAS: Section 4532, your Honor. I have the 4532 that's exchanged with the defendant based on providing them the film --

THE COURT: Do you have the notice with you?

MR. TZANETEAS: Yes, I do, your Honor.

THE COURT: Why don't you hand it up.

MR. TZANETEAS: Your Honor, it's based on their own doctor examining it and the exchange of the CD with them under 4532, so it's not a surprise.

THE COURT: I want specifically the ground for

your objection.

MR. BUFFALOE: Taken by a third-party not present in court, the 4532 is insufficient and there is no autointoxication of those, they weren't subpoenaed directly to the courthouse.

THE COURT: All right, let's go in the back. Thank you.

(Bench conference held outside the presence of the jury.)

THE COURT: All right. It seems to me that you really have to get into the CD to make sure that the MRI contains certain information, the date it was taken and additional identifying information.

MR. TZANETEAS: Your Honor, as an officer of the court this is a CD that was provided by Kolb Radiology provided to the defendant. In addition, the defendant's doctor has reviewed this MRI, so I know my adversary said --

THE COURT: Just give me one moment. Well, I mean this is for the future, not for now, but it's always a good idea to put in your notice of intention that it's available for inspection.

MR. TZANETEAS: I put that, that I exchanged it with him, I attached the CD and I sent it to them.

THE COURT: I am just saying for future.

MR. TZANETEAS: I would rather send it to them and there is no confusion, Judge. You know how I know they have it? They reviewed it and they put pictures.

THE COURT: No, you mentioned that before. I am going to let it in. I want to understand your objection though. I got a 4532(a) notice in front of me, it's purported to have been reviewed by your own doctors.

MR. BUFFALOE: Well, the 4532 has certain very specific requirements including the certification from the radiologist supposedly reviewed them what is contained therein has all the identifying information in his 4532, doesn't contain any of that.

MR. TZANETEAS: Your Honor, it is. There is a part two and with all respect to counsel I've asked him beforehand if he's going to stipulate to anything, he's not. So I have to go through this each and every time, which is fine, Judge. And I don't really feel like doing it in front of the jury every time and waste time, but I will do it because it's not agreed. And Mr. Buffaloe has been doing this for a long time, 4532 says affirmation or the other means of exchanging it or making it available.

THE COURT: Let me ask you, was this incorporated into the doctor's owns records?

MR. TZANETEAS: The MRI.

THE COURT: Yes.

MR. TZANETEAS: He's a treating doctor, he reviewed the MRI's, he knows what the MRI's say, yes.

THE COURT: Is it part of his records?

MR. TZANETEAS: Yes, but either way he reviewed it, Judge. The reports were in his file that we took them out because reports are improper to come in, Judge. That's why I agreed to take them out, you have his file. The CD's, they don't hold onto the CD's because ultimately it's not their record, but he reviewed the films, Judge.

MR. BUFFALOE: My recollection is that the only time he indicates he reviewed the films is when he saw the plaintiff in 2025 in connection with the narrative report.

THE COURT: I am going to read in section 2(a), it's got to contain the name of the injured party, the date when the information constituting the graphic was taken, such additional identifying information, and then it goes on, and the representation has been previously received or examined by the party or parties against whom it is being offered. All right. There is another or, the other or is at least ten days before the date of the trial. So my question to you is, Mr. Buffaloe, were you given a copy of this and its just been represented to me that you have been or your office has been.

MR. TZANETEAS: Not his office, the previous attorney's office, Judge. He's trial counsel. Well,

recent counsel.

THE COURT: So, Mr. Buffaloe, can you represent to the Court that the prior office did not receive a copy of the CD because if you can't I am not going to sustain your objection, we're going to go forward. If we do have to do this on every occasion there is going to be a problem.

MR. BUFFALOE: Well, I just want to point out I just stipulated in evidence the doctor's medical reports without any objection whatsoever.

THE COURT: Please, that's a ridiculous argument. If you're not stipulating to the CD's which is probably crucial to this case, who cares you agreed to other things that would have gone into evidence anyway.

MR. BUFFALOE: You just said if I do it every time it's going to be a problem. I just didn't do it for something else. I am specifically doing it for this.

THE COURT: Look, Mr. Buffaloe, have the ground for your objection. If your office already received information and it meets all the requirements, all I am saying is don't raise objections unless you have a ground for it, that's all. That's all I am saying. So it's in evidence. Thank you.

MR. TZANETEAS: Thank you, Judge.

(Proceedings held in open court, jury present.)

THE COURT: All right. The CD is in evidence.

THE CLERK: Plaintiff's 6?

THE COURT: Yes.

Please proceed when you are ready.

Q Doctor, did there come a time that you initially saw Mr. Djhierry Gousse as part of your practice for an accident that he was involved in back on May 14, 2020?

A Yes, I saw the patient June 26th of 2020.

Q Your file in front of you has been admitted in evidence, you can refer to it, read from it, refresh your recollection; okay?

A Yes. Thank you.

Q I am sorry, when was the first time you saw him?

A June 26th of 2020.

Q Do you know who referred him to you?

A Yes, Dr. Hanan.

Q Have you worked with Dr. Hanan before?

A Yes.

Q Do you know what type of doctor Dr. Hanan is?

A Yes, he's a rehab physiatrist.

Q When he was referred to you what areas were you specifically looking at when Mr. Gousse spoke to you?

A The right knee and the right shoulder.

Q And was that the only body parts you were dealing with?

A Yes.

Q He had other complaints, but we're going to deal with

the knee and the shoulder; correct?

A Correct.

Q When he came to you on that day, the initial visit, did he give you any type of history of what happened to him?

A Yes, he stated on 5/14 of 2020 he was using a bathroom and a piece of a ceiling fell onto his head. He fell to the ground, there was a lot of water on the ground. He had been treating with Dr. Hanan. He was having difficulties sleeping on his right side, his right shoulder. He noted also that his right knee was crackling and buckling, giving way. He had difficulties going up and down stairs. He had denied previous injuries to these to the right shoulder, right knee and he was working intermittently as a security officer due to the pandemic.

Q Now, you said a lot, why is a history -- is a history important?

A Yes.

Q Why?

A Well, you want to find out, you know, what exactly happened trying to piece together the mechanism and examine the body parts that are injured.

Q And why is the fact that he had no previous pain in his or issues with his knee or shoulder important that you put it in there?

A Well, looking at a 25 year old to see, you know, why

he's having this knee and shoulder pain. Is it acute onset, what was the mechanism, how did he, you know, what to better treat the patient.

Q Now, at that some point you reviewed all the records of Dr. Hanan?

A Yes.

Q You reviewed his narrative?

A Yes.

Q Okay. At that point when he came up to you was the treatment reasonable?

MR. BUFFALOE: Objection.

THE COURT: Sustained.

MR. TZANETEAS: Sure.

Q Could you tell me about the treatment up until he came up to you and how does that affect your examination of him?

MR. BUFFALOE: Objection.

THE COURT: Sustained. Rephrase the question.

MR. TZANETEAS: Sure.

Q Did you know about his treatment before coming to you?

A When he showed up I did ask and I found out that he -- when his injury was, that he was in physical therapy, but more importantly he was really having instability of the knee buckling and giving way.

MR. BUFFALOE: Objection. It's not responsive.

THE COURT: Sustained.

Just disregard the last answer.

Q The therapy that he was receiving, do you know if it was helping him?

MR. BUFFALOE: Objection.

THE COURT: Lay a foundation for whether those questions were asked by the Doctor.

Q Doctor, did you ask the patient if the therapy was helping him?

A When he presented he was not doing well.

MR. BUFFALOE: Objection.

THE COURT: The specific question was what you learned from the patient. So why don't you ask another question.

Q Doctor, at the point when he saw you you said he was in pain; correct?

A Correct.

Q Can you describe what pain he was feeling in his knee; you said buckling and crackling, what does that mean?

A That means that -- a crackling is usually crepitus and it's usually a sound that the knee makes when there is an injury. Your knee responds, the synovium, the tissue by trying to protect, so certain motions can cause sounds, cracking, popping.

Q And what about his shoulder, what pain was he in?

A Yes, the shoulder was having -- really difficulties

sleeping on the shoulder. On that date the bigger I believe his knee was the bigger complaint.

Q Doctor, after reviewing the medical records of prior, reviewing the records before he came to see you and reviewing them after with a reasonable degree of medical certainty was the therapy that he received reasonable?

MR. BUFFALOE: Objection.

THE COURT: Be very specific, from what doctor.

Q Doctor Dr. Hanan?

MR. BUFFALOE: Objection.

THE COURT: Lay a foundation for asking those questions. I have no idea what he's basing it on and it's a general question.

Q Doctor, did you read Dr. Hanan's records?

A I have, yes.

MR. BUFFALOE: Objection.

THE COURT: Overruled.

Q When you reviewed Dr. Hanan's records after reviewing his records was the treatment he received from Dr. Hanan reasonable before you seeing him?

MR. BUFFALOE: Objection.

Q With a reasonable degree of medical certainty?

MR. BUFFALOE: Objection.

THE COURT: All right. You can answer the question.

A Yes.
Q And what do you base that on?
A Base it on the fact he did receive therapy, Dr. Hanan sent the patient to me because there were injuries that needed an orthopedic surgeon to evaluate.
Q And what is a clinical examination?
A A clinical examination is when an orthopedic surgeon or a physician examines the actual body parts, the knee and the shoulder.
Q And tell me what was your clinical examination of Mr. Gousse on June 26, 2020?
A Yes. The right shoulder revealed forward flexion of 140 degrees, which is about this high, normal is 180 which is all the way up. Abduction is reaching to the side. He was at 90 which is to the shoulder level. Again, normal is 180. Internal rotation was 50 degrees, reaching behind your back, normal was about 70. So that was restricted. External rotation was 60 degrees, normal was 90, so restricted as well.
He had a positive speed's test which is a test really looking for the biceps. So he had some injury to the biceps, inflammation, and there was also some weakness of the rotator cuff and the rotator cuff is four muscles in his shoulder which form a tendon, the tendon attaches to the bone. When you're brain sends a signal to lift the arm up it's a cable and if it's fully intact it lifts up fully and with strength. If it's

limited in strength it's either due to a tear or due to some swelling or limitation within his shoulder.

The right knee revealed flexion which is bending the knee back. He went to about 115 degrees, normal is about 140 degrees. He had tenderness along the medial lateral joint line which is the inside and outside part of the knee.

He had a positive McMurray's test which is a test which you elicit trying to see if there is a tear in the meniscus and the meniscus is the kind of cushion between the big femur bone and the tibia bone, we have one on the inside, one on the outside. So he did have a positive test there. The anterior cruciate ligament, that was intact, that was fine.

Q Now, did you also review imaging at that visit?

A Yes, I reviewed the right shoulder and right knee MRI.

Q And what, by the way, what are MRI's?

A MRI's, well, x-rays is a test you take to look at the bones, MRI look at the ligaments and the cartilage within the knee. It's better for inside the knee, soft tissue.

Q Part of your practice do you generally usually use MRI's before you consider surgery?

A Yes, it could be a roadmap, it could help you out.

Q By the way, the MRI's, can they be interpreted different ways?

A Yes.

Q Okay. So why do you look at them instead of relying on

interpretations?

A Well, because I am actually examining the patient so I am looking at what clinically what I think the patient has and then I try and validate with the MRI and see how we can get the patient better.

Q What did you see on the MRI in terms of the right shoulder?

A The right shoulder did you have a labral tear and a tear along the labrum is the part of the shoulder where the bicep comes up and attaches, it's the socket part.

Q What did you find in the right knee?

A The right knee had tearing of the medial meniscus, but also some tearing I thought in the lateral meniscus as well.

Q What was your initial impression after that first visit of seeing Mr. Gousse?

A Right shoulder labral tear and the right knee derangement with meniscal tear.

MR. TZANETEAS: With your Honor's permission I would like Dr. Scilaris to look at demonstrative evidence of a knee and a shoulder and I want to ask him some questions about it.

THE COURT: Any objection?

MR. BUFFALOE: No, your Honor.

THE COURT: All right.

MR. TZANETEAS: Doctor, if you could step down

with your Honor's permission?

THE COURT: Yes.

Q Doctor, we'll start with the knee, is that anatomical model a reasonable representation of a human knee?

A Yes.

Q Okay. Could you tell the jury a little bit about different body parts and explain specifically to Mr. Gousse what you found upon the MRI and your examination?

A Yes. So this is the knee. It's made up of the big bone, the femur bone.

Q You have to speak up.

A It's made up of a big bone with the femur bone and the tibia bone. There is the patella which is the kneecap, you have a quadricept tendon which is the tendon down here. The patella, inside the knee you have a ligaments crisscrossing ligaments inside the knee. The anterior cruciate ligament and the posterior ligament which keep the knee from sliding forward and backwards and really gives stability with rotation.

And then in between the big bone you have the meniscus which is the cushion, you have one on the outside and one on the inside. And these when they are torn can cause pain, clicking and the knee giving way usually when it's bent, when it's bent and you are twisting, getting up out of a chair, twisting you can feel a click or a pop.

Q Now, could you show us where you saw on the MRI the

tear?

A Yes, the lateral meniscus there was signal within the body of the meniscus which is this part, the outside part, and the medial meniscus was in the back, this area way in the back on the inside.

Q Okay. Doctor, I want to show you the shoulder, is this a reasonable anatomical model of the shoulder?

Again keep your voice up, please.

A Yes.

Q Could you tell us a little bit about the anatomy of the shoulder and what you found on the MRI and examination of Mr. Gousse on that first visit?

A Yes, the shoulder, again it's a ball and socket. The humerus forms the ball, the socket, the scapula bone, the wing bone in the back and it sits together around the socket is the labrum. It gives you stability, it's where the biceps comes up and attaches.

This was torn on MRI where the biceps attached and this could cause problems when you are lifting up, if you are trying to throw a ball, anything over your head can cause pain and clicking sensation and it really gives you stability. It stops, sometimes when it's torn you feel unstable, you feel like you don't have control of it.

Q And thank you, Doctor.

MR. TZANETEAS: May he sit down, your Honor?

THE COURT: Please.

Q Doctor, I am going to go over visits with you, just so we are on the subject you performed surgery on the right knee and the right shoulder?

A I did.

Q And did the surgery, were you able to look into the shoulder and the knee?

A Yes.

Q Did you confirm these tears?

A Yes.

Q And did you take pictures of these tears?

A I did.

Q And are they in your file?

A Yes, they are.

Q Now, Doctor, why as a doctor would you take photos of someone's knee or shoulder while you are doing surgery?

A Well, it's good to document what you did and to show the patient and to also, you know, remind so I can go over with the patient and get a plan afterwards of physical therapy.

Q Now, have you had MRI's, have you had MRI's where they show one thing and you go in and find another?

A Yes.

MR. BUFFALOE: Objection.

THE COURT: Overruled. You could answer the question.

A Yes. I am sorry.
Q In this case did you find anything different?
A No, the actual MRI did correlate with my examination and with the surgical finding.
Q Are they -- who is in a better position to determine what is wrong with somebody in terms of MRI or actually looking into the body part?
MR. BUFFALOE: Objection.
THE COURT: Ask him if he's got an opinion on this.
Q Do you have an opinion with a reasonable degree of medical certainty whether just looking at the MRI or actually operating on someone and looking in is in a better position to determine what is wrong with that body part?
A I believe clearly looking in is going to give you the best indication what is wrong and to fix it.
Q Okay. Why is that?
A Because you are actually looking at it. Again, the MRI's is a roadmap, it should correlate with your physical examination.
Q Okay. So on that first visit on June 26, 2020 did you come up with a treatment plan?
A Yes. We had discussed arthroscopic surgery of his knee.
Q And what would involve arthroscopic surgery to his

knee, tell me what that is?

A It is surgery that is performed where we look inside with a camera, you can perform it with two little incisions, and you evaluate as a surgeon the entire knee. You take pictures of it and you actually fix the problem.

Q Okay. And what would that type of surgery to his knee do to help fix that problem that he was having?

A Yes. The feeling of buckling and giving way. The goal is to go inside and actually fix the problem that is causing that. In his case he did have tearing of the meniscus.

Q Okay. And did you discuss the pros and the cons of surgical intervention to his knee at that point?

MR. BUFFALOE: Objection, leading.

THE COURT: Overruled. Well, it's preliminary.

A Yes, I did go over it.

Q What was discussed with him?

A Pros and cons were discussed, anesthetic complications, including but not limited to death, surgical complications, continued pain, stiffness, weakness, need for more surgery, infection, development of nerve injuries, bleeding, thrombosis and even death.

Q And why was the knee chosen -- strike that.

With a reasonable degree of medical certainty did you also examine the shoulder that day; correct?

A Yes.

Q And why did you choose the knee to operate on first?
A Because he was experiencing the buckling and giving way and I believe that, I believe was the bigger problem.
Q What did you recommend at that point for the shoulder?
A Well, the shoulder was continued therapy.
Q Okay. And Doctor, did after consulting with you did you perform the surgery?
A Yes, I did.
Q When was the surgery performed?
A August 11th of 2020.
Q And you have the operative report in your file?
A Yes, sir.
Q Where was the operation, where did it take place?
A Health East Ambulatory Surgical Center.
Q Where?
A In New Jersey.
Q Is that one of your offices that you are a part of?
A Yes, that's one of the surgical, that's a surgical center.
Q Okay. Who chose that office?
A The patient gets a choice, so when I indicated surgery then depending on what date or where they want to have the surgery, Tuesdays I operate in New Jersey, Wednesdays I am in the city, and then once a month I am in the hospital.
Q Okay. Could you tell us the surgery, a little bit

about the procedure that you did on 8/11 2020?

A Yes. So, surgery was performed. When I first went in there was significant amount of inflammation, synovitis. As I mentioned earlier the synovium is part of the knee and even in the shoulder, that again if there is something that is injured it becomes hyperactive or it thickens and it starts producing fluid, that's why you get a fusion from swelling sometimes, so there was quite a bit of inflammation.

The cartilage itself looked good, 25 year old guy, no real signs of arthritis. He did have a tear on the inside meniscus and that was in an area, so the meniscus, excuse me, the front part of the meniscus does not have blood supply so once it tears it stays torn. The back part it does have blood supply, so sometimes those can kind of heal up because there is blood there. So when you go in and you have to fix a meniscus in what we call -- it's really called the white white zone because there is no blood supply. So that part you have to take the torn piece out so it doesn't progress.

If you keep falling and buckling and giving way the tear can get bigger and then later on you might lose all of your meniscus which we know is not a good thing. So, medial meniscus I had to take out about 20% of that meniscus. There was also some scar tissue in the front of the ligament, the intra-cruciate ligament, so I debrided that and there was a tear on the lateral outside meniscus, about 30% of that was -- had to

be taken out, again that was also in the area where there is no blood supply.

Q Doctor, you talk about arthritis, what is the term degenerative mean in terms of knees?

A Yes, degenerative it means that it's wear and tear over time. He had really no signs of any cartilage injury or any arthritis in his knee.

Q And what would that indicate to you three months after the accident?

A I would say that the meniscal tear is the cause of his pain and his giving way.

Q And I want you to assume that the defendants are going to bring in a doctor that's going to testify that the knee meniscus tears were caused by a degenerative condition; do you agree with that?

A I do not.

Q Why not?

A Twenty-five year old guy does not get a degenerative meniscal tear. I was in there, I looked at it. I actually took the torn -- there was a torn meniscus, it he wasn't a degenerative meniscus tear of a 70 old. This was an acute traumatic meniscal tear in a young man.

Q Now, you reviewed a bunch of records, I want you to assume that the plaintiff testified that he did not go to the emergency room after and he complained the next day of shoulder,

knee, neck and back pain. I am just concentrating on the knee for now. Is that any significance to you with a reasonable degree of medical certainty that he didn't have complaints immediately after the accident?

MR. BUFFALOE: Objection.

THE COURT: Sustained.

Q I want you to assume plaintiff testified that he had no knee pain immediately after the accident, is that significant to you?

A Is that --

THE COURT: Is that what? I am sorry.

Q Significant to you?

MR. BUFFALOE: Objection.

THE COURT: Overruled.

A I think, you know, when you get injured especially if something hits your head you have the fight or flight syndrome, your adrenalin is pumping, you are worried about probably your head more than anything else.

MR. BUFFALOE: Objection.

THE COURT: Sustained. The question calls for a yes or a no.

MR. TZANETEAS: It does not, Judge.

THE COURT: You asked is it significant.

MR. TZANETEAS: Okay.

Q When you said yes, you said no, why is it not

significant to you?

A Because there are times when people get injured that especially if something hits your head you are --

MR. BUFFALOE: Objection.

THE COURT: Sustained.

MR. TZANETEAS: What is the objection, your Honor?

THE COURT: Ask a question that can be where the response is appropriate.

Counsel, I know it's unintentional, but any facial expressions you have to forgive me, but if you have any objection you raise it, you need to make a record you make a record, but facial expressions.

MR. TZANETEAS: Your Honor, I feel my questions are appropriate. I feel that there is just --

THE COURT: Yes, and we disagree sometimes.

MR. TZANETEAS: This is just prolonging the situation.

THE COURT: I am so sorry you feel that way. Please ask your next question.

MR. TZANETEAS: Okay.

Q Doctor, I want you to assume that the plaintiff did not complain about his knee immediately after the accident, but he complained the next day --

MR. BUFFALOE: Objection.

THE COURT: He didn't complete his question.

MR. BUFFALOE: Sorry, sorry, Judge.

Q Is that of any significance to you?

MR. BUFFALOE: Objection.

Q Yes or no, and then I will follow-up?

THE COURT: Overruled.

A It is not significant.

Q Why not?

A Because people can experience aches and pains even the following day, a couple of days later, it doesn't have to be immediately especially if your adrenalin is pumping.

MR. BUFFALOE: Objection.

THE COURT: Overruled.

Q Is that true also with the shoulder?

A Yes.

Q Okay. Is that true of any body part?

MR. BUFFALOE: Objection.

THE COURT: Overruled.

A Yes.

Q Okay, thank you.

Now, when the surgery was completed did you make any recommendation to Mr. Gousse?

A Yes. Saw the patient back three days after the surgery. Went over the pictures with the patient and we together developed a plan of therapy and to rehab the knee.

Q Okay. What type of rehab of the knee did you recommend

for Mr. Gousse?

A Yes, so the meniscus surgery, again unfortunately I had to take out the meniscus so therapy can start immediately. So I like to get the patient off the cane usually within three or four days and start therapy pretty quickly because you want to get motion and strength.

MR. BUFFALOE: Objection.

Q Did you prescribe a cane?

THE COURT: I am sorry, what was the question and answer?

(The record was read back.)

THE COURT: Forget about the last answer, it was not responsive to what was asked.

You can ask your next question.

Q What type of therapy did you prescribe for Mr. Gousse after the surgery?

A Range of motion, modalities, strengthening of the quadricepts.

Q Why you did you recommend that type of rehab for Mr. Gousse?

A Because he just had surgery and you really want to rebuild the muscle and the strength to get him strong again.

Q Now, you said you removed part of the meniscus, what effect, if any, does that have on Mr. Gousse's knee?

A Yes. Removing the meniscus, when you lose the meniscus

it unfortunately initially it will really help with the buckling and the giving way, but down the road when you lose the cushion you increase really the pressure, the contact pressure that the big femur bone does to the tibia. So you are susceptible to injuring the remainder of the meniscus and causing even some arthritis.

THE COURT: I just need some clarity. Before you testified that you removed 20% I think of the interior or exterior of the meniscus and then 30% either of the interior or exterior, but you testified you removed the meniscus, can you just clarify?

THE WITNESS: Yes. The medial meniscus, there is one on the inside, one on the outside. The inside I removed 20% of the meniscus and in the medial, the lateral was 30, so 20 on one side, 30 on the other.

THE COURT: It wasn't the full meniscus?

THE WITNESS: No.

THE COURT: Thank you.

Please continue.

Q Did you continue following up with Mr. Gousse after the accident, I mean after the knee surgery?

A Yes.

Q When was the next visit you saw him?

A Next visit was October 9th of 2020.

Q On October 9, 2020 did you examine Mr. Gousse?

A Yes.
Q Could you tell me at that visit did you ask Mr. Gousse about any complaints he had to his right knee?
A Yes. He felt much improved from his right knee surgery.
Q Did you do a physical examination on him at that point?
A Yes.
Q What was the physical examination and what did it consist of?
A His right knee revealed healed incisions, he had flexion of 125 degrees, so that had improved. Extension was zero degrees which was normal. He did not have any tenderness on the medial or lateral part of the knee, so the meniscus surgery helped him.
Q At that point did you make any follow-up recommendations for the knee?
A The knee again was just continue therapy.
Q And at that point did you have any recommendations for the shoulder, the right shoulder?
A Yes. The shoulder he continued to have some apprehension, clicking and pain and surgery was discussed with the patient.
Q Okay. And why was surgery discussed with the patient on the right shoulder?
A He continued -- on examination he continued to have

some apprehension and apprehension of the shoulder is when you have a tear in the labrum. You can usually do things below the level of the shoulder, it's when you lift up and you try and reach like throwing a ball, if the labrum is torn the ball tends to slide a little bit and it can be you painful so people feel apprehension about using it overhead.

Q The surgery that you recommend, what type of surgery was that?

A It was arthroscopic surgery of the shoulder with anticipation of a labral repair.

Q Did you perform that surgery?

A I did.

Q When was the surgery performed?

A 11/12 of 2020.

Q Where was it performed?

A Health East Surgical Center.

Q And could you tell us the procedure that you performed on that day?

A Yes. It's arthroscopic surgery. Patient comes in, he has a block, the arm is -- anesthesia numbs the arm, you don't go to sleep completely. And then with a camera I make an incision, I look in and I can visualize the joint. So I look inside the joint and then above the tendon as well.

Q Okay. And what did you find when you looked in and saw the joint and the tendons?

A Yes. There was a torn labrum which is again where the bicep comes up. He tore the labrum here and extended inferiorly which is kind of down in the front, a little bit in the back. There was a lot of really inflammation, synovitis as well. So that was -- that was debrided. The tear, I did not have to stitch the tear up, it was just the top part that was torn. So I debrided that and tightened up the remainder of the labrum.

Q And let's talk about arthritis and degeneration again, when you looked into his shoulder tell us what you found, if anything?

A Yes, there is no arthritis. Again, a 25 year old shoulder. There was a tear in the labrum and synovitis consistent with an acute tear.

Q And Doctor, did you -- after the surgery, by the way, both these surgeries did he have to stay overnight at all?

A No, they're outpatient.

Q Okay. And after the surgery did you have a recommendation for him after you finished the surgery?

A Yes. The patient was seen back, surgery was the 12th, so I saw him back on the 20th. At that time he was feeling better. I discussed the surgery and the plan moving forward which was to begin aggressive therapy.

Q Doctor, with a reasonable degree of medical certainty was the May 14, 2020 accident a competent producing cause of the tear of the meniscus in his right knee?

MR. BUFFALOE: Objection.

THE COURT: I think that was asked before; wasn't that?

MR. TZANETEAS: It was not, Judge.

THE COURT: All right, I am going to overrule it.

A Yes.

Q What do you base that on?

A I base it on the fact that there was no prior injuries, complaints of the right knee. He had an injury, had surgery, finding consistent with the meniscal tear on a 25 year old.

Q I want you to assume that plaintiff testified and he will testify that on May 14, 2020 a ceiling fell on top of his head and right shoulder. As a result he slipped, hit his right knee against the wall, fell backwards and his body twisted and snapped backwards hitting the floor. With a reasonable degree of medical certainty was the right knee meniscus tear, the accident of May 14th caused the condition that caused the tear?

MR. BUFFALOE: Objection.

THE COURT: Overruled.

A I believe so.

Q What do you base that on?

A Again, based on no prior history of an injury, had this mechanism, had surgery, had clinical examination, MRI findings and surgical findings, putting all that together I would say it is.

Q Okay. Now, the shoulder, the labral tear that you found in the shoulder, I want you to assume the same facts, the ceiling hitting him on his head and right shoulder as a result twisted his body, hit his knee against the wall and falling backwards snapping his neck and torso. With a reasonable degree of medical certainty was the labral tear caused by the May 14, 2020 accident?

A Yes.

Q What do you base that on?

A Based on no prior, once again no prior injuries, there is that mechanism and clinical examination with MRI, with surgery I believe it is.

Q By the way, we talked about the degenerative condition in the knee and the shoulder, could you tell us with a reasonable degree of medical certainty whether degenerative condition in the knee is always painful?

MR. BUFFALOE: Objection.

MR. TZANETEAS: How about this, I'll withdraw it.

Q Could you tell us in medical terms what asymptomatic means?

A Asymptomatic is when something doesn't bother you.

Q Could you relate it to what a degenerative condition is in the knee first and then the shoulder?

A Yes, if someone has arthritis in the knee there could be flare ups, some people do fine and some people have swelling

, pain.

Q And did you find records that contained any prior swelling, flare ups of Mr. Gousse to his right knee?

A No.

Q What about his right shoulder, what is an asymptomatic degenerative condition of the right shoulder? What is it?

A An asymptomatic --

THE COURT: The question is what is an asymptomatic tear of the right shoulder?

MR. TZANETEAS: Degenerative condition of the right shoulder.

A If someone has --

THE COURT: I am sorry, ask the question again.

MR. TZANETEAS: Sure.

Q Doctor, could you explain to the jury what asymptomatic degenerative condition is in a shoulder?

THE COURT: Overruled.

A Okay. Degenerative condition would be arthritic. If someone has arthritis in the shoulder there are times when you could have pain and swelling and you could have some limitations in motion, asymptomatic means you are not having any symptoms.

Q Okay. And did you continue to see Mr. Gousse for a period of time after your shoulder surgery?

A Yes.

Q When was the next time you saw him?

A I saw him November 20th postop and then January 8th of 2021.

Q And what about the next time after January, 2021, when was the next time you saw him at?

A March 30th of 2021.

Q After that?

A At that point I had done all that I could in terms of surgery and now the postop care --

THE COURT: What was the last question? I am sorry.

(The record was read back.)

THE COURT: All right. I think, well, was there any further treatment after March 30, 2021?

THE WITNESS: I --

THE COURT: That's a yes or no.

THE WITNESS: Well, by me or --

THE COURT: Yes, by you.

THE WITNESS: By me? No, he was referred back.

THE COURT: All right. Thank you.

All right, you could ask your next question request.

Q Why in March of 2021 did you stop seeing him?

A Because at that point I was going to send him back to -- we have doctors who sent him to me to continue with the rehab.

Q And could you tell us on March, 2021 was he -- could you tell me his symptomology on -- what was the date, March --
A March 30th.
Q -- of 2021, could you tell us the complaints he made to you on that day?
A Yes, the right shoulder still complaints of some stiffness, but the shoulder was improving slowly.
Q And what about the right knee?
A You know, the right knee I think I concentrated on his shoulder at that time.
Q Okay. Last visit to his right knee, how was he doing with his right knee?
MR. BUFFALOE: Objection.
THE COURT: I am sorry, at 3/30, on 3/30 2021 I think.
Q On 3/30 2021 did you examine his knee?
MR. BUFFALOE: Asked and answered.
THE COURT: I will let you answer it again.
A No.
Q Okay. When was the last time you examined his knee?
A I believe in October, October 9th I did examine the knee.
THE COURT: That was 2020?
THE WITNESS: Yes, sir.
THE COURT: Thank you.

Q In October 9, 2020 could you tell me what complaints he had of his knee?
A He was feeling much improved from his knee on that date.
Q Did he still have pain?
MR. BUFFALOE: Objection.
THE COURT: Is there an indication in the records that the patient indicated whether he was suffering from pain?
THE WITNESS: I don't have anything about pain.
Q Okay. My question, Doctor, on my office's request, the attorney's office requested that you conduct an examination of Mr. Gousse on 10/9 2025?
A Yes.
Q And did you generate a report?
A Yes.
Q Okay.
MR. TZANETEAS: Can I show my Doctor the report, Judge, and admit it into evidence, Judge? I am going to have to refresh his memory.
THE COURT: Well, it could be marked for ID, if he needs his memory refreshed you can refresh it.
MR. TZANETEAS: Okay.
THE COURT: So that will be Plaintiff's 7 for identification. Go ahead.

Q Doctor, when you performed an examination of Mr. Gousse on, sorry, 10/9 2025, did you perform tests to the right knee at that point four years later after the you saw him?

A Yes.

Q And could you tell us the complaints he made to you four years later when he saw you about his right knee, if any?

If you need to refresh your memory, look at it, and then look up and tell me what is refreshed. Please don't read from it.

A Okay.

THE COURT: Would you mind turning it over? Do you need your memory refreshed? Do you remember?

THE WITNESS: I have to look at it.

THE COURT: Okay, why don't you take a look at it.

THE WITNESS: Thank you. All right.

Q Could you tell us the complaints he had on that day when he saw you four years later, approximately, four years later?

A Yes, I examined the knee. I used a goniometer which is an instrument to try to get the most accurate motion. He had pain of the kneecap. When I flexed the knee he flexed, bent the knee about 120 degrees and he extended out to zero. There was pain and tenderness along the patella , the kneecap. There was a negative McMurray's, so there was no sign of any recurrent meniscal tear which is good. I also used a tape measure to see

about the girth or the size of the quadricepts of his right knee versus his left knee. He had about a half inch less strength or muscle of the right knee.

Q And what is the significance of that, if any?

A That tends to say that there is still a little bit of atrophy or you haven't gotten your strength completely back.

Q And you said the restriction of the bending, could you tell us what normal is?

A Yes, normal is 140, 140, 140 degrees, he was at 120 on this date.

Q And four years later is that significant?

A Yes, because it's not -- you would hope it would be a little more than that.

MR. BUFFALOE: Objection.

THE COURT: Sustained.

Just disregard the last answer. Thank you.

Q What is the significance, if any, that it was restricted four years later twenty degrees?

A That tells me that sometimes this is his new normal motion.

Q With a reasonable degree of medical certainty is a permanent restriction?

A Yes.

Q And why so?

A Because it's four years after surgery, you would have

expected more motion?

Q And did he make any complaints of pain to you on that day?

A Just when the kneecap was pressed.

Q Okay. And strike.

Any other examination to the knee at that point?

A I am sorry, can you repeat that?

Q Any further examination to the knee at that point --

MR. BUFFALOE: Objection.

Q -- besides what you already told us?

A No.

Q Now, with a reasonable degree of medical certainty upon your visit four years later does Mr. Gousse need any future treatment to the right knee?

MR. BUFFALOE: Objection.

THE COURT: Do you have an opinion as to treatment at this point in time? That's yes or no.

THE WITNESS: Yes.

THE COURT: All right. So why don't you go on.

Q What is your opinion?

A My opinion --

Q Just for the knee for now.

A My opinion is he had the surgery, the meniscus surgery was successful, but unfortunately one of the problems can be limitations in motion, some starting of some arthritis or other

things within the knee. So I do believe he's going to need treatment of this knee.

Q With a reasonable degree of medical certainty is Mr. Gousse going to need any future surgery as a result of this accident, May 14, 2020?

MR. BUFFALOE: Objection.

THE COURT: Lay a foundation for the doctor being able to answer that question.

MR. BUFFALOE: Judge, can we approach on this?

THE COURT: Yes .

(Proceedings held outside the presence of the jury.)

MR. BUFFALOE: I am going to show you the narrative report that Dr. Scilaris prepared in October, 2025. His recommendation into the future treatment is set forth there, they do not include surgeries.

THE COURT: Give me just a moment. You want me to look at the conclusion; is that right?

MR. BUFFALOE: Yes.

MR. TZANETEAS: Look at the last sentence, Judge.

THE COURT: I'll read the whole thing, I will get to the last sentence.

All right. Well, the last sentence does say quote "due to his age and response to treatment and injections to a reasonable degree of medical certainty he would be

indicated for revision surgery to the right knee and right shoulder." End quote. All right. I am going to overrule the objection.

MR. BUFFALOE: Judge, that is contingent upon failure of the treatment that he actually recommends so that is speculative in nature.

THE COURT: Well, I am implying in the last sentence that the response to treatment was negative.

MR. BUFFALOE: But he's recommending treatment in the two paragraphs prior, then he says depending on how he responds to that treatment.

THE COURT: Well, you'll be able to cross examine him and you'll be able to indicate whether or not the jury accepts this as being inconsistent or not. All right, thank you.

(Proceedings held in open court, jury present.)

THE COURT: You can proceed.

MR. TZANETEAS: The objection has to be ruled upon.

THE COURT: The objection is overruled. You could either ask the question or I will have the reporter read it back.

MR. TZANETEAS: I will ask the question again.

Q To a degree of medical certainty is Mr. Gousse going to need future surgery for his right knee in the future?

A Yes.

Q And what type of right knee surgery will he need in the future?

MR. BUFFALOE: Objection.

THE COURT: Sustained.

Q With a reasonable degree of medical certainty what type of surgery will Mr. Gousse need?

MR. BUFFALOE: Objection.

THE COURT: Why don't you ask the question in a way that indicates what conditions would be required for such procedures to occur.

Counsel, I know, let me -- I am sorry, let me speak. I know it's involuntary, but I am telling you stop with the expressions. Stop. Just don't do it and I promise you when I say something that I think is inappropriate or whatever I won't make any expression either. I'll be deadpan.

MR. TZANETEAS: Your Honor, I apologize, it's my face, I am trying. I am looking down.

THE COURT: It's not your face, it's the expressions on your face.

MR. TZANETEAS: I don't think there is anything inappropriate. I am asking my doctors questions and every question is a problem.

THE COURT: He has a right to raise objections,

the Court makes a decision and then you abide by them. That's how it works, no facial expressions at all.

MR. TZANETEAS: I will try my best, Judge. I am trying to move this along. I am sorry if I am making facial expressions.

THE COURT: Members of the jury, you are going to make a determination on the evidence, not what is said between the Judge and the attorneys and the attorneys and the Judge. You are the deciders and the judges of the fact facts here, so don't take any of this into consideration, it shouldn't be. We're all human. We make expressions, sometimes they're involuntary. You hear a joke, you can't help laughing. So let's move on.

Q What are the conditions that he will need to have the surgery?

A Yes, when a young person 25 years of age has surgery, meniscus surgery and you remove the cushion you increase stresses so you are susceptible to arthritis and more stress on the meniscus. So, usually by the third, the fourth and fifth decade when someone is in their forties and fifties there is a progression of meniscal tearing, more arthritis.

MR. BUFFALOE: Objection.

THE COURT: Overruled.

A So, the types of surgery, treatments would be injections, therapy. If those don't work then there are times

when a revision arthroscopy is needed and ultimately if the arthritis wasn't sometimes a knee replacement.

MR. BUFFALOE: Objection.

THE COURT: Overruled.

Q Now, with a reasonable degree of medical certainty will Mr. Gousse eventually need the surgery because of his age?

MR. BUFFALOE: Objection.

THE COURT: Sustained.

Q Will Mr. Gousse need this surgery in the future with a reasonable degree of medical certainty?

MR. BUFFALOE: Objection.

THE COURT: Can you answer that question?

THE WITNESS: Yes.

THE COURT: Is it contingent on any particular factors?

THE WITNESS: Depending on what type of --

THE COURT: So why don't you answer the question?

A So, again, depending on the progression of increased meniscal problems and arthritis revision arthroscopy would be more likely.

MR. BUFFALOE: Objection.

A And then --

THE COURT: Overruled.

A And then if that fails and it keeps progressing and there is problems then the knee replacement is the last option.

Q Is that with a reasonable degree of medical certainty?
MR. BUFFALOE: Objection.
THE COURT: Overruled.
A Yes.
Q Now, the shoulder that you examined on 10/9/25, could you tell us the complaints and problems and findings you had with the right shoulder on that date, please?
A Yes. There was pain of six out of ten of the shoulder. Motion of the shoulder was 160 degrees, I am sorry, for flexion, so improved a bit from the first time I saw him. Abduction was 110 degrees, internal rotation was 60 degrees, external rotation was 65 degrees. There was impingement of the shoulder. And I like to add the patient did have a cortisone injection by Dr. Hanan prior to coming to see me.
Q Okay. And with a reasonable medical certainty is Mr. Gousse a candidate for any type of surgery to his right shoulder in the future?
MR. BUFFALOE: Objection.
THE COURT: Are you talking about now or in the future?
Q Based on your last examination of 10/9/25 with a reasonable degree of medical certainty is Mr. Gousse going to need any type of future shoulder surgery as a result of the 5/14 2020 accident?
MR. BUFFALOE: Objection.

THE COURT: Overruled.

A I believe based on his findings he has what we call adhesive capsulitis, when the capsule around the shoulder tightens up. So he doesn't have his full motion, he even had a recent cortisone treatment and that's a treatment, cortisone and therapy, if that doesn't work there are times you consider what we call a manipulation which is breaking through the scar tissue and releasing some of the tissue in the front to get the full motion back. So I do believe he's a candidate for that.

Q With a reasonable degree of medical certainty what type of surgery in the future will he need to his shoulder, right shoulder?

A I believe --

MR. BUFFALOE: Objection.

THE COURT: Overruled.

A I believe based on his adhesive capsulitis, did have a cortisone injection, that he is a candidate for the manipulation, the arthroscopy component.

Q With a reasonable degree of medical certainty --

THE COURT: I am so sorry, I don't know whether that means he's going to have to, you believe he's going to have surgery or he's a candidate for having surgery? I don't know what you mean by that.

THE WITNESS: I think he is going to have surgery.

THE COURT: Thank you.

Please ask your next question.

MR. BUFFALOE: Objection.

THE COURT: Overruled.

Q Is that with a reasonable degree of medical certainty, Doctor?

A Yes.

Q With a reasonable degree of medical certainty are these future surgeries that Mr. Gousse is going to have or will have, was the May 14, 2020 accident a competent producing cause for the need of these surgeries?

A Yes.

MR. BUFFALOE: Objection.

THE COURT: Please read back.

(The record was read back.)

THE COURT: All right, there's already been testimony. So I am going to allow it because I don't think it does anything, the testimony is no different than it was before, it's causation.

MR. TZANETEAS: Your Honor.

THE COURT: I just said the witness can answer the question.

Go ahead.

A Yes.

THE COURT: The answer is yes. Ask your next question.

Q What do you base that on?
A Based on no prior injuries, the injury on that date with treatment, examination, surgery, intraoperative findings.
Q Now, with a reasonable degree of medical certainty what does the future hold for Mr. Gousse's right knee besides the surgery and treatment?
A The right knee has stiffness. He has flare ups, he will need treatment, medications, injections, physical therapy and surgery.
Q With a reasonable degree of medical certainty is the pain that Mr. Gousse feels in his right knee, was the May 14, 2020 accident competent producing cause of his pain?
A Yes.
Q With a reasonable degree of medical certainty will Mr. Gousse continue to have pain in his right knee as a result of the May 14, 2020 accident?
MR. BUFFALOE: Objection.
THE COURT: Can you answer that question?
A Can you rephrase.
Q Doctor, I want you to assume that Mr. Gousse continues to complain of pain in his right knee.
THE COURT: Rephrase the question.
MR. TZANETEAS: I am using a hypothetical, Judge, subject to connection with my client.
THE COURT: Rephrase the question. I am not going

to allow that hypothetical.

Q Dr. Scilaris --

THE COURT: For the record, considering that you are making another facial expression --

MR. TZANETEAS: I am not making a face, I am thinking.

THE COURT: Yes, I believe that's your position.

MR. TZANETEAS: Can I make a record on this, Judge, please.

THE COURT: Let me make a record first.

MR. TZANETEAS: No, Judge, not in front of the jury. It's inappropriate, Judge. It's inappropriate.

THE COURT: All right. So we're going to take a ten minute break. Thank you.

COURT OFFICER: All rise. Jury exiting.

(Jury exiting.)

THE COURT: I am going to ask you to wait in the hallway and just ask everybody in the courtroom to just wait in the hallway for a moment. Thank you.

All right why don't you make your record first.

MR. TZANETEAS: Yes, your Honor. I am asking questions that are appropriate. They have foundation. I am not saying all my questions should not be objected, but every single one of my questions is being objected to and your Honor is thinking about it and sustaining them and you

are claiming I am making faces I can't control. I am trying to look away. I am looking away from the jury. I am trying to understand why my questions are wrong. I don't want to keep wasting the Court's time, wasting the jury's time, but since this trial has started with defendant he's objecting to go everything, which is fine. He has a right to object to everything. At some point, your Honor, it can't go on everything I ask is objection. He told you there was no surgery in the report and there is surgery in the report. He told you objection to the MRI saying it wasn't -- well, it's not properly foundation and it was, you had to read the charge. He's been doing this for a long time, Judge. So it's hard to imagine that he doesn't know what he's doing as far as that, it's impossible. It's fine. He wants to object the entire time, I can't help it if I am making faces, I apologize, Judge. I don't realize I am. I am trying to look away from you because maybe I am doing it involuntary. I am not doing it on purpose. I have no idea what I am doing, the faces. I do apologize. I am trying to look down and not look at you. I don't know if I am looking at you and making a face, I have no idea. You are right. I shouldn't be making faces, if I am I apologize. But a lot of these questions, Judge, are perfectly fine questions. The other day when I said, you asked me do you want him here the

whole day, yes, this is why, Judge. This is obstruction. This is a problem and I am trying to ask the right question. I am trying to rephrase it. I feel a lot of my questions are correct. And just for the record if I am making a face, Judge, I am sorry. I am trying my best. I don't realize I am doing it. I am trying to look away from you, look down, look behind the TV. If you want me to apologize to the jury I will, Judge, but I don't do it on purpose. I am just trying to figure out, you know, how to ask the next question without objecting. I don't think there is anything wrong with my questions. So I apologize for that, Judge, but it's really difficult to keep getting objected to which is of his right. He wants to do it this way no problem, the jury sees that. All I need to do is try to get the next question out and try to save the Court time. I am trying to cut down my questions, too, Judge, it's impossible.

THE COURT: When an objection and it's overruled it doesn't play well in front of a jury. There is a justice at the end of the day given that your perception is that the objections are inappropriate or unfounded or meant to harass or meant to interrupt, so there is a price to be paid before the jury when you are doing that and you are getting overruled constantly. So, that's an issue that I think takes care of itself over the course of the trial.

Mr. Buffaloe, what do you want to say?

MR. BUFFALOE: Judge, I believe we're having this conference about not the objections themselves, but plaintiff responding to those objections with facial expressions that the jury can see. He's been doing that throughout. He did it during my opening statement. You instructed him to refrain and he refuses to refrain. Whether or not my objections are appropriate or inappropriate, whether or not they're sustained or not sustained is irrelevant to that. Appropriate conduct in the courtroom and that courtroom should be abided by and Mr. Tzaneteas, this is not his first time doing this so. He clearly knows this and the idea that this is completely involuntary as opposed to him a way of expressing his disdain to the jury nonverbally defies belief.

I do want to add regarding my objections, Dr. Scilaris mentions in his report the possibility of revision surgery sometime down the road if other conservative treatment doesn't succeed. He is now testified on the stand about a knee replacement in the future, that's nowhere in his report. This witness should be confined to the four corners of the report because that's what I am on notice of. I am not on notice of knee replacement speculatively testified to about some point in the future. There is no mention of that in the report. So

my objections are valid. He's eliciting testimony that goes beyond what his doctor actually told me that he was going to say.

MR. TZANETEAS: Your Honor, may I address that?

THE COURT: Yes.

MR. TZANETEAS: I have never in how many years have anybody object to MRI films coming into evidence saying that you need an affirmation when the second part clearly says something that your Honor read, read on the record, and now he's saying that my treating doctor can't testify to future surgeries if it's not in the report. There is so much caselaw that says my treating doctor can testify to future surgery, just because I did a narrative or 3101(d) doesn't take away his right as a treating doctor.

THE COURT: He is here as a treating physician.

MR. TZANETEAS: Yes. This is the type of motions that he's making objections to when he knows the law is not that, that's why it's wasting time.

As far as making faces on your opening, I was sitting behind you. Unless you have eyes in the back of your head it's ridiculous.

THE COURT: All right. So, I think we should get the jury back.

You didn't having anything else to add; did you?

MR. BUFFALOE: I did.

THE COURT: Make it fast.

MR. BUFFALOE: Judge, his doctor cannot get up on the stand and just testify as to anything which seems to be what he's suggesting. There is a requirement on the 3101(d) that I get notice on what he intends on his doctor testifying. For the first time I am hearing about a knee replacement, speculative testimony. So I could object to that. I have a right to object to it.

THE COURT: There are different rules that apply with a treating physician than there are with an expert witness.

MR. BUFFALOE: He was disclosed as an expert so he could testify about future care, when he's a treating physician he's confined to his notes and his reports that have been disclosed to me.

MR. TZANETEAS: He's not.

MR. BUFFALOE: About future care and the need for future care, that's different.

THE COURT: I am not quite so sure you are correct about that, when it comes to a treating physician testifying, but we're going to leave it there. We're going to take a break.

(A recess was taken.)

COURT OFFICER: All rise. Jury entering.

(Jury entering.)

THE COURT: Please, everybody sit down. Thank you. Let me impart to all of you that, you know, the attorneys and the judge we all respect one another, sometimes we disagree. And there is no such thing of a perfect trial, but what I am here for and really what you are here for is that there is a fair trial, that's what really counts and we're going to move on and questions will be asked, the witness will give answers and you are going to hear the testimony of all the various witnesses and you are going to consider all the exhibits at the end of this trial and then you are going to deliberate. Let's move forward. Thank you.

MR. TZANETEAS: Thank you, Judge.

Q Doctor, I am taking a look at what is marked as plaintiff's Exhibit 6 which is the June 16, 2020 MRI's of the right knee, could you tell us on the screen what we're looking at and a little bit about the picture?

A Yes, yes. This right here is the femur, this is the tibia bone. Can you see my pointer? And then this is the fibula which is the outside part of the knee.

So this MRI is going from the outside in, so I am looking at it from the side view.

The meniscus here, this is the back part and this is the front part of a lateral meniscus. It should be a black

triangle which you start to see a little fluid.

Q What does the fluid mean?

A Fluid means that anything that is white means there's fluid so that means there is a tear within that part of the meniscus. So if you scroll down there is a line, a white line that shows that the posterior horn into the body of the meniscus has a tear, and the anterior horn as well, this is the lateral meniscus, you could see this is a black triangle and this is flattened. It should be more of a triangle.

Q Could you tell me about degeneration by looking at that picture?

A Degenerative meniscal tear will have fluid signals throughout the whole meniscus and it's usually in someone older.

Q Did you find that here?

A No.

Q Okay.

A So then we come in, this is posterior cruciate ligament, this is the anterior cruciate ligament right here. This is the front part of the knee, that looks fine, and then we come now to inside the medial meniscus, and again, the triangle is here, and the other triangle is here and there is signal change within the meniscus of the posterior horn. So, the MRI coincided with the physical exam and the surgery.

Q Okay. I am going to switch to what's in Exhibit 4, just using the mouse for a minute, let me get this, I got the

wrong one. Hold on.

MR. TZANETEAS: Judge, this is contained in his Exhibit 4, would you like me to mark it as a separate exhibit or leave it as Exhibit 4 in his file?

THE COURT: You can leave it as Exhibit 4 in the file, but what is on the screen can you somehow identify it so that anybody in the future will know exactly what we're looking at.

Q Please identify what this is, Doctor.

A Yes, this is the knee. So, this is picture one. So as soon as you enter the knee the camera goes in and what is noticed is a lot of red, that's the synovium. So the joint was inflamed. Usually a young person why is it inflamed, usually from an injury, a traumatic injury, a tear.

MR. BUFFALOE: Objection.

THE COURT: Overruled.

MR. BUFFALOE: As to usually, Judge.

THE COURT: Overruled.

A So then this is a kneecap, the patella, so I am looking up at the patella and there is a lot of synovitis here. Coming down to the medial, this is the medial meniscus. This is the femur bone, the tibia of the -- of the knee, and this is the tibia bone down here. The meniscus is the cushion. There is a tear of the posterior horn. So this, you can see here that's a biter, it's an instrument that goes in and takes the torn piece

out so it doesn't progress. It solves -- it makes the buckling go away, but again it can cause problems down the road. Then this is the anterior cruciate ligament.

All this is a scar tissue, you can see this, he developed all this scar tissue from trauma. So there was some bleeding and some inflammation, so you have some scar tissue in front of the ligament, I debrided that out.

And then there is a tear of the lateral, the outside meniscus and unfortunately this one about 30% I had to take out. And then looking at the end this is the knee. So everything was cleaned out.

Q Now with a reasonable degree of medical certainty did you finds any degenerative condition in his fee?

A No.

Q With a reasonable degree of medical certainty, these photos, do they show any degenerative meniscal tear?

MR. BUFFALOE: Objection. Asked and answered.

THE COURT: Not on this particular exhibit.

You can answer the question.

Although, if we're going to cover the same questions and answers before.

MR. TZANETEAS: Just on this, Judge.

THE COURT: All right. Go ahead.

A No degenerative.

Q I am going to skip the MRI and go right to the other

shoulder and go right to the intraoperative photos. Hold on. Can you identify this for the record that's part of Exhibit 4?

A Yes. This is the right shoulder. So, this is picture one. So as soon as I go into the joint from the back the camera is looking. The first thing you notice is the redness and all this right here. This is along the labrum. So he had a tearing of the labrum.

I used this shaver you can see up here on picture two, this debrided the top part that was torn. So once I removed the top part, the bottom part was still attached, so then I used this instrument that tightens it up. It's a thermal wand. So the remaining fibers I tighten them up so they don't progress and tear more.

What's also noted here is, here, so this is the undersurface of the rotator cuff as I am looking up. This is where the bicep comes out, because the tear was along where the biceps is. This is all -- this redness, all this inflammation, so the biceps was very inflamed.

Then I look above , above the shoulder into the space and again you can see a lot of this redness, irritation, so I cleaned out a lot of this synovitis, the bursitis. And there is a spur here, so I shaved that down. Cleaned up the space. The rotator cuff looked just fine.

MR. TZANETEAS: Okay. Your Honor, could we have a sidebar for two minutes?

THE COURT: Yes, out of the presence of the jury.

(Proceedings held outside the presence of the jury.)

MR. TZANETEAS: What I would like to do, Judge, is ask a hypothetical question, usually it involves I want you to assume the following facts.

THE COURT: Well, tell me what the hypothetical is.

MR. TZANETEAS: The hypothetical is basically I want you to assume 5/14 2020 the ceiling fell down on Mr. Gousse, as a result of the ceiling hitting the head and shoulder twisted to the ground, fell back and sprained his body. As a result of the accident he went to Dr. Hanan received treatment to his knee, his shoulder, his neck, his back. Took MRI's, which showed tear of the labrum, a tear of the meniscus. Came under your care, performed surgery. Continues to have pain, continued to have a problem, with a reasonable degree of medical certainty is this all caused by this accident, competent producing cause. Was the pain caused by this accident, competent producing cause, and was the need for the treatment competent producing cause was the accident. I don't want to ask these separate questions, but they objected to my hypothetical before. I think a hypothetical is proper. It's assuming facts that I am not going to assume any facts not are not in evidence or

will not be in evidence, based on the records and the treatments and it will just speed up the process.

THE COURT: All right, Mr. Buffaloe.

MR. BUFFALOE: I am not sure that any part of what he just posited has already been asked and answered and is in fact hypothetical, right. He considered all of these things in his conclusion analysis and his opinions already, so I am not really sure why it needs to be asked in a hypothetical form. And two, I mean unless there is some records that he hasn't reviewed and is included in the hypothetical that he -- that plaintiff wants him to assume about, which would be improper anyway, just he's already asked this question.

THE COURT: All right. I don't need to go back and forth. Virtually everything you've just placed on the record has been asked and answered. The only difference was the way you phrased it. You said as a result of the accident on such and such a date was there causation with the knee, was there causation with regard to the shoulder. I am going to go by my memory and I take notes. It's not a hypothetical.

MR. TZANETEAS: I am talking about the pain, I was asking about pain and you wouldn't let me --

THE COURT: No.

MR. TZANETEAS: Why not? I don't understand.

THE COURT: How does this doctor know.

MR. TZANETEAS: He's in continued pain. I am sorry, Judge.

THE COURT: Thank you. How is this doctor going to know what pain is being suffered by the plaintiff except by what the plaintiff is telling him? How is that doctor going to know?

MR. TZANETEAS: Judge.

THE COURT: You could ask him is pain --

MR. TZANETEAS: I thought you were finished.

THE COURT: You could ask him is pain something that you have medical opinion of him suffering in the future. You could ask him those questions, I don't have any problems with that.

MR. TZANETEAS: Okay.

THE COURT: But that's it. This hypothetical no, you did ask all those questions before.

MR. TZANETEAS: Note my objection. I think a hypothetical is proper.

THE COURT: It's not a hypothetical.

MR. TZANETEAS: I did not.

THE COURT: Okay. I respectfully disagree with you. Okay, thank you. Let's go.

(Following proceedings held in open court, jury present.)

THE COURT: Proceed when you are good, counselor.

Q Doctor, is a torn meniscus painful?

A Yes.

Q Is a torn labrum painful?

A Yes.

Q With a reasonable degree of medical certainty will Mr. Gousse experience pain into the future of his right knee and his right shoulder?

MR. BUFFALOE: Objection.

THE COURT: Sustained.

Q Doctor, as a surgeon do you evaluate patients based on their pain level?

MR. BUFFALOE: Objection.

MR. TZANETEAS: Let me withdraw it.

Q Doctor, do the injuries that Mr. Gousse has sustained are they going -- do they cause pain in his right knee?

MR. BUFFALOE: Objection.

THE COURT: Sustained.

Q Do you know if Mr. Gousse the last time you saw him has pain in his right knee?

THE COURT: Sustained.

Q Doctor, based on your examination of Mr. Gousse on your last visit did he complain of pain in his right knee?

A There was a pain scale of six out of ten.

Q And would you say with a reasonable degree of medical

certainty is this pain permanent in his right knee?

MR. BUFFALOE: Objection.

THE COURT: Can you answer that question? If you can't that's okay.

A I mean can you rephrase it?

Q Sure. Based on your last evaluation of Mr. Gousse, based on your review of the records, based on the MRI's, the surgery, will Mr. Gousse's pain in his right knee ever go away?

MR. BUFFALOE: Objection.

THE COURT: Sustained.

MR. TZANETEAS: Okay. Let me just review my notes, Judge.

THE COURT: Yes.

MR. TZANETEAS: Thank you.

Q Doctor, could you tell us, the records you reviewed in your last examination?

A My records, Dr. Hanan's records, the MRI's of the right shoulder, right knee. There were records from Dr. Lattuga, FDNY records from 5/14/20 and 9/23/17, Kings County Hospital 9/23/17 and a Dr. Baptiste.

Q With a reasonable degree of medical certainty the records that you reviewed was the treatment reasonable that was done on Mr. Gousse for the injuries he sustained in the 5/14 2020 accident?

A Yes.

Q What do you base that on?
MR. BUFFALOE: Objection.
THE COURT: What is the ground? If you can't articulate it it's overruled.
MR. BUFFALOE: I can't articulate it in one or two words.
THE COURT: Why don't you try.
MR. BUFFALOE: Can we have a quick sidebar?
THE COURT: Okay.
(A bench conference was held.)
MR. TZANETEAS: May I rephrase with the question, Judge?
THE COURT: Yes.
Q Doctor, your review of those records just as it pertains to his knee and shoulder, with a reasonable degree of medical certainty was the treatment reasonable?
A Yes.
Q In your opinion with a reasonable degree of medical certainty is there anything different that Mr. Gousse could have done that you saw he didn't do in your opinion?
MR. BUFFALOE: Objection.
THE COURT: I don't understand the question.
MR. TZANETEAS: Sure.
Q Is there anything that Mr. Gousse failed to do that you saw on the record that he didn't do that would affect your

opinion?

MR. BUFFALOE: Objection.

THE COURT: Sustained. I am sorry, I still don't understand.

Q Is there anything in those records -- strike that.

Did Mr. Gousse in your opinion do everything medical necessary to get his knee and his shoulder better?

MR. BUFFALOE: Objection.

THE COURT: Sustained.

MR. TZANETEAS: Your Honor, can we approach on this, please? I would like a sidebar and put a record on it, Judge.

THE COURT: If you want to make a record you can do it.

(Proceedings held outside the presence of the jury.)

THE COURT: The form of the question is did Mr. Gousse do everything he had to do, that's my interpretation of the question. This doctor has no idea whether he did everything he was supposed to do or not do. The question was in the form of is there any indication that he didn't follow the advise of the other physicians, that's a different question. But this doctor has no basis to know what this patient did or did not do. So that's the basis of my decision. Now, what is the record that you

want to make?

MR. TZANETEAS: The record I want to make, your Honor, last night I received a jury charges, I know we didn't discuss it, but one of the tenets they want, one of the charges they want is failure to mitigate which is a burden. I am trying to ask my doctor is there anything he didn't do that would date change or make it worse, I will phrase it anyway you want it. But as far as their charge I have to ask the doctor an opinion, even though it's not my burden, I want to be able to ask the doctor if you are saying that my doctor can't say that then he can't ask his doctors that and I ask you to withdraw.

THE COURT: I am asking you to ask your doctor did he do everything that he was instructed by this doctor to do, that's what you can ask him.

MR. TZANETEAS: I don't want to ask that question, Judge. I know what the question that should be asked, that is not the question I am asking. I am asking is there anything you see in the records that would indicate to you that he didn't do what he was supposed to do or is there anything more he could have done.

THE COURT: That was my suggestion to you in terms of rephrasing the question.

MR. TZANETEAS: Can I see upon your review of the records is there anything more he could have done; is that

okay?

THE COURT: I don't understand the question.

MR. TZANETEAS: Is there anything else he could have done to make his knee or his shoulder better.

THE COURT: No.

MR. TZANETEAS: Any other treatment he could have received.

THE COURT: You could ask that question.

MR. TZANETEAS: Just so I can make sure so I don't get objection, is there any other treatment that he could have received to make him better.

THE COURT: That he did not receive?

MR. TZANETEAS: That he did not receive.

THE COURT: You could ask that question.

MR. TZANETEAS: To his knee and his shoulder.

MR. BUFFALOE: Even that question I have a problem with because that's beyond the scope of the knowledge of this doctor, whether he reviewed the records of other doctors or not, he can only discuss his treatment, what he determined was medically necessary and whether or not the plaintiff did that. It also calls for the plaintiff's state of mind, whether he could have done more or less. I am not even sure the nature of how this doctor could come to a conclusion regarding that beyond what he said he should do and whether or not he did it or not.

THE COURT: You could ask him anything that he personally knows or you could ask him anything reflected in the records.

MR. TZANETEAS: I said based on those records, is there anything else that he could have done to make him better based on the records.

MR. BUFFALOE: Could have done anything to make him better, followed the recommended treatment prescribed to him by X doctor, based on the records that he reviewed whether or not he followed recommendations.

MR. TZANETEAS: You could ask that question.

MR. BUFFALOE: Whether he could have done more or less.

THE COURT: I agree with you, I think that's what my ruling is, yes. You can't -- I don't know and neither does this witness know what he could have done or did do afterwards. All he can go on --

MR. TZANETEAS: Based on the review of the records.

THE COURT: We've all made a record here.

MR. TZANETEAS: Okay, thank you.

(Following proceedings in open court, jury present.)

THE COURT: Proceed when you are ready.

MR. TZANETEAS: Sure.

Q Based on those records that you reviewed in your report could Mr. Gousse have done anything else to make him better in regard to his knee or his shoulder beyond what he already did?

MR. BUFFALOE: Objection.

THE COURT: Sustained.

MR. TZANETEAS: Okay, no further questions.

Thank you, Doctor.

THE COURT: Okay. We're going to take a ten minute break and then we're going to go through cross examination and we're going to take it to about ten minutes of 1:00. We're going to break for lunch. Then I am going to ask you to return for 2:15 so we can start again. I am sorry, if you could return at 2:10 and then we'll start at 2:15. But right now we're going to take about a five minute break. Thank you.

COURT OFFICER: All rise. Jury exiting.

(Jury exiting.)

THE COURT: Dr. Scilaris, I will just ask that you not discuss your testimony between now and the resumption of your testimony in about five or ten minutes. Thank you so much.

(A recess was taken.)

COURT OFFICER: All rise. Jury entering.

(Jury entering.)

THE COURT: Please, everybody sit down. Thank you. Mr. Buffaloe, please proceed when you are ready.

MR. BUFFALOE: Thank you.

CROSS EXAMINATION

BY MR. BUFFALOE:

Q Afternoon, Dr. Scilaris.

A Good afternoon.

Q By the way, you and I have never met before today?

A No.

Q Good morning or otherwise; correct?

A I don't think so.

THE COURT: Would you like a podium?

MR. BUFFALOE: No, I am okay.

Q So Dr. Scilaris, the first time you examined the plaintiff was on June 26, 2020; correct?

A Yes, sir.

Q And on that day, that same day you recommended surgery; correct?

A Correct.

Q Now, having said that did you have the films in your possession at that time?

A I do review MRI's.

Q Did you have them in your possession on June 26, 2020 is what I am asking?

A I review them before surgery. Did I have them that

date, I know I had 100% had the results, but I do review MRI's.

Q That's not what I asked you, sir. I asked you did you have those films on June 26, 2020; yes or no?

MR. TZANETEAS: Asked and answered.

THE COURT: You could be answer it again.

A I reviewed radiographs of the knee and shoulder.

THE COURT: I am sorry, I can't hear. You reviewed --

THE WITNESS: I reviewed radiographs of the right shoulder and right knee. The MRI reports were reviewed.

THE COURT: . Okay. Concentrate. Did you actually see the film or are you basing it on a report?

THE WITNESS: I would say this is the report.

THE COURT: Okay, that's fine. That's the answer. It was a report.

Q So when was the first time you saw the films, the MRI's that you testified to?

A Before the surgery.

Q Before the surgery?

A Yes, sir.

Q Was it the day before, when it was scheduled, Health East in New Jersey?

A No, when a surgery, when a surgery is on the week before I review all images and all x-rays before surgery.

Q Where did you get them from?

A Where did I get the --
Q Yes, where did you get the films from, the MRI?
A I would say I got it from the radiology.
Q Are you guessing?
A No.
MR. TZANETEAS: Objection.
THE COURT: When there is an objection you have to wait until I rule on it. The objection is sustained. The last question stricken.
Ask another question.
Q You said I would say I got them from radiology, do you know where you got them from?
A I get them from the radiology place.
Q Which radiology place?
A I believe it's Kolb Radiology.
Q You believe you got it directly from there or do you have a specific recollection? Is it noted anywhere in your report where you got it from?
A The MRI's are reviewed before the surgery.
Q That's not what I asked you, sir. I asked you where did you get them from?
MR. TZANETEAS: Asked and answered.
THE COURT: Overruled.
A It's from the radiology place, the MRI's were taken.
Q Where were the MRI's taken?

MR. TZANETEAS: Your Honor.

THE COURT: Did you complete your last answer?

I believe the last question was where were the films received from that you received.

A Well, the MRI report was taken off of here, but I believe it's Kolb Radiology.

THE COURT: All right, ask your next question.

Q Do you remember receiving the films from Kolb Radiology or some other source?

A My standard protocol is reviewing MRI's.

Q That's not what I asked you, sir. You were answering a different question than the one I asked you.

MR. TZANETEAS: Objection, your Honor.

THE COURT: Sustained. No commentary. You ask a question or you direct a question to me in terms of how to direct a witness.

Q Do you know where you got the films from, the MRI's?

MR. TZANETEAS: Objection.

THE COURT: Overruled.

A MRI's are sent by the place where the MRI is taken.

Q Is that a yes or a no?

MR. TZANETEAS: Objection, your Honor.

Q Do you remember?

THE COURT: Overruled.

A I do not have written down the exact date that the

MRI's were reviewed.

Q Again, do you remember where you got them from, is there a note as to where you received them? Did you get them from Kolb Radiology or some other source?

A There is nothing in my notes about the exact date.

Q Now, by the way, you saw the plaintiff a grand total over the last five years how many times, nine times, and that's including the two surgeries, correct?

A Let me count, the 26th, the surgery is two, postop is three, four, five, six, seven, eight, nine times, correct.

Q Right. And of those nine times there was one before you did the surgery on August was it 11th of 2020?

A Surgery was 8/11 2020, correct.

Q So there was one time before you did the surgery to his right shoulder, right knee; correct?

A Correct, his knee.

Q Right. And without seeing any films, you recommended he have surgery; correct?

A Yes.

Q By the way, you mentioned that when you saw him in 2025 at the request of plaintiff's counsel you measured his range of motion using a goniometer; correct?

A Yes.

Q When you saw him back in August, in June of 2026, 2020, sorry, you did not use a goniometer; correct?

A That's correct.
Q You used basically based on your observation you were measuring him; correct?
A Correct.
Q By the way, on that note, range of motion testing is subjective; correct? It depends on the participation and the active motion of the patient; correct?
A Yes.
Q Okay. Unlike an MRI say for example which is objective, plaintiff doesn't have any control over what the MRI shows, it shows what it shows; correct?
A Correct.
Q Now, by the way, and also complaints of pain are subjective as well; correct?
A Yes.
Q Now, over the time that you have seen plaintiff those nine times including the two surgeries, right, so let's say you examined him seven times; correct?
A Correct.
Q It was in your office at Park West; correct?
A Yes.
Q Now, by the way, there were four times in 2020; correct?
A Okay, yes.
Q Once postsurgical follow-up on August 14, 2020 and then

an evaluation on October 9, 2020, then by the way, so he was back in your office three days after you did the arthroscopic surgery on his knee; correct?

A Yes.

Q Right? By the way, so the arthroscopic surgery when you say outpatient he was at that facility in New Jersey for approximately what, an hour?

A No. I would say if someone comes in and they have to come in at least an hour or so before the surgery, get pre op'd by the nurses, getting put in, go to preop, then I have to consent, the knee, anesthesiology has to see the patient, get consent and then if the room is ready the patient goes into the room, anesthesia is administered. Then the surgery is performed, then they go back to the recovery room. So I would say four or five hours --

Q So how long is the presurgical process that you just mentioned?

A Presurgical?

Q Yes, before he actually goes in and gets the anesthesia administered?

A I would say if I have a 7:00 surgery they'll come until around 5:00, 5:30, if they go in at 7:00, it depends on when they go in. Anesthesia probably takes about 15 minutes maybe to prep and to get him ready.

Q So you are saying the presurgical part is what, an hour

and a half?

A It could be.

Q Okay. And 15 minutes for the anesthesia and then what, half an hour for the scope?

A It depends on complexity, sometimes it's less and sometimes it's more.

Q So by the way, and then the post scope procedure, the recovery is what, an hour you have him sit there?

A It depends how they recover, if there is a lot of pain they have to stay in the recovery room, the nurses have to give pain medication. They have to be aware, alert. Then they have to be able to get up move around with the cane. If they're not steady they stay a little longer.

Q By the way, you mentioned cane a couple of times now, there's no notation in your record the patient ever used a cane; correct?

A No. When you leave the surgical center you have to use a cane.

Q There is no notation in your records that he ever used a cane; correct? There is no reference in your records --

A He --

Q There is no reference in your records --

THE COURT: You have to let him answer.

A He did not have a cane when he saw me initially, after surgery he has a cane, he is discharged with the cane.

Q Is that in your records?
A I am sure it's in the Health East records.
Q Is it?
MR. TZANETEAS: Objection, your Honor. Health East is part of his records.
A The surgical center.
THE COURT: All right, that's his answer.
Ask your next question.
Q Point that out to me in your records from Health East where it mentions cane?
A I am sorry.
Q Can you show me in your records from Health East, you said you are sure it says it?
A Everybody, my postop orders, so I have to look up, we have to get the surgical center records. It's not part of my chart. It's from the surgical center where the surgery is done.
MR. TZANETEAS: That's not the surgical chart he has in front of him.
THE WITNESS: This is a surgical chart.
THE COURT: The records before you, it's not in there, but they're in other records?
THE WITNESS: Yes, sir.
Q Those are records that haven't been produced today?
MR. TZANETEAS: Objection, your Honor. They're in subpoenaed records.

THE COURT: You use the word objection. If it's more than that and one word and then if it's more than that it goes onto the sidebar.

MR. TZANETEAS: Objection. Not true, Judge.

THE COURT: As far as you know you don't have those records in front of you?

THE WITNESS: I do not have those records in front of me.

THE COURT: What was the last question?

(The record was read back.)

THE COURT: All right. That question is stricken.

Q Do you have those records with you, Dr. Scilaris?

A I just have my chart. I don't have the surgical chart with me.

Q So there is other separate records from Health East Ambulatory that -- did you review those before you came here today?

A I have the operative report. If you are asking about the postoperative, I have a sheet, my postop sheet says for every knee scope weightbearing with cane, you are discharged with the cane and that is the hospital policy, every hospital has a policy after a surgery.

MR. BUFFALOE: Move to strike as not responsive.

THE COURT: All right. That part is stricken. The part of the testimony that indicates that those records

are not before the witness, that remains.

All right, ask your next question.

Q So Dr. Scilaris, you saw him one more time before you did your surgery on his shoulder; correct?

A October 9th we discussed surgery, correct.

Q So and then you did the surgery to his shoulder on, what was it, 11/12 2020; correct?

A Yes, sir.

Q In the process was the same, it was outpatient, it was anesthesia administered and he was released to go home, correct, the same day?

A Yes, sir.

Q By the way, the anesthesia we're talking about, it was local; correct? He wasn't unconscious; correct?

A No, it's a regional anesthetic. So they're giving sedation in one arm, makes you a little sleepy, then anesthesia numbs or deadens the arm so you don't have to put you a tube in the mouth. It's regional sedation.

Q He's awake during the procedures; correct?

A He's not. There is no tube in his mouth, but you are given medication that you really are kind of asleep.

Q And so that's the reason for the recovery; correct? He recovers from the anesthesia, the affect of the anesthesia before he can be released; correct?

A With knee arthroscopy you are under a general, so it

takes longer to recover for the knee. The shoulder it's a regional so you don't have the problem vomiting and whatnot. You recover quicker from a shoulder than a knee.

Q What I asked you, Dr. Scilaris, that is the reason for the postsurgical recovery so that he can recover from the affects of the anesthesia; correct?

A From anesthesia and surgery, yes.

Q Now, after you did the shoulder scope, you did the knee scope did you instruct the plaintiff to -- withdrawn.

You didn't instruct the plaintiff to receive any further MRI's; correct?

A I did not to the best of my knowledge.

Q And to the best of your knowledge the only MRI's that the plaintiff has had in the last five years and change was in 2020; correct?

A That I see, that's correct.

Q Now, you saw him one more time, you saw him again January, 2021; correct?

A Yes, sir.

Q And by the way, you recommended that he continue therapy; correct?

A Yes.

Q Do you know if he actually continued therapy?

A From what date?

Q From any date.

A On January 8th he had surgery, two months before, so prescription was written for therapy. So, I don't have therapy notes in front of me.

Q So you don't know, is that a yes, you do not know?

A I don't have Dr. Hanan's notes in front of me about the therapy he had.

Q As you sit here right now you don't know one way or the other; is that correct?

A I do not have them in my chart.

Q I am not asking if you have them in your chart. I am asking you as you sit here right now giving testimony before this jury do you know if he continued with the therapy one way or the other?

A I don't have any records in front of me.

Q By the way, do you know if the plaintiff was recommended to do exercises at home?

A Yes.

Q Did you ask him if he did those exercises at home?

A So he on January 8th was given, continued therapy, home exercise program and return in eight weeks, continued therapy, continue therapy with Dr. Hanan. So on March 30th he had some improvements slowly of the shoulder, complained of stiffness so his motion had improved. So he was doing -- so he was improving.

Q Dr. Scilaris, do you know if he was doing the home

exercises, did you ask him?

A I do not have that in my note on March 30th.

Q Do you have in your notes what therapy he was receiving?

A I do not have Dr. Hanan's therapy notes.

Q Do you have in your notes what therapy he was receiving?

A He was doing therapy at Dr. Hanan's office.

Q I understand that.

A So he would --

Q Did you ask him what therapy he was receiving?

A I wrote a prescription for therapy and it's given to Dr. Hanan and then --

Q Did you ask him what therapy he was receiving, Dr. Scilaris?

A I do not have anything about me asking him about therapy.

MR. TZANETEAS: Your Honor, just objection. At what point? I might have missed it and I apologize.

Q At any point after the surgery, before the surgery, at any point?

THE COURT: At any point.

A Did I ask him if he had therapy?

Q No, when he had therapy what therapy he was receiving. You wrote a prescription for therapy; right?

A Correct.
Q By the way, that prescription is not in your notes; correct?
A They're not here, but a prescription is written. But yes.
Q All right. So as we sit here right now you don't know, well, let me ask you a question. Did you just say continue physical therapy in your prescription or you did you delineate specific therapy in your prescription?
A When I fill out a therapy note I put the patient's name, the surgery they had, the date they had it and what I want the therapist to perform.
Q So you specified what therapy he should receive?
A I always put yes, range of motion, modalities, strengthening.
Q But that's not in your records though?
A I just have my notes.
Q Right. So it's not in your records, what you brought here today that you put in evidence?
A My prescription for physical therapy is not here, correct.
Q So, you see Doctor, I mean you see the plaintiff, last time March 20, 2021; correct?
A Yes.
Q Then you don't see him again until, what is it, until

October 9, 2025; right? Four years later; right?
A Yes.
Q When you see him four years later that was at the specific request of plaintiff's counsel; correct?
A Yes.
Q By the way, do you know how he got to New Jersey?
A To New Jersey?
Q Yes, to the facility in New Jersey before the knee surgery?
A I -- I don't -- either he made his way there, I don't know.
Q I am not asking you to guess, only if you know.
A In my record I don't have how he got there.
Q Do you know how he got home from New Jersey?
A I do not.
Q You didn't provide transportation for him; did you?
A Me? No, I did not.
Q Do you know if he was accompanied by anybody when he went to New Jersey?
A Usually you have to be accompanied by -- you have to have somebody.
Q I didn't ask you usually, I asked you do you know?
A I would have to look at the surgical center charts.
Q As you sit here right now you do not know?
A Protocol is you have to have somebody with you.

Q I didn't ask you about protocol, sir.

MR. TZANETEAS: Objection, your Honor.

Q I asked you about Mr. --

THE COURT: Overruled.

Q Mr. Gousse specifically, do you know if he was accompanied by anybody?

A I don't have anything in my note about that.

Q So you don't know?

A No, not in my note, no.

Q By the way, let's take the first one, August 11, 2020, do you know how many scopes you did at Health East that day?

A I do not.

Q How many scopes do you do after that, let's say in 2020?

A 2020, I believe it was COVID time so I don't remember. I know this week I did twelve surgeries on Tuesday and three on Wednesday.

Q Okay. Now, that said, by the way, when Mr. Gousse went to your facility in New Jersey was he the only patient there?

A Was he the only patient?

Q Was he the only patient in the facility?

A I don't recall.

Q Well, did you see other patients that day? Did you -- back in August of 2020 were you scheduling like one person who would travel all the way out to New Jersey because that was your

day to do surgeries in New Jersey; right?

A Did I schedule one person?

Q Yes, just one person, only one person, travel all the way to New Jersey, one arthroscopic surgery?

A I have no idea, if I book a surgery and it's done a short date, if it's scheduled then I know when I do surgery.

Q So you don't recall one way or the other?

A Five, six years ago, I don't remember how many surgeries I did that day.

Q Well, let me ask you this question; in the time you have been running Health East how many days was it that you went and did only one scope?

A I don't remember. I don't even have a recollection.

Q It never happened; right?

MR. TZANETEAS: Objection, your Honor.

THE COURT: Overruled.

A I don't know if I did one, one day, two one day, ten, that I don't have a recollection of.

Q By the way, when you saw him for the last time aside from when his attorney sent him to see you right when you saw him for the last time in 2021, in March of 2021, you did not recommend that he come back to you; correct?

A Correct.

Q You didn't recommend any further follow-up with you; correct?

A The follow-up was to be with Dr. Hanan.

Q With you, Dr. Scilaris I am asking?

A Yes, it was PRN with me. Dr. Hanan, if there was a problem he would send him back to me.

Q When you said PRN that's as needed; correct?

A Correct.

Q That is up to, let me ask you a question about that. You said PRN, as needed. When you spoke to the plaintiff did you tell him on any occasion you saw him, when you scheduled the follow-up on June 26, 2020 and came back on August 14, 2020 and he came back on August 9, 2020, those appointments were made with you; correct? They were not made through Dr. Hanan's office; correct?

A Dr. Hanan originally sent the patient to me, then I was his treating doctor for his knee and shoulder, so any follow-ups would be through me setting it up, right.

THE COURT: We're going to stop there. I am just going to ask one question so I have some clarity and then we are going to break for lunch.

PRN, what does that stand for?

THE WITNESS: As need be.

THE COURT: As needed.

THE WITNESS: Yes.

THE COURT: All right. We're going to break for lunch. Please return around 2:10 then we'll commence the

trial again at 2:15. Thank you for your attention this morning.

COURT OFFICER: All rise. Jury exiting.

(Jury exiting.)

THE COURT: Just request that you do not discuss your testimony with counsel between now and the resumption of your testimony this afternoon. Thank you so much.

THE WITNESS: Thank you.

(A lunch recess was taken.)

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