

Proceedings

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 39

-----X
LAINEY HOWARD,

Plaintiff,

- against -

INDEX #
159388/2021

COSTIKYAN, INC. and GATAK GATAK a/k/a "JOHN DOE"
as legal name is presently unknown,

Defendants.
-----X

Jury Trial

October 5, 2026
60 Centre Street
New York, New York 10007

B E F O R E: THE HONORABLE JAMES G. CLYNES,
Justice of the Supreme Court

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Senior Court Reporter

mlp

Proceedings

1 THE COURT: Is everybody ready for the jury?

2 MR. CERTAIN: Your Honor, I have one matter
3 ahead of time. Defense counsel and I discussed an image
4 that was taken right after Exhibit 11 that essentially
5 shows the same thing, without the problematic things that
6 were in the original Exhibit 11. We have agreed, with the
7 Court's permission, to swap that image with this one taken
8 the same day what appears to be seconds after, which also
9 appears on their social media, as Exhibit 11 and move it
10 into evidence.

11 THE COURT: Okay. No objection?

12 MR. SMITH: No objection.

13 And Judge, before the jury comes out there is
14 still a pending application for mistrial.

15 THE COURT: Decision reserved.

16 Let the record reflect that the offer is now a
17 million dollars; and I am seriously considering a
18 mistrial.

19 THE WITNESS: Good morning, Your Honor.

20 THE COURT: Good morning.

21 (Whereupon, the witness took the stand.)

22 COURT OFFICER: All rise. Jury entering.

23 (Whereupon, the jury entered the courtroom.)

24 THE COURT: Good morning, everybody. You can be
25 seated.

Radna - by Plaintiff - Direct

1 COURT CLERK: Good morning. Doctor, if you
2 could please stand and raise your right hand?

3 R I C H A R D R A D N A, after having
4 first been duly sworn was examined and testified as
5 follows:

6 COURT CLERK: Please state your name and address
7 for the record.

8 THE WITNESS: Richard J. Radna, 1165 Park
9 Avenue, New York, New York 10128.

10 COURT CLERK: Thank you. You can sit.

11 THE WITNESS: Thank you.

12 MR. ZILBERG: May I inquire, Your Honor?

13 THE COURT: Yes.

14 DIRECT EXAMINATION

15 BY MR. ZILBERG:

16 Q Good morning, Dr. Radna.

17 A Good morning.

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

20 A Yes.

21 Q When were you so licensed?

22 A 1974.

23 Q Can you please tell us about your educational
24 background?

25 A Undergraduate, City University of New York.

mlp

Radna - by Plaintiff - Direct

1 Medical school Ph.D. in Biochemistry; also at the
2 City University of New York.

3 My clinical training was all at Mount Sinai, general
4 surgery, neurosurgery, which I completed in 1981.

5 Q What is neurosurgery?

6 A Neurosurgery is the medical specialty that deals with
7 mechanical problems in the nervous system. That's the area of
8 the brain, the spine and the nerves which bring information
9 into and out of the spine. Those types of interventions in
10 neurosurgery may include operations and may include
11 non-operative management. To a great extent neurosurgery deals
12 with the treatment and management of pain.

13 Q And are you board certified in the field of
14 neurosurgery?

15 A Yes.

16 Q And what does that mean?

17 A The American Board of Neurological Surgeons is the
18 gold standard throughout the United States, North America, and
19 really it has become the world, and it certifies neurosurgeons
20 in practice.

21 Q And do you have any special interest in the field of
22 neurosurgery?

23 A Yes, trauma to the nervous system.

24 Q Do you have a hospital affiliation?

25 A Yes.

Radna - by Plaintiff - Direct

1 Q Are you published in medical literature?

2 A Yes.

3 Q In what areas are these publications?

4 A Basic science, as well as clinical applications.

5 Q Do you hold any patents on medical devices?

6 A Yes, we designed an auxiliary spinal retractor for
7 larger incisions to give access to the spine from the back
8 while preserving circulation by minimizing the pressure put on
9 the muscles.

10 Q Have you been involved in medical teaching?

11 A Yes. I taught at the Mount Sinai School of Medicine
12 for 20 years in a subspecialty elective course: Neurosurgery
13 Approaches to Medical Students Using the Operating Microscope.

14 Q Now, Doctor, what are neural imaging studies?

15 A Any medical picture of the nervous system or the
16 structures around the nervous system are called neural imaging
17 studies; and that may be a regular x-ray, it may be a type of
18 computerized scan. There are two major types. The CT scan
19 uses ionizing radiation to generate the signal, the picture.
20 The MRI scan, which was developed about ten years after the CAT
21 scan, uses magnetic energy.

22 Q And Doctor, what is a neuroradiologist?

23 A A neuroradiologist is a doctor who is trained in
24 performing imaging studies, but who has special training and
25 interest in the imaging studies relevant to the nervous system.

Radna - by Plaintiff - Direct

1 Q Now, as part of your responsibilities to your
2 patients, do you read and interpret neural imaging studies?

3 A Yes.

4 Q And these are neural imaging studies of the spine?

5 A In part.

6 Q And do you have any credentials in this -- special
7 credentials in this regard?

8 A Yeah, while I was active in clinical practice I
9 was -- when I was Chief of Neurosurgery at St. Joseph's Medical
10 Center in Yonkers I was credentialed to perform and interpret
11 neural imaging studies.

12 Q Now, Doctor, in your opinion, in terms of using
13 neural imaging studies to make recommendations for patients,
14 who is better qualified to use neural imaging studies, a
15 neurosurgeon or neuroradiologist?

16 MR. SMITH: Objection, Your Honor.

17 THE COURT: Overruled.

18 If you know?

19 A The neurosurgeon.

20 Q Why?

21 A When we see a patient, frequently the patient comes
22 to us with discs with neural imaging studies on them. That's a
23 map. We are going to take a trip with our patient. We are
24 going to recommend a trip to our patient, that's the map that
25 we use. And we look at that map whenever we see the patient.

mlp

Radna - by Plaintiff - Direct

1 We have that map up on the computer when we are in surgery
2 operating on the patient, fixing whatever problem, you know, we
3 have hopes to repair with neurosurgical management. And we use
4 these images as guidance in everything we do.

5 The neuroradiologist, now, is usually remote from the
6 area where the studies were done. The neuroradiologist never
7 sees the patient, never gets a real feeling for the patient's
8 problems, whether the patient's history neurosurgically impacts
9 on the life of that patient; doesn't look at the studies more
10 than once; and just writes a report on paper. So of course in
11 helping patients, the person who uses the map is the
12 neurosurgeon, not the radiologist.

13 Q Now, Doctor, when you make recommendations to
14 patients, do you primarily depend on your own interpretation of
15 the imaging studies or on the radiologist's interpretation?

16 A Predominantly on our own knowledge and experience.
17 Neurosurgeons, as part of our training, are certified in
18 neuroradiology. I mean, that's the map we use and what we do.

19 Q Doctor, if you were not in court now, what activities
20 would you be involved in?

21 A I would be in my office.

22 Q And Doctor, is your practice being compensated for
23 your time away from the practice today?

24 A Yes.

25 Q Okay. And at what rate?

Radna - by Plaintiff - Direct

1 A \$500 an hour.

2 Q Now, have you been called upon to testify in court
3 before?

4 A I have been so privileged.

5 Q Have you been accepted as a medical expert in court
6 before?

7 A Yes.

8 Q Where?

9 A The last 50 years in practice probably everywhere in
10 the greater metropolitan region.

11 Q Would that include Supreme Court within New York
12 County, Bronx County, Kings County, Queens County?

13 A Yes.

14 Q Now, Doctor, when in the course of your professional
15 practice did you evaluate Ms. Lainey Howard?

16 A May 8, past.

17 Q And what, if any, medical records did you review with
18 regard to Ms. Howard?

19 A Everything chronologically. The first records from
20 City Med, Dr. Thomas performed an x-ray of her back and he
21 referred her to Dr. Bitan, who is the Senior Orthopedic Spine
22 Surgeon at Lenox Hill Hospital. Dr. Bitan saw Ms. Howard
23 several times. Ordered an MRI scan of her low back done at
24 Lenox Hill Radiology. I reviewed Dr. Bitan's records. I
25 reviewed the imaging studies both from City Med and from Lenox

Radna - by Plaintiff - Direct

1 Hill Radiology, plus imaging studies down -- an MRI lumbar down
2 in Chicago. Plus all the images studies including MRIs and CAT
3 scans of Ms. Howard's low back done at Lenox Hill Radiology
4 here in the city. I reviewed all of Dr. Diwan's treatment
5 records. Diwan is the pain management doctor who Dr. Bitan
6 referred Ms. Howard to. I also referred all of the treatment
7 records from physical therapy group, Resurgence, which group
8 Dr. Diwan referred Ms. Howard to. Plus any other doctors or
9 consults that she had along the way. We have a chronologic
10 directory of some 3 or 400 reports.

11 Q Now, Doctor, at that juncture did you elicit a
12 history from Ms. Howard?

13 A Yes.

14 Q What is a history?

15 A A history consists of a chief complaint, which
16 basically is what is bothering the patient most that brings the
17 patient to see the doctor.

18 And the next thing we look at, what a doctor -- after
19 we talk to the patient we make a determination, what in the
20 patient's history led to the chief complaint. That's called
21 the present illness. If there are other things in the
22 patient's life which we feel is not related to the chief
23 complaint, that's called a past medical history. It is just a
24 definition we teach the medical students.

25 Then we have something called review of systems and

Radna - by Plaintiff - Direct

1 we go through the whole body asking the patient questions about
2 anything that went on, family history, social history.

3 And that together is the whole format of the complete
4 medical history.

5 Q Doctor, what is the history that you received --

6 MR. SMITH: Objection, Your Honor.

7 THE COURT: Sustained.

8 Q Doctor, would it be useful at this juncture to use a
9 computer-assisted spine model to demonstrate the anatomy of the
10 spine and the nature of the major injury sustained by
11 Ms. Howard?

12 A Yes.

13 MR. ZILBERG: Your Honor, may the doctor use a
14 spine model?

15 THE COURT: Yes.

16 THE WITNESS: Thank you, Your Honor.

17 I am just going to plug this in, it will take a
18 second.

19 MR. SMITH: Your Honor, with your permission,
20 may I position myself so that I can see the screen?

21 THE COURT: Yes.

22 MR. SMITH: Thank you.

23 A Now what we are looking at on the monitor is a model,
24 just as a demonstrative aid, of the lumbar spine. And as we
25 rotate it, the image can be seen in three dimensions so we can

Radna - by Plaintiff - Direct

1 get the relationships.

2 The front of the lumbar spine, here, is made of the
3 vertebral body. This is a building block. And it is basically
4 the biggest and strongest part of the lumbar spine.

5 The back of the lumbar spine as we rotate around is
6 mainly something called the lamina. It is a protective layer
7 that protects the spinal canal. The contents of the spinal
8 canal are the wires that we will call nerve roots, which brings
9 information from the body into the spine, and into the spinal
10 cord into the nervous system, and brings information from the
11 central nervous system out telling us to do things like move,
12 et cetera. So, this lamina is the back of the spine.

13 Now, the middle of the spine connects the front to
14 the back. And the middle of the spine, this part right here,
15 is called a "foot." And the medical term for that foot is
16 pedicle, coming from the Latin *pes pedis*, as in the word
17 pedestrian. And what that foot does is, pedicle comes out of
18 the top of the vertebral body here and goes back and joins the
19 lamina here.

20 Now, there is a portion of that foot which attaches
21 to the lamina. In English that's called the interarticulating
22 part. It is the part that joins the middle of the spine to the
23 back. For short, doctors just call it, the Latin term is long,
24 called *pars interarticularis*. Doctors just call it for short
25 the pars. P-A-R-S.

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1 And what happened to Ms. Howard on the date of
2 accident is that she had a trauma to the pars on both sides,
3 disrupting the stability of this lamina bone to the pedicle on
4 each side.

5 And as you rotate the spine you can see the
6 relationship here between the vertebral body, the pedicle, and
7 the back of the spine here. And the weakness of the fracture
8 from this trauma that Ms. Howard sustained is right here. This
9 is the left side. This is the right side. Rendering this
10 entire arch no longer having a solid connection to the
11 vertebral body in front. So when she moved, they didn't move
12 together because the muscles attached to the lamina in back
13 basically pulled, stressed the lamina as she did normal
14 motions. And that's why Ms. Howard has been in constant pain
15 from this trauma.

16 Excuse me. Are we done with the display? Should I
17 turn this off now?

18 Q Yes. For now. Thank you, Doctor.

19 A Thank you.

20 Q Now, Doctor -- Doctor, from the medical records that
21 you reviewed, what were the most important -- what is the most
22 important information that you were able to glean from those
23 records with regard to Ms. Howard's accident and her resulting
24 injuries and complaints of pain?

25 A The neural imaging studies, the pictures we did

Radna - by Plaintiff - Direct

1 specifically of Ms. Howard's spine, specifically four MRI scans
2 of the lumbar spine and one CT scan of the lumbar spine gives
3 the most objective evidence of the injury and the severity of
4 the injury.

5 Q Now, Doctor, did you perform a clinical examination
6 of Ms. Howard?

7 A Yes.

8 Q And what did that examination consist of?

9 A It gave objective signs of an injury to the region of
10 the L5 nerve root. There are five vertebral bodies in the
11 lumbar spine from our ribs to our tailbone. And every one of
12 those levels have all of the same elements as the others. In
13 other words, they all have a front, they have a middle, they
14 have a back; and particularly important for the nerve roots is
15 that little foot, called pedicle, in the middle of the spine.
16 And the nerve root that exits the spine under the L5 pedicle,
17 is called the L5 nerve root because it exits under the L5
18 pedicle.

19 And every nerve root in the body has a certain
20 function. The L5 nerve root gives sensation to the instep of
21 the foot and the great toe. It elevates the foot at the ankle.
22 It is called dorsiflexion in the foot. That motor power, it is
23 the anterior tibial muscle does that, it is the L5 nerve root.

24 And every muscle of the body has a reflex. When we
25 have -- they take out a little reflex hammer and tap the tendon

Radna - by Plaintiff - Direct

1 of that muscle, and the muscle jumps, well, the muscle that
2 jumps is the medial hamstring. It is our middle of our thigh,
3 inside of our thigh, is the medial hamstring. It pulls the
4 calf back at the knee. And when we tap the tendon of the
5 medial hamstring muscle, that muscle twitches, and that's L5
6 nerve root.

7 And all of those tests I did on Ms. Howard, her
8 power, her reflex, her sensation, all showed that she had an
9 injury to her left L5 nerve root. And that left L5 nerve root
10 passes right next to that area of the middle of the spine that
11 was fractured by this trauma. So that gave objective evidence
12 that this trauma caused her problem in the distribution of the
13 L5 nerve root. Objective reflex changes, subjective complaints
14 of lack of sensation, lack of power, consistent with the
15 objective findings. And consistent with the objective findings
16 on the CAT scan showing a fracture from the trauma.

17 And retrospectively, if you look at the MRI scans,
18 the MRI scans showed signal changes to that pedicle for that
19 little foot consistent with the CAT scan findings of a
20 fracture, a post-traumatic fracture for the events on the day
21 of accident.

22 Q Now, Doctor, did you also conduct range of motion
23 testing?

24 A I did.

25 Q And can you please tell us what the -- how you

Radna - by Plaintiff - Direct

1 performed it and what were the results?

2 A We asked Ms. Howard both in her neck and her low back
3 to flex and extend her neck and her low back; but not to do
4 anything that would cause pain. We asked her to move up to the
5 limit of the pain, not to cause her pain.

6 And she cooperated when I saw her on May 8, but was
7 in so much back pain that day she really couldn't do the full
8 range of motion of the low back. So we brought her back five
9 weeks later, I believe that was June 15, and she did the
10 testing then. And both showed a moderate restriction of range
11 of motion.

12 Q Can you please tell us specifically what the range of
13 motion was in every plane, as compared to normal?

14 A I would have to take a look at my report. May I do
15 that?

16 Q Please do so.

17 A I am not going to project it, just look at it on my
18 computer.

19 Q Please.

20 A Thank you, sir.

21 Q And by the way, the range of testing motion, was it
22 conducted with a goniometer?

23 A Yes.

24 Q Can you please tell us? Thank you.

25 A Yes, thank you.

Radna - by Plaintiff - Direct

1 MR. SMITH: Your Honor, can we preserve for the
2 record what he is looking at right now?

3 THE WITNESS: Yes. I am looking at my first
4 report when I evaluated Ms. Howard, that was on May 8 of
5 2026; and the second report of, I believe, June 15, 2026.

6 MR. SMITH: Thank you.

7 THE WITNESS: You are welcome.

8 A Okay. We are in the report of 5/8/2026, and I am
9 walking back to the physical exam. Here it is.

10 The range of motion testings is on page 22. It notes
11 visual observations via goniometer. And cervical flexion, I
12 gave 30 degrees; and cervical extension also gave 30 degrees.

13 And I made a note that lumbar range of motion at that
14 time was deferred because the patient anticipated increased
15 pain with those maneuvers.

16 Q Doctor, I just need to interrupt you for a second.
17 When you gave the range of motion, please compare it to what is
18 normal.

19 A Normal is 30 degrees. She had normal ranges of
20 motion.

21 Q Of her neck?

22 A Of her neck. Thank you.

23 Now, I am now looking at the report of June 15, 2026.
24 It is just taking a minute to open up the PDF file here.

25 We are now on page four. Now, this -- these were

Radna - by Plaintiff - Direct

1 also done with a goniometer, an instrument to quantify with
2 some precision the amount of motion.

3 And the cervical findings were unchanged for the
4 findings that we had in the previous exam on May 8.

5 The lumbar flexion gave 20 degrees, where normal is
6 90. And gave 30 degrees on extension, where normal is also
7 30 degrees.

8 Q So on -- what was the lumbar flexion?

9 A The lumbar flexion was 20 degrees with where the
10 normal is 90 degrees.

11 Q And what is lumbar flexion?

12 A Bending forwards.

13 Q In looking at your report from your physical
14 examination of Ms. Howard from June 15, 2026, were there any
15 other significant findings?

16 A Yes. We found significant reduction in the left
17 medial hamstring reflex, which means her left L5 nerve root
18 just wasn't working right. And that's an objective finding.
19 Whether a patient feels numbness or can't show full strength,
20 that's under the patient's control; credible, but subjective.
21 It is credible, but subjective, the patient's control.

22 However, the corroborative reflex change is an
23 objective finding which the patient cannot control in any way
24 and which confirms the significance of the subjective findings.

25 Q Doctor, can you please explain the difference between

Radna - by Plaintiff - Direct

1 objective findings and subjective findings?

2 A A subjective complaint is something a doctor depends
3 on the patient to understand. We ask the patient what is
4 bothering you today that brings you to see me. That's the
5 chief complaint. That's subjective because we need the patient
6 to tell us that.

7 An objective finding is something we can determine
8 without the patient's help. If we take out a reflex hammer and
9 tap a tendon and look at a muscle moving, and one side is much
10 weaker than the other, we don't need the patient's help for
11 that. That's why it is called objective, because it is
12 something the patient cannot produce, cannot interfere with.

13 Q Now, Doctor, did there come a time that you had the
14 opportunity to review objective diagnostic studies?

15 A Yes.

16 Q And what diagnostic studies did you review?

17 A Well, first we saw an x-ray that was done at City Med
18 six days after the date of accident with Dr. Thomas. I saw
19 Dr. Bitan eight days after the date of accident ordered an MRI
20 of the lumbar spine at Lenox Hill Radiology. I saw that.

21 The neck MRI Ms. Howard had was on October 12, that
22 was done in Chicago where she was living at the time and she
23 had a MVA that impacted mainly her cervical spine. But out of
24 completeness they did an MRI of her low back. And Dr. Bitan --
25 excuse me. Dr. Diwan, Ms. Howard's pain management doctor back

Radna - by Plaintiff - Direct

1 in New York, ordered three imaging studies at Lenox Hill
2 Radiology. Two of them were MRI scans. And one was a CAT scan
3 of the low back. And those are all the imaging studies
4 relevant to this injury I reviewed.

5 Q Now, Doctor, can we please display the imaging
6 studies that you reviewed on the screen here? And you can take
7 us through your analysis and diagnosis with regard to those
8 studies.

9 A Yes.

10 THE WITNESS: Almost there.

11 A The most important study which clearly shows very
12 readily the fracture sustained by Ms. Howard was the CT of the
13 lumbar spine that was done at Lenox Hill Radiology on May 7,
14 2026.

15 Q One second.

16 MR. ZILBERG: Just for the record, the image
17 that the doctor is talking about is in evidence as
18 Plaintiff's 29.

19 Q Please go on, Doctor.

20 A Thank you.

21 If we look at this dual image on the right side, over
22 here is a side-view. This is called a sagittal view. And on
23 the left side of the image is a -- what is called an axial
24 view. If you look at a line on the side view, this line is
25 called a scout line, it shows where the axial view is exactly

Radna - by Plaintiff - Direct

1 placed. So here we see the vertebral body in front. We saw
2 that on the little model we looked at before. Well, here is
3 the vertebral body on the axial view. It is the biggest part
4 of the vertebrae. And then behind that we can see the front,
5 pedicle, with just four attachments. The front is the
6 vertebral body itself; the back is the lamina and the spinous
7 process; the side is the transverse process; and there is a
8 bone, if you take a look at the sagittal view, this bone coming
9 up from the pedicle is called the facet joint. This is the
10 ascending facet of L5.

11 If we count, this is Lumbar 5, Lumbar 4, Lumbar 3,
12 Lumbar 2, Lumbar 1. This is the bottom of our ribs here, T12.
13 That's how this got to be called Lumber 5, because five
14 vertebrae down from where our ribs are and right above the
15 tailbone. So that's where we got that number 5 from.

16 And if we look at the axial view through the pedicle,
17 there is a crack on both sides.

18 Now, if you take a look carefully at the feet on both
19 sides, these pedicles, see the bone is very thick, it is very
20 white. CT scans do one thing, they absorb radiation. The
21 thicker the bone, the stronger the bone, the more radiation
22 gets absorbed and the whiter the picture looks. This is a
23 condition called, medically, sclerosis. There is *sclerose*,
24 from the Greek, means to harden. That bone is hardened because
25 that part of the body takes a lot of stress through our lives.

Radna - by Plaintiff - Direct

1 And the body, in its wisdom, hardens these bones in certain
2 places. They are called sclerotic change, they are called
3 degenerative change, but they don't bother us at all. What is
4 bothering Ms. Howard is that when she was dragged by this -- by
5 this carpet cleaning truck, that trauma cracked these bones.
6 She has fractures here. And that's why all the excellent
7 treatment that Dr. Bitan recommended, Dr. Diwan recommended,
8 Mr. Goodell recommended, which are good and accepted practices
9 most people get better from from back injuries, really didn't
10 help her; because her injury was more severe than that.

11 Q Can we please go to the next film --

12 A Yes.

13 Q -- that you reviewed?

14 A Yes. I showed the CAT scan first because you can see
15 the fracture very clear here.

16 We are going to look at the MRI. It is there on the
17 MRI and I'll show it to you. But this is the clearest for
18 everybody to see.

19 There is one other thing I want you to see which is
20 very important. If we look at the right side view, this is the
21 L4-5 disc that I am indicating, the disc is like a cushion
22 between the vertebral bodies. We bend, we move, the bones are
23 supported and they are not knocking each other about. If you
24 look in back of that there are two facet joints here, the
25 ascending facet of L5 that I am showing with a pointer, is in

Radna - by Plaintiff - Direct

1 front of the descending facet of L4 which is coming from the
2 lamina. So the ascending facet is a projection up from the
3 little foot; and the descending facet is a projection from the
4 lamina above. Why I am showing you this? If you look at this
5 line you are going to see that this line is through pedicle, it
6 is through the foot. It shows pedicle here that is cracked.
7 It is nowhere near these facet joints. You can see that very
8 clearly here. You don't see that well on an MR. That's why I
9 want to show you on the CAT scan, you can see that these facet
10 joints are nowhere near pedicle and nowhere near the fracture.

11 Now we are going to take the same view we have here
12 with the CAT and we are going to look at it with an MRI scan.
13 The only difference is the MRI picture is made from magnetic
14 energy. When we get into an MRI scanner, all of the hydrogen
15 molecules in our body line up with a magnetic field. Like our
16 kids have that magnetic filing experiment with the magnet on
17 the paper and the filings all move around, just like that. And
18 when the scanner, the MRI scanner perturbs that magnetic field,
19 it is called a perturbation and energy is relayed; and that
20 energy is used to make an MRI scan picture, just like ionizing
21 radiation makes a picture for the CAT scan. So that being
22 said, let's go look at the first MRI.

23 Okay.

24 Q One second, Doctor.

25 MR. ZILBERG: Just for the record, this slide is

mlp

Radna - by Plaintiff - Direct

1 in evidence as Plaintiff's 30.

2 Q Please go ahead, Doctor.

3 A Thank you, Mr. Zilberg.

4 This was done on May -- March 25, 2021. This is the
5 first MRI scan that Dr. Bitan ordered. Dr. Bitan, again, is
6 the senior orthopedic spine surgeon of Lenox Hill Hospital who
7 Dr. Thomas at City Med referred Ms. Howard to. He ordered this
8 study.

9 And if you look at it, you see these lines through
10 the pedicles on both sides? They are in the same position as
11 the fractures were on the CAT scan. These are the fractures.
12 And you can see by this line through the pedicle, the ascending
13 and descending facets on a higher slice might look like
14 something like this. However, now that we know where this
15 slice is, we know it is nowhere near those facets. This is the
16 fracture through the pedicle.

17 And furthermore, the other three MRI scans, the one
18 done in Chicago in October, the two other MRIs that Dr. Bitan
19 did in the months and years later at Lenox Hill Radiology, show
20 the same thing. They show that fracture.

21 And furthermore, the MRI scan before and after that
22 October accident looked the same. That October accident didn't
23 do anything to change her back.

24 So, I can show you the other scans if you like from
25 Chicago and the two others from Lenox Hill Radiology, but they

Radna - by Plaintiff - Direct

1 just look the same as this. It shows fractures through the L5
2 pedicles, and that's the main injury Ms. Howard sustained.
3 That's a pretty severe injury.

4 It wasn't that clear on the MRs, but with the
5 guidance of the CAT scan that Dr. Diwan ordered, we can all see
6 clearly that she had this all along, and this is her problem,
7 and that's why she is not getting better. That's why she needs
8 more surgery.

9 Q Doctor, can you please take us through the subsequent
10 MRI films?

11 A Yes.

12 Q Just to point out what the findings are?

13 A Absolutely.

14 This is the MRI scan, and the same dual view we were
15 looking at, done in Chicago on October 14, 2021.

16 Q One second, Doctor.

17 MR. ZILBERG: This is Plaintiff's 31 in
18 evidence, this slide.

19 Q Go on, Doctor. Sorry.

20 A Thank you, Mr. Zilberg.

21 So we see the same scout line. You see that scout
22 line is nowhere near the inner space. It is through the
23 pedicle. And here is the fracture on both sides.

24 Now, the fracture on an MRI scan looks like a signal
25 change. That's what MRIs do. You see it is all black here, it

Radna - by Plaintiff - Direct

1 is abnormal. But it is basically the same as the results of
2 the MRI we just saw that was done eight days after the trauma
3 over at Lenox Hill.

4 And if we move on to the next MRI scan that was done
5 on May 11, 2022 at Lenox Hill Hospital that Dr. Diwan ordered,
6 and same thing.

7 MR. ZILBERG: One second. For the record this
8 is Plaintiff's 32 in evidence of this slide the doctor is
9 testifying about right now.

10 A We can see that there is this black signal change
11 through the pedicle of L5 bilaterally, and it is the fractures
12 unchanged.

13 And we have one more to look at.

14 MR. ZILBERG: Just for the record, I think the
15 last one is going to be Plaintiff's 33 in evidence.

16 A So here we are on April 29 of 2025. We see the scout
17 line on the right side here. That's through the pedicle of L5.
18 It is nowhere near the inner space and nowhere near those facet
19 joints. And we see the bilateral fractures through the
20 pedicles on both sides.

21 And if we complete the cycle of scans and we take a
22 look back at the CAT scan we looked at initially in this
23 series, the CAT scan clearly shows the fracture on both sides,
24 the sclerotic bone. And clearly shows it is through the
25 pedicle, localizing where the fracture is exactly.

Radna - by Plaintiff - Direct

1 Q Doctor, what is your principal diagnosis of
2 Ms. Lainey Howard following the accident of March 17, 2021?

3 A It is a post-traumatic lumbosacral and radicular pain
4 syndrome associated with a fracture through bilateral pars
5 interarticularis at the L5 level.

6 What that means in English is that basically when we
7 say somebody has musculoskeletal pain, it is pain in the area
8 of the spine and the surrounding areas. When you crack a bone
9 in the spine, that fracture causes pain in the spine. That's
10 called musculoskeletal pain because that pain is coming from
11 the skeleton, the bony portions of the spine.

12 When we talk about radicular pain, radicular pain is
13 pain in the distribution of a nerve root. The L5 nerve root
14 gives sensation to the instep of the foot and the big toe.
15 When Ms. Howard gets pain going down her left toe to the area
16 of the big toe -- when she has pain going down that leg, that's
17 where it goes. She is getting radicular pain exactly to the --
18 from the nerve root right next to that fracture. It is the
19 fracture causing that pain. It is different from
20 musculoskeletal pain which is in the spine. Radicular pain
21 goes down the path of the nerve root into the leg.

22 And we talked about the pars interarticularis, for
23 short, "the pars." What it is, it is the middle of the spine.
24 That's what got cracked right next to the L5 nerve root, worse
25 on the left side where the worse pain is.

mlp

Radna - by Plaintiff - Direct

1 Q And Doctor, did you reach that diagnosis to a
2 reasonable degree of medical certainty?

3 A Yes.

4 Q Did you review any other objective findings which
5 assisted you in establishing your diagnosis?

6 A When we make a diagnosis we look at data from
7 structure. We look at CAT scans; we look at MRI scans; we look
8 at structure. But we also look at physiology, is what a
9 patient tells us the patient feels and what the exam shows
10 objectively. And when we can correlate that Ms. Howard has a
11 marked reduced left hamstring reflex, which we know is an L5
12 nerve root, and we know that she has weakness and pain in the
13 distribution of the L5 nerve root, now we have a correlation
14 from two different viewpoints from the view point of structure:
15 What the scans show where the fracture is; and physiology is
16 what our body is telling us where the problem is. When they
17 correlate it greatly increases the reliability of that
18 diagnosis.

19 Q Now, Doctor, based on the medical records that you
20 reviewed, can you briefly take us through Ms. Lainey Howard's
21 medical treatment since the accident of March 17, 2021?

22 A Ms. Howard first went to see City Med. Her own
23 strength of character led her to keep working for six days in
24 federal law enforcement, in spite of this injury. And when it
25 was too much already, the pain was getting worse, she went to

Radna - by Plaintiff - Direct

1 City Med and saw Dr. Thomas, did some x-rays. And he sent her
2 to the senior orthopedic spine surgeon of Lenox Hill Hospital,
3 Dr. Bitan. And Dr. Bitan did an MRI scan.

4 The reading from the radiologist at Lenox Hill really
5 didn't find anything showing a focused injury on that date. We
6 saw the picture. We know what it shows, we know it shows a
7 fracture. But they just didn't see that. That type of micro
8 knowledge to see that, is something more frequently in the
9 armory of a micro neurosurgeon. When we look -- every time we
10 operate on a patient through an operating microscope --

11 MR. SMITH: Objection, Your Honor.

12 THE COURT: Overruled.

13 You can answer.

14 A -- and we see the anatomic detail to a level of
15 exactness that maybe an orthopedic spine surgeon, who doesn't
16 use a microscope, wouldn't have.

17 But, Dr. Bitan did not see any surgical indications;
18 referred Ms. Howard to Dr. Diwan, who is a pain management
19 doctor, who treated Ms. Howard with all of the generally
20 accepted and reliable treatments of pain management done for
21 her presentation. Dr. Diwan didn't know she had a fracture.
22 The radiologist didn't say so.

23 She had epidural injections. The dura mater is a
24 membrane around the nerve roots of the low back and it
25 surrounds the exiting nerve roots. And in medicine when we

Radna - by Plaintiff - Direct

1 see, "epi," it means when you are around something. An
2 epidural injection is an injection around the spinal dura where
3 the nerve roots are, to relax the nerve roots.

4 She had a spinal stimulator, which she still has in
5 her body, to stimulate those nerve roots. And gives what is
6 called a competitive stimulation with the aim of diminishing
7 pain stimulation. It is a good treatment. It didn't work on
8 Ms. Howard because her injury was too severe for that type of
9 treatment to work.

10 Ms. Howard had tons of medications.

11 Had tons of, really, aggressive physical therapy by
12 Mr. Goodell for Resurgence, you know. We call this type of
13 treatment work hard. Well, Ms. Howard didn't need work hard.
14 She is an athlete, she does downhill skiing -- this is before
15 her injury -- she is a runner, she is a federal cop. That's
16 why she -- she could actually get back to work in spite of
17 these injuries. She is working as we sit here today.

18 But in terms of treatment, Dr. Diwan, after all of
19 these years giving her everything he had and seeing she was
20 still suffering, he said, I am going to do something different.
21 He got a CAT scan, which finally the radiologist made the right
22 diagnosis and made it a fracture.

23 Q Doctor, what treatments have you recommended?

24 A Ms. Howard had every other treatment, non-operative,
25 that could possibly fix could this fracture. She had a back

Radna - by Plaintiff - Direct

1 brace. She had all sorts of neural suppressant medications to
2 ease the pain, ease the spasm. She has all sorts of therapy to
3 relax the nerve roots, to build muscles. It all failed. She
4 has no choice at this juncture to have a definitive procedure
5 for a spondylolysis, which is basically a separation of the
6 front from the back of the spine. The first part of that
7 treatment --

8 So, may I show this on the spine model again?

9 MR. ZILBERG: Your Honor, can the doctor bring
10 up the spine model?

11 THE COURT: Yes.

12 MR. ZILBERG: Thank you, Your Honor.

13 A While I am bringing this up, what we are going to
14 take a look at on the model, exactly what we are talking about.
15 Here it is. And basically -- I'll make this full screen.

16 Now, here is the vertebral body. Here is the foot it
17 is attached to. The fracture looking from the front is right
18 here. It is from the back of the pedicle, the middle of the
19 spine, and the lamina in back. So every time Ms. Howard moves
20 her back, there are muscles and ligaments attached to this L5
21 lamina.

22 Now, this L5 lamina is supposed to be solid to the
23 vertebral body in front. They are supposed to be moving as one
24 in every other level, but L5 is cracked.

25 So, the first thing doctors have designed operations

Radna - by Plaintiff - Direct

1 to remove this lamina arch. And that operation is called a
2 laminectomy. But it is a special laminectomy which removes
3 this lamina all the way to this point where it is attached to
4 the pedicle.

5 And the reason why that is important is the body, in
6 its wisdom, when it has a bone which is fractured, it tries to
7 heal it. It puts down scar, puts down a fibrous union. And
8 that scar has a medical term, it is called a pseudo arthrosis.
9 When something in medicine is called "pseudo," it means it is
10 false. A false arthrosis is not what nature made, it is what
11 the body made in response to an injury. And as that pseudo
12 arthrosis gets bigger, when the L5 nerve root -- take a look
13 here. Do you see that yellow mark right here? That's the L5
14 nerve root exiting the pedicle of L5 here. When that has that
15 false joint here, when she moves that pseudo arthrosis is
16 making that pedicle bigger, hitting that nerve root and causing
17 pain. So part of the laminectomy takes that pseudo arthrosis
18 away.

19 So the first operation, as a single-standing
20 operation, was originally described by an orthopedic spinal
21 surgeon by the name of Dr. Gill, G-I-L-L. And Dr. Gill's
22 procedure was simply a lumbar laminectomy of L5 taking away
23 that pseudo arthrosis. Taking everything away that was hitting
24 that nerve root when a patient moved. So that's the first
25 part.

mlp

Radna - by Plaintiff - Direct

1 But we learned that to really stop motion, which can
2 be painful in and of itself by this disruption, this accident
3 rendered to Ms. Howard's spine, is basically to strike through
4 the joint between L5 and S1. And that's a procedure we do from
5 the front. It is called an anterior lumbar interbody fusion.

6 What it means in English is, there is an approach, it
7 is done from the left side of the belly. We go from the left
8 side because the big blood vessel around the spine in front in
9 the area right in front of the spine, called a retroperitoneum,
10 behind our peroneal cavity is the aorta, a big arterial vessel.
11 And actually we can deal with that a lot more safely than a
12 vena cava, a big vein, which is on the right side. We always
13 go for the left side for this, because it is safer.

14 And we sweep away the peritoneal contents, open up
15 the iliopsoas muscle here, and remove this entire disc in
16 photo.

17 And our current technology we replace it with
18 material called PEEK. That's P-E-E-K, polyether ether ketone.
19 It is a special plastic designed for this operation. It has
20 little titanium markers so we can see it on an x-ray. But what
21 it does is, it allows us to put special medicines to help these
22 bones heal together. It is called a fusion.

23 So, the weakness caused by the trauma Ms. Howard
24 sustained in fracturing the pedicle, in fracturing the pars,
25 would be -- situation would be improved by strengthening the

Radna - by Plaintiff - Direct

1 joint between the sacrum and L5 vertebral body. That's called
2 an anterior lumbar interbody fusion.

3 And in basically these two procedures together
4 usually staged on different days: The Gill procedure, the
5 laminectomy of L5; and then another date the fusion of L5-S1,
6 are procedures generally accepted in our current time and
7 technology to treat the condition that Ms. Howard has. This is
8 what is done now for this.

9 THE WITNESS: Are we done with the displays?

10 MR. ZILBERG: I think so, but you will tell me
11 if you think you need it again.

12 THE WITNESS: Thank you.

13 Q Is the recommendation that you just discussed to a
14 reasonable degree of medical certainty?

15 A Yes.

16 Q Now, the condition that Ms. Howard has, is that a
17 permanent condition?

18 A Yes.

19 Q Is this condition causally related to the accident of
20 March 17, 2021?

21 A Yes.

22 Q And is that to a reasonable degree of medical
23 certainty?

24 A Yes.

25 Q Have you presented to Ms. Howard the risks and

Radna - by Plaintiff - Direct

1 benefits of these proposed surgeries?

2 A Yes.

3 Q Okay. What are the risks?

4 A Excuse me?

5 Q What are the risks?

6 A In experienced hands these surgeries are repeatedly
7 done with good results. But there are risks. You know, I have
8 been scrubbed on an anterior lumbar interbody approach where
9 the iliac vein was injured, was bleeding, we backed right out.
10 Because once you do that, the game is over. There is a lot of
11 real estate there, you know. Over cautery of the sympathetic
12 chain can cause injuries.

13 Like everything else in medicine, the docs who do
14 this with the most experience have the best results. But
15 nobody is free of complications. And the complications can be
16 severe, including paralysis and death.

17 You know, knock on wood, I have never scrubbed on one
18 of these where we had any complications, because I have been
19 privileged to work with some amazing people. But, there are
20 risks to these surgeries, no question about it.

21 Q Have these recommended surgeries been performed?

22 A No.

23 Q Now, absent the accident of March 17, 2021, would
24 there be complaints of spine pain?

25 A No.

Radna - by Plaintiff - Direct

1 Q Would there be complaints of extremity pain?

2 A No.

3 Q Would there be disability?

4 A No.

5 MR. SMITH: Objection.

6 THE COURT: Overruled.

7 Q Would there be permanency?

8 A No. I mean, she is a federal cop, she is doing
9 everything she wanted to do.

10 Q Would there be any need for the surgical procedures
11 that you described?

12 A No.

13 Q And what is the basis of that determination?

14 A Ms. Howard wasn't seeing any doctors unless she had a
15 cold or something. She had no back pain, no leg pain, no
16 disability, no need for braces on her back. She had no need
17 for epidural injections. She had no need for extreme work
18 hardening physical therapy. She was doing downhill skiing.
19 She had all of the therapy, you know, she wanted from her
20 normal athletics.

21 Q And Doctor, is this opinion to a reasonable degree of
22 medical certainty?

23 A Yes.

24 Q What is Ms. Lainey Howard's prognosis?

25 A There is nothing any doctor can do to fully return

Radna - by Plaintiff - Direct

1 Ms. Howard to normal like she was the morning before this
2 trauma when she got hit by this van. All we can do is make the
3 best recommendations to help her that we can. We are not
4 perfect, we just do the best we can. And this is a serious
5 injury.

6 Q Doctor, can you tell us within a reasonable degree of
7 medical certainty how long Ms. Howard will require
8 non-operative care?

9 A She is going to continue to have muscle spasm, have
10 some degree of pain both musculoskeletal and radicular on an
11 ongoing basis, with or without surgery. So, the need for pain
12 management, the need for back braces, the need for physiatric
13 evaluation will be ongoing, with or without surgery.

14 Q Doctor, do you have an opinion within a reasonable
15 degree of medical certainty as to whether Ms. Howard sustained
16 a fracture as a result of the accident of March 17, 2021?

17 MR. SMITH: Objection, Your Honor.

18 THE COURT: Overruled.

19 You can answer.

20 A Yes; and she did.

21 Q Please explain.

22 A We looked at the pictures, this is not some etherial
23 physiologic test, like an electrodiagnostic testing, like an
24 ENT or something like that. We got a picture. We looked at
25 it. The bone is busted.

Radna - by Plaintiff - Direct

1 Q Doctor, do you have an opinion within a reasonable
2 degree of medical certainty as to whether Ms. Howard sustained
3 a significant limitation of use of a body function or system,
4 specifically her lumbar spine, as a result of the accident of
5 March 17, 2021?

6 MR. SMITH: Objection, Your Honor.

7 THE COURT: Overruled.

8 You can answer.

9 A Yes; and she did.

10 Q Please explain.

11 A After this trauma, notwithstanding Ms. Howard's
12 strength of character and desire to keep working, her life is
13 changed. You know, she can't do the things she used to do in
14 her life. She is going through extraordinary measures to have
15 children. And her and her husband's hopes in that regard has
16 been --

17 MR. SMITH: Objection.

18 THE COURT: Sustained. That's stricken.

19 Q Doctor, do you have an opinion within a reasonable
20 degree of medical certainty as to whether Ms. Howard suffered a
21 permanent loss of use of a body organ or member, specifically
22 her lumbar spine, as a result of the accident of March 17,
23 2021?

24 MR. SMITH: Objection.

25 THE COURT: Overruled.

mlp

Radna - by Plaintiff - Direct

1 You can answer.

2 A Yes; and she did.

3 Q Please explain.

4 A The low back is supposed to work in unison with all
5 of its parts moving together. If the parts are separated, it
6 ain't going to work right. They have to be fixed as best as we
7 can to have the spine work together without causing her pain.

8 Q Doctor, do you have an opinion within a reasonable
9 degree of medical certainty as to whether Ms. Howard suffered a
10 permanent consequential limitation of a use of a body organ or
11 member, specifically her lumbar spine, as a result of the
12 accident she was involved in on March 17, 2021?

13 MR. SMITH: Objection.

14 THE COURT: Overruled.

15 You can answer.

16 A Yes; and she did.

17 Q Please explain.

18 A Again, the lumbar spine, the front and the middle and
19 the back has to move together. If it ain't moving together, it
20 is just not going to work right.

21 Q And Doctor, I would like to offer you a hypothetical
22 at this point. I would like you to assume that Ms. Howard
23 testified that prior to March 17, 2021, she was working full
24 time as a DEA agent. That she was in excellent health. That
25 she was in -- she was athletic and she was able to do all of

Radna - by Plaintiff - Direct

1 her normal daily activities. And she was extremely active in
2 her daily lifestyle.

3 Do you have that in mind?

4 A Yes.

5 Q I would like you to assume that Ms. Howard testified
6 that after the March 17, 2021 accident she was in constant
7 pain.

8 Do you have that in mind?

9 A Yes.

10 Q I want you to assume for the purposes of this
11 hypothetical that several days after the March 17, 2021
12 accident, Ms. Howard testified that she was unable to work at
13 all for five straight months from late March up until August 25
14 of 2021.

15 Do you have that in mind?

16 A Yes.

17 Q And she also testified that being out of work for
18 five months, completely out of work for those five months
19 immediately after the accident, was by orders of her treating
20 doctor, Dr. Sudhir Diwan.

21 Do you have that in mind?

22 A Yes.

23 Q I want you to assume that during those five months
24 Ms. Howard testified that she was confined to her home and only
25 able to leave with the assistance of friends, colleagues and

Radna - by Plaintiff - Direct

1 family to attend her medical appointments. I want you to
2 assume that during that time she testified she had trouble
3 sleeping. She had trouble dressing herself. She was unable to
4 cook. She was unable to clean her home. She had difficulty
5 showering. She had difficulty with her hygiene. She was
6 unable to use the toilet without help. She was unable to --
7 she had trouble sitting. She had trouble walking. And that
8 her father had to take a leave of absence to travel from
9 Massachusetts just to take -- help take care of her.

10 Do you have that in mind?

11 A Yes.

12 Q Now, Doctor, do you have an opinion within a
13 reasonable degree of medical certainty as to whether Ms. Howard
14 sustained an injury as a result of the accident of March 17,
15 2021 that stopped her from doing substantially all of her usual
16 daily activities for at least 90 of the first 180 days
17 immediately following the March 17, 2021 accident?

18 MR. SMITH: Objection, Your Honor.

19 THE COURT: Overruled.

20 You can answer.

21 A She did.

22 Q Do you have an opinion, Doctor, to a reasonable
23 degree of medical certainty, as to whether or not the accident
24 of March 17, 2021 is a substantial factor in bringing about the
25 injuries and the pain in her lower back and the disabilities

Radna - by Plaintiff - Direct

1 from the date of the accident until the present?

2 A Yes; and it is.

3 MR. ZILBERG: Nothing further, Your Honor.

4 THE COURT: Okay.

5 MR. SMITH: Your Honor, I have to mark some
6 exhibits and I just want to chat with my colleague.

7 THE COURT: Sure. We will take a short break.

8 COURT OFFICER: All rise. Jury exiting.

9 (Whereupon, the jury exited the courtroom.)

10 MR. SMITH: Your Honor, do you mind if I start
11 marking exhibits?

12 THE COURT: Sure. Did everything come up from
13 the record room?

14 MR. SMITH: Yes.

15 THE COURT: Good.

16 MR. ZILBERG: Your Honor, we moved all of the
17 records in on consent before you came into the courtroom.
18 Should we put that on the record or is that in the record
19 already?

20 THE COURT: Everybody ready for the jury?

21 MR. ZILBERG: Yes.

22 MR. SMITH: Yes, Your Honor.

23 COURT OFFICER: All rise. Jury entering.

24 (Whereupon, the jury entered the courtroom.)

25 MR. ZILBERG: Your Honor, I want to formally --

Radna - by Plaintiff - Cross

1 (Whereupon, the witness resumed the stand.)

2 MR. ZILBERG: I just want to formally put on the
3 record that Plaintiff's Exhibits 29 through 33, and 35
4 through 44 have been entered into evidence on consent of
5 both sides.

6 MR. SMITH: That is true, Your Honor.

7 THE COURT: Okay.

8 MR. SMITH: And I will actually be using
9 portions of some of those during the cross examination
10 this morning -- this afternoon.

11 Your Honor, when I hand the witness an exhibit,
12 does the officer hand it to him or I hand it to him? How
13 do you want to do it?

14 THE COURT: Officer.

15 COURT OFFICER: All rise. Jury entering.

16 (Whereupon, the jury entered the courtroom.)

17 THE COURT: Okay. Be seated.

18 We will now have the cross examination.

19 MR. SMITH: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q Doctor, I believe we have another doctor coming in
23 this afternoon, so I am going to try to ask you a bunch of yes
24 or no questions, if we can kind of keep to the script, I would
25 appreciate that. Okay?

Radna - by Plaintiff - Cross

1 A Yes, sir.

2 Q Thank you.

3 Sir, you are not a treating physician in this case,
4 are you?

5 A Correct.

6 Q You were retained by plaintiff's counsel to render
7 opinions in the litigation; is that right?

8 A Yes.

9 Q Okay. And the relationship you have with Ms. Howard
10 is not a physician/patient relationship, it is essentially you
11 got retained to do a report and then presumably have to testify
12 later at trial, fair enough?

13 A Yes.

14 Q Okay. And the first examination you did of
15 Ms. Howard was on May 8 of this year; is that correct?

16 A Yes.

17 Q And when you did that exam, did you know that we were
18 scheduled to go to trial approximately a month later?

19 MR. ZILBERG: Objection.

20 THE COURT: Overruled.

21 You can answer.

22 A I knew eventually, not exactly.

23 Q Okay. Would it surprise you that we were originally
24 scheduled for trial in this case in June?

25 MR. ZILBERG: Objection.

Radna - by Plaintiff - Cross

1 THE COURT: Overruled.

2 You can answer.

3 A I don't recall if I was told that or not.

4 Q Okay. Your second exam occurred on June 15; is that
5 correct?

6 A Yes.

7 Q And did you know that that date was -- Ms. Howard was
8 actually in town for the first trial in this case?

9 MR. ZILBERG: Objection.

10 THE COURT: Overruled.

11 You can answer.

12 A I don't recall if I was informed of that or not.

13 Q Okay. You were compensated by plaintiff's counsel
14 for doing your exam, your report and your testimony here today;
15 is that right?

16 A In part.

17 Q What does that mean?

18 A Well, I haven't submitted a bill for today yet.

19 Q Well, that's -- so at least you are being honest
20 about your billable hours, right?

21 A Excuse me?

22 Q You are being honest about the hours you are here
23 today; is that right?

24 I'll withdraw the question. Nevermind.

25 The -- this is not the first time you have testified

Radna - by Plaintiff - Cross

1 in court, is it?

2 A Correct.

3 Q You are retained -- this is not the time you were
4 retained by counsel to do a report and to give testimony at
5 trial, is it?

6 A I am sorry, you are speaking quickly, your words are
7 getting --

8 Q I am sorry, I was trying to move this along. I'll
9 speak slower.

10 A Thank you.

11 Q This was not the first time someone who was a patient
12 of another doctor hired you to examine the plaintiff, review
13 some records, do a report and then testify at trial, is it?

14 A Correct.

15 Q Okay. In fact, sir, when you testify, the vast
16 majority of the time it is beyond -- on behalf of people like
17 Ms. Howard who are suing somebody else, correct?

18 A Yes.

19 Q Okay. And sir, just like on this occasion, you are
20 essentially hired, even though there are doctors who are truly
21 actively treating patients. But even though you are not
22 treating, you are hired specifically to do the record review
23 and then ultimately give testimony, fair enough?

24 A Yes.

25 Q Okay. And we can agree, sir, that it has been over

Radna - by Plaintiff - Cross

1 five years since this accident, correct?

2 A Right.

3 Q And during those five years, the plaintiff in this
4 case has never treated with a neurosurgeon, has she?

5 A I don't believe so.

6 Q So you are the first neurosurgeon -- so during the
7 course of this treatment with these exemplary doctors you
8 discussed before, none of them do what you do for a living,
9 correct?

10 A Not exactly.

11 Q Right. Dr. Bitan is an orthopedic specialist; is
12 that right?

13 A Yes.

14 Q What did you say about Dr. Bitan, he is the head of?

15 A He is the senior spine surgeon at Lenox Hill
16 Hospital. That's on East 77th Street in Manhattan.

17 Q And his specialty is orthopedic surgery, correct?

18 A Yes, but he -- he limits his practice not to
19 extremities, to spine.

20 Q Oh, so he only does the back?

21 A He is the senior spine surgeon there.

22 Q Thank you. Dr. Diwan is a pain management specialist
23 correct?

24 A Yes.

25 Q And every procedure that has been done from 2021 to

Radna - by Plaintiff - Cross

1 the present was done by Dr. Diwan; is that correct?

2 A I believe that's true, yes.

3 Q And we can agree, I'll make this easy, you reviewed
4 records and did two exams, correct?

5 A Yes.

6 Q And that included some of the films we looked at and
7 that kind of stuff, correct?

8 A I am sorry, I couldn't understand all of your --

9 Q And that includes the films and other things we have
10 already showed the jury, correct?

11 A Yes, I reviewed the imaging.

12 Q At any time did you consult with the head of
13 orthopedic surgery at Lenox Hill about Ms. Howard?

14 A No.

15 Q You didn't talk to Dr. Bitan about his findings or
16 anything like that?

17 A No. I reviewed his records. I didn't speak to
18 Dr. Bitan.

19 Q Did you talk to Dr. Diwan about all of these
20 treatments and the like that he had done?

21 A No.

22 Q You did speak to the plaintiff, of course, right?

23 A Yes.

24 Q So, I mean, Doctor, we are looking at some records
25 here. Dr. Diwan has seen the plaintiff a substantial amount of

Radna - by Plaintiff - Cross

1 times; is that fair?

2 A Yes.

3 Q And you didn't feel the need to talk to Dr. Diwan
4 before you made your opinions in this case?

5 A No, not above and beyond his considerable and
6 detailed records which I studied in detail.

7 Q And you feel the same way about the head of
8 orthopedic surgery at Lenox Hill, you didn't feel the need to
9 talk to him before you gave your opinions here today?

10 A Well, Dr. Bitan only saw the patient twice.

11 Q Which is exactly the amount as you, correct?

12 A Right.

13 Q That was immediately after the first accident,
14 correct?

15 A Correct.

16 Q And do you agree with me, sir, I think you just said
17 it moments ago, Dr. Bitan on March 25 and in March of 2021, did
18 not find a fracture in the lumbar spine?

19 A Correct.

20 Q He did not?

21 A Well, he depended on the radiologist from Lenox.
22 They missed it also.

23 Q So the head of orthopedic surgery at Lenox Hill and
24 the radiologist at Lenox Hill both disagree with your initial
25 finding of a fracture in March of 2021, correct?

Radna - by Plaintiff - Cross

1 MR. ZILBERG: Objection.

2 A It was an act of omission, not commission. They
3 didn't say they disagree with me, I didn't see the patient yet.
4 They didn't find the fracture, which we all know is there.

5 Q They didn't find the fracture and you did?

6 A It is obviously on the CAT scan reported by Lenox
7 Radiology.

8 Q I understand, sir. They didn't find a fracture and
9 you did, correct?

10 A Back in 2021 they did not report a fracture.

11 Q And you haven't spoken to either one of them, so as
12 far as you know their opinion hasn't changed?

13 MR. ZILBERG: Objection.

14 THE COURT: Overruled.

15 You can answer.

16 A Well, the opinion of Lenox Hill Radiology has
17 changed. They issued a report, the patient has a partial
18 fracture in L5 bilateral.

19 Q When was that report issued?

20 A The same date as the scan May 7 of 2026.

21 Q May 2, 2026?

22 A Seventh.

23 Q I am sorry?

24 A Seventh.

25 Q May 27 of 2026?

Radna - by Plaintiff - Cross

1 A May 7.

2 Q Seventh of 2026. Meaning five months ago, correct?

3 A That's when the CAT scan was done.

4 Q Right. So the treating doctors found no fracture
5 before October of 2021, but the treating doctors have found a
6 fracture in May of this year, correct?

7 A Right.

8 Q Thank you. Doctor, you had an opportunity to speak
9 with Ms. Howard on two occasions, correct?

10 A Yes.

11 Q And did you learn from her that at one time when she
12 was younger she had a knee injury?

13 A A what injury?

14 Q Knee.

15 A Yes.

16 Q Okay. And did she report to you -- well, I want
17 to -- I want you to assume that she testified earlier in this
18 trial that immediately upon obtaining her knee injury, she went
19 directly to the hospital. Is that your understanding of what
20 happened?

21 A I really did not study her knee in any detail.

22 Q That's fair enough.

23 Doctor, I want you to assume for a moment that she
24 said she injured her second -- another knee also when she was
25 younger, and she went that day immediately to the hospital.

Radna - by Plaintiff - Cross

1 Did she ever convey that information to you?

2 MR. ZILBERG: Objection.

3 THE COURT: Overruled.

4 You can answer.

5 A No, I really did not ask her about her knees.

6 Q Okay. Doctor, I want you to assume that the
7 plaintiff testified in this case that she injured her neck
8 while wrestling, and on that day she also went directly to the
9 hospital. Did she convey that information to you?

10 A No, we did not discuss that.

11 Q Okay. Well, let's -- I want you to assume for the
12 record, sir --

13 I'll withdraw the question.

14 Can we agree that someone who has had three accidents
15 and has immediately gone to the emergency room at the hospital,
16 would not be considered a stranger to an emergency room?

17 MR. ZILBERG: Objection.

18 THE COURT: Overruled.

19 You can answer.

20 A No, she has been to ERs by the history you give.

21 Q And the woman that was reported to you as being fully
22 healthy in January -- I am sorry, in May of 2026, is someone
23 who has suffered injuries to her neck and her back, and in all
24 these occasions, according to what I just heard, that she is
25 fully healthy as of March 16, 2021, she was able to recover

Radna - by Plaintiff - Cross

1 from all of them, correct?

2 MR. ZILBERG: Objection. Fully healthy in May
3 of 2026?

4 MR. SMITH: No, March 16 of 2026, the day
5 before.

6 MR. ZILBERG: 2021.

7 MR. SMITH: Sorry. Thank you, Counsel.

8 Q March 16 of 2021, it is your testimony it was
9 reported to you that she is a fully healthy person; is that
10 correct?

11 MR. ZILBERG: Objection.

12 THE COURT: Overruled.

13 MR. ZILBERG: I don't know what the question is
14 at this point.

15 THE COURT: Just repeat the question.

16 MR. ZILBERG: There are several versions of it.

17 Q March 16 -- the woman who was reported to you as of
18 March 16 of 2021, was reported to you as being fully healthy
19 and able to do all of her activities; is that correct?

20 A Ms. Howard filled out all of the past medical history
21 and stuff from the present illness. It is in her report she
22 told me about her knee, she didn't hide anything from me.

23 Q Okay. So she has two knee operations and this -- two
24 knee situations and this neck, the way it was reported to you,
25 did not in any way prohibit her from doing normal daily

Radna - by Plaintiff - Cross

1 activities, correct?

2 A I apologize. I really limited my work with
3 Ms. Howard to her lumbar spine. I did not, you know, go
4 outside the level of neurosurgery, especially neurosurgery, and
5 deal with the knees. It just isn't the area where I normally
6 work.

7 Q Would you agree with me, Doctor --

8 I'll withdraw the question.

9 I think we know this. Plaintiff didn't go to the
10 emergency room on March 17 of 2021, did she?

11 A No.

12 Q She didn't go to the emergency room on March 18 of
13 2021, did she?

14 A No.

15 Q First time she went anywhere was to a walk-in clinic
16 on March 23 of 2021, correct?

17 A Yes.

18 Q And is that the first time that you are aware of that
19 she suffered an injury in an accident or otherwise where she
20 didn't present directly to an emergency room?

21 MR. ZILBERG: Objection.

22 THE COURT: Overruled.

23 You can answer.

24 A Well, I heard you testify in this regard, that's all
25 I know about it.

Radna - by Plaintiff - Cross

1 Q Okay. The accident on October 12 of 2021, there are
2 records about that accident that you reviewed, correct?

3 A I apologize, which records are you referring to?

4 Q The second accident, the one where she was rear-ended
5 and went straight to the hospital. You saw those records from
6 the day she went straight to the hospital, did you not?

7 A Yes.

8 Q Okay. And in that accident she made complaints about
9 her neck, correct?

10 A Principally.

11 Q And she made complaints about her back, correct?

12 A Correct.

13 Q And she also made complaints that she had a droopy
14 eye from the accident, correct?

15 A I don't recall that.

16 Q Okay. And she also reported, to the hospital at
17 least, that she had chronic headaches as a result of this
18 accident, correct?

19 A I would have to refresh -- if you want me to look at
20 a record I would be happy to look at it, but I don't recall
21 that as I sit here now.

22 Q I have records, but let's keep moving.

23 Somebody who injures their neck, back, has an eye
24 droop and chronic headaches on October 12 of 2021, we can agree
25 she suffered injuries from the accident on October 12 of 2021;

Radna - by Plaintiff - Cross

1 can we not?

2 A I am sure she had some multiple transient complaints.
3 And my understanding from Ms. Howard, the major injury that
4 persisted from that Chicago accident was her cervical spine,
5 not her low back.

6 Q Okay. And that's her subjective complaint. We
7 talked about objective and subjective, the woman bringing the
8 lawsuit here is telling you her main problem was her neck,
9 correct?

10 A Right.

11 Q Thank you.

12 All right. Doctor, I thought this came up earlier
13 during the trial?

14 A I apologize. I am missing what you are saying
15 because you are talking --

16 Q Is this better?

17 A Thank you.

18 Q I think at one point during the trial, but I want to
19 verify something, she had films taken both after the first
20 accident and after the second accident, correct?

21 A Plain films.

22 Q Well, she had MRIs taken after the first accident;
23 did she not?

24 A Yes.

25 Q And the October 12, 2021 accident, she had MRIs taken

Radna - by Plaintiff - Cross

1 also; did she not?

2 A Correct.

3 Q And she also had a CAT scan taken after the first
4 accident, correct?

5 A What part of her body?

6 Q Of her -- didn't you show us a CAT scan from March of
7 2021 where you claim there is a fracture?

8 A You are talking about the CAT scan this year? Okay.
9 Yes, she had a CAT scan done this year ordered by Dr. Diwan.

10 Q Okay. But the -- what was the first film that you
11 were shown immediately after the March 17 accident where you
12 claim that there is a fracture?

13 A I looked at all of these imaging and I looked at the
14 CAT scan and I found when I saw her and saw those films, they
15 all showed the same thing, a bilateral pars fracture at L5.

16 Q Okay. But the March ones, I think we just agreed to
17 this, the March ones you found a fracture but the treating
18 doctors did not, right?

19 A Correct.

20 Q Okay. We can agree that there were both plain films
21 or CAT scans and MRIs done before October 12 and after
22 October 12, correct?

23 A Just repeat that once again, please?

24 Q Sure. We can agree that there were films done before
25 October 12 of 2021 and after October 12 of 2021, correct?

Radna - by Plaintiff - Cross

1 A Could you clarify what part of the body are you
2 talking about?

3 Q I am sorry?

4 A You said plain films, you didn't say what part of the
5 body.

6 Q Didn't you show us a film from March of 2021 where
7 you claim you saw a fracture?

8 A Counselor, I don't disagree with anything you are
9 saying, I just want to understand your question. Is your
10 question about films of the low back?

11 Q Yes.

12 A Thank you. That's all I wanted to know.

13 Yes, I saw them. Sure.

14 Q Okay. I want to just focus, is your report in front
15 of you, sir?

16 A I can get it up on the computer if you give me a
17 minute.

18 Do you want me to project it or just look at it on my
19 computer?

20 Q Your computer is fine by me, if it is okay with you
21 guys.

22 A Okay. Let me get rid of this picture, sorry.

23 I'll just turn off that monitor, one second.

24 Okay. I am good now.

25 Now, you want me to bring up -- which report do you

Radna - by Plaintiff - Cross

1 want me to bring up, sir?

2 I apologize. Nobody introduced you, what is your
3 name?

4 Q Oh, my name is Arthur Smith, but everybody calls me
5 AJ, when they are not mad at me.

6 A I am sorry, which report?

7 Q Let's pull up your May 8, 2026 report.

8 A I have it.

9 Q That's the report you did after your first
10 examination, correct?

11 A Yes.

12 Q I want to refer you to page 23 --

13 A Sure.

14 Q -- of that report.

15 A Okay. I got it.

16 Q All right. Would you agree with me, sir, that you
17 put in your report that absent the trauma of March 17, 2021
18 Ms. Howard had a healed, fused, totally asymptomatic bilateral
19 L5 spondylolisthesis?

20 A The word is spondylolysis. Spondylolisthesis is a
21 totally different condition.

22 Q Spondylolysis, is that what your report says?

23 A Yes.

24 Q So as of March 17, 2021, Ms. Howard had a healed
25 fused, asymptomatic spondylolysis?

Radna - by Plaintiff - Cross

1 A Spondylolysis, she had a congenital finding that was
2 normal for her.

3 Q So that means before March 17 of 2021, at some point
4 she had spondylolysis?

5 A Which is very common in about 10 percent of the
6 population.

7 Q She had that before the accident, correct?

8 A Right. We saw that from the scarring we looked at
9 today.

10 Q What is spondylolysis?

11 A "Spondylo" is a word from the Greek meaning the
12 vertebrae. "Lysis" means to cut. A spondylolysis, as we go
13 through life and our body senses a weakness in that part, the
14 body strengthens it. It is a normal process and she had that.

15 Q So she had a broken back before the accident which
16 had fused, correct?

17 A No.

18 Q She had a spondylolysis fused?

19 A It is two parts of the word. Spondylo is the prefix,
20 the suffix is lysis. So they shouldn't be run together
21 spondylolysis.

22 Q She had a spondylolysis before March 17 of 2021,
23 correct?

24 A She has a congenital condition.

25 Q And you said that that actually fused; is that

Radna - by Plaintiff - Cross

1 correct?

2 A Right. She had some strengthening there.

3 Q And that was -- you said was asymptomatic, and that
4 this accident exacerbated it, made it worse; is that correct?

5 A Yes.

6 Q So the condition in her back at least preexisted this
7 accident, correct?

8 A No, because it was normal for her. What was new was
9 the fracture related -- that we all saw on the CAT scan and
10 retrospectively on the MRI scan that was caused by the
11 accident; and that's what is causing her problems.

12 Q I understand where you are trying to go, sir. But
13 you agree that whatever happened on March 17 exacerbated, made
14 worse a prior medical condition, correct?

15 A That's true.

16 Q Okay. And that prior medical condition apparently
17 self healed and fused itself, correct?

18 A It was normal for her. She had it for her lifetime.

19 Q And bony tissue can eventually self heal. It can
20 heal. It can fuse together. Bone can regrow and a person's
21 problem, earlier fractures or earlier breaks and the like, can
22 actually heal naturally, correct?

23 A I apologize, Mr. Smith, because I am a little
24 confused.

25 Q Okay.

Radna - by Plaintiff - Cross

1 A Was this question totally about this patient or you
2 are talking about hypothetical patients in general? I mean, I
3 didn't see where you were going with this.

4 Q Well, she had spondylolysis before the accident,
5 correct?

6 A Yes.

7 Q And that fused, correct?

8 A Yes, it healed.

9 Q That's not from the accident, that happened before
10 the accident?

11 A Yes.

12 Q Okay. And it is your -- it is your position that the
13 accident made that worse, correct?

14 A Yes.

15 Q We can agree, sir, can we not, that on July 20 of
16 2021 the plaintiff had a microdiscectomy?

17 A That was -- it was a percutaneous disc procedure.
18 Microdiscectomy means different things to different medical
19 doctors. But what she had was actually a percutaneous disc
20 procedure by Dr. Diwan. It was not an open surgery.

21 Q Okay. So this percutaneous was not an open surgery
22 it was just a percutaneous -- what did you call it?

23 A It was a percutaneous disc procedure.

24 Q And that was done by the pain management doctor,
25 correct?

Radna - by Plaintiff - Cross

1 A Right.

2 Q And that was done in July of 2021, correct?

3 A I can confirm that date. I have it here if you like,
4 but I can't do it without looking at my records.

5 Q Well, let me show you.

6 (Handing)

7 THE WITNESS: Thank you.

8 MR. SMITH: Your Honor, I have had, I believe,
9 six exhibits marked. They are all from records in the
10 evidence. And in an effort to speed things along, I made
11 a poster board so I can show the jury while he is
12 reviewing the same record. Okay?

13 THE COURT: Sure.

14 MR. SMITH: All right.

15 Q Offering you Exhibit A1, sir. Do you see A1?

16 A Right.

17 Q Okay. This report from Dr. Diwan, he is the pain
18 management specialist, right?

19 A Right.

20 Q And you agree with me that it says that she is post
21 lumbar discectomy?

22 A Discectomy, that's correct.

23 Q At the L5-S1 level, correct?

24 A Yeah.

25 Q A significant difference, better than 70 percent

Radna - by Plaintiff - Cross

1 improvement in her pain, with improved range of motion and
2 functional status. Do you agree with that?

3 MR. ZILBERG: Objection.

4 THE COURT: Overruled.

5 You can answer.

6 A Well, you are reading the words correctly.

7 Q Okay. And it states here the pain is not radiating
8 anymore.

9 Why is that significant?

10 A If you look at Dr. Diwan's record as a whole, he
11 admits that, you know, all of the treatments he gave the
12 patient gave no permanent benefit to her. That's why he did
13 the CAT scan, because the other treatment, the other studies
14 weren't going anyplace. The patient can have a procedure and
15 have a transient result. It gave her no permanent help.

16 Q You don't like this pain is not radiating, you don't
17 think that's true?

18 A I am not questioning the quality or veracity of
19 Dr. Diwan's records. What I am saying is that none of these
20 changes were permanent.

21 Q Why is radiating pain important --

22 A It can be.

23 Q -- to somebody with a lower back injury?

24 A It can be.

25 Q Why?

Radna - by Plaintiff - Cross

1 A Well, because we discussed radicular pain is
2 different than musculoskeletal pain.

3 Q So the treating doctor in February would note a lack
4 of radiating pain, because that would show someone who is
5 getting better, correct?

6 A Perhaps.

7 Q Four lines below: She does not feel spasms anymore.
8 Why would the doctor -- I will withdraw that
9 question.

10 Doctor, spasms, why are they important?

11 A All spasm is tightening of muscles, and we listen to
12 everything that the patient complains about.

13 Q And Doctor, would you not agree with me that one of
14 the reasons that you would do the procedure that was done in
15 July would be to reduce spasms?

16 A In part.

17 Q And one of the reasons you would do it would also be
18 to stop the radiating pain?

19 A Perhaps.

20 Q Correct?

21 And the report states that she wants to go back to
22 physical therapy. Why would it be important for her to -- in
23 July of 2021, to go back to physical therapy?

24 A Well, Dr. Diwan was treating the patient in a very
25 standard way within a known specialty; which a pillar of that

Radna - by Plaintiff - Cross

1 is therapy.

2 Q And by saying she would go back to physical therapy,
3 that suggests her condition in July of 21 is such that she is
4 not doing it, but hopefully this procedure will work so she can
5 go back to physical therapy, correct?

6 A What was your last sentence?

7 MR. SMITH: You know what, I'll withdraw it.

8 (Handing)

9 THE WITNESS: Thank you.

10 MR. SMITH: Showing the witness B and the jury
11 B1, which is from a visit on September 22, of 2021.

12 Q That's a record from Dr. Diwan, correct?

13 A Yes.

14 Q All right. And this is 9/22. And her second
15 accident is 10/12, correct?

16 A Right.

17 Q All right. Once again, it mentions that she had the
18 procedure approximately a month ago. That's the disc procedure
19 that we talked about, correct?

20 A Right.

21 Q And at this visit she reports an 80 percent reduction
22 in pain with improved range of motion and functional status.
23 Do you see that?

24 A Yes.

25 Q 80 percent reduction in pain, that was the purpose

Radna - by Plaintiff - Cross

1 for the procedure in the first place; was it not?

2 A In part.

3 Q And having improved range of motion, that was also
4 the purpose of that procedure; was it not?

5 A In part.

6 Q Once again, the report clearly states pain is not
7 radiating anymore. Do you see that?

8 A Yes.

9 Q So this is two reports. I have shown you post disc
10 procedure where she has no radiating pain. Do you agree with
11 that?

12 A It is likely consistent with this report, but not
13 with the fourth dimension of time.

14 Q The woman you saw in 2026, four and a half months
15 after the second accident had radiating pain, did she not?

16 A You are asking me a question about the patient? When
17 I saw her in 2026?

18 Q In 2026.

19 A Yeah?

20 Q Did she have radiating pain?

21 A Yes.

22 Q And that was some -- that was, we can agree, after
23 her October accident, correct?

24 A Years.

25 Q Years. But as of September '22, you can believe

Radna - by Plaintiff - Cross

1 Dr. Diwan, pain is not radiating anymore?

2 A I do not question the veracity of Dr. Diwan's
3 reports.

4 Q And you haven't spoken to Dr. Diwan to try to clarify
5 this or anything like that, right?

6 A I don't think it requires clarification. She
7 obviously had a transient assistance and it wasn't permanent.
8 All problems came back.

9 Q Well, okay. She doesn't have spasms anymore,
10 correct?

11 A That's -- you know, I see what is written in the
12 report.

13 Q Yep. Okay.

14 Let me show you Resurgence Physical Therapy. That
15 was her physical therapy facility, was it not?

16 A Yes, referred to by Dr. Diwan.

17 Q And she had -- she actually had a televisit with them
18 on the morning of the second accident, correct?

19 MR. SMITH: Officer?

20 (Handing)

21 THE WITNESS: Thank you.

22 MR. SMITH: I am showing the witness what has
23 been marked as D and D1 for the jury, which is in evidence
24 from Resurgence Physical Therapy. The date of the note is
25 10/12/2021.

Radna - by Plaintiff - Cross

1 A These dates are wrong, because the incident in
2 Chicago was on October 12, my recollection is. I can confirm
3 that if you like.

4 Q Well, this is dated 10/12; is it not?

5 A It says visit 10/18/2021, Counselor.

6 Q Are you looking at the same thing as I am?

7 (Handing)

8 MR. SMITH: No, this is the last one. D1, do
9 you have D up there?

10 COURT OFFICER: A and B.

11 MR. SMITH: My bad. Here you go.

12 (Handing)

13 Q Do you have D in front of you now, sir?

14 A Yes.

15 Q All right. 10/12/21, date of the second accident,
16 correct?

17 A Yes.

18 Q That morning before the second accident she reports
19 she is making steady progress, correct?

20 A Yes.

21 Q Her sitting tolerance improves week to week and less
22 muscle spasm. Again this muscle spasm, that's something you
23 are trying to cure, correct?

24 A Hopefully, yes.

25 Q Okay. And her ability to sit, improve it, that's

Radna - by Plaintiff - Cross

1 something else you are trying to cure; is it not?

2 A Sounds right.

3 Q Now, Doctor, it states right here: She has been an
4 able to get to and from work with less pain.

5 The woman you saw in May let you know that she works
6 from home now, correct?

7 A In part.

8 Q So the woman on 10/12 of 2021, according to this
9 record, says she is able to get to and from work on her own,
10 correct?

11 A It also says she has less pain, which means she is
12 still in pain.

13 Q Absolutely. Not denying that, sir.

14 The pain was not so bad that it prevented her from
15 going to work that morning of that accident, correct?

16 A Consistent with the record, yes.

17 Q Yes.

18 And in fact, she was actually driving to work when
19 that accident happened, correct?

20 A I would have to refresh my recollection to confirm
21 that.

22 Q That's fine.

23 And, sir, you know from meeting her in May, that she
24 doesn't drive to work anymore, right? She has a thing at home
25 that she works with, correct?

Radna - by Plaintiff - Cross

1 A My recollection is that she has a necessity, if I
2 understood her correctly, for some site work as well.

3 Q So she doesn't drive to work every morning like she
4 did the morning of 10/12/2021, correct?

5 A I can't confirm the frequency of exactly when she
6 drives or didn't drive. I read the record, but my knowledge is
7 not encyclopedic.

8 Q You have no reason to suggest that this record is
9 inaccurate, correct?

10 A No.

11 Q Doctor, it states in record that she is happy with
12 her current progress and will be following up with her surgeon
13 in the next few days. Did the woman you meet in May of 2026
14 seem happy with her current progress?

15 A When I examined her and found L5 nerve root problems
16 consistent with the fracture --

17 Q I am just going to move to strike the non-responsive
18 portions.

19 Doctor, the woman you met in May of 2026, did she
20 feel happy with her current progress?

21 MR. ZILBERG: Objection.

22 THE COURT: Overruled.

23 You can answer.

24 THE WITNESS: Thank you, Your Honor.

25 A When I met Ms. Howard, she wasn't happy. She was

Radna - by Plaintiff - Cross

1 miserable. She still had persistent pain. These reports talk
2 about some micro improvement. She still had pain. They didn't
3 cure her. They didn't even diagnose that she had the fracture.
4 And I congratulate you on your micro dissection. But frankly
5 it is not worth anything, because the point your own report
6 referring to says she was still in pain.

7 Q So the woman you met in May was not the same woman
8 who was --

9 MR. SMITH: You know what, I am going to
10 withdraw that question.

11 Q I am going to show you now, sir, Defendant's Exhibit
12 E.

13 MR. SMITH: Showing the jury as well.

14 Q This is a report from Rush University Medical Center.

15 A Right.

16 Q Rush University Medical Center is where she went on
17 an emergency basis on the morning of 10/12/2021; is it not?

18 A Yes.

19 Q This is the first time Ms. Howard was at a hospital
20 for anything having to do with her lower back; is that correct?

21 MR. ZILBERG: Objection.

22 THE COURT: Overruled.

23 You can answer.

24 A I believe that's true.

25 Q So the first, not just emergency treatment, but the

Radna - by Plaintiff - Cross

1 first time she went to a hospital for her lower back condition
2 was on the morning of 10/12/2021, correct?

3 A I believe that's true.

4 Q And on the very bottom they have her name. What does
5 "cc" next to back pain mean?

6 A That usually means to most of us they are sending a
7 copy to somebody. I am not sure of the relevance to this
8 though.

9 Q Would you agree with me, sir, that --

10 A Oh, I apologize. CC, chief complaint.

11 Q Her chief complaint?

12 A Right.

13 Q Her chief complaint is back pain?

14 A That's what they wrote there.

15 Q That's what the hospital wrote. Not neck pain. Not
16 anything else. They wrote her chief complaint is back pain.
17 Do you agree with that, sir?

18 A Well, I agree you are reading it properly.

19 Q Okay. So, sir, Ms. Howard told you and you saw her
20 as part of the lawsuit, but if you look at the actual hospital
21 record, you agree with me her chief complaint was actual back
22 pain, correct?

23 A That's what was written contemporaneously. But I saw
24 her years later; there is a fourth dimension of time involved.

25 Q Right. And below that it says, she now reports pain

Radna - by Plaintiff - Cross

1 in her lower back, worse with movement, no associated radiating
2 pain down the legs, no numbness?

3 A I apologize.

4 Q I'll withdraw.

5 A I see where you are reading now. I just didn't.
6 Okay.

7 Q Okay. She immediately reports to the emergency room
8 at the only hospital she has ever gone to, that she had back
9 pain. And that was her chief complaint, agreed?

10 A That's what the report states, right.

11 MR. SMITH: Officer. Sorry. Get your steps
12 done.

13 (Handing)

14 THE WITNESS: Thank you.

15 Q Showing the witness what is marked as Exhibit F. I
16 will show the jury F1, which is the poster board.

17 Can you see F1, sir?

18 A You are talking about this piece of paper?

19 Q Yep.

20 A Yeah, I got it.

21 Q And that's also a report from Resurgence Physical
22 Therapy; is that right?

23 A Yes.

24 Q And that's also dated 10/12/2021, correct?

25 A Yes.

Radna - by Plaintiff - Cross

1 Q And that report is the same day as the accident,
2 correct?

3 A Yes.

4 Q And it says that she was in the office the evening
5 after having been seen for physical therapy this morning. And
6 we just looked at it, she actually went to physical therapy
7 that morning, correct?

8 A Patient --
9 Forgive me if I read this?

10 Q Sure.

11 A Patient called PT office in the evening after having
12 been seen for PT this morning. That's a tongue twister.

13 Q But the earlier report we showed you, she had
14 physical therapy on the morning, the October 12?

15 A Frankly, I am trying to figure out what this means,
16 Counselor, sorry. What is your question?

17 Q The morning of the 12th, we just looked at it, she
18 had a physical therapy visit, correct?

19 A If you say so, yeah.

20 Q 10/12/21 Resurgence Physical Therapy, that's her
21 physical therapist, correct?

22 A Yes.

23 Q So she had a physical therapy session that morning,
24 correct?

25 A Give me one second. I just want to read this.

Radna - by Plaintiff - Cross

1 Q Unless the records aren't accurate, she had a
2 physical therapy session?

3 A Counselor, I need to read this to answer your
4 question. If you give me a minute, I really appreciate it.

5 Q Sure.

6 A So she had a PT visit in the morning before the
7 accident. Is that your understanding as well?

8 Q Yeah.

9 A Thank you.

10 Q Okay. Then she had the accident?

11 A Yes.

12 Q And then that night, or after the accident, she
13 contacts the same physical therapist, her normal treating
14 physical therapist, correct?

15 A Yes.

16 Q Okay. And there has been, I believe, testimony
17 earlier that she didn't get a physical therapist at Rush. But
18 the night of the accident, you can agree if the records are
19 accurate, she treated with the same physical therapist for her
20 back that she had been treating with from the beginning of this
21 whole thing, correct?

22 A For the treatment that she had before the new
23 accident?

24 Q Exactly.

25 A Okay.

Radna - by Plaintiff - Cross

1 Q And she doesn't need a new physical therapist at Rush
2 Hospital for her back because she has already got one, correct?

3 A That's a clinical judgment by a current doctor at
4 that time.

5 Q She saw the guy in the morning for therapy for her
6 lower back, and then she calls him that night. If she is happy
7 with the person, she has a physical therapist for her back,
8 doesn't she?

9 A That's the patient's judgment, correct.

10 Q And you agree with me that that night she has
11 immediate onset of pain and went directly to the ER, according
12 to this report; is that right?

13 A Well, specifically at that time of that accident in
14 Chicago, the patient was driving on the Interstate and she was,
15 like, a block away from this accident. She just exited the
16 interstate and went straight to the hospital. It was right
17 there. It wasn't that it was a big deal.

18 Q Sir, the upper east side of Manhattan has hospitals,
19 doesn't it?

20 A Sure.

21 Q And on March 18 there are hospitals open in the city
22 of New York are there not? I mean, they might be full of
23 partiers from March 17, but on March 18 there are hospitals
24 open in the city of New York; are there not?

25 A Of course.

Proceeding

1 Q And March 20 there were hospitals open in the city of
2 New York; were there not?

3 A Yes.

4 Q And she didn't decide to use any emergency room at
5 all for her back in her entire life until 10/12 of 2021,
6 correct?

7 A She was a block away and she went there and she was
8 right there.

9 Q So I am correct?

10 A Yeah.

11 THE COURT: Okay. We will stop now for lunch.
12 Come back at 2:15.

13 COURT OFFICER: All rise. Jury exiting.

14 (Whereupon, the jury exited the courtroom.)

15 (Whereupon, a luncheon recess was taken at this
16 time.)

17 * * *

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

19 * * *

20 THE COURT: Everybody ready for the jury?

21 MR. ZILBERG: Yes, Your Honor.

22 THE COURT: Okay. We are ready.

23 COURT OFFICER: All rise. Jury entering.

24 (Whereupon, the jury entered the courtroom.)

25 THE COURT: Okay. Have seats. We will continue

Radna - By Plaintiff - Cross

1 now with the cross.

2 MR. SMITH: Thank you, Judge.

3 Q Hope you had a nice lunch, sir.

4 A Thank you. Yes.

5 Q Very few questions left. Thank you.

6 Sir, on July 20 of 2021, if I am accurate, the
7 plaintiff had a procedure called a percutaneous discectomy?

8 A Correct.

9 Q Can you describe for the jury what a percutaneous
10 discectomy is?

11 A It is a pain management intervention where a doctor
12 identifies, via fluoroscopy, which is basically live x-ray
13 during surgery, a location of a disc. And the theory is in a
14 hypothetical patient, if there is an irritation of neural
15 elements because of protrusion of a disc into the area of the
16 spinal canal, by putting a probe and using a laser to evaporate
17 part of the disc, to diminish the volume of the disc, and it
18 takes the pressure off the neural elements.

19 So, it is a pain management procedure. Neurosurgeons
20 don't consider it an operation, we consider it a pain
21 management procedure.

22 Q And you would agree appropriately in this case it was
23 done by a pain management doctor, not a surgeon, correct?

24 A Correct.

25 MR. SMITH: Sir?

Radna - By Plaintiff - Cross

1 (Hanging)

2 THE WITNESS: Thank you.

3 Q Doctor, showing you Defendant's G. Is that right?

4 A Yes.

5 MR. SMITH: I just want to give you a copy so we
6 don't go crazy here.

7 Q All right. Sir, Defendant's G reflects a visit with
8 Dr. Diwan on 10/18 of 2021; does it not?

9 A Yes. It is a -- it is a tele-medicine.

10 Q And it reflects the fact that MRIs were going to be
11 done approximately a week after her second accident in October,
12 correct?

13 A Which line are you referring to in this?

14 Q The third line -- starting at the end of the second
15 line into the third line.

16 A That's the one we looked at, yeah.

17 Q And in fact, MRIs were done at around that time; is
18 that not -- that's true?

19 A We saw that MRI.

20 Q Yeah. And again, this notes radiating pain to her
21 left lower extremity. And that's a residual of injury to your
22 lower back, is it not?

23 A I would have to review the record specifically to
24 respond to that. I can, if you want to give me time to do it.

25 Q Okay. So, you are not sure whether or not you agree

Radna - By Plaintiff - Cross

1 with Dr. Diwan or not?

2 A It is a huge record. I mean, I can refresh my
3 recollection if you want to take the time. I know you have
4 another doctor.

5 Q I am just asking you -- Okay. Let's make this simple
6 here. If, in fact, on 10/18 of 2021, if she had increased back
7 pain radiating to her left lower extremity, that would be
8 consistent with a lower back injury; would it not?

9 A An exacerbation.

10 Q Right.

11 Doctor, if you can just skip down to the portion of
12 it that talks about just below the section where it said that
13 she had been experiencing greater than 80 percent better
14 feelings. And the next sentence is: Her pain has returned
15 after the accident and she is very worried. The condition
16 of -- I think we saw before lunch, the history of her condition
17 leading up until the day of the accident on 10/12, would you
18 agree with me that the accident on 10/12 caused the plaintiff
19 pain?

20 A Yeah, there was an exacerbation.

21 Q And in fact, would you agree with me that what we saw
22 this morning was that her chief complaint on 10/12 was back
23 pain?

24 A Correct. That's what the record reflected at that
25 time.

Radna - By Plaintiff - Cross

1 Q Okay.

2 MR. SMITH: Your Honor, at this point I would
3 just ask that -- I didn't make a board for this, if this
4 record could be published to the jury, please?

5 THE COURT: Okay.

6 (Whereupon, the above mentioned exhibit was
7 published to the jury.)

8 THE COURT: Did you publish it to the jury?

9 COURT OFFICER: Yes. The exhibit has been
10 published.

11 Q Okay. Doctor, let me finish here.

12 Doctor, would you agree with me -- I'll withdraw that
13 question.

14 Doctor, the plaintiff eventually had a spinal
15 stimulator inserted; did she not?

16 A Yes.

17 Q And that was in June of 2022; is that correct?

18 A I would have to refresh my recollection to look at
19 the exact date.

20 Q Doctor, you would agree with me that the spinal
21 stimulator was inserted after her October of 2021 accident?

22 A I think that sounds right.

23 Q And she had no operations before October 12, 2021,
24 correct?

25 A You are talking about the facet rhizotomies or

Radna - By Plaintiff - Cross

1 ablations.

2 Q I am talking about the treatments that Dr. Diwan
3 called -- did call ablations. Did she have any ablations
4 before October 12 of 2021?

5 A Again, I mean, I would be happy to look at the record
6 to refresh my recollection. I can't repeat the record
7 encyclopedically.

8 Q Are there records you can look at to see if she had
9 an ablation before October 12 of 2021?

10 A Sure.

11 MR. ZILBERG: Your Honor, we can stipulate there
12 were no ablations before October of 2021.

13 MR. SMITH: Okay. That would be great.

14 MR. ZILBERG: To move things along.

15 MR. SMITH: Thank you, Counsel.

16 We can also stipulate that the spinal stimulator
17 was implanted in June of 2022. Fair enough?

18 MR. ZILBERG: It was.

19 MR. SMITH: Thank you.

20 Q And Doctor -- Doctor, the records I showed you this
21 morning showed that she was driving to work on the morning of
22 10/12?

23 A Excuse me. I just missed your last two words.

24 Q The records I showed you this morning shows that the
25 plaintiff was driving to work on the morning of the 12th.

Radna - By Plaintiff - Cross

1 She had no spinal stimulator in her body. She had no ablations
2 prior to 2022. She doesn't drive anymore. She has trouble
3 sitting. While the records I show you suggest otherwise.

4 Doctor, sitting here today, is it your opinion that
5 the accident of October of 2021 has nothing to do with her
6 current complaints?

7 A The objective data shows that there is no structural
8 changes in the MRI. The injury she sustained back in 2021 is a
9 pars fracture, and the MRI looks exactly the same. I mean,
10 there are many mechanisms of a patient having pain after an
11 exacerbating incident, after a procedure on her back, the
12 placebo effects. There are many things going on. You have to
13 look at the whole picture through time. That's what I call the
14 fourth dimension of time, to understand what is going on.

15 I mean, there is no question there are bumps on the
16 road. There may be exacerbations, bumps on the road. The
17 bottom line is she never recovered from the 2021, March 17
18 incident.

19 Q So it is like the October accident never happened?

20 A I didn't say that.

21 MR. ZILBERG: Objection.

22 THE COURT: Overruled.

23 You can answer.

24 A I mean, it happened. She had an exacerbation.
25 That's not the major theme here.

Radna - by Plaintiff - Redirect.

1 Q Doctor, how much were you compensated to do your
2 report and your examination?

3 A My fee is \$500 an hour.

4 Q Was that for the report?

5 A For everything.

6 Q Everything. How many hours have you spent, so far,
7 on this case?

8 A I would have to do arithmetic. In excess of 40.

9 MR. SMITH: That's all I have, Judge.

10 THE COURT: Okay.

11 MR. ZILBERG: May I, Your Honor?

12 THE COURT: Yes.

13 THE WITNESS: Oh, there is redirect? I am
14 sorry.

15 MR. ZILBERG: Yes, Doctor. I have to put you
16 through some redirect.

17 REDIRECT EXAMINATION

18 BY MR. ZILBERG:

19 Q Doctor, when a patient is being treated for
20 radiculopathy, and there is a note in the doctor's chart that
21 on a particular day the patient is not exhibiting symptoms of
22 radiculopathy, does that mean that the patient is cured?

23 A No.

24 Q Now, Counsel showed you one page of a report from
25 Dr. Diwan from July 28, 2021, and then another page from a

Radna - by Plaintiff - Redirect.

1 report from September 22, of 2021, indicating that there were
2 no complaints of radiculopathy. Do you remember that?

3 A Yes.

4 Q Now, did you know that on September 3 of 2021
5 Dr. Diwan issued a letter to Ms. Lainey's -- to Lainey Howard's
6 employer, in evidence, which states:

7 "Please be advised that Lainey is suffering from
8 lumbar radiculopathy secondary to work injury."

9 It says: "Ms. Howard is not to lift or wear anything
10 in excess of 10 pounds; not to partake in any physical activity
11 that causes excessive bending or turning of the back and spine;
12 and not to sit for prolonged periods of time."

13 That's September 3, 2021. Does that affect in any
14 way the answer you gave to Mr. Smith on cross?

15 A Thank you for refreshing my recollection about that
16 disability letter. Yes, it does. Because basically it shows
17 the Dr. Diwan who followed the patient longitudinally,
18 understood that she had a permanent injury. Obviously her
19 symptoms can change from day to day, but it doesn't change the
20 very fact that the record that counsel showed me said her pain
21 was lessened. It didn't mean it was relieved. She still was
22 in pain.

23 Q Now, counsel also blew up one of the pages from
24 Dr. Diwan's report from September 22, 2021. Now, counsel
25 didn't blow up all of the pages from that report. He blew up

Radna - by Plaintiff - Redirect .

1 one page from that report. But if we turn the pages of the
2 report from September 22, 2021, it indicates that Ms. Howard is
3 still being treated for radiculopathy of the lumbar region,
4 lower back pain, and other intervertebral disc displacement of
5 the lumbar region. It further indicates that on September 22,
6 2021 Ms. Howard is still on Zofran, diclofenac gel,
7 cyclobenzaprine, Percocet and Lidocaine.

8 Finally, if we continue to turn the pages on that
9 same report that counsel only blew up one page of, it says:
10 "Light duty restrictions. Patient can go back to work with
11 light duty assignments. Weight lifting not more than
12 10 pounds. Avoid flexion, extension. Use lumbar support as
13 much as possible. Wear back brace if lifting weights. Avoid
14 hard pushing or pulling."

15 That's all from that same report on September 22,
16 that has a single notation saying, "no radiculopathy."

17 Now, my having read those sections to you, does that
18 in any way change your opinion or change your answer to what
19 Mr. Smith asked you on cross?

20 A Thank you again for refreshing my recollection.

21 The point is, and the point I was trying to make in
22 my answers on cross exam, is that you have to look at a
23 longitudinal history, not just a bump on the radar from one day
24 where leg pain may be less. It doesn't change the overall
25 picture and progress when looking at everything over time.

Radna - by Plaintiff - Redirect .

1 And thank you for refreshing my recollection that
2 Dr. Diwan felt the same way.

3 Q Doctor, counsel was kind enough to blow up one of the
4 pages from the physical therapy report, because as you recall,
5 Ms. Lainey Howard had a physical therapy session the very
6 morning of the October 12, 2021 accident.

7 Now, if we continue to turn the pages of that report
8 and see what else her physical therapist wrote, we will see
9 that she had a lumbar spine disability of 38 percent, which he
10 notes in his report. And we note in his report that she has
11 specific complaints of radiculopathy in her left glute and
12 occasionally into bilateral lower extremity with increased
13 activity and sitting. That's on the morning of the October 12,
14 2021 accident, which counsel did not blow up and did not read
15 into the record.

16 Now, does that information in any way affect the
17 answer that you gave on cross?

18 A It does. And I thank you again for refreshing my
19 recollection.

20 It shows that even if there was some report of a
21 transient improvement, it doesn't change the overall picture.

22 Q Now, Doctor, counsel spoke about the emergency room
23 record from Rush where it was indicated that the chief
24 complaint was back pain. And I think we have discussed that
25 there was an increase in back pain after the October 12, 2021

Radna - by Plaintiff - Redirect.

1 accident. What we know, of course, is that she went to the ER
2 at Rush and then two days later there were MRIs done of her
3 lower back. In fact, during the initial visit to Rush there
4 were x-rays done as well.

5 Now, after the x-rays were done of her lower back at
6 Rush in Chicago, after MRIs were done two days later at Rush in
7 Chicago, were there any new injuries diagnosed with those
8 imaging studies?

9 A No.

10 Q Doctor, I would like you to assume that Lainey Howard
11 testified, and the records of course support the testimony that
12 from late March to late August she missed five months of work
13 continuously after the March 17, 2021 accident. And that after
14 that she only returned to work on a limited basis, on light
15 duty.

16 I would like you to further assume that Ms. Lainey
17 Howard testified that after the October 12, 2021 accident, she
18 only missed three days of work, and then continued working
19 light duty as she was before.

20 Does that information at all affect your opinion in
21 this case?

22 A Tremendously.

23 Q In what way?

24 A Well, it puts in perspective that the October 12
25 incident really didn't affect her that much.

Radna - by Plaintiff - Cross

1 Q Now, Doctor, were there any other questions that you
2 were asked on cross that in any way changed any of the opinions
3 that you gave thus far in this case?

4 A No.

5 MR. ZILBERG: Thank you, Your Honor.

6 MR. SMITH: Your Honor, I would just like to
7 make a record that we have another doctor coming on. At
8 some point during this case I will be more than happy to
9 publish the entire set of records from the blowups. I
10 would just like to do it some other time.

11 THE COURT: Okay.

12 MR. SMITH: And I just have one question,
13 Doctor.

14 CROSS-EXAMINATION

15 BY MR. SMITH:

16 Q Doctor, on September 7 -- on March 17 plaintiff was a
17 field worker, did you know that?

18 A Yes.

19 MR. ZILBERG: Objection.

20 THE COURT: Overruled.

21 Q Doctor, on October 21 her job was light duty inside
22 of an office; did you know that?

23 A Again, I have to refresh my recollection by looking
24 at the record.

25 Q You would agree with me that light duty work is

Radna - by Plaintiff - Redirect

1 easier to come back to than field work with the DEA, correct?

2 A Yes, I would.

3 MR. ZILBERG: Objection.

4 THE COURT: Overruled.

5 You can answer.

6 A Yeah, I think that's true.

7 MR. ZILBERG: One question.

8 MR. SMITH: That's it, Judge.

9 MR. ZILBERG: I have a question.

10 REDIRECT EXAMINATION

11 BY MR. ZILBERG:

12 Q Assuming that light duty work is easier to come back
13 to than full duty work, during the five months that Lainey
14 Howard was out of work after March 17, 2021 included no work
15 whatsoever, not even light duty work, not any form of light
16 duty work, not even work from home, to which she was bound
17 other than going to medical appointments; does that in any way
18 change your opinions in this case?

19 A It shows the injury, initially the date of accident
20 we are here about today, was a much more profound incident to
21 her affecting her medically and occupationally than the initial
22 incident -- injury, which was much more profound.

23 MR. ZILBERG: Thank you.

24

25

Radna - by Plaintiff - Cross

1 CROSS-EXAMINATION

2 BY MR. SMITH:

3 Q So it is your opinion the injury that put her in the
4 hospital is less profound than the one that took her six days
5 to see a doctor?

6 MR. ZILBERG: Objection to, "put her in the
7 hospital."

8 A Counsel, in all respects it is a non sequitur. When
9 she had the incident in Chicago she was on the Interstate, you
10 know, within view of an exit to get off to the hospital. She
11 was right there. So, it isn't like she made a special trip to
12 the hospital. She just happened to have been there, that was
13 the first medical location available to her. It isn't like she
14 traveled some distance to go to the hospital.

15 Q Okay. How much --

16 MR. SMITH: I'll withdraw the question. I am
17 good.

18 THE COURT: Okay. Thank you. You are excused.

19 THE WITNESS: Thank you, Your Honor.

20 (Whereupon, the witness exited the courtroom.)

21 MR. ZILBERG: Your Honor, we have another
22 witness. Can I go check outside if she is there?

23 THE COURT: Mm-Hm.

24 MR. ZILBERG: Thank you.

25 Your Honor, the doctor is outside. Should I

Radna - by Plaintiff - Cross

1 bring her in or should the court officer bring her in?

2 THE COURT: Continuing with the plaintiff?

3 MR. ZILBERG: Yes. Oh, no. We have another
4 doctor out of turn.

5 THE COURT: Okay.

6 MR. ZILBERG: Should I bring her in?

7 THE COURT: Yes.

8 MR. ZILBERG: Thank you, Your Honor.

9 MR. SMITH: Your Honor, just so you know, we
10 have Margot is going to be doing the exam with this one.

11 THE COURT: Mm-Hm.

12 MR. ZILBERG: Your Honor, plaintiff calls to the
13 stand Dr. Lisbeth Shlansky as her next witness.

14 (Whereupon, the witness took the stand.)

15 COURT CLERK: Please remain standing. Raise
16 your right hand.

17 L I S B E T H S H L A N S K Y, after
18 having first been duly sworn was examined and
19 testified as follows:

20 COURT CLERK: Please state your name and address
21 for the record.

22 THE WITNESS: Lisbeth Shlansky, 363 East
23 76th Street, 21F, New York, New York 10021.

24 COURT CLERK: Thank you. You may be seated.

25 MR. ZILBERG: May I inquire, Your Honor?

Shlansky - by Plaintiff - Direct

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. ZILBERG:

4 Q Good afternoon, Dr. Shlansky.

5 A Good afternoon.

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

8 A Yes, I am.

9 Q And when were you so licensed?

10 A In New York or as a physician?

11 Q Tell us both.

12 A Okay. I was licensed as a physician in 1998 for --
13 in Connecticut. And I was licensed in the state of New York in
14 2018.

15 Q And can you please tell us about your educational
16 background?

17 A Would you like to know college?

18 Q Yes. Let's start with college if you don't mind.

19 A I went to college and graduated in 1985 from Goucher
20 College in Towson, Maryland.

21 I then worked for several years as an actuarial
22 student.

23 I went back and did my pre-med classes at Columbia
24 while I was working. And then applied to medical school and
25 entered medical school in 1990.

Shlansky - by Plaintiff - Direct

1 I graduated in 1994 with both a degree in medicine
2 but also a degree and Master's in public health, so I have both
3 degrees. I did my residency in 1994 through 1998. And then
4 started practicing in 1998.

5 Q And what -- where did you do your residency?

6 A Danbury Hospital in Danbury, Connecticut.

7 Q Okay. And what was the focus of your residency?

8 A Obstetrics and gynecology.

9 Q And are you board certified in obstetrics and
10 gynecology?

11 A Yes, I am.

12 Q Okay. Please tell us what that means, to be board
13 certified.

14 A To be board certified you have to pass two exams; one
15 is a written exam and one is an oral exam. As well as maintain
16 your certification, which is done annually. I think after you
17 initially become board certified you have six years where you
18 don't have to take any tests, and then after that you have to
19 maintain your certification on an annual basis.

20 Q Doctor, are you employed?

21 A Yes.

22 Q Where?

23 A I work for a practice called Maternal Fetal Medicine
24 Associates in New York City up on the upper east side.

25 Q And can you please tell us, what is the nature of

Shlansky - by Plaintiff - Direct

1 that practice?

2 A The field of study of maternal fetal medicine is a
3 subspecialty in obstetrics. So obstetrics, I am a generalist.
4 I am an OB/GYN, so I practice obstetrics and gynecology, but it
5 is the practice of high risk obstetrics. So, basically our
6 practice is very, very heavy in care and delivery of high risk
7 pregnancies.

8 Q And do you have a leadership role in that practice?

9 A I do. I am currently considered one of the senior
10 physicians. I am still delivering babies, but I am more in a
11 supervisory role so that as -- Our practice is very busy. We
12 currently are delivering a thousand babies a year in the whole
13 practice. But I have moved into a more senior role. When
14 somebody has a complicated pregnancy or care of a complicated
15 patient, or there is just a lot of volume on the floor, the
16 second person will get called in, which is a senior person,
17 which is myself and several of my other partners.

18 Q Do you have any special interest in the field of
19 obstetrics?

20 A I do. I like high risk obstetrics. Its very
21 interesting. Routine obstetrics is interesting, but it is much
22 more interesting when you get complicated patients with
23 multiple medical problems. And so our practice has become kind
24 of a referral service for all of the patients that are in other
25 practices that are too complicated for, basically, a

Shlansky - by Plaintiff - Direct

1 generalist. So we care for a lot of high-risk, very
2 complicated patients.

3 Q Have you been involved in medical teaching?

4 A Yes. I have had multiple different roles over
5 different time periods. Part of my time as a physician I
6 worked at Danbury Hospital. Then I worked at St. Francis
7 Hospital.

8 At St. Francis I was the director of an inner city
9 women's clinic, and during that time I was supervising
10 residents in both the care of women, and received several
11 teaching awards at that point in time for my teaching.

12 I am also currently involved in teaching at Mount
13 Sinai, and we have medical students rotating with us, usually
14 once a week.

15 Q Have you received any awards?

16 A So those were the awards from the teaching clinic
17 from those years where I really had a lot of involvement with
18 residents.

19 Q Great. Have you been involved in any volunteer work
20 in the field of obstetrics?

21 A Yes. There are probably two places where I have been
22 involved. One has been on mission trips, and I'll come back to
23 that in a minute.

24 And the other has been, Mount Sinai offers a free
25 clinic on Saturday mornings to women that are under insured or

Shlansky - by Plaintiff - Direct

1 not insured. And they always need an attending to volunteer
2 and supervise residents, and so I cover that intermittently.

3 And then the mission work I did a lot of when I lived
4 in Hartford -- outside of Hartford. And did mission trips to
5 the Dominican Republic, as well as Haiti. And in Haiti we
6 actually had, kind of, adopted a small town. And in that small
7 town we were trying to provide services. And the more that we
8 went, the more that they provided services. So we were trying
9 to provide care. So the care was free, but we would go --
10 there were four mission trips every year; and I would go on
11 multiple different mission trips there.

12 Q And in your practice and during your career, have you
13 treated women -- pregnant women during their pregnancies as
14 part of your main practice?

15 A Yes.

16 Q And have you had the opportunity to deliver babies?

17 A Yes.

18 Q Okay. And how many babies would you estimate you
19 delivered over the course of your career?

20 A In the beginning, since I was the new person, I
21 delivered more than everybody else. But I would have to
22 average it out to about 100 babies a year times 32 years, so
23 that's 3,200.

24 Q Okay. Do you have any distinguished honors in that
25 regard with regard to delivering babies?

Shlansky - by Plaintiff - Direct

1 A Yes. I guess most recently -- there is no award, but
2 I am a little embarrassed by this, but apparently I have the
3 lowest cesarean section rate in all of the Mount Sinai system
4 for the last several years. We were initially at Mount Sinai
5 East and then we moved to Mount Sinai West, and there is no
6 honor, there is no prize, but apparently my rate is lower than
7 everybody's; which I think is a great thing.

8 Q Have you treated women during the postpartum period
9 as well?

10 A Yes, I do lots of postpartum visits.

11 Q Now, earlier in your testimony you mentioned high
12 risk. Can you please tell us, what is a high risk pregnancy?

13 A Probably the -- there isn't any formal definition
14 aside from, it's exclusionary. It is what a low-risk pregnancy
15 isn't. So a low-risk pregnancy would be somebody who has no
16 risk factors. And I'll give you lots of examples: Obesity; in
17 vitro. These are all examples of high risk pregnancies:
18 Twins; hypertension; diabetes; chronic medical problems. Those
19 would all be considered high risk pregnancies. As well as
20 people who have had difficult pregnancies, like they have had a
21 hemorrhage or some other issue. So it is more a -- it is more
22 if you can exclude all of those things, that's a low-risk
23 pregnancy, and high-risk pregnancy is everything else.

24 Q Now, in the practice that you are currently with now,
25 approximately what percentage of your patients are high risk?

Shlansky - by Plaintiff - Direct

1 A Our practice probably is somewhere around 70 percent.
2 It could be as high as 80 percent. I don't think we really
3 divide people up by whether they are high risk or low risk, but
4 a majority of our practice is high risk.

5 Q Okay. Now Doctor, if you were not here in court now,
6 what would you be doing?

7 A I was seeing patients this morning, I would still be
8 seeing patients this afternoon.

9 Q And are you being compensated for your time away from
10 the office?

11 A Yes, I am.

12 Q At what rate?

13 A I believe \$500 an hour.

14 Q Now, Dr. Shlansky, at some point did my firm retain
15 your services as an expert in this case?

16 A Yes.

17 Q Okay. And what was the -- what was the -- your
18 understanding for what purpose did we hire you?

19 A To see Lainey Howard and to give an opinion.

20 Q And in the course of your professional practice, did
21 you come to evaluate Lainey Howard?

22 A I did.

23 Q And were you provided with medical records as well?

24 A Yes, I was.

25 Q Can you please tell us, generally, what medical

Shlansky - by Plaintiff - Direct

1 records you reviewed as part of your analysis?

2 A Do you want me to review my list?

3 MR. ZILBERG: Your Honor, can the doctor
4 reference her report?

5 THE COURT: Sure.

6 MR. ZILBERG: Thank you, Your Honor.

7 THE WITNESS: Thank you.

8 Q We are not going to try to make this a memory test.
9 If you need to look at your report just let us know, please.

10 A Okay. That would be helpful.

11 Q Thank you.

12 A I reviewed Dr. Diwan's records; as well as the
13 records of Dr. Thomas; I reviewed the records of Dr. Bitan,
14 B-I-T-A-N; as well as Dr. Moran; and the records of Dr. Sarah
15 Pachtman.

16 Q Now, Doctor, can you please tell us, were there any
17 significant findings in those records that impacted your
18 opinion in this case?

19 A I think the two records that were probably most
20 pertinent to me were Dr. Moran's records and Dr. Pachtman.
21 They are in my field of study, so I think that those were most
22 relevant.

23 Q And in what sense were they relevant?

24 A I think that they basically gave an opinion. Their
25 concern was basically for the medications that Lainey Howard is

Shlansky - by Plaintiff - Direct

1 taking and how that might impact pregnancy. As well as concern
2 for her well-being in the course of pregnancy and potentially
3 postpartum.

4 Q Now who did you understand Dr. Moran to be?

5 A My understanding was Dr. Moran was hired by the
6 defense to see and evaluate Lainey Howard.

7 Q Okay. I think that was Dr. Pachtman.

8 A Oh, my apology.

9 Q Okay. That's fine.

10 Now, Doctor, did you perform a medical examination of
11 Ms. Howard?

12 A I did.

13 Q Okay. Can you please tell us about that?

14 A I spent some time taking a history from Lainey Howard
15 as well as --

16 MS. LUDLAM: Objection Judge, as to the history.

17 THE COURT: Overruled.

18 You can answer. Well, you already have.

19 MS. LUDLAM: Judge, may I -- may we approach, or
20 sidebar, as to the history?

21 THE COURT: Were there any other questions after
22 that one?

23 MR. ZILBERG: Sure.

24 THE COURT: What is the next question?

25 MR. ZILBERG: Next question is, can you please

Shlansky - by Plaintiff - Direct

1 tell us what your medical exam consisted of.

2 THE COURT: Okay.

3 You can answer.

4 A History or medical exam?

5 THE COURT: Medical exam.

6 THE WITNESS: Okay. Thank you.

7 A My medical exam was basically heart, lung, spine,
8 abdomen exam.

9 Q Now, Doctor, based upon -- well, Doctor, I would like
10 to present you with a hypothetical question. I would like you
11 to assume that Lainey Howard was in her regular state of health
12 prior to March 17 2021. She was a DEA agent. She was
13 extremely fit. She engaged in many physical activities,
14 recreational. She was an avid runner. She did -- she had
15 many, many sport-related hobbies.

16 I would like you to assume that Ms. Lainey Howard
17 testified that on March 17, 2021, while engaged in the course
18 of her work, she was pinned and crushed between two vehicles by
19 defendant's van. That she immediately felt pain in her lower
20 back and in her side. That she went to -- that she sought
21 medical care the following week. And that she was unable to
22 return to work for five months following this accident.

23 I would like you to assume that Lainey Howard
24 returned to work with limitations, light duty, and has,
25 although she has switched jobs several times in the following

Shlansky - by Plaintiff - Direct

1 years after she left the DEA, she has been on light or
2 restricted duty or duty with accommodations up until today.

3 I would like you to assume that over the past -- over
4 the past five or so years since the accident she has been on
5 various narcotics and pain medications consistently.

6 I would like you to assume that she has had many
7 steroid injections into her spine; ablations of her spine;
8 caudal injections of her spine; that she has a percutaneous
9 discectomy performed. And that in around June of 2022 she had
10 a spine stimulator installed, which she has to run twice a day,
11 every day, for 30 minutes. And that she has been doing that
12 since June of 2022 to present.

13 I want you to assume that Lainey Howard has testified
14 to all of that.

15 Now, based on the hypothetical that I have presented
16 and the medical records that you have reviewed and your
17 examination of Ms. Howard, do you have an opinion to a
18 reasonable degree of medical certainty as to Ms. Howard's
19 ability to handle a pregnancy and the postpartum period?

20 MS. LUDLAM: Objection. Foundation. Beyond --
21 calls for questions and answers that are beyond the scope
22 of her practice, so I am objecting.

23 THE COURT: Overruled.

24 You can answer, if you can.

25 A I have two concerns. One is the medication that she

Shlansky - by Plaintiff - Direct

1 is taking. So, some of her medications are nonsteroidals which
2 are -- they are okay up to a certain point in pregnancy.
3 Typically first trimester is up to 13 weeks, second trimester
4 is 13 weeks to 28 weeks. Nobody has a clear answer as to what
5 point people should stop nonsteroidals in pregnancy. She is
6 currently taking those on a daily basis, so that's one concern,
7 because that can have effects on the pregnancy. It can also
8 have effects on fetal blood flow and fetal circulation. So
9 that's one concern.

10 The other concern is narcotic use. Narcotics do
11 cross the placenta. And so any exposure that she has to
12 narcotics, her child would also have to narcotics.

13 So, in people who have a baseline narcotic usage,
14 there is an effect on a newborn, and they can go through
15 withdrawal. Not all of them go through the withdrawal. It is
16 somewhat dose dependent. But those are two concerns that are
17 medication related.

18 Another concern is women who have limited mobility.
19 Pregnancy is tough. It is very hard on women. The current
20 recommendation is that women gain between 25 to 35 pounds in
21 pregnancy, which is a lot. And the smaller the person, the
22 bigger a load that actually is. It is a little easier for big
23 women, such as myself. But it really put a lot of stress and
24 strain on posture and mobility. And the concept is that you
25 want enough reserve in the form of the "F" word, which is

Shlansky - by Plaintiff - Direct

1 "fat," so that babies can grow and have that extra energy. Yet
2 it puts a strain on mother's to, kind of, provide that in
3 somebody who already has back pain and limited mobility.

4 You know, it is tough. And we have patients who have
5 Cerebral Palsy. We have patients who are wheelchair bound or
6 have spina bifida who have limited mobility. And it is really
7 challenging. So, the medication is one issue. Mobility is
8 another issue.

9 And there is concerns because it doesn't get any
10 easier once a baby is out. Because you care for an infant, and
11 it depends who the primary caregiver is, but people put a kid
12 in their arms, and we only have two of them. One arm holds the
13 kid and the other arm, even if you bottle feed them, you are
14 doing this all the time. You are constantly looking down to
15 make sure that they are breathing and doing fine, and there is
16 a lot of need to be a flexible human being. And that's hard.

17 So those are my concerns. So its, you know, I hope I
18 answered the question.

19 Q Doctor, do you have an opinion to a reasonable degree
20 of medical certainty whether it is advisable for Lainey Howard
21 to carry a child?

22 MS. LUDLAM: Objection.

23 THE COURT: Overruled.

24 You can answer.

25 A One of the things that we tend to do is, we see a lot

Shlansky - by Plaintiff - Cross

1 of patients. My practice is very interesting. We have 50-year
2 olds. We have 55-year olds. We have 45-year olds. Many of
3 them have diabetes or hypertension or other medical problems,
4 like connective tissue disorders. What we try to do is get
5 people to get to an optimized state before they actually get
6 pregnant, as best as possible.

7 I don't -- I think with her limited mobility and her
8 inability to flex and bend, I wouldn't recommend that she get
9 pregnant.

10 Q And is that opinion rendered to a reasonable degree
11 of medical certainty?

12 A Yes.

13 Q Okay.

14 MR. ZILBERG: Nothing further.

15 THE COURT: Okay.

16 MS. LUDLAM: May I inquire, Judge?

17 THE COURT: Yes.

18 MS. LUDLAM: Thank you.

19 CROSS-EXAMINATION

20 BY MS. LUDLAM:

21 Q Good afternoon, Doctor.

22 A Good afternoon.

23 Q I am just going to ask you some follow-up questions.
24 If you don't understand my question, just let me know.

25 A Absolutely.

Shlansky - by Plaintiff - Cross

1 Q Or if you can't hear me, I'll speak up. But I am
2 going to try my best to do everything in the microphone.

3 Doctor, you testified earlier that your specialty, in
4 addition to being a general obstetrician and gynecologist, your
5 specialty is maternal fetal medicine, correct?

6 A No. The practice I work for is Maternal Fetal
7 Medicine Associates. It is very confusing, because everybody
8 thinks that we are all maternal fetal medicine associates. I
9 am a generalist. I am not a maternal fetal medicine
10 specialist.

11 Q So you are -- not you personally, although you are
12 part of a practice that practices maternal fetal medicine, you
13 personally are not a maternal fetal medicine -- you don't
14 specialize in that area; is that what you are saying?

15 A I have an interest in it, but I am not -- there is a
16 board certification that is a subspecialty, which is maternal
17 fetal medicine. I am not a subspecialist.

18 Q Okay. All right. So --

19 A Sorry.

20 Q That's okay. Don't apologize. Don't apologize. I
21 just want to be clear.

22 A Mm-Hm.

23 Q And I want to make sure that I have an understanding,
24 and so that the jury has an understanding as well.

25 So you mention that there is a subspecialty for board

Shlansky - by Plaintiff - Cross

1 certification in OB/GYN practice and that's a subspecialty of
2 maternal fetal medicine, correct?

3 A Correct.

4 Q But you do not have that board certification, that
5 specialized board certification?

6 A That's correct.

7 Q I understand you are board certified in OB/GYN
8 general practice, correct?

9 A Yup.

10 Q Okay. So is it fair to say that if you -- that since
11 you do not have a specialty, the subspecialty or practice the
12 subspecialty of maternal fetal medicine, you personally do not
13 treat patients that are the high risk patients?

14 A That's not true. I do treat lots of high risk
15 patients.

16 Q Okay. So the high -- just so we are clear, as to the
17 focus of your practice with high risk patients, is it the
18 high-risk patients who are pregnant?

19 A I am not sure I am understanding your question.

20 Q Okay. Sure. Well, you mentioned that your office,
21 just generally, your office sees high-risk patients, correct?

22 A Can I word it a different way, and hopefully --
23 because I have to explain this to patients all the time.

24 Q Okay. Well, let me just -- let me just make sure if
25 you can answer my question, and I'll rephrase it if you can't

Shlansky - by Plaintiff - Cross

1 answer it the way I phrased it. So obviously I'll rephrase it.

2 So, a high risk pregnancy, fair to say, is a woman
3 who is pregnant who has some -- that there is some risk with
4 regard to her pregnancy, correct?

5 A Correct.

6 Q Okay. So when you say high-risk patients, is it
7 patients who are both pregnant and not pregnant?

8 A Technically when we say high-risk pregnancies, we are
9 only referring to pregnant patients.

10 Q Okay. So for purposes of this discussion, when we
11 are -- when you are referring to a high-risk patient or a -- a
12 patient who is in the midst of a high-risk pregnancy, correct?

13 A Say that one more time.

14 Q Sure. When you are referring to high-risk patients
15 for purposes of this discussion, you are referring to patients
16 who are in the midst of -- or are pregnant and are considered
17 high-risk pregnancy, correct?

18 A I am unfortunately referring to both patients that
19 are considering pregnancy, as well as patients that are
20 currently pregnant. Part of what we do in our practice is see
21 people before they get pregnant to try to optimize whatever
22 their high risk conditions would be before they get pregnant.

23 Q Okay. And is it fair to say that your treatment of
24 these particular patients before they get pregnant, the
25 intention is to give them a course of treatment so that they

Shlansky - by Plaintiff - Cross

1 can have a successful pregnancy, correct?

2 A An optimized pregnancy. Because successful pregnancy
3 would mean that you have -- to me would mean that you have a
4 baby. But to try to make -- to try to have the pregnancy be as
5 smooth as possible, with as few complications as possible.

6 Q Right. So it is fair to say the ultimate goal for
7 the pre-pregnant high-risk patients is to formulate some plan
8 so that they are able to then transition to a pregnancy?

9 A Yes.

10 Q Okay. Now, Doctor, it is fair to say that you are
11 not a reproductive endocrinologist?

12 A That's correct.

13 Q You don't specialize or focus in infertility,
14 correct?

15 A That is correct.

16 Q You also don't specialize in hormonal imbalances?

17 A You might have to define hormonal imbalances.

18 Q Okay. Sure. Is it fair to say that you do not focus
19 your practice on reproductive disorders?

20 A As a generalist I see gynecologic patients, not a
21 lot, probably about 20 percent, and sometimes people do have --
22 they have diabetes or they have thyroid dysfunction, those
23 would qualify as hormonal imbalances.

24 Q Right. You just mentioned a different term, which is
25 gynecological?

Shlansky - by Plaintiff - Cross

1 A Mm-Hm.

2 Q So if we can do a quick --

3 A Sure.

4 Q -- health class discussion.

5 There is a difference between the gynecological
6 aspect of your practice and the obstetrics part of your
7 practice, correct?

8 A They are pretty seamless.

9 Q I am sorry?

10 A They tend to be somewhat seamless. Because we care
11 for people from a gynecologic basis. They come to us and say,
12 I want to get pregnant, so we do care for them in both aspects.

13 Q Correct. But do you have any patients who just see
14 you for purposes of gynecological exams, pre-cancer screening
15 essentially?

16 A I do.

17 Q Right. And the focus -- there are some patients
18 where the focus isn't a pregnancy issue, it is just they want
19 to be screened for cancers, correct?

20 A Or STDs, yes.

21 Q Right. That's a gynecological practice, correct?

22 A Correct.

23 Q And the obstetrics portion of the practice is
24 focusing on preconception, conceptions and pregnancy, correct?
25 And birth?

Shlansky - by Plaintiff - Cross

1 A Yes.

2 Q Right. Okay. So in all of those aspects, you don't
3 practice -- you don't have a specialty in fertility?

4 A That's correct.

5 Q That's even maybe a special -- a different office,
6 correct?

7 A Nobody in our practice focuses on infertility. We
8 refer people out.

9 Q It is also fair to say, Doctor, that you are not a
10 spinal doctor?

11 A That's correct.

12 Q You are not an orthopedist, correct?

13 A That's correct.

14 Q You are also not a pain management specialist,
15 correct?

16 A That's correct.

17 Q And is it fair to say that in your practice it is not
18 the primary part of your practice to prescribe medication other
19 than, maybe, birth control hormonal medications?

20 A There are lots of medications that we prescribe in
21 the field of OB/GYN. But, yeah.

22 Q Most of them are not related to pain or
23 antiinflammatory, correct?

24 A Sometimes antiinflammatories are a big part of
25 control of people's pain around their periods or -- but yes, we

Shlansky - by Plaintiff - Cross

1 stay, in general, away from narcotics.

2 Q Now, you mentioned some of the records that you
3 reviewed with regard to Ms. Howard. And I believe you said you
4 mentioned a Dr. Diwan, correct?

5 A Yes.

6 Q And that's a pain management specialist, correct?

7 A I believe so. It has been a little while.

8 Q Right. And you also mentioned a Dr. Thomas, is that
9 the City M.D. doctor that Ms. Howard first saw approximately
10 six days after the accident?

11 A I believe so.

12 Q Okay. And then you mentioned a Dr. Jill Moran, you
13 reviewed her -- she wrote a four-page report, correct?

14 A Yes.

15 Q And you also you mentioned a Dr. Pachtman, correct?

16 A That's correct.

17 Q Right. And I believe when counsel was asking you
18 questions, who was Dr. Moran, and you said I think that's the
19 defense counsel's doctor; but is it fair to say that was a
20 maternal fetal medicine doctor who performed a consult or did a
21 consult with Ms. Howard in March of -- March 19 of 2024? One
22 visit. Does that refresh your recollection?

23 A Can I look?

24 Q Sure.

25 A Can I cheat, please?

Shlansky - by Plaintiff - Cross

1 Q Sure.

2 A Yes.

3 Q And other than the four-page record that you reviewed
4 of Dr. Moran, it is fair to say that you did not review any
5 other OB/GYN records concerning Ms. Howard?

6 A That is correct.

7 Q Now, you mentioned you discussed a little bit about
8 the examination that you had with Ms. Howard, which was one
9 visit on May 8, 2026, correct?

10 A Yes.

11 Q Okay. And were you retained -- well, let me rephrase
12 the question. It is fair to say that -- is it fair to say that
13 you were retained to perform an examination of Ms. Howard on or
14 around May 8, 2026 and to prepare a report in anticipation of
15 testifying at a trial in June of 2026, approximately one month
16 later?

17 A That's correct.

18 Q And other than that May 8, 2026 examination, you
19 didn't perform any other examinations of Ms. Howard, correct?

20 A That is correct.

21 Q And it is also fair to say you didn't perform any
22 treatment of Ms. Howard, correct?

23 A That is correct.

24 Q At some point after you performed the examination on
25 May 8, 2026 you prepared a report, correct?

Shlansky - by Plaintiff - Cross

1 A That is correct.

2 Q And you -- and in the report, which I believe is
3 before you, you stated that this is a requested obstetrics and
4 gynecological examination of Lainey Howard, correct?

5 A Yes.

6 Q But it is fair to say you didn't actually perform a
7 gynecological exam on her, correct?

8 A That is correct.

9 Q And you didn't, obviously, perform an obstetrics exam
10 on her, because she is not pregnant, correct?

11 A That is correct.

12 Q Now, you noted that she hadn't had -- Ms. Howard
13 hadn't had prior pregnancies, correct?

14 A That is correct.

15 Q And you also noted in your report that her -- her
16 30-day cycle was regular, correct?

17 A Yes.

18 Q Did you review Dr. Moran's report prior to preparing
19 your report dated May 8, of 2026?

20 A Yes.

21 Q Okay. And --

22 MS. LUDLAM: Judge, may I please give to the
23 officer to provide to the witness what is in evidence as
24 Exhibit 39, which is Dr. Moran's report?

25 THE COURT: Yes.

Shlansky - by Plaintiff - Cross

1 (Hanging)

2 Q Doctor, do you have what is in front of you, which is
3 in evidence as Exhibit 39. On the first page I believe is the
4 subpoena, but if you flip through the subpoena pages, the first
5 page is Duly Health and Care in the upper corner. Let me know
6 when you are on the first page of the actual medical report.

7 A Yup.

8 Q On the top it says: 3-19-2024, office visit in
9 maternal and fetal, Pennsylvania Avenue, Glen Ellen, correct?
10 On that top of that page, the first page of the Duly?

11 A I apologize, because I don't see that.

12 MS. LUDLAM: Judge, may I flip it to the correct
13 page?

14 THE COURT: Yes.

15 MS. LUDLAM: Thank you.

16 (Hanging)

17 MS. LUDLAM: Okay.

18 Q Doctor, I have flipped over on the Exhibit 39 to the
19 first page of Dr. Moran's record.

20 (Hanging)

21 Q And do you see down in the record where it says
22 underneath Past Medical History, that she has a history of
23 irregular menstrual cycles?

24 A Yes.

25 Q Okay. And if you turn to what I have as page -- not

Shlansky - by Plaintiff - Cross

1 the next page, but the page after that, which I have as page
2 five, which there is a section about midway down the record it
3 says: Impression?

4 A Yup.

5 Q Okay. And underneath Impression there is a bullet
6 points. Do you see that? And the third bullet point says
7 irregular menstrual cycles, possible infertility. Do you see
8 that?

9 A Yup.

10 Q All right. And did you see that when you prepared
11 your report dated May 8, 2026 wherein in your report you noted
12 that Howard had regular cycles?

13 A Mm-Hm. Are you --

14 Q So that's just a yes or no.

15 A Okay.

16 Q Now, Doctor, you talked about some various
17 medications which may be an issue at some point during a
18 pregnancy term. Correct?

19 A Yes.

20 Q Just generally speaking right now.

21 And you mentioned that it is usually the first
22 trimester is an issue, correct? With medications?

23 A With nonsteroidals, first trimester there is some
24 data about miscarriage, that it increases your risk of
25 miscarriage. Not the best data. But what I was saying is

Shlansky - by Plaintiff - Cross

1 actually first trimester and even a good part of second
2 trimester is usually okay with nonsteroidals.

3 Q Is it fair to say, Doctor, that in the first
4 trimester of any pregnancy, the first trimester is always the
5 riskiest of the three trimesters, correct?

6 A With regard to medication?

7 Q Anything. In general.

8 A No, there are joys of every trimester.

9 Q But there are also other risks with regard to --
10 during the time that the woman is in the first trimester in
11 addition to, other than medicine or medications, correct?

12 A I feel like every trimester has lots of risk.

13 Q Right. And that has nothing to do with medications,
14 correct?

15 A Correct.

16 Q Right. So you want to make sure that your heart rate
17 doesn't exceed a certain level, correct?

18 A That's no longer valid.

19 Q But it -- at one point it was, particularly with the
20 first trimester, correct?

21 A That's old data. That's been debunked.

22 Q Okay. Now, Doctor, it is fair to say that you -- you
23 had mentioned during your direct examination that one of the
24 concerns you had was limitation of motion, correct?

25 A Yes.

Shlansky - by Plaintiff - Cross

1 Q You mentioned that you have patients who have CP,
2 correct?

3 A Yes.

4 Q And they have limitations of motion, correct?

5 A Yes.

6 Q You also mentioned patients that you have who are
7 wheelchair bound, correct?

8 A That's correct.

9 Q They also have, fair to say, limitations in motion,
10 correct?

11 A That's correct.

12 Q You also mentioned that you have patients who have
13 spina bifida, correct?

14 A That is correct.

15 Q And they also have limitations in motions, correct?

16 A That's correct.

17 Q And it is fair to say they are not incapable of
18 carrying children, correct?

19 A That is correct.

20 Q And in fact, it is fair to say, if you had a patient
21 that came in with Cerebral Palsy you wouldn't necessarily say
22 you cannot have children because you have Cerebral Palsy,
23 correct?

24 A There is a difference when somebody is already
25 pregnant, versus when you are doing a preconception consult.

Shlansky - by Plaintiff - Cross

1 Q And it is fair to say that if the patient was
2 wheelchair bound, you wouldn't say, no, it is, generally
3 speaking, it is not appropriate to be pregnant, correct?

4 A That's correct. We --

5 Q Now, Doctor, in your examination you didn't actually
6 perform range of motion tests with Ms. Howard, correct?

7 A That is correct.

8 Q Right? In fact, during your examination Ms. Howard
9 remained standing for the entire visit, correct?

10 A Yes.

11 Q So is it fair to say that you were taking her word
12 for it that she couldn't perform certain motions?

13 A I asked her to do certain things, and she was unable
14 to do them.

15 Q And when you say she was unable to, is that her
16 saying to you, I am not able to do that?

17 A Um, I asked her to do certain things, she was unable
18 to do them. I can't interpret beyond that.

19 Q All right. So when you say she was unable to do
20 them, did you actually observe her attempting to lean forward?

21 A Yes.

22 Q All right. And would you agree with me, Doctor, that
23 when a patient performs range of motion testing, it is a
24 subjective -- it is a subjective test, correct?

25 A Yes.

Shlansky - by Plaintiff - Cross

1 Q Right. And it is fair to say that the patient can
2 control how far they are actually going to bend over or extend
3 back or bend side to side laterally, correct?

4 A That is correct.

5 Q And you didn't have any instrument with you when you
6 were performing this examination to test the actual percentages
7 of her ranges of motion, correct?

8 A That is correct.

9 Q And you didn't state in your report what the normal
10 ranges of motions are in an orthopedic test, say, for forward
11 bending, extending backwards and lateral bending, correct?

12 A That is correct.

13 Q Right. In fact, Doctor, you don't perform range of
14 motion testing for most of your patients, fair?

15 A That is fair.

16 Q Doctor, it is also fair to say that on your one
17 examination that you had of Ms. Howard, you didn't observe her
18 interacting with any type of infant devices such as a carrier
19 that you snap into the backseat of a car, correct?

20 A That is correct.

21 Q You didn't observe her interacting with a stroller,
22 correct?

23 A That is correct.

24 Q It is fair to say that you didn't perform any
25 strength testing during your one evaluation, correct?

Shlansky - by Plaintiff - Cross

1 A That is correct.

2 Q So you didn't see her lift more than 10 pounds,
3 correct?

4 A Yup.

5 Q You didn't ask her, can you go lift that object
6 there, which is more than 10 pounds, correct?

7 A That is correct.

8 Q Now, Doctor, when you have patients who come to you
9 for preconception consult and they are on medication, it is
10 fair to say that to assist your patients in ultimately being
11 able to carry a child, that you would alter, if you could,
12 their medication plan, correct?

13 A Typically if people are on medication, we make
14 recommendations of what we would like to see happen. If the
15 meds are prescribed by other doctors, we communicate with that
16 other doctor and have a shared plan with them. So when we have
17 complicated patients and they have an orthopedic problem, we
18 communicate our concerns. If we have a patient that has a
19 diabetes problem, we communicate our concerns so that we are
20 caring for them as a team.

21 Q Right. And Doctor, you didn't have any communication
22 with Dr. Moran, correct?

23 A That is correct.

24 Q And it is fair to say that the only record you saw of
25 Dr. Moran was just of the one consult on March 19, 2024,

Shlansky - by Plaintiff - Cross

1 correct?

2 A That is correct.

3 Q And other than that March 19, 2024 record, you didn't
4 see any other OB/GYN records at any time concerning Ms. Howard,
5 correct?

6 A Just Dr. Moran and Dr. Pachtman.

7 Q And is -- now that the names have been corrected for
8 you, is it fair to say that Dr. Pachtman isn't a treating
9 physician, correct?

10 A I actually don't know that detail, whether she treats
11 patients or not.

12 Q No, whether Dr. Pachtman treated Ms. Howard, it is
13 fair to say she did not, correct?

14 A That's correct.

15 Q You mentioned some postpartum -- post-birth concerns
16 that you had had. And most of them have to do with, if I am
17 correct, have to do with holding and feeding the infant,
18 correct?

19 A Yes.

20 Q All right. And Doctor, it is fair to say that there
21 are numerous assistive devices out there for new mothers to use
22 when holding and feeding their baby, correct?

23 A Correct.

24 Q Okay. For instance, Doctor, there is -- if a new
25 mother chooses to breastfeed, there are breastfeeding pillows,

Shlansky - by Plaintiff - Cross

1 correct?

2 A Yes.

3 Q Right. And the breast feeding pillow is, sort of,
4 like a semicircle with an infant lying on the pillow to help
5 raise the infant up towards the breast, correct?

6 A Yes.

7 Q And that reduces the stress on the lower back and the
8 shoulders of the mom, correct?

9 A I would disagree, that it doesn't reduce the stress
10 on your shoulders.

11 Q But it is --

12 A And your back.

13 Q But it is one of the purposes in having the pillow,
14 to support the baby, correct?

15 A It does. But women -- feeding a baby is frightening
16 to many women. They are afraid that their child will choke.
17 They are afraid they can't see that their child is feeding.
18 And typically it is here, and people do this. They curve
19 themselves downward in an effort. So the pillow is helpful,
20 but unless you are doing it over here where it is a little bit
21 easier to see, they still, incredibly common, complain that --
22 people complain that their upper back hurts them when they are
23 postpartum, even if they are not breast feeding.

24 Q That's the upper back you are referring to, correct,
25 the shoulders and neck area, correct?

Shlansky - by Plaintiff - Cross

1 A Yup.

2 Q And that's a common complaint of all -- pretty much
3 across the board with all new moms, correct?

4 A Yup.

5 Q Regardless as to their health condition, correct?

6 A Yes.

7 Q Right. And there is also nursing stools that are
8 available where the mom can put her feet up on a low stool
9 while she is sitting, which relieves the stress to the lower
10 back, correct?

11 A Somewhat.

12 Q Right?

13 And there is also other types of support such as
14 wedges or rolled towels, even that you can take from your linen
15 closet, to put under the baby to help prop the baby up,
16 correct?

17 A There is lots of creative solutions, yes.

18 Q Right. So there is options out there, fair to say,
19 to help new moms across the board, all new mom's, for these
20 devices to help relieve some strain or stress on some part of
21 their upper body, correct?

22 A Yes.

23 Q Now, doctor, in your review of Dr. Diwan's records,
24 he is the pain management specialist, you are aware that
25 Ms. Howard was involved in an accident on October 12 of 2021,

Shlansky - by Plaintiff - Cross

1 correct?

2 A Yes.

3 Q All right. And as a result of that accident
4 Ms. Howard went directly to the emergency room, correct?

5 A Define "directly."

6 Q Right after the accident, got in her car and drove to
7 the emergency room?

8 A I thought there was a delay.

9 Q The delay -- maybe the amount of time it took to get
10 to the emergency room, but I am referring to the second
11 accident, not the March 17, 2021 accident. I am referring to
12 the second accident which is after the accident that is the
13 subject of this lawsuit, October 12 of 2021. Does that refresh
14 your recollection as to which accident I am referring to?

15 A Thank you.

16 Q Okay. And after that accident Ms. Howard went
17 directly to the hospital, correct?

18 A Yes.

19 Q And she went to the hospital with complaints of back
20 pain, correct?

21 A I don't remember that part.

22 Q And is it -- is it fair to say that you are here
23 today to discuss issues concerning medication that Ms. Howard
24 is currently taking, correct?

25 A That is correct.

Shlansky - by Plaintiff - Redirect

1 Q Regardless as to for which accident, correct?

2 A That is correct.

3 MS. LUDLAM: Okay. Judge, I don't have any more
4 questions. Thank you.

5 THE COURT: Okay.

6 MR. ZILBERG: May I, Your Honor?

7 THE COURT: Yes.

8 MR. ZILBERG: Just a few.

9 REDIRECT EXAMINATION

10 BY MR. ZILBERG:

11 Q Doctor, on cross you were asked about the notation in
12 Dr. Moran's report of March 19, 2024 regarding irregular
13 menstrual cycle and possible infertility. Can you please tell
14 us your opinion of that notation?

15 A As an OB/GYN, we typically don't see people's
16 periods, that is what is reported. Am I correct that, I
17 believe, Bromocriptine or Cabergoline has been part of her
18 medication list, which is a treatment for, many times, an
19 elevated prolactin level; which is sometimes the basis for
20 irregular menses.

21 Q Now, counsel on cross discussed a fairly substantial
22 laundry list of various items that a new mother can use in
23 helping feed her child or hold her child, et cetera. But when
24 breast feeding, for example, I think many of the examples were
25 regarding breast feeding or feeding otherwise, but all of these

Shlansky - by Plaintiff - Redirect

1 examples that counsel brought up, all of those involved the
2 mother sitting, didn't they?

3 A I mean, they are basically, if you want to divide
4 three ways that women can feed a baby; one is exclusively
5 breast feeding, and a woman can be standing, lying, sitting.
6 Ultimately that's one method.

7 Another method is bottle feeding, which can be
8 exclusive bottle feeding. Much easier because you can put a
9 kid in any place; but the recommendation is not to prop a
10 bottle. Babies can't protect their airway.

11 And the third is a hybrid of both breast feeding and
12 bottle feeding. You know, there is plenty of people who do
13 things in crazy ways, it doesn't matter as long as you are
14 safe. So, I mean, there is no one way to do anything.

15 Q Well, my question is, these various items that
16 counsel referenced, are they, whether it be the pillow or
17 rolling up a towel to help prop a child, would any of those be
18 helpful to a new mother if the mother simply can't sit for
19 pain; she is unable to sit?

20 A It would leave the capacity to potentially breast
21 feed, bottle feed laying down. Or it would be standing, which,
22 again, makes it difficult.

23 I usually joke and tease my patients that breast
24 feeding or feeding any infant you kind of wish you had a few
25 more arms. It is tough because they are wiggly and they don't

Shlansky - by Plaintiff - Redirect

1 support themselves. So one hand is for safety and the other
2 hand is to hold the bottle. It is tough.

3 Q Is it -- is there a strain on your spine, on your
4 body if you are breast feeding a child or feeding them with a
5 bottle while standing up?

6 A I mean, it is just hard because one hand is safety
7 and the other hand is holding a bottle. So, it is -- its
8 difficult.

9 Q Do you still have Exhibit 39, Dr. Moran's report, in
10 front of you?

11 A Yes.

12 Q Okay. Can you please -- and that report, of course,
13 is in evidence. And that is a report of a treating OB from
14 March, 19, 2024. Can you please turn to the last page of that
15 report?

16 A Four out of four?

17 Q Yes. Or on top of the page it should say
18 "Recommendations."

19 A I believe that's three out of four.

20 Q Okay. The second bullet point, do you see that: In
21 light of?

22 A Yes.

23 Q Can you please read that entire bullet point into the
24 record?

25 A In light of her risk of potential progressive nerve

Shlansky - by Plaintiff - Redirect

1 injury, as well as the potential risks to a developing fetus,
2 due to her need for narcotic pain management, I recommend that
3 she seek IVF.

4 MS. LUDLAM: Objection, beyond the scope.

5 MR. ZILBERG: There was a question specifically
6 about this report.

7 THE COURT: Let's take a quick break, just a
8 quick two-minute break.

9 COURT OFFICER: All rise. Jury exiting.

10 (Whereupon, the jury exited the courtroom.)

11 (Pause in the proceeding.)

12 THE COURT: What is the objection again?

13 MS. LUDLAM: She is about to read something into
14 the record that she didn't testify to on direct
15 examination.

16 THE COURT: She did not?

17 MS. LUDLAM: That she did not. And I didn't
18 bring it up on cross. If Your Honor has in front of you
19 the portion of the medical record where it says,
20 Recommendations, the second bullet point.

21 THE COURT: I have a subpoena in front of me.

22 THE WITNESS: Do you want me to show you?

23 MS. LUDLAM: Judge, I can show you on mine.

24 THE COURT: Where is that in here?

25 MS. LUDLAM: It is in here, but it is a little

Shlansky - by Plaintiff - Redirect

1 different.

2 The record is laid out a little differently, but
3 it is the same verbiage. It is the second bullet point
4 starting with where it says -- the second bullet, and then
5 it is the issue I have it starts with the: I recommended
6 that she boop, boop, boop. This was never brought up on
7 direct and I didn't bring it up on cross.

8 THE COURT: Okay. Objection is sustained.

9 So we are on the record. Objection is
10 sustained.

11 Everybody ready for the jury?

12 MS. LUDLAM: Yes.

13 MR. ZILBERG: I think Gary ran to the bathroom.

14 THE COURT: Is that a no?

15 MR. ZILBERG: That's a no, Judge, sorry.

16 THE COURT: Everybody ready for the jury?

17 MR. CERTAIN: Yes, Your Honor.

18 THE COURT: Okay. Bring in the jury.

19 COURT OFFICER: All rise. Jury entering.

20 (Whereupon, the jury entered the courtroom.)

21 THE COURT: Okay be seated.

22 The objection is sustained.

23 Q Doctor, as we discussed earlier, as part of your
24 review of records in this case, did you review the report of
25 Dr. Moran, Jill Moran?

Shlansky - by Plaintiff - Cross

1 A Yes.

2 Q Okay. And are -- having reviewed her report, are you
3 in general agreement with her assessment?

4 A Yes.

5 MR. ZILBERG: Nothing further, Your Honor.

6 THE COURT: Okay.

7 MS. LUDLAM: Quick recross, Judge?

8 THE COURT: Yes.

9 MS. LUDLAM: Thank you.

10 CROSS-EXAMINATION

11 BY MS. LUDLAM:

12 Q Doctor, is it fair to say that the only OB/GYN
13 record related to OB/GYN health issues, is Dr. Moran's report,
14 which is March 24, 2024? Correct? I am sorry, March 19, 2024?

15 A Yes.

16 Q And that was a record that was prepared from an
17 evaluation performed after October 2021, correct?

18 A Correct.

19 Q And you did not review any OB/GYN records or any
20 maternal fetal medicine records or any fertility records prior
21 to -- that were prepared prior to October 2021, correct?

22 A Correct.

23 MS. LUDLAM: All right. Thank you. Nothing
24 further, Judge.

25 MR. ZILBERG: Nothing, Your Honor.

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1 THE COURT: Okay. Doctor, you are excused.

2 THE WITNESS: Thank you.

3 THE COURT: Since it is 4:00 we will break for
4 the day. Now remember, today is Monday. Okay? So
5 tomorrow is Tuesday. So, no testimony tomorrow morning,
6 so come back tomorrow, Tuesday, 2:15. 2:15 when the trial
7 will continue.

8 COURT OFFICER: All rise. Jury exiting.

9 (Whereupon, the jury exited the courtroom.)

10 THE COURT: Anything else?

11 MR. CERTAIN: Not at the moment.

12 THE COURT: Who is for tomorrow? Plaintiff?

13 MR. CERTAIN: Tomorrow we anticipate that the
14 husband, Hayden Johnson, will be called in the afternoon.

15 THE COURT: Okay. Where is the plaintiff? Why
16 aren't you continuing with the plaintiff?

17 MR. ZILBERG: Your Honor, I think the plan is to
18 have the plaintiff testify on Thursday so that counsel has
19 a full day to cross examine her.

20 MR. CERTAIN: Instead of breaking it up.

21 MR. ZILBERG: So it is not done piecemeal.

22 MS. LUDLAM: We are fine with that, Judge. We
23 have already agreed with that, that's fine.

24 THE COURT: All right.

25 MR. SMITH: We have our first doctor set up for

Shlansky - by Plaintiff - Cross

1 Friday. We moved him to the 9th. The only problem is the
2 following week, because you are not -- we are down on
3 Monday and then off half a day on Tuesday, I may have
4 problems.

5 THE COURT: You know what, I am going to adjourn
6 those Tuesday motions. So we will have a full day. Does
7 that help, a full day on Tuesday?

8 MR. SMITH: I don't think so, because I already
9 paid for my doctors for, I think, Thursday of that week
10 because they couldn't come in Wednesday. But let me check
11 with my office before, we have a few days.

12 THE COURT: I can switch from -- from going
13 forward after tomorrow, I can forget about that Tuesday
14 rule. We will adjourn the Tuesday -- my Tuesday motions
15 into November.

16 MR. CERTAIN: That's appreciated, Your Honor.

17 MS. LUDLAM: Yes. Thank you, Judge.

18 (Whereupon, the trial stood adjourned to Tuesday
19 October 6, 2026 at 2:15 p.m.)
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