**In The Matter Of:**

*GORDON SAYLES v.*
*URBAN AMERICAN MANAGEMENT CORP., et al.*

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*DR. GERLING and DR. ROOT*
*October 8, 2026*

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*Karen Perlman and Alan Bowin*

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 57

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GORDON SAYLES,

Plaintiff,

- against -

INDEX NUMBER:
155149/2020

URBAN AMERICAN MANAGEMENT CORP., PUTNAM HOLDING COMPANY, LLC, BSREP UA 3333 BROADWAY LLC, SCHINDLER ELEVATOR CORPORATION, CENTENNIAL ELEVATOR INDUSTRIES INC, ESSENTIAL ELEVATOR, LLC, NEW YORK CITY EDUCATIONAL CONSTRUCTION FUND, RIVERSIDE PARK COMMUNITY (STAGE I), INC., RIVERSIDE PARK COMMUNITY II, LLC, RIVERSIDE PARK COMMUNITY, LLC, UAB PROPERTY MANAGEMENT, LLC, CENTENNIAL ELEVATOR INDUSTRIES INC., CENTENNIAL ELEVATORS IND. CORP.,

Defendants.

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60 Centre Street
New York, New York
October 8, 2026

JURY TRIAL

B E F O R E :

HONORABLE SABRINA B. KRAUS,

JUSTICE OF THE SUPREME COURT

(Appearances are listed on the following page.)

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SENIOR COURT REPORTER

THE COURT: We're ready to go on the record and move some documents into evidence while we're waiting for the witness. I'll turn it over to counsel.

MR. McCRORIE: I just wasn't the one keeping the list. We'll do this.

This is Plaintiff's 15 is South Radiology certified bills.

THE COURT: Plaintiff's 15 is what?

MR. McCRORIE: South Radiology certified bills.

MR. SCHIFERL: 15 is more actually than that. If you could include the CDs, and we offered them. 15 is South Jersey Radiology records, including some bills. But there is also some other --

MR. McCRORIE: I think the South Jersey Radiology CDs were later on; they were marked separately.

MR. SCHIFERL: I agree. Okay.

THE COURT: So 15 in evidence on consent is South Jersey Radiology bills?

MR. SCHIFERL: Correct.

THE COURT: Great.

MR. SCHIFERL: For the record, on behalf of defendants, for all of these, it is on consent, Your Honor.

THE COURT: Thank you.

MR. SCHIFERL: I would like an exception noted because of your earlier ruling, which we understand, about

the later records. We already have that. But I do give consent to this, but it's in light of your ruling that allowed the later records, if that makes any sense.

THE COURT: Understood.

MR. SCHIFERL: Okay. So all of these we go through, I'll say consent on subject to the objection.

(Whereupon, Plaintiff's Exhibit 15, South Jersey Radiology records, was marked and received in evidence.)

THE COURT: Good morning, everybody. I've just been handed by plaintiff's counsel an article about the RICO lawsuits.

MR. KULLER: So there was a whole lot of questioning yesterday by defense counsel about Subin & Associates, which is a different law firm --

THE COURT: Now, I -- I objected -- you objected, and I sustained those objections. So there was no questioning about Subin. There was no questioning about Asher. There was questions about his having privileges suspended, and there was questioning about --

MR. KULLER: Napoleon Aquino.

THE COURT: Yes. About this individual.

MR. KULLER: And Kolb Radiology, which is also referenced in there. And all of those lines of questioning pertain to RICO lawsuits that -- in unproven allegations.

THE COURT: Right now, really, the only thing in

the record is essentially that his -- he has -- no longer has privileges in New York, which is accurate. And there may have been one or two questions about this -- this individual that's discussed in -- in the article. But nothing about the RICO lawsuits. Nothing about Subin. Nothing about Asher.

So, again, I'm not sure why I would be marking this article as a court exhibit as you're requesting. It's not the type of thing that generally gets marked as a court exhibit.

MR. KULLER: This is from yesterday, from page 533 of the transcript. It's about Thomas Kolb and Kolb Radiology. It's about Subin & Associates, and there are questions and answers that were not stricken. And there are a whole bunch of questions about Subin, Kolb Radiology. Napoleon Aquino, there's questions about. These are all related --

THE COURT: Okay. How does the article come into play?

MR. KULLER: Because the article is referencing all of these RICO lawsuits. All of this pertains to these RICO lawsuits in unproven allegations in the GEICO case.

THE COURT: The purpose of marking it as the court exhibit would be what? It's not going into evidence. You don't want to discuss the --

MR. KULLER: Right. Because I'm just making and renewing the application that all lines of questioning pertaining to Subin & Associates and Kolb Radiology and Napoleon Aquino, they should all be precluded. Everything related to the GEICO case, they should --

THE COURT: Counsel, I don't entertain reargument on objections that I ruled on yesterday. I've already issued my in limine ruling.

I also don't entertain reargument on in limine rulings.

I don't see any purpose of marking this as a court exhibit. It's not a document that comes in as a court exhibit.

So all of those applications are denied. But for the record, you can specify that you've provided the Court with what you're asking that I mark is an article. I don't know where you got -- you can tell me where you got it from and what the date is.

MR. KULLER: I got it off the Internet, and I got it yesterday.

THE COURT: Who's article is it?

MR. KULLER: The date of the article is February 5, 2026, from legalnewsline.com. And it also specifically references -- and there was questioning yesterday about this Napoleon Aquino and whether there was consent. And counsel

implied that he performed surgery on this individual without capacity and consent. And this is just nothing but an unproven allegation stemming from a lawsuit.

THE COURT: Okay. So noted. Let's move on.

Are you ready to bring in your witness?

MR. KULLER: Sure. I'll go get him.

THE COURT: We can bring down --

THE COURT OFFICER: Is the witness coming in first, Your Honor?

THE COURT: It doesn't really matter.

MR. McCRORIE: Judge, should he go right up to the stand?

THE COURT: Yes, he should.

THE WITNESS: There was traffic.

THE COURT: It's fine.

Good morning.

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury enters the courtroom at this time.)

THE COURT: Please be seated.

Okay. We're going to start with continued cross-examination of Dr. Gerling.

DR. M I C H A E L G E R L I N G,

having been previously duly sworn/affirmed by the Clerk of the Court, took the stand and testified further as follows:

THE COURT: Dr. Gerling, I remind you that you remain under oath from your testimony yesterday.

Do you understand that, sir?

THE WITNESS: Yes, I do.

THE COURT: Okay. You may inquire.

CROSS-EXAMINATION (continued)

BY MR. CASCONE:

Q. Let me start off by apologizing for my raised voice. I apologize to the Court. I apologize to the jury. I'll try not to do that again. And I apologize to you.

When we left off yesterday, you and I were having a little bit of a dust-up about the causation of Mr. Sayles's spinal injuries. And I told you that it's not your job to convince the jury of causation. It's the jury's job to decide what caused the injuries. Okay?

MR. McCRORIE: Objection.

THE COURT: There's no question yet.

BY MR. CASCONE:

Q. Sir, I believe you admitted yesterday that you lecture on anatomy, correct?

A. Yes.

Q. And part of your audience sometimes, you lecture to attorneys, correct?

A. No.

Q. Don't you provide information to plaintiffs' attorneys

on exactly how to maximize recovery in personal injury lawsuits?

A. No.

Q. When you're in the courthouse and you show an x-ray to a jury or an MRI film to a jury, you're very careful in the phraseology you use, correct?

A. I think when I am conducting myself to an audience of people who are trying to learn from what I say, no matter who they are or what the circumstance is, I'm always careful.

Q. Okay. But you understand that, if you were the sole arbiter on what injuries were caused by an accident, there would be no reason for a jury, right? You would be serving their role. We wouldn't need a jury if you were the only one who had the last word on what was caused or not caused by an accident.

You understand that, correct?

A. I'm just trying to answer the questions that you're asking. I'm not trying to be anything that I'm not.

Q. Okay. You're only providing an opinion, correct?

A. Correct.

Q. Okay. So when you said, "It's a forgone conclusion," that's just your opinion, correct?

A. Correct. I'm here to state my opinions --

Q. Okay.

A. -- as an expert.

Q. Good. Thank you.

But when you're in the courtroom, you're giving

somewhat of a performance. Is that fair?

A. No more than you are. I'm just trying to play my role. I've been asked to come here and answer questions.

Q. Okay. See, I ask questions, and you are the one giving your opinions. I'm not giving my opinions, not until my closing argument. That's when I'm going to give my opinions. But during the trial, you're being asked to give your opinions, just so we're straight.

Okay. So when you show an x-ray or an MRI film to non-doctors and you say, quote, "We all can see," and you point to an impinged nerve, you realized that we can't see that on an x-ray or an MRI. We're not doctors. We're not radiologists.

So when you say, "We all can see," that's a way for you to manipulate the jurors.

MR. McCRORIE: Objection.

THE COURT: Sustained.

BY MR. CASCONE:

Q. Are you not trying to plant in the minds of the jurors things that we can't really see?

MR. McCRORIE: Objection.

THE COURT: Overruled.

A. Absolutely not. I mean, that's the whole reason we have these large blow-up diagrams so that I can literally show them exactly what I'm seeing.

BY MR. CASCONE:

Q. What you're seeing?

A. Absolutely. It's -- it's my expert opinion. I am obviously playing a role where I'm supposed to help them interpret relatively complex radiographic imaging that -- that a layman would look at and not understand. I'm asked to explain it because that's -- that's what we have to do in order to try and make it clear why I did the surgery, why -- like, why we diagnosed them with the injuries that they have.

I'm doing the best I can to educate them, to show them what I see. And I'm sure that you have any experts that are going to as well have things that they see. And that's fine. I'm not trying to convince them of anything that's not there. I'm trying to show them. It's real. It's real. It's right there.

Q. My focus was on the way you chose to present it; not "Here it is"; or, "If you look here, you may see." You said, "We all can see," as it was a conclusion. And I wanted to know if you're choosing that phraseology for a purpose.

A. We can all see. This is as clear as day. This is one of the more obvious radiographic imaging that I've seen in this scenario before. It's obvious what's wrong. So we can all see. They're using their eyes to look at it. That's why we have demonstrated aids. That is why we use those things, to show them with their eyes so they can see what I see.

Q. So you expect me, someone with no medical training, to

be able to look at a film and be able to tell if there's trauma-induced pathology or degeneration?

MR. McCRORIE: Objection.

BY MR. CASCONE:

Q. You expect me to see this?

A. I think you're a pretty sophisticated guy. I think I could teach you within a minute, yeah. I think I can teach you to look at it and see the difference, yes.

Q. What I didn't see -- maybe because I'm dumb. I didn't see any fractures. Did you see any fractures of this --

MR. McCRORIE: Objection. There is no claim, no testimony of fractures.

THE COURT: The objection is overruled, although I would strike the "I'm dumb" part.

A. Yeah. I said there are no fractures.

BY MR. CASCONE:

Q. Okay.

A. And as we know, there are soft tissue injuries. Discs are technically a soft tissue injury. Fractures are broken bones, which is another thing that can happen when an elevator plunges four floors, like a free fall. It's like stepping off a building. People oftentimes have fractures, but sometimes they have disc herniations. Or if they are really stiff because they're older and they have some arthritis, it -- it plays havoc with them, and they have herniation superimposed on top of

degeneration, which is what the case is here.

Q. Yesterday you --

THE COURT: I'm sorry. Let me just interject.

I'm going to ask you on cross to limit it to directly answering. So if the question, for example, was, "There are no fractures," it would be, like, "yes" or "no."

THE WITNESS: Okay.

THE COURT: Great.

BY MR. CASCONE:

Q. Because yesterday you seemed a little frustrated you were here late, and I don't want to keep you here later than you need to be.

So if I ask a "yes" or "no," answer me with a "yes" or "no." Is that fair?

A. Yes.

Q. Okay. When was the first spinal MRI taken in relation to the date of the accident? Was it done within a week of the accident? A month of the accident? More than that? Less than that?

A. I don't know. It was the normal time frame when you would get an MRI.

Q. What is that normal time frame?

A. It depends on the nature of the injury. If he had severe neurologic deficits, it would probably have been done in the emergency room. You know, it just depends on the person's

injury type and the way they present, the severity, what type of treatment's being planned.

Q. Okay.

A. So once -- once a patient sort of passes the initial screening process in the emergency room, then they -- then there is a treatment algorithm that people try to follow for the most part, which he went through. And there is a point at which we're really permitted by treatment guidelines to actually order an MRI. And that is dictated by the workmen's compensation board.

Q. So, then, the answer to my question is you don't know when the first spinal MRI was taken. Is that fair?

A. No. I didn't memorize it, no. I'm sorry. Do you want me to look in the chart?

Q. No.

A. Okay. It was in 2018, I believe.

Q. Okay.

A. Same year as the accident.

Q. Okay. So in the MRI, you saw blood in the canal, the spinal canal?

A. I don't remember seeing blood.

Q. You didn't see even staining of blood?

A. MRIs don't show staining.

Q. No?

Hemosiderin? What's that term?

A. I'm sorry?
Q. Hemosiderin? Is that a phrase you're familiar with?
A. That is a term that's used for blood that can be found in tissues, yes. It's the -- you know, I don't know the technical term. A radiologist would be better at answering that question.
Q. That's a stain that you would see if there was ever any blood in the canal. It would be a stain on the soft tissue called hemosiderin. So even if we took an MRI three, six months after a trauma, if we didn't see any fresh blood because the body reabsorbs the blood, there would be a stain, like a red dot of wine on my white shirt. You would still be able to see that if there was ever any blood in that canal.
Would you agree with me?
A. No.
Q. Okay. When you prepared with the plaintiff's attorneys, did you tell them what questions to ask you?
A. No.
Q. So when the attorneys spoke about the tail end of the spinal cord and he said "cauda equina" and then he said "horse tail" and you smiled, are you telling us that wasn't all queued up?
A. Not at all. I don't think it's even relevant. I don't know why -- I've never been asked that question in court before. I -- it's not -- it's not relevant.

Q. Are you telling me that you've never been asked about the cauda equina at a trial?

A. Not like that, not the way he did, no. I don't think so, not that I can recall. I don't think it's relevant.

Q. I understand.

But in other trials you talk about the spine. The plaintiff's attorney in the courtroom says to the jury, "Like the cauda equina," and then you laugh. And you say, "Yes, like the cauda equina." And then you say "horse tail," and then you immediately talk about spaghetti.

This is what you do in every trial, and you do it because you tell the attorneys that we should be more relatable to the jury. So you use terms like "horse tail" and "spaghetti" so we're talking to the jury in a relatable fashion; yes or no?

Oh, you look at me, or you look at the judge.

MR. McCRORIE: Your Honor, he can look where he wants.

THE COURT: No, no. He shouldn't be looking at you and signaling to you by looking at you --

MR. McCRORIE: Understood. Understood.

THE COURT: -- to object, which is what I just saw happened. So --

MR. McCRORIE: I didn't object.

THE COURT: You can rest assured, Doctor, that your attorneys -- the plaintiff's attorneys are well qualified,

and they know when they should and what to object to.

Okay. So right now, you can go ahead and answer.

There was no objection, right?

A. The answer is I've never ever counseled an attorney to -- to talk about a horse's tail or talk about cauda equina. That is not at all my role. I do my best to explain the anatomy in simple terms.

If I thought it was relevant, when I was presenting the anatomy, I would have said that, and I would have presented that. I don't think it's relevant. It's a small anatomical thing that's not relevant. It's not important. It doesn't -- it's -- it doesn't impact the fact that the disc herniations are present and visible, the fact that the disc herniation in the neck where there is no cauda equina is compressing the spinal cord. It's not relevant. I would have presented it myself if I thought it was relevant.

BY MR. CASCONE:

Q. Okay. I'm going to move on. Let's talk about causation, about what causes a disc herniation.

I believe that you explained to the jury that a herniated disc, like a jelly donut -- I'm sorry. The disc, like a jelly donut, could bulge, or it can actually break out, protrusion, what we call herniation, yes?

A. Yes.

Q. Okay. Now, that occurrence, if it's trauma induced,

where there is such pressure on the bones of the spine that it causes the disc materials to burst, that would cause immediate pain, correct?

A. Actually, it doesn't always. I mean, it's very well-known that a lot of people with disc herniations present just with sciatica and leg pain. They don't necessarily have back pain.

Q. But in this case, we have a burst lumbar disc and two cervical disc bursts, correct?

A. Correct.

Q. Okay. So you would immediately feel the radiculopathy down at least one of the arms right away. Your disc just burst. The materials just popped out. The nerves are so close that the dermatome -- you called it a cartoon. We call it diagnostic demonstratives.

MR. McCRORIE: Objection.

MR. CASCONE: Did you say objection?

MR. McCRORIE: I did.

MR. CASCONE: Okay.

THE COURT: I'm sorry. I didn't hear objection.

MR. McCRORIE: I said it in the microphone.

MR. CASCONE: That's why I paused because I heard it.

THE COURT: What is the basis of the objection?

MR. McCRORIE: Saying that "We call it a

demonstrative; you call it a cartoon," it's not a question.

MR. CASCONE: I'm just getting -- I'm laying down a foundation.

THE COURT: All right. Why don't you try and rephrase the question.

MR. CASCONE: Okay.

BY MR. CASCONE:

Q. Did you say to the jury yesterday that, if you had an acute burst of your disc material in your neck, it would, quote, "stop you in your tracks," closed quote; yes or no?

A. I -- are you asking me to answer what you're saying when you're saying that you're quoting me? What is the question?

THE COURT: He's asking you if that is what your testimony was yesterday.

A. That's not what I said.

BY MR. CASCONE:

Q. You didn't tell the jury that the pain would stop you in your tracks?

A. I don't --

Q. Am I misquoting you?

A. -- recall using that terminology.

Q. So let me ask you a fresh question.

If your neck bursts and your lower spine bursts --

A. Sorry.

MR. McCRORIE: And he's saying his neck bursts, Judge, not a --

THE COURT: I heard what he said.

BY MR. CASCONE:

Q. -- would that stop somebody in their tracks?

MR. McCRORIE: Objection.

THE COURT: Overruled.

MR. McCRORIE: What part of the neck? The whole neck bursting?

A. I don't know what you mean by "burst." Like, you're making me think of the movie Alien or something like that. This is a disc herniation.

THE COURT: I think he's referring to the bursting that you discussed before with the disc.

MR. McCRORIE: No one -- no, he didn't say "burst" yesterday. He's saying "burst." And now he's saying the whole neck burst, Judge.

THE COURT: Oh, my goodness. Really? I understood him to be asking about the discs. Do you want him to rephrase the question?

MR. McCRORIE: Yes, please, for the record so it's clear.

THE COURT: Counsel, could you please ask the question again more specifically. Thank you.

BY MR. CASCONE:

Q. Did you ever see a football player injure his neck on the football field?
A. Yes.
Q. They get taken off in a stretcher, correct?
A. Yes. Sometimes they're paralyzed.
Q. Right. And those guys are in the top physical shape of their lives, and they're taken off the field in a stretcher, yes?
A. Yes.
Q. Okay. Mr. Sayles was how old when his herniations occurred?
A. I'm not sure. In his 50s or 60s.
Q. And he was able to walk down ten flights of stairs, correct?
A. I don't know.
Q. Well, if I told you that I would like you to assume that, that this 58-year-old man, who you tell us had brand-new, fresh, acute injuries to his neck and lower back, walked down, unassisted, ten flights of steps, does that sound consistent with a fresh, acute disc herniation?
A. I think it's possible, yes.
Q. Within a reasonable degree of medical certainty?
A. Yes.
Q. Have you testified in the past that most 30-year-olds have disc herniations both in the cervical and lumbar spines?

A. That's not true.
Q. At what age would you expect to see the beginning of disc herniations in your average nontraumatic spine?
A. So, I mean, when I was 30, I had disc herniations in my spine. It's not most people, but some people. It depends on how predisposed they are. It depends on their activity level, the -- how they live their life. If you -- if you take MRIs of people, you do see MRIs -- disc herniations in young people and in old people.
Q. How many of us have disc herniations right now without trauma?
MR. McCRORIE: Objection.
THE COURT: Overruled.
A. I have no way of knowing that.
BY MR. CASCONE:
Q. Would you say that more than one of us is walking around with a disc herniation in their cervical spine just by looking at our faces, our age, the hair color?
A. I'm sorry. It doesn't work like that. I don't -- you don't diagnose people's herniations with age, race, or hair color.
Q. I'm talking about age. Certainly in your circles of doctors, you talk about when the spine begins to degenerate.
Doesn't that happen in our teens, where your spine begins to degenerate just from simple causes of gravity?

A. The -- the natural degenerative pathway of the spine is multi-factorial. It's genetic. It's what environment -- you went through this in detail yesterday. There are a lot of different ways that the spine degenerates and gets damaged.

Q. Okay. So wouldn't you -- would you be surprised if someone as young as ten years old had a cervical herniation?

A. I've seen it.

Q. Something you called "tech neck," correct?

A. That's not the same thing. It's not a herniation, no.

Q. When you talk about tech neck, we're talking about maybe ten-year-old kids that have a cell phone. They're always looking down. The curvature of their spine over time, that can cause a herniation in a preteen. Is that fair?

A. No. I don't talk about disc herniations in the context of tech neck. But, I mean, people that -- that put undue pressure on parts of their spine, regardless of their age, can have an injury to their discs.

Q. So when I said "tech neck," is that the first time you ever heard that phrase?

A. No, no. I've published on it.

Q. You have. And you've spoken to that guy Rosato on his interview with you about just this topic of tech neck and how we should tell our children not to use their cell phones at --

A. That's not what I said. But -- but, yes. I'm very familiar with the topic.

Q. Okay.
A. I would be -- I was interviewed on -- on a TV network because I'm an expert in the field.
Q. Okay. So we agree that a spinal cord, the discs in the cord -- I'm sorry -- the discs in the canal can begin to have degeneration just by age but also by behavior, such as looking down at a phone. Is that fair?
A. The -- I think you're mischaracterizing it.
Q. Okay. Help me out.
A. I don't think it's entirely fair what you're saying.
Q. Okay. How about for a man in his 50s who has spent most of his life in physical labor? And I want you to assume that he described it as very difficult: crouching down, bending down, climbing steps, full time, five days a week for years.
Would you expect that spine to have advanced degeneration?
A. Mr. Sayles is not a laborer. He's not a construction worker or a garbage -- sanitation worker. He -- he is somebody who inspects. He's not a laborer. It's a completely different level of wear and tear on your spine.
Q. So how do you know that, what you just said? Did that come from your interview with Mr. Sayles?
A. Yeah. It's in my notes too.
Q. Did you read his deposition transcript of this trial where he told the jury just that, that his job was very

difficult?

A. He may think that it's difficult, but -- but being a laborer, he's not -- maybe he's not familiar with the different types of stress you can put on your spine. But -- but, I mean, I see construction workers that lift 60-pound bags of cement all day long every day that work with major heavy machinery. That's completely different, and it's mischaracterizing what he does.

Q. So we covered degeneration could come from just gravity. It could come from behavior.

What about a prior accident, a prior trauma to the spine?

A. Yes.

Q. Okay. Is it your testimony that the spine heals itself without medical intervention?

A. I'm sorry. Can you repeat that.

Q. Can the spine heal itself without medical intervention?

A. Yes.

Q. So do you know by looking at prior films, comparing prior films -- when I say "prior films," films taken of his spine before the elevator accident to the films taken after the accident -- did you do that?

A. I believe I did.

Q. Okay. And that's in your report?

A. You mean my notes?

Q. Your notes, your reports.

A. I don't recall whether I had that in my notes. I don't recall.

Q. Okay. So whether or not it's in your notes -- and we're going to get into the completeness and accuracy of your notes in a second.

Whether or not it's in your notes, are you telling the jury that you looked at films taken of Mr. Sayles's spine before the elevator accident and before -- I'm sorry -- right after the dog incident but before the elevator incident and you compared the two? That's my question. And if that was sloppy, I'll rephrase it if you don't understand.

A. I think I understand what you're saying. I mean, I did compare the -- I'm trying to remember which specific films you're referring to. If you want, I'll look at them now with you. I mean, I know that I looked at the reports too. I know that, at some point, I made a comparison. But --

Q. This is what I'm asking: Do you have a shadow box in your office? Like, how do you physically look at the films?

A. They're digital.

Q. They're digital?

A. Most of the time, almost always.

Q. Do you remember pulling up a digital image of a spinal film that predated the elevator accident and then put it side by side to a film taken after the elevator accident, and you compared the two and said, "Okay, I see in the post-elevator

accident injuries that were not present in the pre-accident" -- "the pre-elevator accident films"? Did you do that?

A. Listen, I look at hundreds and hundreds of films every day. I don't specifically recall which films I looked at in Mr. Sayles from predating the accident versus postdating. I am very familiar with all of the imaging that was done, pre and post. And I've looked at the radiologist's interpretations that said that they saw a progression and a worsening.

So that's -- you know, I'm confident that there was a change. I just don't specifically recall pulling up the images and looking in which specific ones you're referring to. But I'm happy to look at them again if you would like to.

Q. You took a swipe at radiologists yesterday when you said that they only are window shopping, correct?

MR. McCRORIE: Objection.

THE COURT: Sustained.

BY MR. CASCONE:

Q. You told us that a radiologist is not as qualified as you because they're only looking at the outside product through a window and you're actually in the store.

Do you remember saying something like that?

MR. McCRORIE: Objection.

THE COURT: Overruled.

A. I did say something like that, but I didn't say that

I'm more qualified than them.

BY MR. CASCONE:

Q. Didn't you imply that you're more qualified because you're actually in the store while a radiologist is just looking inside the Macy's window from the street?

A. No. I think that I implied that I have different perspective on it and that I'm very familiar with -- that I have unique opportunities to correlate anatomy inside the body with what I see on imaging. So that gives me a unique perspective on it, yes.

Q. Okay. So you don't rely on the reports of other doctors. You want to see it firsthand for yourself. Is that fair?

A. If I'm going to do surgery on them, yes. I think that it is important to look at the --

Q. And you did do surgery on him, yes?

A. I did, yes.

Q. So it's important in this case because you did surgery, yes?

A. And I did. I did look at his imaging, yes.

Q. All right. So I just want to be clear because we are going to talk about your records.

You looked at the pre-elevators films and compared them side by side to the post-elevator films. And that's why you're so comfortable in telling this jury that the elevator accident

was the cause of the herniations because, using your terms, you wanted to rule out that they were not old. You wanted to make sure that the herniations were all new. And the only way to do that is to make sure that they weren't on the prior films.

MR. McCRORIE: Objection. That's not his testimony. That's Mr. Cascone's speech. Objection. That's never been the testimony, that they were new.

THE COURT: The objection is sustained as to form. The witness just testified he's very familiar with all of the images done pre- and post-accident. So maybe you can just streamline that question a little.

MR. CASCONE: Sure.

BY MR. CASCONE:

Q. Your notes, they're complete, correct?

A. I believe so, yes.

Q. They're accurate, correct?

A. To a reasonable degree, yes.

Q. Right. Maybe he fell 14 floors as compared to 4 floors. Minor stuff like that we're not talking about.

A. Exactly.

Q. But the films that you reviewed, that's critical, correct?

A. My descriptions of the films and the critical elements of the interpretations of the imaging are accurate within my notes, yes.

Q. So we established yesterday that certain things can't be faked, right? A patient can tell you, "I'm in so much pain, 9 out of 10." That's subjective.

But what's on a film can't be faked. Is that fair?

A. It's objective, yes.

Q. Okay. So we're relying on the comparison of films. And when we have the benefit of films taken before an accident, maybe because there was a prior incident, wouldn't it be the best practice to look at the two side by side to make sure that what I'm looking at in the post-accident films is new and was not in existence on the prior film?

A. I believe that was done, yes.

Q. And if it wasn't done, would that be a mistake?

A. No. I -- I think that even if -- even if his films did not show a -- even if the film showed that there were degenerative changes or some damage to the discs from the prior accident, that doesn't stop him from having an exacerbation of his injury when he has a free fall of four floors, and then other people are falling to the floor, and he has to catch himself.

And -- there -- there are many ways in which, if the imaging -- even if the imaging showed some herniation pre-accident, even in that scenario, he can still exacerbate the injury with a new accident that's a high-energy accident, especially with his presentation, yes.

Q. We covered yesterday that how the accident occurred is not relevant to what your role is supposed to be as a doctor.

So why did you just bake that into your answer, that other people fell? Are you not performing right now to help them win a case?

MR. McCRORIE: Objection.

THE COURT: Sustained.

BY MR. CASCONE:

Q. Why would you keep on telling us that other people fell in the elevator when that has nothing to do with what you're doing to his spine?

MR. McCRORIE: Objection.

THE COURT: Overruled. I mean, the -- the response was not -- the answer that the witness gave was not responsive to the question that was asked.

MR. CASCONE: I'll withdraw the question and move on.

THE COURT: Okay.

BY MR. CASCONE:

Q. You told us -- and I know you're going to tell me if I'm wrong --

A. I'm sorry. I didn't hear that.

Q. I believe you told us yesterday that Mr. Sayles, when he first came to you, wasn't hiding anything from you.

Do you remember telling us that?

A. That he wasn't hiding anything from me? No, I don't remember that.

Q. Was Mr. Sayles completely honest with you and forthcoming when you took his history?

A. I believe he was, a hundred percent, yes.

Q. Okay. Now, we just established a moment ago that the best way to determine if something is new is to compare it to what was old.

So did Mr. Sayles tell you all about his prior incident and all the treatment he received that kept him out of work for two years? Did he tell you about all of that treatment during your initial visit?

A. I believed that he did --

Q. Okay.

A. -- tell us about it, yes.

Q. Let me stop you there. Let me stop you there because that is a "yes," he told you.

Okay. So in your notes, you would have listed all the doctors that Mr. Sayles saw after the dog bark incident that kept him out for two years, yes?

A. I don't believe that that's true.

Q. But if you're talking to your patient and you want to determine if an injury is new, and you've already told us that you'd have to compare it to the prior accident history, you asked him, "Did you have a prior accident?"

He said, "Yes."

And you said, "Okay. Were you injured in that accident," correct?

And then you would say, "What doctors treated you in that accident?"

You would list all those doctors, and then you would review all of those medical records and maybe even talk to those doctors to compare on your mutual patient. Is that fair or not fair?

A. It's totally unfair. I mean, when I see a patient, I don't -- first of all, I don't have the time to do that, and it's not clinically relevant. So I don't know why I would do that.

Q. So, then, why are you doing it today? If it's not relevant, why are you trying to convince this jury that it's the elevator accident that caused the herniations?

MR. McCRORIE: Objection.

BY MR. CASCONE:

Q. If it's not relevant, what are you doing here?

MR. McCRORIE: Objection.

THE COURT: Overruled.

A. So you yourself said that there is a clinical realm, and then there is me giving testimony. When I'm doing clinical work and I'm documenting, I document what I think is clinically relevant. I'm not trying to prove something or -- or make a

case. I'm not being an expert witness. All I'm doing is trying to document if we had a conversation about something. I don't have the time to put in every single detail or a transcript of what we talked about.

We probably did talk about that stuff, but it's just not necessary for me to investigate and for me to call this doctor. It would take me hours just to see one patient if I did that.

Now, if I'm called into court -- you've called me into court, and you're asking me for my opinion -- of course, I'm going to review everything. Because if I didn't, you'd say, "Well, how can you have an opinion without reviewing things? And if you didn't look at this, how can you have an opinion?"

So once I step into court with you and you're asking me to give you an opinion, you're asking me to look at all of this stuff in more detail, spend more time doing it. Obviously, this is beyond the scope of regular clinical documentation.

BY MR. CASCONE:

Q. Okay. You understand that I didn't call you here, right? I didn't call you to court. They called you to court. They're the ones asking you to convince the jury that the elevator incident caused him to have the herniations. I have nothing to do with that.

You understand that, correct?

MR. McCRORIE: Objection. Objection.

THE COURT: The objection is sustained. The Court notes that the witness is here on behalf of the plaintiff.

MR. CASCONE: Okay.

BY MR. CASCONE:

Q. Did you just tell us that you're not here to testify as an expert?

MR. McCRORIE: Objection.

THE COURT: Sustained. That was not -- mischaracterizes the witness's testimony.

MR. CASCONE: Forgive me. I must have misheard him.

BY MR. CASCONE:

Q. The reason why I ask you whether Mr. Sayles was forthright with you about his prior medical history is because I had to wrestle it out of him on cross-examination.

MR. McCRORIE: Objection.

BY MR. CASCONE:

Q. He told me the name of Doctor --

MR. McCRORIE: Objection.

BY MR. CASCONE:

Q. -- some doctor --

THE COURT: Counsel.

BY MR. CASCONE:

Q. -- that we didn't know about for ten years.

MR. McCRORIE: He's -- he's --

THE COURT: Let's just review the rules.

Before we make an objection, we have to wait for the question to be finished. If the lawyer is still speaking, we can be reasonably sure that he hasn't finished the question.

MR. McCRORIE: Yes, Your Honor. That wasn't a question. And three seconds in, I knew it wasn't a question. And he was making a speech.

THE COURT: It doesn't matter if you know it one second in, Counsel. You need to abide by the rules and wait for the lawyer to finish talking. What happens if two people talk at the same time is that we get an incomplete record.

MR. McCRORIE: Yes, Your Honor. Then I object that was not a question.

THE COURT: Okay. The -- I believe the objection is sustained.

BY MR. CASCONE:

Q. Do you have any financial interest in the outcome of this trial?

A. No, I don't think so.

Q. You don't think so, or you know you don't?

A. Well, I mean, there are circumstances where workmen's compensation patients, they -- their cases are closed, whereby they -- they no longer are paying their bills because the

workmen's compensation is closed. It's sort of like an in-limbo zone.

I don't believe that's the case with him. I believe workmen's compensation is still open for him and that he -- all of his bills have been paid by workmen's compensation. So I have no bills outstanding with him, as far as I know.

Q. Let me ask you a different question. I want to move on.

We covered yesterday you get paid $8,000 for a morning of trial testimony. I'm assuming then you get $8,000 for the afternoon. You'll get another $8,000 for today. So we're up to $24,000 money made literally on the back of Mr. Sayles.

MR. McCRORIE: Objection. "On the back of Mr. Sayles."

THE COURT: Was that --

MR. McCRORIE: His doctor is going to get paid.

THE COURT: Wait. Wait. Geez.

MR. CASCONE: I withdraw the question. I withdraw the question. I just want to go into --

THE COURT: Please --

MR. McCRORIE: I would like to hear what the judge has to say about you saying "on the back of Mr. Sayles." That was the objection.

THE COURT: What I would like to say is it's very hard for me to preside over the trial when everybody is

talking at the same time.

I didn't hear a question, Counsel. Was there a question there? No. So the question is stricken.

Next question. Let's move it along, please.

BY MR. CASCONE:

Q. You performed three surgeries on Mr. Sayles or two? How many surgeries?

A. I believe I performed two.

Q. Two.

Were you paid for the work you did in those surgeries?

A. Yes. It's custom and practice. That's how surgeons make money. They bill for their services, and I did so with workmen's compensation, as far as I know.

Q. How much were you paid for each of the two surgeries?

MR. McCRORIE: Objection.

THE COURT: Sustained.

BY MR. CASCONE:

Q. Do you know how much you charged for each of the surgeries?

A. No.

MR. McCRORIE: Objection.

A. No.

THE COURT: I don't really see the relevance of this -- this line of questioning.

MR. CASCONE: Because I don't -- my

understanding -- and there is going to be a life care planner, a Dr. Root, that's going to come in and tell us the price of each surgery and then ask my client to pay for future surgeries. So I wanted to establish what the reasonable cost would be.

THE COURT: Okay. I understand what your offer of proof is.

Is that going to be the subject of future testimony?

MR. McCRORIE: Yes, Your Honor. At the nonworkers' comp rates.

THE COURT: Okay. I'm sorry. I missed --

MR. McCRORIE: That's fine. He can ask his question.

THE COURT: Okay.

MR. McCRORIE: And we'll redirect on --

THE COURT: The objection is withdrawn.

All right. Go ahead.

BY MR. CASCONE:

Q. So how much were you paid for the lumbar surgery?

A. I answered the question already. I don't know how much I was paid. And I told you I don't know how much it was billed either. You asked me both questions.

Q. I know, but I didn't get the answer. I'm sorry. We had some colloquy.

A. It's okay.
Q. Okay. How much were you paid for the cervical surgery?
A. It's exactly the same issue. I don't know how much I was paid. I don't know how much was billed. I don't do that. I have a third-party billing purpose. It's custom. It's custom. It's just the -- it's the fee schedule that workmen's compensation dictated. So if you want to know, all you have to do is look it up.
Q. I just -- right now, I'm only inquiring as to what you know. Okay?
A. Yes.
Q. Okay. Now, is who Dr. Bonnett?
A. Dr. Bonnett?
Q. Yes.
A. How do you spell it?
Q. I think it's B-o-n-n-e-t-t.
A. I'm sorry.
Q. If I told you that Dr. Bonnett was Mr. Sayles's primary care physician, the doctor that treats him regularly, would that refresh your recollection as to who Dr. Bonnett may be?
A. No.
Q. Did you ever speak to Dr. Bonnett --
A. I may have.
Q. -- at any time during any of your evaluations or treatment of Mr. Sayles?

A. I don't recall whether I did.
Q. Would you agree with me that that would be a good source to understand what was going on with your patient before he claimed to have been injured in the elevator?
A. If -- if -- if he had relevant information, I think that it would be more useful to look at his actual notes that he has from his office.
Q. Okay.
A. That would be --
Q. So --
A. That would be information that you could use, yes. That would be interesting.
Q. Okay. And you reviewed Dr. Bonnett's notes, then, and his records?
A. I don't recall whether I did.
Q. Now, wouldn't than a big chunk of missing information in your conclusion, then?
A. No.
Q. All right. I'm going to try to simplify this.
If you have two plus two, we know that equals four. Two plus two plus question mark, what does that equal?
MR. McCRORIE: Objection. It's --
THE COURT: Sustained.
A. Yeah.
BY MR. CASCONE:

Q. Sir -- Doctor, if you're going to tell the jury in a reasonable degree of medical certainty that an accident caused an injury in a 55-plus-year-old man, you would want to rule out the possibility that the injury predated the accident. Wouldn't you want to look a little bit deeper than what the patient tells you to verify if there was any prior pathology? Wouldn't you?

A. We know that he had a problem with his back. We -- we -- it's been disclosed. He's been very, very forthcoming with it.

Q. Okay. So he is --

A. There is no mystery here.

Q. I'm sorry to interrupt you.

So he was forthcoming with you. He told you all of the names of the doctors, the facilities. He came clean to you --

MR. McCRORIE: Objection. "Came clean."

THE COURT: Again, I --

MR. McCRORIE: He said it from the first visit, Judge.

THE COURT: Again, I need to hear the whole question before I can rule on the objection.

MR. McCRORIE: I think the question was over.

THE COURT: Once I hear the whole question, Counsel -- again, just, please, if I'm talking, don't talk over me.

MR. McCRORIE: Yes, Your Honor.

THE COURT: Thank you.

Once I hear the whole question, I can make a determination about the objection. I can also make a determination whether I'm going to adopt a different form. But I can't do that until I know what the question is.

MR. McCRORIE: Can we have that question read back?

THE COURT: We didn't --

MR. McCRORIE: It ended with "came clean."

THE COURT: We never got to the question part yet. So let's try it again.

MR. CASCONE: I'm going to move on.

THE COURT: Okay.

BY MR. CASCONE:

Q. I believe you told the jury yesterday that you performed tests to rule out, meaning to make sure that there wasn't in existence, any prior pathology; is that accurate or not accurate?

A. I don't remember saying that.

Q. Doctor, you knew you were performing surgery as soon as you got the phone call, the referral to you, didn't you?

MR. McCRORIE: Objection.

THE COURT: Sustained.

BY MR. CASCONE:

Q. You don't need to take films or history. This is all predetermined. As soon as you get a referral, you know you're

cutting a guy open. Is that fair?

MR. McCRORIE: Objection.

THE COURT: Sustained.

BY MR. CASCONE:

Q. Now, you mentioned a Dr. Henry Bohlman, yes?

A. Yes.

Q. You spoke to -- you spoke about him in high regard?

A. Is that a question?

THE COURT: Yes.

BY MR. CASCONE:

Q. Did you speak --

A. Yes.

Q. I'm sorry.

Did you speak about Dr. Henry Bohlman in high regard?

THE COURT: Asked and answered.

Next question.

MR. CASCONE: I didn't get the answer.

THE COURT: He said "yes." He did say "yes."

BY MR. CASCONE:

Q. You called him a godfather. You called him your mentor. Fair?

A. Yes.

Q. You've studied his work, yes?

A. I'm sorry?

Q. You studied his work? You've read his lectures?

A. I mean, I was his -- I was mentored by him, yes.

Q. Okay. Would you agree with me that, according to Dr. Henry Bohlman, that only 50 percent of spinal surgical patients will ever require adjacent-level surgery?

A. I don't think that's the exact data. He is famous for having published with Alan Hilibrand. They were the ones who innovated the concept and first published on adjacent segment disease. But that is not the statistic.

He was not the first author. So he's not the one who said that. But it's true that not every single patient that has spinal surgery needs to have revision surgery for adjacent segment disease. That's true.

Q. Okay. When you said "not everyone," less than half of the surgical patients ever require a revision surgery; yes or no?

A. Well, it's by -- first of all, it is -- you know, I don't know what the exact number is. It's a very high percentage of patients with his condition that have adjacent segment disease. I think that to -- to characterize across the board, which he was talking about population statistics, that's true. But it's not true in circumstances where you have post-op clinical data.

If you took a hundred Gordon Sayleses and you looked at their clinical course, if you looked at their clinical imaging, you would not say that they fall into the same category is what

that paper from Henry Bohlman was referring to.

He is way more than 50 percent likely to have another surgery in his neck. So I don't think that that is a fair characterization of the current case.

Q. Right. His condition is an active lawsuit, fair?

A. No.

MR. McCRORIE: I didn't hear the --

MR. KULLER: Yeah. What was that? I didn't hear it.

THE WITNESS: I answered the question. No.

BY MR. CASCONE:

Q. We established yesterday that you derive a substantial amount of your business from referrals, yes?

A. Like all surgeons, yes.

Q. But unlike all surgeons, a large portion of your referrals are plaintiffs in lawsuits, yes?

A. That's not what I said. That's not true.

Q. You testify in court quite often, correct?

A. No.

Q. Six times a year is not quite often to you?

THE COURT: Counsel, I'm going to ask you to move on because we went over that yesterday, how many times he testifies and the income he derives from it.

BY MR. CASCONE:

Q. You make a lot of money off of these referred

plaintiffs in personal injuries. Is that fair?

A. No.

Q. Two surgeries, even though we don't know how much money you charge for them, you got two surgeries, and you got at least $24,000 plus $700 an hour.

This is pretty good money for you, correct?

A. Well, listen, I -- I'm not going to -- to judge you by how much money you make for your expertise. I -- I'm a spine surgeon. I make what spine surgeons make for the services that I perform.

Workmen's compensation reimbursement, such as in this scenario, is much lower than if I was seeing a patient with United Healthcare or a commercial regular insurance. So it's much lower.

So for me to go through all the hassle of treating workmen's compensation patients, which is tremendous, for me to cancel my office hours today, for me to cancel surgery yesterday is a loss leader for me. It's not a financial benefit. It's not a financial win. Okay?

Q. We established yesterday you're not under subpoena. You're not under court order. You don't have to be here. But you keep on coming to court six times a year. I'm not attacking anyone who makes money. But you told us yesterday that you don't like this.

THE COURT: Counsel, again, let's move on. This is

stuff we covered yesterday. We're on -- I would like to get to new material.

BY MR. CASCONE:

Q. You, right now -- right now, in this case, you're auditioning for the next lawyer to hire you for his clients.

MR. McCRORIE: Objection.

A. Come on.

THE COURT: Sustained. Counsel --

A. That's so rude. You're so rude.

THE COURT: Counsel -- counsel -- all right. All right. Gentlemen.

Counsel --

BY MR. CASCONE:

Q. You told the jury --

THE COURT: Counsel, I would like to direct you towards more substantive cross. Okay? I think you've expressed -- we've covered the credibility issues, whatever. If there is anything else substantive --

MR. CASCONE: Yes.

THE COURT: At this point --

MR. CASCONE: Yes.

THE COURT: -- please move on to that.

MR. CASCONE: Yes.

THE COURT: Thank you.

BY MR. CASCONE:

Q. We were told that Mr. Sayles didn't have the surgery originally because he was scared to death. And then his attorneys asked him about paralysis, brain damage, and death.

How many people did you paralyze in doing cervical or lumbar surgery?

MR. McCRORIE: Objection.

THE COURT: Overruled. I will adopt the question as being "What percentage of your patients have been paralyzed as a result of those surgeries?"

MR. CASCONE: That is a better question.

BY MR. CASCONE:

Q. Please answer that one.

A. Well, you're using a general phrase "paralysis." What most people would interpret from that would be where they can't move their arms or their legs, where they're completely paralyzed. I think most of the jurors probably think that is what you just asked me.

But in the medical world, you can paralyze, or you can injure a nerve. You can paralyze an individual muscle. You can -- you can cause a lot of damage to sensation. So those -- that is a more technical term for it. And patients do have neurologic injuries.

I think that my injury rate is lower than the published complication rates. In other words, you know, if somebody -- if -- if you looked up what is the rate --

THE COURT: Sir -- I'm sorry, sir. I'm going to stop you. That question only called for a percentage answer.

Do you know the percentage?

THE WITNESS: It's really not -- I don't know the answer to that.

THE COURT: Okay.

BY MR. CASCONE:

Q. I'll ask the next question.

A. But I'm going to say that it's less than 1 percent.

Q. Good.

In 2023, you performed 550 spinal fusions, correct?

A. I don't know.

Q. Is that number outrageous? Is that around the number?

A. I don't know. I think you're making that up.

Q. You testified in the Rosario EBT that, in 2023, you performed 550 spinal fusions. That was your testimony.

Are you now denying that?

A. I am not denying it. I don't recall saying that. I don't recall whether that is true.

Q. When you just said I'm making that up, that's rude of you, no?

A. I don't know.

MR. McCRORIE: Objection.

THE COURT: Overruled.

BY MR. CASCONE:

Q. Okay. I'm not making anything up.

THE COURT: Let's just --

A. I think you are.

THE COURT: Okay. Really, gentlemen, can we please just --

BY MR. CASCONE:

Q. In 2023, how many spinal fusions did you perform?

A. I don't think I've ever done more than 400 in a year. I've done -- I do a lot of surgery that is not fusion. In other words, I do decompressions --

THE COURT: Sir, if he's asking you about how many spinal fusions you've performed, please don't tell us about the other surgeries. Just answer the question directly to the best of your ability.

THE WITNESS: Okay.

THE COURT: Thank you. I know --

BY MR. CASCONE:

Q. And out of the 400 spinal fusions that you did in 2023, how many of those people became paralyzed, brain dead, or died?

A. I don't know.

Q. Some of them?

A. I'm not sure. I don't recall.

Q. Have you been sued for medical malpractice in the year 2023?

MR. McCRORIE: Objection.
THE COURT: Overruled.
MR. McCRORIE: Has he been sued for medical malpractice?
MR. CASCONE: Right. If he killed somebody, I'm assuming he would have been sued.
THE COURT: Counsel --
A. I don't think so, no.
BY MR. CASCONE:
Q. Okay. So 400 spinal fusion surgeries that you perform every year, it's kind of customary for you, correct?
A. I didn't say that I do that every year. I think that that is the most I've ever done in a year. But to answer your question, as I said before, I'm not paralyzing people, or they're not dying. That doesn't mean that they don't have neurologic injuries. I'm sure I had neurologic injuries in that year.
Q. I'm talking about whether -- I'll move on.
How many of these surgeries do you do every single day on the regular?
A. It depends on the day. Sometimes zero; sometimes three or four.
Q. Sometimes four a day, correct?
A. Yeah. But not this type of surgery necessarily.
Q. Okay. How long does it take to do a one-level fusion?

An hour? An hour and a half?

A. It can take four hours, five hours. It can take two hours. It just depends on the scope of the case.

Q. If you do four in a day, are you doing surgery 24 hours a day?

A. I sometimes am operating all day long until late in the night, yes. But I don't typically do four in a day. That's not normal for me. That's just --

Q. Okay.

THE COURT: Again, again -- --

A. -- max.

THE COURT: Again, Doctor, I'm going to ask you to just not add extra stuff in your answers and just try your best to answer directly, limited to what he's asking you.

MR. CASCONE: I'm almost done.

THE COURT: Okay. Wonderful.

MR. CASCONE: Less than three minutes.

BY MR. CASCONE:

Q. You told this jury that this man can't work, that he was clumsy in his hands, and he was dropping things, and he was falling.

Have you seen any accident reports in the years that he returned to work where he fell down the steps or he dropped anything? Did you see any accident reports from his job?

A. No.

Q. Did you speak to any of his coworkers or supervisors about his ability to perform his work?

A. No.

Q. So were you just making that up?

A. No.

MR. CASCONE: No further questions.

MR. McCRORIE: I do object to that. I saw Your Honor lean in.

THE COURT: I -- yeah. Okay.

All right. Thank you. We're going --

MR. McCRORIE: Is that sustained?

THE COURT: We can sustain the objection and strike the last question and answer, yes, sir.

Yeah --

MR. SCHIFERL: Your Honor, I am ready to proceed. Just as a point of order because I know we'll have a mid-restroom break. Hopefully we will at some point in time. Do you want to do it now, or you want me to start?

THE COURT: I think the witness would like to take a short break now. So I'm okay with that.

THE WITNESS: Less than five minutes.

MR. SCHIFERL: That is all I'm asking.

THE COURT: Let's take a five-minute break.

THE COURT OFFICER: All rise.

(Whereupon, the jury leaves the courtroom at this

time.)

(A recess is taken.)

THE COURT: Are we ready to deal with the exhibits?

MR. SCHIFERL: Yes.

THE COURT: Okay. Let's go.

MR. SCHIFERL: Jim stepped out, but I think I can do this. And if you disagree with what I state, you can just let me know.

Counsel for plaintiff had marked a number of exhibits for introduction, and I want those introduced. And they're by consent subject to the exception of Your Honor's ruling about --

THE COURT: We already put that on the record.

MR. SCHIFERL: I was just making sure.

THE COURT: Yeah.

MR. SCHIFERL: I just want to go through the numbers real quick.

MR. KULLER: If it's our exhibit, we have no problem with you using it. Is that what you're asking?

MR. SCHIFERL: We have to --

THE COURT: No, no. Yeah. And your co-counsel was here when we started this morning to do this.

MR. SCHIFERL: I'm going to talk slowly. But the following marked for ID exhibits would now be put into evidence by consent: Number 12.

MR. KULLER: What is Number 12?
THE COURT: Yeah. Can you --
MR. SCHIFERL: Which is Advanced Back and Neck Care.
THE COURT: Okay.
MR. SCHIFERL: Number 13, twin --
MR. KULLER: Hold on one second.
MR. SCHIFERL: I'm just reading off of them.
(Whereupon, Plaintiff's Exhibit 12, document, was marked and received in evidence.)
THE COURT: Back on the record. 12 in evidence is Advanced Back and Neck Care.
What is next?
MR. SCHIFERL: 13, which is Twin Boro, B-o-r-o, Physical Therapy.
(Whereupon, Plaintiff's Exhibit 13, document, was marked and received in evidence.)
MR. McCRORIE: It's also called "breakthrough" on the record, just --
MR. SCHIFERL: I'm reading what you guys put on.
MR. McCRORIE: Yes.
MR. SCHIFERL: Number 14, Fifth Avenue Surgery Center.
(Whereupon, Plaintiff's Exhibit 14, document, was marked and received in evidence.)

THE COURT: In evidence on consent subject to the prior disclosures, as all of them.

MR. SCHIFERL: Yes. 15 we already did before, sequentially.

THE COURT: Correct.

MR. SCHIFERL: 16 is Pennsauken Diagnostic Center. That is P-e-n-n-s-a-u-k-e-n.

(Whereupon, Plaintiff's Exhibit 16, document, was marked and received in evidence.)

MR. SCHIFERL: 17, labeled "Workers' Compensation Records."

MR. McCRORIE: Just to be fair, that was ID'd, and you guys objected. So I don't want you to put that in if --

THE COURT: No. I think all of these are coming in subject to the objections they had raised.

MR. SCHIFERL: Your Honor, has got it down right. Correct.

MR. McCRORIE: Okay.

(Whereupon, Plaintiff's Exhibit 17, document, was marked and received in evidence.)

MR. SCHIFERL: Now, the next numbers are a series of all CDs and one thumb drive, okay, starting with 18. 18 --

THE COURT: Wait. 18 is Stand-Up MRI.

MR. SCHIFERL: It is.

THE COURT: Okay. It's already in.

MR. SCHIFERL: It wasn't labeled.

THE COURT: Okay. It was marked in yesterday. We're going to put a label on it.

(Whereupon, Plaintiff's Exhibit 18, document, was marked and received in evidence.)

MR. SCHIFERL: 19 is a thumb drive of Lenox Hill Radiology.

MR. McCRORIE: And, for the record, if you want me to put it in, it contains an x-ray of June 5th, '18, an MRI of the lumbar spine; 3/26/21, an MRI --

MR. SCHIFERL: It's on the envelope.

MR. McCRORIE: If you don't need it in there.

MR. SCHIFERL: I don't need it.

THE COURT: It's up to you guys. It's your record.

(Whereupon, Plaintiff's Exhibit 19, document, was marked and received in evidence.)

MR. McCRORIE: Just state this: It's six studies. That's all we have to say.

THE COURT: Okay.

MR. SCHIFERL: Exhibit 20 is a CD of four lumbar spine x-rays.

MR. McCRORIE: Two lumbar; two cervical.

MR. SCHIFERL: From -- you didn't write down who

that is from.

MR. KULLER: Pennsauken.

MR. SCHIFERL: Pennsauken. That is 20.

(Whereupon, Plaintiff's Exhibit 20, document, was marked and received in evidence.)

MR. SCHIFERL: 21 is a cervical spine two-view x-ray from South Jersey Radiology.

(Whereupon, Plaintiff's Exhibit 21, document, was marked and received in evidence.)

MR. SCHIFERL: 22 is also from South Jersey Radiology. It is an -- a lumbar spine four-view x-ray.

MR. KULLER: From 1/5/23.

(Whereupon, Plaintiff's Exhibit 22, document, was marked and received in evidence.)

MR. SCHIFERL: 23, also from South Jersey Radiology, is a 4/25/23 cervical x-ray.

(Whereupon, Plaintiff's Exhibit 23, document, was marked and received in evidence.)

MR. SCHIFERL: 24, also from South Jersey Radiology, is a lumbar spine from 9/15/23, four views.

(Whereupon, Plaintiff's Exhibit 24, document, was marked and received in evidence.)

MR. SCHIFERL: 25 is also from South Jersey Radiology, 11/22/23 lumbar spine, two or three views. That's what it says on it.

(Whereupon, Plaintiff's Exhibit 25, document, was marked and received in evidence.)

MR. SCHIFERL: 26, a CD from South Jersey Radiology, CT cervical spine without contrast, 11/22/23.

(Whereupon, Plaintiff's Exhibit 26, document, was marked and received in evidence.)

MR. SCHIFERL: 27 is a South Jersey -- sorry. Not --

MR. KULLER: New Jersey Imaging.

MR. SCHIFERL: New Jersey Imaging network MRI of the shoulder of 9/15/26.

(Whereupon, Plaintiff's Exhibit 27, document, was marked and received in evidence.)

MR. SCHIFERL: 28, Lenox Hill Radiology MRI without contrast, cervical spine, 9/2/25.

(Whereupon, Plaintiff's Exhibit 28, document, was marked and received in evidence.)

MR. SCHIFERL: 29. Are you ready?

THE COURT: Yeah. Go ahead.

MR. SCHIFERL: 29 is Lenox Hill Radiology MRI without contrast, 4/9/25.

(Whereupon, Plaintiff's Exhibit 29, document, was marked and received in evidence.)

THE COURT: I'm sorry. What was 29?

MR. KULLER: 29 is a MRI of lumbar spine from Lenox

Hill Radiology from 4/9/25.

THE COURT: Thank you.

MR. SCHIFERL: Thanks.

30, again, Lenox Hill. It is a CT lumbar spine, 4/30/26.

(Whereupon, Plaintiff's Exhibit 30, document, was marked and received in evidence.)

THE COURT: 31 is already in.

MR. SCHIFERL: It's now labeled.

31 is now labeling. It's already in evidence, for the record. It's MRI of the spine without contrast from 4/30/26.

(Whereupon, Plaintiff's Exhibit 31, document, was marked and received in evidence.)

MR. SCHIFERL: 32, was this in?

THE COURT: No.

MR. SCHIFERL: Okay. 32 is a Lenox Hill Radiology MRI without contrast of the cervical spine, 8/6/25.

(Whereupon, Plaintiff's Exhibit 32, document, was marked and received in evidence.)

MR. SCHIFERL: '26. Sorry, Counsel. It is '26. Sorry, Counsel.

Okay. I only got a few more, Your Honor.

33 is also Lenox Hill, cervical spine without contrast of the neck, 8/6/26.

(Whereupon, Plaintiff's Exhibit 33, document, was marked and received in evidence.)

MR. SCHIFERL: 34, was this in evidence? 34, I'm now labeling. I can't remember if it is in or not. It's a CT of the lumbar spine without contrast from 8/6/26 from Lenox Hill.

(Whereupon, Plaintiff's Exhibit 34, document, was marked and received in evidence.)

MR. SCHIFERL: Second to last here is 35 from Lenox Hill, an x-ray of the lumbar spine, four views, 3/11/26.

(Whereupon, Plaintiff's Exhibit 35, document, was marked and received in evidence.)

MR. SCHIFERL: And the last to mark is 36, which is Lenox Hill, 3/11/26 x-ray of the cervical spine, four or five views.

(Whereupon, Plaintiff's Exhibit 36, document, was marked and received in evidence.)

MR. SCHIFERL: And we're done.

THE COURT: Okay. Great. Thank you.

MR. SCHIFERL: Thanks for the indulgence, Your Honor. It will help us move things along quicker, right?

THE COURT: I know we're going up to 43 at least. We'll see.

Okay. Let's bring down the jury.

THE COURT OFFICER: All rise.

(Whereupon, the jury enters the courtroom at this time.)

THE COURT: Please be seated. We're now going to have cross-examination by co-defendant.

MR. SCHIFERL: May it please the Court, counsel, Mr. Sayles and Dr. Gerling.

CROSS-EXAMINATION

BY MR. SCHIFERL:

Q. How are you?

A. Good. Thank you.

Q. I heard you say you don't like doing this.

Did I hear that correctly?

A. I don't like canceling my surgeries et cetera, yes.

Q. Again, as the judge asked earlier, if I ask a question, could you just answer my question, please --

A. Yes.

Q. -- or try to?

Okay. And when you say you don't like doing it, you take an oath and tell the truth -- your truth to this jury, correct?

A. Yes.

Q. I want to ask you about a few things. One of the things we have the benefit of is Ms. Karen's great work every day. We get it in a transcript.

Did you review the transcript of your testimony yesterday?

A. No.

Q. Yesterday you told us the difference between objective and subjective, correct?

A. Yes, I think I did.

Q. And you told us "subjective" means something that one says, whereas "objective" is something that is documented that you can look at yourself, correct?

A. Yes.

Q. In this case, you had a report of an incident on 5/11/2018 from Mr. Sayles to you on the initial visit he made to you, correct?

A. Correct.

Q. That is a subjective report, correct?

A. Yes.

Q. So, Doctor, can we agree that other than Mr. Sayles saying, "Something happened to me on 5/11/2018," that you have no other corroborating objective evidence that it, in fact, occurred, correct?

A. I mean, I don't know what the threshold is for evidence. So --

Q. Well -- I'm sorry. I didn't mean to interrupt you.

A. If I can go on, I mean --

Q. Go ahead.

A. Right. So, I mean, I think there are -- there are -- I mean, he -- there are emergency room -- there is, like, a report -- you know, there are reports that are there. But I don't know what you consider evidence versus not. I mean, there was obviously an incident report. There are emergency room records. Those are all things that we all discussed and we know exist, yes.

Q. All based on what Gordon Sayles says happened, correct?

A. I believe so.

Q. There is nothing from anyone else you saw that says something happened, correct?

A. Correct. Like, I haven't seen elevator reports or things like that, correct.

Q. And towards that end, when you were saying -- and I -- again, we have the transcript. We've got a nice word index.

MR. SCHIFERL: Thank you, Ms. Karen.

BY MR. SCHIFERL:

Q. You talked about free fall and all of this.

Again, that's based on what you were told, correct?

A. Yes.

Q. In fact, you don't know how the elevator 8 at 333 C actually operates, do you?

MR. McCRORIE: Objection.

THE COURT: Overruled.

A. That's true.
BY MR. SCHIFERL:
Q. And, in fact, you don't know if what was subjectively reported could even physically happen, given the design --
MR. McCRORIE: Objection. Liability finding. Objection.
THE COURT: Overruled, Counsel. Proximate cause is a damages issue.
MR. McCRORIE: Whether the accident happened is not.
THE COURT: Counsel, this is not the time to get into an argument with the Court.
MR. McCRORIE: Okay.
THE COURT: And, again, I'm going to ask that we wait until the question is finished to raise an objection.
MR. McCRORIE: Yes, Your Honor.
THE COURT: Thank you.
BY MR. SCHIFERL:
Q. I was interrupted. So let me --
A. Sorry.
Q. -- ask my question.
In fact, sir, you don't know anything about the design, operation, or engineering of that elevator to say whether what Mr. Sayles says happened could have, in fact, happened, do you?
A. Correct.

Q. So when you were giving an opinion -- and we all heard it in this court -- about what you believe to be the relation for the surgeries you performed to an event, you're doing that based on what Mr. Sayles told you and accepting it or assuming it to be true, correct?

A. Correct. In addition to the other supporting documentation that we have, yes.

Q. Okay. Let's talk -- again, just so we're very clear, the other supporting documentation is Mr. Sayles saying something in an emergency room, correct?

A. In addition to the accident report, yes.

Q. And that too. And Mr. Sayles saying something in an accident report.

Everything comes back to Mr. Sayles alone saying that that's what happened, correct?

A. Well, when you say -- I don't know that to be true. I don't know that to be true. I don't know what other people have investigated. I just know from my perspective, yes. When I'm forming my opinions, yes.

Q. That is why I'm asking these questions, sir.

Have you seen any other person other than Mr. Sayles saying anything about the event or how it happened?

MR. McCRORIE: Objection. Continued objection.

THE COURT: Overruled.

A. No.

BY MR. SCHIFERL:

Q. So I am correct, the only source you know about, about the event is what Mr. Sayles reported, and you're taking that report and assuming it to be true, correct?

A. Yes.

Q. Thank you.

Now, you also, yesterday, told us that one of the things -- and this was early in the morning of the four-hour exam. That one of the things that you do as a physician is to try to gather as much information as possible about the patient that presents to you, correct?

A. Yes.

Q. And you even described for counsel EMR, right?

A. Yes.

Q. Okay. How electronic records are kept, et cetera?

A. Yes.

Q. Isn't it true, sir, that you, in your office, undertook no efforts to acquire any records for any care that Mr. Sayles had before the time he came to your office?

A. No.

Q. Okay. Isn't it true that you never acquired and had in your records any record during the time you were caring and treating for him that predates 5/11/2018?

A. I'm not sure. I don't think so.

Q. Okay. Well, let's make sure you're sure.

One of the things you did in this case was you prepared a report; a, quote, "to whom it may concern" report, correct?

A. I guess so.

MR. SCHIFERL: Can we bring up Exhibit 2 in evidence, Your Honor, page 259.

(Whereupon, a portion of Exhibit 2 was published to the jury.)

MR. SCHIFERL: If you could go up and scroll so we see the signature there.

BY MR. SCHIFERL:

Q. Dr. Gerling, is that your signature?

A. Yes.

Q. And that's your signature under a sentence that says you're a board-certified and licensed physician in New York and New Jersey -- I'm paraphrasing. I'm not reading it exactly -- "and certify under penalties of perjury that the above statements are true and accurate to the best of my knowledge," with your signature there, correct?

A. Yes.

Q. Okay. And I take it when you signed this document that what you were doing was signing to the truth and the accuracy of what's in the document, correct?

A. Yes.

Q. You were also asked by, I believe, counsel on cross about whether you brought your file yesterday.

Do you remember that question?

A. Yes.

Q. Did you bring your file today?

A. No.

Q. Okay. Is it correct for all of us here in this courtroom that it's your understanding that Exhibit 2 contains the entirety of your office's file?

A. I mean, that's what my understanding was, yes.

Q. And if we look at that "to whom it may concern" report --

MR. SCHIFERL: Let's please go to page 245 of Exhibit 2.

(Whereupon, a portion of Exhibit 2 was published to the jury.)

MR. SCHIFERL: Is that 245? I'm sorry. I may have it wrong. 254. I transcribed [sic] my numbers. I'm dyslexic.

(Whereupon, a portion of Exhibit 2 was published to the jury.)

MR. SCHIFERL: There we go.

BY MR. SCHIFERL:

Q. Do you see that page, sir?

A. Yes.

Q. And you listed in this "to whom it may concern" report all of the diagnostic imaging that was in your file, correct?

A. I believe so. That's the intention, yes.

Q. Your intent was to -- in writing "to whom it may concern" was to say, "Here's all of the things that I, Dr. Gerling, have in my file on which I am basing my opinion," correct?

A. Yes.

Q. Okay. Now, yesterday you were asked by counsel on direct examination -- again, this was early in the day -- about what you had at your disposal when you were doing the care and treatment. Anything you would have had at your disposal would be in your chart, correct, in the records that you have at your office?

A. Well, that's a documentation of conversations that we had, imaging reports, my interpretations. It's not all of my knowledge base. It's -- at the time, I may have had more knowledge base than what might be in the chart.

Like, for example, if I did speak to the primary care doctor, it may not have even occurred during a visit. It may not be in the chart, for example.

Q. You have no memory speaking to any other doctor about the care and treatment of Mr. Sayles, correct?

A. At this time, I don't, no.

Q. And when you were asked questions by counsel yesterday, we heard that you met with counsel the morning before you testified, correct?

A. Yes.
Q. And that you had met some two weeks ago, correct?
A. Yes.
Q. Isn't it true that the first time you ever saw the ER report was when you met with counsel and were provided it by the plaintiff's counsel?
A. I don't know. I don't recall.
Q. Sir, it's not in Exhibit 2, is it?
A. Well, it's not a diagnostic imaging report, no. That's a list of diagnostic imaging.
Q. I'm sorry, sir. You're focused on a page in there. That is not my question. And I apologize if I asked a poor question. That is not my intent.
A. Okay. I accept that.
Q. My intent is to ask you, this Exhibit 2, it's 451 pages. I've looked at every one of them.
Nowhere in your file did you have the ER visit, correct?
A. I don't know. I haven't looked through it as well as you have. I'll take your word for it, though.
Q. As an officer of the court, I'm giving you my word and the Court my word.
A. I accept it.
Q. I could spend three hours having you look, but it's not in there.

A. I believe you.
Q. So my question is isn't it true the first time you saw it is when you met with counsel?
A. Same question; same answer.
Q. Okay. You were also shown something about the work comp report that was filled out that day.
Do you remember those questions, Exhibit 9, I think it is, that was in evidence?
A. I'm not sure what the number was.
Q. Okay. You referenced it earlier about -- when I was asking about subjective reporting, and you conceded it was subjective because it was Mr. Sayles.
But that was not in your file either, was it?
A. Nor would it be, no.
Q. So the point so that the jury understands this is that when you are seeing Mr. Sayles beginning in '21 up through any current time, those documents were not in your file for you to look at or factor into any opinion you might arrive at, correct?
A. When you say "my file," you're referring to my clinical chart. That's different.
Q. So you have other records that aren't here? I think that was the reason Mr. Cascone asked you. You have -- just so we're clear, is it your testimony to this Court that you, Dr. Gerling, have other records involving Mr. Sayles that you have not provided to the Court and us as counsel?

A. I mean, that is the clinical chart. I -- if I had -- if I looked at an attachment of an email where we had requested -- so I -- to make it clear, I don't -- I don't make all of the requests for outside records. I have medical assistants and secretaries that would request these types of materials if I wanted to look at them.

And if one of them was sent to me and I saw it, it may have been printed out for me, and I read it, and I looked at it. It wouldn't -- it wouldn't make it into my clinical chart most of the time because that's just not the way my practice works. It's not easy to do that. I would have to specifically ask them to put -- to scan this in, which I could technically do. But it's not a clinically relevant thing that we put inside our clinical charts, which is what you're holding in your hand.

THE COURT: So the answer to this question is "yes"? You have other --

THE WITNESS: No. I don't -- so the answer is I don't necessarily have them in my possession. It's just something that I -- that I may have reviewed and seen at some point. But it doesn't mean that I have it and I'm maintaining it in a file somewhere. Do you know what I mean?

That is the implication. I don't have a file folder somewhere that has outside records other than what you're looking at in the clinical chart, to answer your

question.

BY MR. SCHIFERL:

Q. Again, you -- I'm not belaboring the point, but you testify in court frequently. Six times a year, approximately.

You do understand that one of the processes at play here is for you to give all of the information you have so we can review it, our experts can review it, and I can formulate questions so that we can get answers so that the jury, who is going to make a decision, can understand what it is you did and/or did not do.

Do you understand that?

A. Yes.

Q. Okay. My question, again, is you did not have those other records you made reference to in examination yesterday, and they're not anywhere in a chart that's in the records that you have here today, correct?

A. No. They're not in my clinical chart. That's true.

Q. Thank you.

One of the things that you do -- strike that.

When you met with counsel, whether it's two weeks ago or yesterday morning, did they have records they showed you that were not part of your chart, clinical or otherwise?

A. I'm sure that they had a lot of things that I've never seen and that I didn't even look at yesterday or during that meeting two weeks ago.

Q. Did they ever provide you with any videos of Mr. Sayles undertaking activities -- I'll just leave it vague -- during the time from 2021, when you began caring for him until present?

A. Non-extensive. I think that they showed me a picture -- one or two pictures of some of the activities that he did. I don't recall whether they showed me a video, though.

Q. You testified yesterday as to your understanding of what Mr. Sayles's job was, correct?

A. Yes.

Q. Do you have an understanding as to whether he has any other jobs other than the job with New York City?

A. I know he's also a preacher.

Q. Is that recorded anywhere in your chart, that he has -- also does preaching activities?

A. I'm not sure.

Q. Again, I've looked at all of these pages. I did not see it in there. As an officer of the court, I'm going to represent that it's not in there.

A. Okay.

Q. Why would you not have recorded that information?

A. Because that is absolutely not clinically relevant.

Q. So --

A. I mean, if -- look, if -- if -- if it -- if he told it to me and I was writing at the time what his job was, then I probably would have kept it. But it's just not something that I

would make a point of needing to document because I felt like it was clinically important.

Q. Dr. Gerling, you talked to us yesterday about your offices, and the jury heard that testimony about suspension and all of that. I'm not getting into all of that.

MR. McCRORIE: There was no suspension -- it's fine. Withdrawn.

THE COURT: Okay.

BY MR. SCHIFERL:

Q. You told this jury that you now operate mainly -- or operate -- by that, I mean that you practice medicine mostly in New Jersey, correct?

A. I -- I do my surgeries in New Jersey, yes.

Q. Okay. And you have an office in Clifton, New Jersey, correct?

A. Yes.

Q. Now, we're going to look at some of these. But your protocol, when a patient comes in, is that you and/or the physician assistant or the nurse practitioner take notes, and you keep those because keeping notes are important, correct?

A. Yes.

Q. Okay. Tell us, where do you understand Mr. Sayles lives?

A. I don't remember right now.

Q. Did you know that Mr. Sayles, from your Clifton, New

Jersey, office, lives over a hundred miles away?

A. I don't recall whether I did or not. I mean, it's not unusual, though, for my patients.

Q. So to come see you, you then -- strike.

You didn't know where he lives, so you didn't know that just for the act of coming to see you that this person that has a purported back injury is traveling an hour and a half or more each way just to come see you, right?

A. I don't remember that.

Q. Okay. You would agree with me that transit -- even if you're not driving. If you're sitting in a car or a bus -- those activities can cause spinal problems, correct?

A. Yes. I mean, most people would not think that sitting in a car or a bus for an hour and a half is going to cause a spinal injury, no.

Q. Well, it can exacerbate. I mean, your advice would be to not exacerbate problems or not do activities that might exacerbate problems, correct?

A. An hour and a half does not constitute that.

Q. Sir, I'm sorry. That wasn't my question.

You would give advice to your patients to not undertake activities that exacerbate their problems, correct?

A. Yes.

Q. And, certainly, where Mr. Sayles lives, down near the Philadelphia suburban area -- Camden, Philadelphia, area --

there are neurosurgeons and orthopedic doctors there, correct?

A. Yes.

Q. And you've referred to people down in that neck of the woods, correct?

A. You mean spine surgeons?

Q. Yes.

A. Not really, no.

Q. Well, you're not the only spine surgeon on the Northeast Corridor?

A. Of course not.

Q. And isn't it typical that people usually seek care and treatment nearer to their homes as opposed to going hours and miles away?

A. For spine surgery, it's not unusual for people to travel from Philadelphia, Pennsylvania, Upstate New York. I see people from Delaware, Florida. People come to me from distances, yeah.

Q. Let's talk about your first visit with Mr. Sayles.

MR. SCHIFERL: If we could please bring up page 4. I would just like the top part, if we can use that on this so everyone can see it.

(Whereupon, a portion of Exhibit 2 was published to the jury.)

BY MR. SCHIFERL:

Q. Your format in these, what are called progress reports,

is consistent, correct? I mean, in other words, this is a -- forget about the information filled out there. That box, for instance, is on your letter head, regardless of what office it is as to the patient's name and all of that other information, correct?

A. Well, this is a relatively old letterhead. But it -- we do typically have a, like, standard format, and it changes from time to time, yes.

Q. And among the things -- this is the first visit, 2/23 of '21, correct?

A. Yes.

Q. And so at that time, this is, like, the initial visit, the seminal one that you're trying to get the most information you can by this person who is showing up at your door step, correct?

A. Within reason, yes.

Q. And one of the things that you want to know and you keep track of is who referred the person to your office, correct?

A. It's nice to know for multiple reasons.

Q. In this case, was there any doctor that referred Mr. Sayles to your office?

A. I don't recall.

Q. That's blank on this form, correct?

A. Yes.

Q. And as we continue through them, it's remained that way, correct?

A. It carries over, I'm sure.

Q. Well, going back to it's nice to know, because one of the things as a practitioner is, if Dr. Smith -- and I'm making that up. If Dr. Smith referred the patient, that would be a way for you then to know, "Hey, maybe Dr. Smith has some records on that patient that I can, through electronic means or my office staff, obtain so that I can also look at them."

That's why one of the reasons you do it, correct?

A. Absolutely. That's right.

Q. In this instance, do you know how Mr. Sayles was referred to you?

A. No.

Q. Was it by an attorney?

A. I don't think so. I don't know, though.

Q. Well, again, the record will speak for itself. Mr. Sayles testified in this court about that issue, and he was unable to tell us if any doctor had ever referred him to you.

And I asked, "Well, could it have been an attorney?"

And he acknowledged that it was, potentially.

Did you know that?

A. No.

Q. Sir, do you have arrangements with attorneys on referral of potential patients to you?

A. No.
Q. If we continue looking at this, this was from your Manhattan office. This is when you still had privileges in New York, correct? I mean, you had --
A. What do you mean "privileges in New York"? I still have an active license. I've never had a problem with my license in New York.
Q. You still had operating privileges in New York?
A. You mean when I was operating in New York? Yes.
Q. Okay. At this time.
Now, one of the things that you record here is the mechanism. In other words, regardless of who it is that comes to your office, you ask, "Hey, patient. Please tell me why you're here," correct?
A. Yes.
Q. And this then -- the specifics are, "Why are you here?"
And if someone were coming to you and saying, "I was in a car accident," you would write down "car accident," correct?
A. Or my assistant that's taking in -- that's sort of -- they're doing the intake, yes.
Q. So that information comes from the patient?
A. Yes.
Q. Okay. And in this instance -- and by the way, this information on the mechanism of injury is the same throughout all of the 20-plus reports that your office has, yes?

A. We covered that yesterday, yes.
Q. We didn't look at it, though, did we?
A. I don't know.
Q. Okay. The jury now gets to see this.
So what was recorded here, again, words that were communicated to someone at your office or you by Mr. Sayles was "Was inside an elevator at work when it fell from the 23rd to the 9th floor on 5/11/2018."
That's in your records, correct?
A. Yes.
Q. And that's in each and every one of your records, correct?
A. Right. It was translated, obviously. It's identical, right.
Q. And, in fact, until you met with the attorneys two and a half weeks ago, you didn't know that it's Mr. Sayles's claim now "Well, it was just a little four-floor incident"?
A. You know, as I said -- I think I said this yesterday -- I don't remember when it first came to my attention that it was a 4-story drop instead of a 14-story drop. I don't know when that came to my attention, no.
Q. Well, that's significant as to the length of a drop under the laws of physics, isn't it?
A. No.
Q. So let me get this straight.

Part of your medical training, you understand and have some modicum of science education, I take it, correct?

A. Yes.

Q. So our old friend Isaac Newton talked about 9.8 centimeters squared for a drop, correct? I mean, that's gravity, pull of gravity, free fall?

A. Yeah.

Q. Okay. And whether that pen I just dropped dropped the three-and-a-half feet I just dropped it or dropped 30 feet, there is going to be different energies when that pen hits the ground, correct?

A. There is something called -- that's not necessarily true. There is something called "terminal velocity." So there is a point at which it stops.

THE COURT: Sorry, Doctor. I'm just going to remind you that this is cross-examination. So if he says "correct," and you say "not necessarily true," then that's it.

THE WITNESS: Okay.

THE COURT: Thank you.

BY MR. SCHIFERL:

Q. Again, going back, we already established, other than what Mr. Sayles told you happened, you really don't know about what happened in the elevator, right?

A. Exactly.

Q. Okay. But if someone came to you -- I want you to assume that someone comes to you and says, "I was in a car accident."

One of the things, am I correct, that you might want to know is, "Well, was it that you hit the bumper at the Target store parking lot 2 miles an hour, or did you get hit by a semi at 50 miles an hour?"

Those would be significant things for you as a medical practitioner to know, correct?

A. We try to keep track of that, yes.

Q. Okay. Because the injurious nature, the relation -- as Your Honor said, one of the issues here is the relation of an event to cause something.

The injurious nature depends upon the energy input to the event, correct?

A. Yes.

Q. Thank you.

Now, you also don't know, with regard to Mr. Sayles's elevator event, the rate of speed of the elevator, do you?

A. No.

MR. McCRORIE: Objection.

THE COURT: Basis?

MR. McCRORIE: I don't think we should do it in front of the jury, but I have a basis, Your Honor, if you'd --

THE COURT: Okay. We can -- it's up to you. You want me to excuse the jury, I will.

MR. McCRORIE: Is an elevator expert going to come and talk about how fast the elevator goes? I don't --

THE COURT: Overruled. The objection is overruled.

MR. SCHIFERL: Thank you.

BY MR. SCHIFERL:

Q. Now, I want to go back -- or stay on this first visit here.

You, then, also put in this beginning part here --

MR. SCHIFERL: If we could just scroll up just a little bit, we still see the previous -- right there. That is fine.

BY MR. SCHIFERL:

Q. "Previous fall at work in 2015. Injuries to low back. Underwent PT and was back to 75 percent, with persistent mild back and leg pain."

Those three lines I just read were information conveyed by Mr. Sayles to you or your staff, correct?

A. Yes.

Q. That information is also repeated throughout all of your records, correct?

A. That section is -- is copied, yes. It's copied forward.

Q. Sir, is there anywhere in your records that you know

anything more about that event than what is recorded in your records?

A. I'm not sure.

Q. Well, when in 2015 did the event occur?

A. I don't recall.

Q. What happened in 2015?

A. He had a fall at work.

Q. A fall?

A. Yes. I think a dog attacked him or something --

Q. Okay. A dog attack.

A. -- and made him to fall.

Q. How long was Mr. Sayles off of work from when that event happened?

A. I don't recall.

Q. Do you know, when he was off of work, was it under a physician's instruction to be off of work?

A. I don't recall.

Q. When he was off of work after that event, did he seek medical care anywhere?

A. It's my understanding he did.

Q. And since you had that understanding, did you ever acquire any records about the medical care that Mr. Sayles would have received following this dog event in 2015 when he reported it to you and you were aware of it?

A. I don't recall whether I reviewed any of those records.

I don't think that they're in my chart, though.

Q. I can tell you as an officer of the court they're not there.

A. Okay.

Q. So, again, what I want to know -- and I think it's important for the jury to understand -- is what information that you, Dr. Gerling, had or didn't have available to you. Okay?

Do you understand that?

A. Yes.

Q. Okay. So you were aware -- you used the word "He was very forthcoming. He told us about this event." That's fair.

But as a physician, when he was very forthcoming about this, what did you or your office staff or anyone do to say, "Hey, Gordon. Thank you for telling us that. I would like to get the records of any care and treatment you had because you're here presenting for a low back injury. You had this low back injury after that. And that might be important for me to know about."

What did you do?

A. Well, I mean, when you're talking about "here," you're referring to being in court five-and-a-half years later? What do you mean when you say "here"? What do you mean by that?

Q. That is a fair question. I absolutely can.

A. Yeah.

Q. I'm really not here to answer questions, as you, I

think, understand. But fair.

You are treating a person. A patient has arrived in your office --

A. Yeah.

Q. -- and says, "I have low back pain. Oh, and by the way, three years before the event that I'm here about, I had back pain in another incident, and I got treatment."

So for you as a treater, not someone coming into court, $24,000, but as someone who is treating someone, wouldn't you want to know what happened medically with that person in that period of time?

A. Do you want a yes-or-no answer, or do you want me to answer the question fully?

Q. The question was wouldn't you want to know what happened medically to that person before they came to see you?

A. Do you want a full --

THE COURT: "Yes" or "no."

A. -- answer?

THE COURT: Yes, sir. That is a yes-or-no question. Please answer with a "yes" or "no."

A. I'm sure that I did know some information that's not included in the chart. This is -- this is a summary of a conversation that happened.

BY MR. SCHIFERL:

Q. Well, we know certain things because you signed under

oath.

MR. SCHIFERL: If we can go back to page 254, please.

(Whereupon, a portion of Exhibit 2 was published to the jury.)

BY MR. SCHIFERL:

Q. You listed, under signature of telling the truth and oath, all of the diagnostic imaging you had in your file, correct?

A. Yes. At that time.

Q. Sir, nowhere in there is there any diagnostic image that predates 5/11/2018, correct?

A. I believe that's true.

Q. So you did not look at -- despite what you told counsel that you did, you never looked at any record, specifically an MRI or an x-ray that predated 5/11/18, did you?

A. At that time, I don't think that I had it. No, I don't think I had it in my possession.

Q. Well, let's say -- when you say "at that time," this letter you signed was in May of this year, correct?

A. I don't know. I don't know the date of that.

MR. SCHIFERL: Well, let's go to the first page of the record, please.

BY MR. SCHIFERL:

Q. I don't want to have this fight, but I'm representing.

Do you see the date up there, sir?
A. I believe you.
Q. Okay. I thought you said you didn't know.
A. I don't know. I didn't know the date of that document. But I'm telling you that I -- at that time, whenever that was written, that that is what I had in front of me.
Q. So in May of '26, when you're actively treating someone, the fact of coming into a courtroom, in Her Honor's courtroom, and providing testimony to a jury is not in your mind, correct?
A. Treating and testimony are two separate things.
Q. When you're treating someone in May of '26, the fact of coming into a courtroom at that time is not in your mind, correct?
A. When I'm writing a document like this, I am -- the -- coming to a -- the courtroom is in my mind, yes.
Q. Oh, it is? So you --
A. When I'm writing a document like this, of course.
Q. Okay. So I'm confused. It seems as though, in your meeting with the attorneys, that they provided you some information you didn't have; is that true?
A. I don't know when I received additional information. They certainly did meet with me and show me, and we reviewed documents and whatnot, yes.
Q. So there was additional information you received before

you took the stand to talk to us in this courtroom, knowing that we were going to question you, and you didn't tell us what that additional information was anywhere?

A. How would I have done that?

Q. Well, you could have supplemented your "to whom it may concern" letter.

Did you ever do that?

A. Two weeks ago?

MR. McCRORIE: Objection.

BY MR. SCHIFERL:

Q. Correct.

THE COURT: What's the basis of the objection?

MR. McCRORIE: It's a CPLR -- it's a court rule narrative report that --

THE COURT: The objection is overruled.

A. No, I didn't make a supplement two weeks ago when I met with the attorneys.

BY MR. SCHIFERL:

Q. And just so we're very clear, it wasn't another doctor. It was attorneys that were providing you information that you didn't have before, correct?

A. They're providing me documents, yes.

Q. Now, we just established that nowhere in your chart did you have any of these -- any radiographic studies, x-rays, CTs, MRIs before Mr. Sayles's reported event of 5/11/2018.

Did you ever ask?

A. You know, it's been five-and-a-half years. It is the custom of my practice to ask. That's standard practice. Even before they hit the door, we ask them for -- for whatever they have in their possession. And we do ask, yes. And, you know, this imaging that we have, it does -- it does actually compare to pre-accident film.

MR. SCHIFERL: Move to strike. I just asked if he asked. He's answering something else.

THE COURT: The motion to strike is granted. Everything after "we do ask" is stricken and will be disregarded by the jury.

BY MR. SCHIFERL:

Q. Independent of your asking, did Mr. Sayles ever come into your office with any documents about this 2015 incident?

A. I don't recall.

Q. Now, you do have, throughout the course of your care and treatment for patients, patients that come to you, whether it's on referral from an attorney or a doctor, with records sometimes, correct?

A. Sometimes.

Q. Okay. They come in with CDs or other things like that, right?

A. We ask them to bring those things in, yes.

Q. At any time in your -- I show 24 -- visits with

Mr. Sayles, did he ever bring any records in?

A. I don't know. You know, I don't -- I'm not the one who stands at the front desk and collects all of the things that people bring in. I'm pretty busy. So I don't have the time to keep track of that, and it's been years. So I don't recall.

Q. In your chart, Exhibit 2, are there any records that Mr. Sayles brought in to you?

A. I don't think so. I'm not sure. You know, I'd have to review it.

Q. You were asked about Dr. Bonnett, and you expressed you didn't know who that was until you were informed by counsel that it was the PCP, correct?

A. Yeah. I don't regularly interact with him, no.

Q. Do you know who Dr. Patel is -- you ever heard that? -- from Brooklyn?

A. From where?

Q. Brooklyn.

A. I know about a hundred Patels. There are probably 50 Patels that are doctors that I know.

Q. Do you know any that purportedly treated Gordon Sayles?

A. I mean, I know a cardiologist group that does preoperative clearing and preoperative testing that's in Brooklyn. And one of the doctor's names is Patel, if that is who you're referring to.

Q. The question on the floor right now is do you know any

Patels, the legions of them that you say are out there -- and I believe you -- that treated Gordon Sayles?

A. I don't specifically recall.

MR. SCHIFERL: Can we go back to page 4, please.

(Whereupon, a portion of Exhibit 2 was published to the jury.)

MR. SCHIFERL: The part about the prior incident. The 2015 is what I want to show.

BY MR. SCHIFERL:

Q. Again, on this incident, you don't know when in 2015 it happened. You don't know how long Mr. Sayles was off of work, correct?

A. Yeah. I don't recall, as I sit here right now.

Q. And you don't know if he was off of work because some physician told him to be off of work, correct?

A. I don't recall. It's been five-and-a-half years.

Q. Now, during that time that he was off of work -- and I'm going to represent to you, and I want you to assume that Mr. Sayles said this event happened in September of '21 -- I'm sorry -- 2015 and that he was off of work until January of 2018, which our calendars tell us is about two-and-a-half-years -- or, actually, two years and five months.

Until I'm telling you that, did you have an awareness of that?

A. It sounds familiar. I know he was off of work for a

while.

Q. If someone is off work that long and has a low back injury -- and you've toiled in this field -- wouldn't you expect that that person would have sought medical care somewhere?

A. You know, I don't know what the custom is with the -- his bosses and the treating doctors that they have. I have a lot of patients that are off work for disability. And it varies from person to person. But, yeah. I -- usually, they are being supervised, and their employers demand that.

Q. Again, if that occurred here, you're unaware of those doctors?

A. Yeah. I don't remember who they are. I don't recall any details.

Q. Now, you said he was very forthcoming with you about this event in 2015.

Did he tell you about any other prior times that he had had back issues?

A. I am aware that he had back pain predating that accident as well.

Q. Is that awareness captured anywhere in the pages of Exhibit 2?

A. I don't -- I don't remember where that's documented, no.

Q. So this awareness, is this an awareness that you became aware of when you met with the attorneys before you testified?

A. Honestly, I don't know. We did review all of these issues, yes. That's a part of -- that's why we meet.

Q. When did you become aware that, before the 2015 incident, that he had had back issues?

A. Well, I mean, it's referenced in his imaging. In the imaging that I've reviewed, it references studies that were performed prior to that accident. So I know that he had back pain because he had an x-ray prior to that. So I know he had a back condition.

That's -- that's -- you know, I don't have a lot of details or knowledge about that. But I do know that he did have x-rays before, which suggests that he had a back condition.

Q. Sure, Doctor, because if an x-ray exists -- forget about what it shows or how it shows or anything.

If an x-ray exists, that means that someone from a physician got a script to go get that x-ray, correct?

A. Yes.

Q. I mean, none of us can just walk into a radiologist's office and say, "Give me an x-ray"?

A. Why would we?

Q. We can't do that. It has to be under a doctor's direction?

A. Exactly.

Q. Okay. And this awareness -- awareness is something that you just two-and-a-half weeks ago became aware of, correct?

A. Actually, in my report that you showed us earlier, it has imaging studies. And in those images studies, it references the imaging studies that were done before the accident.

Q. Okay. None of which you ever got and saw during the time that you're caring and treating for Mr. Sayles, correct?

A. I can't understand what you're saying. I'm sorry.

Q. None --

A. Can you speak up?

Q. -- of the referenced studies from before 2018 were ones that you ever acquired to have during the time that you're caring and treating for Mr. Sayles up through at least May of 2026, correct?

A. That's probably true, yes.

Q. So you're treating and caring for a patient, knowing that they had a 2015 event, that they had a 2014 back incident, and it's of zero consequence to you, Dr. Gerling, about you looking at those images?

A. From a clinical standpoint, no. You're right.

Q. So I guess, if I could come to you and walk in your office and say that I was in a car accident five years ago, you don't need to get those records; is that true?

A. If you come for care, I -- I am -- I'm -- I'm a thorough doctor. I do everything that I feel that's necessary and appropriate to diagnose you and treat you.

Q. Because one of the things you knew you're going to walk

into this courtroom on was to answer a question that they were going to pose to you about what you believe to be the cause of Mr. Sayles's back injury, correct?

A. Well, when are you referring to?

Q. I'll move on.

Doctor, you -- well, strike that.

So let's talk about these imaging studies, as you referenced them.

When you did your demonstration up here with the charts and you showed things and you're comparing things, you do believe -- if I followed what was going on, it's important to do comparisons of x-rays and MRIs at different stock points in time, correct, of a patient?

A. It's important to update them.

Q. But it's also important to look at them and compare them, like how someone is in the year 20X compared to how they are in the year 20Y, right?

A. It could be helpful. It's not necessarily important in all circumstances, but it can be helpful, yeah.

Q. Well, one of the things --

A. To see progression if you're looking for progression, yeah.

Q. Sure. And one of the things you told counsel was that your demonstration up here was an attempt to be helpful to the ladies and gentlemen of the jury, correct?

A. Yes.
Q. Okay. And when you were trying to be helpful, to use your words, you showed us an x-ray from 2018, after the event, correct?
A. Yes.
Q. And then you showed us some more recent ones from '23, correct?
A. We looked at a lot of different films. I know we looked at '23. I'm -- I think we looked at '21. I'm not sure.
Q. But in your attempt to be, quote, "helpful," end quote, you not once showed this jury any image from before 5/11 of '18, did you?
A. You're -- I'm not the one who is showing. The plaintiff's counsel is -- is providing us with this material from after the accident, and I'm explaining it.
Q. Okay. So -- so the attorneys, who are not medical practitioners, they determine what was going to be shown and not shown to the jury?
MR. KULLER: Objection.
THE COURT: Basis?
MR. KULLER: He's referencing -- he's referencing matters that are not under our control. All of those matters were under the defense's control.
THE COURT: Overruled.
A. I am -- I'm trying to present what we have as data for

demonstrating what the injury is and demonstrating what the indications were for surgery.

BY MR. SCHIFERL:

Q. Again, the point is, if you're attempting to show data and you have an event -- let's call it point X on a time continuum. There is pre-X. And post-X. You are presented in this case with Mr. Sayles post-X, post 5/11/18, correct?

A. Yes.

Q. And if you want to document about what happened at point X and whether point X -- whatever happened on that date -- is, in fact, something that resulted in the things that follow point X, you might want to look back before point X, correct?

A. Yes. If we have the ability to, we would, yes.

Q. And in this case, you were not provided any data about pre-, post-X, correct?

A. No. That's not true.

Q. Well, we looked at your list of diagnostic films. You didn't have anything from before 2018, correct?

A. No. The imaging -- the imaging that is listed in that file, on that narrative, it references old MRIs that were compared by the doctors that were interpreting them. I just didn't have them available to me.

But in the actual reports that are listed there, it compares to pre-accident films by radiologists that are

interpreting them.

Q. So let me make sure I follow this, Dr. Gerling.

Your aim is to be helpful. You acknowledge that it would be helpful to show pre-incident films, x-rays, but you didn't do it, did you?

A. If you have them, I'd be happy to do it. I don't think anybody has them.

Q. Sir, you understand it's not my client's burden of proof in this case. You do understand --

THE COURT: Gentlemen, can we --

MR. SCHIFERL: Fair enough. I'll move on, Your Honor.

Thank you, Your Honor.

BY MR. SCHIFERL:

Q. The attorneys you met with and practiced and went over what you're going to talk about not once suggested to you, "We should look at something before. What do you think about that, Doctor?"

They never said that to you, correct?

A. No.

Q. And you never said to them, "Hey, if we're going to be appearing in front of these five Manhattans to talk about this thing and have them judge the evidence, it might be useful for my demonstration to show them something before."

You never suggested that, did you?

A. I don't know how you would know that. How do you know that?

Q. I'm asking you. You, Dr. Gerling --

A. No, I didn't.

Q. Let me finish my question.

You, Dr. Gerling, when you met with the attorneys and knew you were coming here, you never said to them, "Hey, let's get those images from before the event so that I can cogently explain to the jury how they impact or don't impact my testimony."

You never suggested that, did you?

A. That's not true.

Q. You did suggest it?

A. We discussed it.

Q. So you discussed it, and so the attorneys apparently rejected your recommendation?

A. No. They said that that would be very helpful.

Q. So if it's very helpful, where are the images from before 5/11/18, sir?

MR. KULLER: Objection.

A. I would love to know.

THE COURT: Overruled.

A. I don't think they're available. I think that I was told, if I recall correctly, that they were not available.

BY MR. SCHIFERL:

Q. Let's talk about what is or is not available.

When you receive images from the various places that you receive it, you get reports and CDs or things over the computer to look at, correct?

A. Yes. Usually.

Q. And the places that you get them from include Lenox Hill Radiology, correct?

A. Yes.

Q. And, in fact --

MR. SCHIFERL: I'm looking for a record here, Your Honor. I apologize. I'm trying to move things along, and I may have misplaced it in all of my work here.

I didn't misplace it. It was under my file. Sorry for the delay.

If we can go to -- this is Exhibit 2 -- it's his records -- page 15.

(Whereupon, a portion of Exhibit 2 was published to the jury.)

MR. SCHIFERL: And if we can go to the third box on 15 there.

BY MR. SCHIFERL:

Q. Let's just establish what we're looking at.

This is, again, in the format of how you keep your progress notes, correct?

A. Yes.

Q. Okay. And this was an order that you had ordered for some MRI that we're looking at here. And it's got an assigned order number of EXT- -- I don't have my glasses with me right now -- -0025402, correct?

A. Yes.

Q. Is that your order number or the order number that Lennox gets from you?

A. It's -- I don't know. The EMR puts that in there. I don't know what the relevance of that is.

Q. Okay. But there is no doubt, this is something that you ordered, correct?

A. Not necessary -- I think I did. But that -- that verbiage that is up there does not relate to whether I ordered the study or not. The EMR just always puts something like that in there when we insert a study.

Q. And so when you get reports back from somewhere like Lenox Hill, they're on a letterhead, correct? There is a letterhead that eventually finds its way to your file?

A. Usually. We try to put it in there.

Q. And at the top, it'll say "exam requested by Michael Gerling, MD." That's you?

A. Yes.

Q. So the letter was sent to Michael Gerling, MD, at 110 Duane Street, first floor, New York, New York 10007. That would be you?

A. Yes.

Q. And they, in this report -- and I know you said the importance of your own self looking at images. But the radiologist looks at the images and then, in addition to providing you with the image, provides a report with his or her determinations on it, right?

A. Correct.

Q. Okay. And in this case, for this image -- and by the way, for the record, this same box that we're looking at here from page 15 is on page 35, page 25, page 65, page 52 of Exhibit A.

This shows that you did have and did receive in your records a 3/26/21 MRI, correct?

A. Yes.

Q. And that 3/26/21 MRI, the report, as a matter of fact, talks about the Lenox Hill Radiology folks doing a comparison to a September 4, 2014, radiograph, correct?

A. Yes.

Q. Okay. Is the -- well, strike that.

MR. SCHIFERL: Your Honor, for purposes of ID, may I have the witness handed Exhibit 2A?

MR. KULLER: Thank you.

MR. McCRORIE: Thank you.

THE COURT: Yeah. Okay. I ask that the court reporter mark it. And have you provided a copy to

plaintiff?

MR. SCHIFERL: Just did.

THE COURT: Can you just identify it for the record.

MR. SCHIFERL: 2A is a Lenox Hill Radiology report concerning the 3/26/21 -- 3/26/21 MRI readout.

THE COURT: Okay. You're just marking it for identification?

MR. SCHIFERL: Right now, yes.

THE COURT: Okay.

(Whereupon, Plaintiff's Exhibit 2A, document, was marked and received in evidence.)

BY MR. SCHIFERL:

Q. Do you recognize what has been marked as 2A for identification, Doctor?

(Handing.)

A. Yes.

BY MR. SCHIFERL:

Q. Is this a record that you would have received?

A. I'm sorry?

Q. Is this a record you would have received?

A. Yes. This is the -- this is a very routinely received MRI report.

MR. SCHIFERL: I would move into evidence 2A. And the reason for that, to be clear, it is not part of

Exhibit 2.

THE COURT: Any objection?

MR. McCRORIE: Judge, other than the ruling on the reports, we'll allow this report to go in. It's as a comparison, if that's what he's looking to put in there. It references the 2014, but that doesn't mean all of the other reports. But, yes.

THE COURT: Okay. We can mark Exhibit 2A in evidence.

MR. SCHIFERL: And you know what? I do agree with Counsel. The rest of it we can redact.

Thank you, Counsel.

THE COURT: Okay.

MR. SCHIFERL: I think he --

THE COURT: So my understanding is 2A is coming into evidence subject to redactions that both attorneys are going to agree on.

MR. McCRORIE: Yes.

THE COURT: Okay. Very good. Thank you.

(Whereupon, Plaintiff's Exhibit 2A, document, was marked and received in evidence.)

MR. SCHIFERL: Are we good, Your Honor?

THE COURT: Yes, yes. Please proceed.

BY MR. SCHIFERL:

Q. The thing I want to ask about on here is really a

pretty simple issue. This is the record that you received or your office would have received after the 3/26 MRI that is in your chart on multiple occasions.

And that references that there was an earlier lumbar spine radiograph, correct?

A. Yes.

Q. And it specifically references that Mr. Sayles underwent a lumbar spine radiograph in September -- it's actually September 4 of 2014, correct?

A. Yes.

Q. Okay. Now, you just said you would have done more with exhibits if it was available. You had this in your records, in your chart, in your files at the office.

Did you do anything ever -- you, Dr. Gerling. Did you or your office staff do anything to obtain that radiograph?

A. I don't think so.

Q. Okay. It clearly is identified, was used by the folks at Lenox Hill, and therefore it existed, correct?

A. At some point.

Q. And it was available, at least as of the date of March 21, correct?

A. Back then, which was seven years after the radiograph, yes.

Q. Well, have you asked since? Since you got this in '21, have you gone back and asked, "Hey, it might be helpful to get

this radiograph? Because I'm going to walk into court and explain some things about my opinion, and it's good to have a pre-X radiograph to compare it to a post-X radiograph"?

A. No. I don't think it's relevant.

Q. Okay. Now, the fact, again, that there was a radiograph tells us it was ordered by a doctor.

Did you ever inquire, "Hey, what doctor ordered that radiograph"?

A. I don't recall.

Q. Did you ever, anywhere, ask Mr. Sayles about, "Hey, you told me about this 2015 incident or some things about it. But before that time, did you have back problems?"

Did you ever ask that question?

A. I think I did.

Q. Okay. Is that contained or noted anywhere in the 415 pages that constitute Exhibit 2A of your chart?

A. As I said, the chart is a summary of our conversation. It doesn't include every single word. It's not a transcript. It's a summary of what I think is important to include. And it includes the fact that he had a preexisting condition.

Q. So it's not important at all to your care and treatment --

A. An x-ray that is seven years old, no.

THE COURT: Wait, wait, wait. Sorry, sir. I'm just going to ask you to wait until the attorney --

THE WITNESS: Sorry.

THE COURT: -- finishes asking the question before you start your answer.

MR. SCHIFERL: I'm going to move on, Your Honor.

THE COURT: Okay. Good.

MR. SCHIFERL: I think the point has been made.

BY MR. SCHIFERL:

Q. Now, you just didn't have --

MR. SCHIFERL: You can take that down.

BY MR. SCHIFERL:

Q. You just didn't have information about a 2014 radiograph. You had information about other imaging that was predating the event of 5/11/18, correct?

A. I believe, on subsequent MRIs, there were compare -- I don't recall exactly.

Q. Well, one of the places that you also use for imaging is South Jersey Radiological Associates, correct?

A. I don't -- when you say "what I use," I mean, I don't choose them, no. That's just where he happened to go.

Q. One of the things we did when the jury wasn't here and you weren't up there was go through a bunch of exhibits and mark them. And there are a number of exhibits from South Jersey Radiology, starting with Exhibit 21, continuing on through 26.

And those constitute imaging that you did list in your letter, correct?

A. I'm not sure exactly. I'll take your word for it.
Q. I'll represent that it is, and we'll move on for time.
But, again, when you get that imaging from South Jersey Radiology Associates, you similarly get a letter about not just the CD, but you get a letter from the radiologist with their findings, correct?
A. Usually. I mean, ideally, we try to. We request them, yes.
MR. SCHIFERL: I'd like to have our court reporter mark for identification Exhibit 15A. I'm providing counsel with a copy.
(Whereupon, Plaintiff's Exhibit 15A, document, was marked and received in evidence.)
THE COURT: What's been marked as 15A for identification is being handed to the witness.
MR. SCHIFERL: And for the record, Your Honor, it's --
BY MR. SCHIFERL:
Q. Well, do you recognize Exhibit 15A, sir?
A. I don't specifically recognize it, no.
Q. Was this in the same format -- is this similar to what Lenox Hill does when they send a record in to you?
A. I recognize what it is. It is an x-ray report.
Q. And in this case, it is Dr. Gerling referred at an address in Clifton, New Jersey, correct? That's you?

A. Yes.
Q. That would be your practice?
And this is the type of report that you got when you received all of these other images from South Jersey, correct?
A. Yes.
MR. SCHIFERL: Your Honor, I would move to -- again, subject to redaction with counsel, move into evidence Exhibit 15A.
MR. McCRORIE: Limited to it's compared to something without the comparison.
MR. SCHIFERL: Correct.
THE COURT: Okay. 15A is in subject to the agreed-upon redactions.
(Whereupon, Plaintiff's Exhibit 15A, document, was marked and received in evidence.)
BY MR. SCHIFERL:
Q. The point I want to get to on 15A is very similar, Doctor, to what we talked about before.
In this report --
MR. McCRORIE: Excuse me, Your Honor. Just so it's not confusing, are these numbers or letters? Because Plaintiff's are numbers.
THE COURT: We've been admitting these as Plaintiff's. I was --
MR. SCHIFERL: Because they're tied to --

MR. McCRORIE: Yeah. But 2 is the emergency room. This is a Lenox Hill. So I -- I think --

THE COURT: No, no. 2 is Dr. Gerling's records. And then 2A was a subportion of that. 15 is --

MR. McCRORIE: It's fine. It's a Lenox Hill record.

THE COURT: Okay.

BY MR. SCHIFERL:

Q. You would agree with me that, on 15A, there is reference to a comparison to a prior MRI obtained of Mr. Sayles's lumbar spine in August of 2016, correct?

A. Yes.

Q. And when you received and knew about this comparison, did you seek to acquire that prior MRI?

A. I don't recall.

Q. You would agree with me that that prior MRI is not in your file, correct?

A. I'll take your word for it.

Q. You would also agree with me that the fact that there was an MRI means that there is some doctor behind the order to go get the MRI, correct?

A. Yes. It's consistent with the patient's history.

Q. Which also informs you that, with regard to this 2015 event or in the time afterwards, that Mr. Sayles is, in fact, under a doctor's care, correct?

A. Yes, I do believe he was.
Q. You don't know who that doctor is, correct?
A. As I sit here, I don't know.
Q. Now, you -- I don't want to -- I'm trying to move along on time.
You saw him first -- and we went through 2/23/21 -- and continued for some -- 20-some times up until -- the last time you saw him was, what, very recently?
A. Yes.
Q. Okay. And during that time that you saw him, did you ever ask him about his other doctors?
A. You know, I -- I know that we had conversations about his prior history early in his care, but I don't recall recently.
Q. Okay. You said -- all I'm after is did you ever ask, "Hey, who is treating you? Who is your doctor?" Did you ever ask that?
A. Yeah. We always do.
Q. Okay. And there is a reason, if you do that, it's not contained anywhere in your records, the Exhibit 2?
A. We try to put everything -- if we knew who was -- you know, who was doing his rehab or something, then we would put it in if we know it. We try to keep track of that stuff.
Q. Well, one of the things you did do is you obtain a listing of medications that he was taking, correct?

A. We do. We ask.
Q. And if you got a medication, same thing. There is a doctor behind it, or should be, right?
A. Yes.
Q. Okay. And one of the medications he was taking was gabapentin, correct?
A. Yes.
Q. And that's for nerve issues?
A. Yes.
Q. And do you know who it was that prescribed that?
A. I don't recall.
Q. That's something you need to know, especially if you're going into surgery, correct, the medications that someone is taking? Or, actually, I shouldn't say you need to know, but really the anesthesiologist needs to know, right?
A. We all seek to know all of the medication they're on.
Q. And so in this case -- or in this -- your treatment time with regard to Mr. Sayles, you also -- there is something in the record I wanted to ask about.
You sent him for some pain therapy with a doctor in -- let's see where the doctor is located. Hold on -- at the Garden State Pain & Orthopedics, correct?
A. I guess so. I don't remember.
Q. We have in evidence Exhibit 8.
MR. SCHIFERL: And if you could go to page -- I

believe it's page 7 of Exhibit 8.

(Whereupon, a portion of Exhibit 8 was published to the jury.)

MR. SCHIFERL: Maybe it's the next page. Is that page 8 that we're on now? Okay. Go to page 9.

Your Honor, I apologize.

THE COURT: It's okay.

(Whereupon, a portion of Exhibit 8 was published to the jury.)

BY MR. SCHIFERL:

Q. Do you see page 9 there at the very top? It's got your name there. Do you see that?

A. Yes.

Q. It says, "Referred LESI by Dr. Gerling," correct?

A. Yes.

Q. Okay. And then right below that, there are some bullet points, including that there was an upper/lower NCS/EMG reviewed. Do you see that?

A. Yes.

Q. One thing we didn't hear about yesterday, what is an EMG?

A. It's a study that's done to try and document the status of the nerves.

Q. Did you ever look at that EMG?

A. I vaguely remember it. I don't remember this moment.

I would assume it's in my chart.

Q. Well, I'll tell you that assumption is not true. I looked for it and didn't see it.

A. Okay.

Q. But I have it.

MR. SCHIFERL: I'm going to mark as Exhibit 8A for identification a document.

THE COURT: Okay. Do you have a copy?

(Whereupon, Plaintiff's Exhibit 8A, document, was marked for identification.)

BY MR. SCHIFERL:

Q. Do you recognize Exhibit 8A?

A. Yes.

Q. And what is Exhibit 8A, sir?

A. It's an EMG.

Q. And is this what you were commenting earlier, that you recall it and have some familiarity with it?

A. Yes.

Q. Okay. If I may real quick grab that back.

MR. McCRORIE: And 8A, the objection was it was a diagnostic that --

THE COURT: Wait, wait. It hasn't been offered yet.

MR. SCHIFERL: I just -- I did --

THE COURT: Oh, are you offering it in evidence?

MR. SCHIFERL: I am offering Exhibit 8A into --

THE COURT: Okay. And what is the objection?

MR. McCRORIE: It's -- it's -- it's a diagnostic of someone not coming in. Same as all of the other diagnostics. It doesn't talk about a comparison. That was --

THE COURT: Can I --

MR. McCRORIE: I don't want to say too much, Judge.

MR. SCHIFERL: For the record, he just identified it's something he looked at and reviewed in this case.

MR. McCRORIE: It's a diagnostic test under --

THE COURT: I understand that's the basis of your objection.

Can I see the proposed exhibit. Thank you.

(Handing.)

THE COURT: Okay. And your response to the objection is that this is something that the witness looked at and relied upon in arriving at his opinion?

MR. SCHIFERL: Yeah. He just said that.

THE COURT: Is that right?

THE WITNESS: I said that I don't recall specifically, but I assume it's in my chart.

BY MR. SCHIFERL:

Q. For foundational purposes, you did have this during the care and treatment of your patient, correct?

A. I don't recall specifically.
Q. I thought you said you did recall.
A. I said I assumed so.
THE COURT: All right. The objection is overruled. I'm admitting the document and -- will it also be subject to redaction?
MR. McCRORIE: I don't --
MR. SCHIFERL: I'll work with counsel on that.
MR. McCRORIE: Yeah.
THE COURT: Okay.
MR. SCHIFERL: I pledge to do so.
THE COURT: Okay.
MR. McCRORIE: I would -- yes, subject to redaction.
THE COURT: Thank you.
MR. SCHIFERL: And may I see it real quickly?
(Whereupon, Plaintiff's Exhibit 8A, document, was marked and received in evidence.)
MR. McCRORIE: While we're doing that, can we just approach and talk, me and --
THE COURT: Yeah. Off the record?
MR. McCRORIE: Yes.
(Whereupon, a discussion was held in the robing room off the record among the Court and counsel.)
MR. SCHIFERL: May I proceed?

THE COURT: You may.

BY MR. SCHIFERL:

Q. So, Doctor, with regard to EMGs, one of the things they measure is neuropathy, correct?

A. Yes.

Q. They also measure radiculopathy?

A. Yes.

Q. Both cervical and lumbar radiculopathy, correct?

A. Yes.

Q. Did your read of the EMG show that there was any lumbar or cervical radiculopathy?

A. So -- so, as I said, I mean, I don't specifically recall reviewing that document. So it's going to be hard to be specific. But I did just notice that that was from 2025, correct?

Q. Absolutely.

A. Yeah. So you're talking about a document that I don't have in front of me that I don't specifically recall.

Q. All right. I'll move on.

THE COURT: You don't want to give him the document? I mean, it's a fair --

BY MR. SCHIFERL:

Q. Do you need it to answer any further questions?

A. Only if you want me to reference it.

THE COURT: Okay. All right.

MR. SCHIFERL: I'm not. Okay.

BY MR. SCHIFERL:

Q. So one other question about your records -- or about records.

You just acknowledged that -- about the care and treatment from Exhibit 8 that we looked at up on the screen from Garden State Pain Orthopedics. And the reports from Exhibit 8, I'll represent into the record, are from September of '24 and September of '25 and October of '25. And I'm just representing it. You're welcome to see what I'm saying.

But that would be during the time that you were also caring and treating for Mr. Sayles, right?

A. Yes. And I probably -- did I refer him to them? I -- it would make sense --

Q. I believe you did.

A. -- that he was if he was treated by me, yes.

Q. But my question is these records would coincide or overlap with your treatment and care of Mr. Sayles, correct?

A. Yes.

Q. Including the ongoing time. I gave you those dates: September 24, October 24 --

A. Correct.

Q. -- et cetera.

That's during the time you were caring and treating for him, right? Yes?

A. Yes.
Q. And one of the things you told counsel on your direct exam was either you or your physicians's assistant or your nurse practitioner on each visit would obtain any new, pertinent history information for your chart, correct?
A. Yes.
Q. And one -- is it true that one of the things you want to know about are any surgeries that Mr. Sayles might have undergone?
A. Yes.
Q. So please tell us why did Mr. Sayles have jaw surgery in February of '24?
A. I don't recall. I don't know. Jaw surgery?
Q. Jaw surgery.
A. I don't know.
MR. SCHIFERL: Can we please bring up Exhibit 8, the September 24th report. It's the cover sheet.
In evidence, Your Honor.
(Whereupon a portion of Exhibit 8 was published to the jury.)
BY MR. SCHIFERL:
Q. If you look at the very bottom left-hand corner, it says "Surgical History." Do you see that, sir?
A. Yes. Jaw repair.
Q. And the jaw repair would have occurred during the time

that you were caring and treating for Mr. Sayles, correct?

A. Yes.

Q. And despite it occurring during that time, you have nothing in your records about it, correct?

A. Yeah. I don't know what that is. I mean, is that, like, a dental procedure, jaw repair? Maybe he had a root canal. I don't know.

Q. I'm just a big --

A. What is it?

Q. -- dumb attorney here. I'm asking you.

A. You tell me. I'm not a dentist.

Q. Well, time-out.

Nowhere does it say it's a dental procedure versus some orthopedic surgeon or anybody else doing the work, does it?

A. It says "jaw repair." That's a mouth procedure. That's what dentists do.

Q. My question -- I don't mean to talk over you.

You don't know what that's for, correct?

A. Correct.

Q. You were never told by your patient that they were undergoing some jaw repair surgery, correct?

A. Well, I don't know. They may have told me. I don't recall.

Q. All right. I'm going to turn to my last topic, sir.

In your meeting with the attorneys -- I asked this

earlier -- if they ever showed you any video. And I think you told me you may have seen some still pictures, correct?

A. I think so, yes.

Q. Do you recall being asked by counsel yesterday morning, and he actually gestured with his hand and held it up? Do you remember those questions --

A. Yes.

Q. -- that he asked you?

Okay. And when he asked you those questions -- and it's in the transcript from yesterday -- he said, "Can someone do this after a surgery?"

Do you remember that question?

A. Yes.

Q. Have you looked at any of the videos from when Mr. Sayles is doing his preaching?

A. I don't think so, no.

Q. You did your first surgery in September of '22, correct?

A. I believe that's correct.

Q. September 28 of '22, correct?

A. Yes.

Q. Okay.

A. I don't recall exactly the date. But, yes, that sounds right.

Q. And before you did that, you have in your

records -- the jury will have them to review. So I'm trying to move things along.

In your records, among the things you did when someone would come to you is you'd do range-of-motion studies and other things for the records, right?

A. Yes.

Q. You'd take a pain complaint, correct?

A. Yes.

Q. So if we see on pain complaints where Mr. Sayles would say, "My pain is a 9 of 10," you would write it down that way, correct?

A. Yes.

Q. Okay. If you do a test and he's able to lift his arm, like, this high -- and I'm trying approximately 90 degrees -- you would say it's a 90-degree lift?

A. That would be an example, yes.

Q. And you're looking for effort to make sure that they're not faking it, correct?

A. Yes.

Q. That's important to you, right?

A. Yes.

Q. Okay. One of the -- you were asked about a bunch of terms.

Are you familiar with the term, as a medical practitioner, a "secondary gain"?

A. Yes.
Q. Can you tell the ladies and gentlemen of the jury what secondary gain is?
MR. McCRORIE: Objection.
THE COURT: I'm sorry. Was there an objection?
MR. McCRORIE: There was. This wasn't on, Judge. Objection.
THE COURT: And the basis?
MR. McCRORIE: Based on the opening and everything they've done and said, I object.
THE COURT: I don't understand what --
MR. KULLER: Secondary gain is inadmissible.
THE COURT: I'm sorry? I didn't hear what you said.
MR. KULLER: Secondary gain is inadmissible.
THE COURT: Is inadmissible? He's just asking him to define what it means. I don't know what it means, personally. I don't know if you want to have a further discussion about this.
MR. McCRORIE: Judge, we'll accept your ruling. We'll take exception and go on.
THE COURT: Okay. You can tell us what secondary gain means.
A. Secondary gain is not just a medical term. I mean, it's just a term in general that -- that -- it's

basically -- it's basically saying that someone has something to benefit that's not direct.

So -- I'll just say that you were at the grocery store and you were buying something and you also were a stock owner in that item. You would maybe have some secondary gain because you bought the -- the item. So it means that you're getting some type of secondary benefit to the -- it's not the direct, immediate benefit.

So in the medical context, just to help because I know that's where you're going, is it's used sometimes because, if somebody is injured and then they also have a lawsuit, the implication is that the reason that they are saying things or doing things or getting treatment is because the lawsuit is there; and, therefore, they have a secondary gain from the lawsuit.

MR. McCRORIE: And that is the objection. He's a medical doctor.

THE COURT: Yeah. All right. I agree the objection is sustained now that I know what it means.

MR. SCHIFERL: Okay. But --

THE COURT: The jury will -- I mean --

BY MR. SCHIFERL:

Q. Just so I'm clear, as a medical practitioner, one of the things that you're doing when you're looking for effort and you know about as medical practitioners -- they teach you in

school -- is to make sure a patient is not doing something for secondary gain, correct?

MR. McCRORIE: Objection.

THE COURT: Overruled.

A. Yes. I mean, we do -- we actually have even formal tests that we do sometimes when we suspect secondary gain issues.

BY MR. SCHIFERL:

Q. Okay. Now, we've established the surgery was in September of '22. And the last time you would have seen Mr. Sayles before that time, according to the records here in Exhibit 2, was August of '22.

MR. SCHIFERL: If we can bring up page 48.

THE COURT: Of Exhibit 8?

MR. SCHIFERL: Of Exhibit 2, Your Honor.

THE COURT: Oh, Exhibit 2.

(Whereupon a portion of Exhibit 2 was published to the jury.)

BY MR. SCHIFERL:

Q. And one small point before we move on from this page.

All of your records -- each and every time of a visit, you necessarily didn't see Mr. Sayles each time, did you? Some staffers might have?

A. Not always. I mean, I have a PA or -- and a nurse practitioner. Sometimes they will see the patient as well.

Q. I'm not -- I think that's appropriate. I'm not here to suggest it's not.

A. Okay.

Q. But I just want to make sure it's clear.

So in your records, sometimes you're seeing the patient; sometimes you and the PA are seeing the patient?

A. Exactly.

Q. And sometimes just the PA?

A. Yeah. And sometimes they're on the PA's schedule even though I'm there, or I'm seeing patients with the PA, and they write the note. It's -- it is a mixed picture, for sure.

Q. And all I wanted to establish here is would you agree with me that this record of 8/2/22 is the last visit that was before the 9/28/22 surgery?

A. I'll take your word for it.

Q. And thank you. I'll represent that it is.

And if we look at that report -- and to save time, I won't go every page. But in that report, you did all of the things we talk about. You talked about the range of motion and all those things that Mr. Sayles was demonstrating for you, correct?

A. Yes.

Q. Okay.

A. I assume so. I can't see it.

Q. We can go through it if you would like to do that.

A. No.
Q. Okay. So I would ask that we -- you've not seen any video of Mr. Sayles, correct?
A. I don't think so.
Q. Okay.
MR. SCHIFERL: In evidence, Your Honor, is Exhibit C. And I'd ask if we could please show Dr. Gerling clip 3 from Exhibit C in evidence.
(Whereupon, a portion of Exhibit C was published to the jury.)
THE WITNESS: Do you have a cloth to clean this?
MR. McCRORIE: It's there too.
(Video played.)
BY MR. SCHIFERL:
Q. Were you able to watch that short clip, sir?
A. Yes.
Q. Is it your testimony watching that clip that the movement we see that Mr. Sayles is demonstrating is consistent with the movement recorded in your office in the note of 8/2/22?
A. I'd have to look at the note. When is the date of the video? I don't know when this was done.
Q. It's a great question.
MR. SCHIFERL: And I should have done that, Your Honor.
BY MR. SCHIFERL:

Q. It's already in evidence, but you don't know that. That's fair, sir.

Exhibit C is a video from before the neck surgery, dated 8/27 of '22.

A. So this is -- that's the date that this video was --

Q. Yes, sir.

A. Okay. Can I see the office note?

Q. We need to go back.

MR. SCHIFERL: Go to page 48. It's where it starts.

(Whereupon a portion of Exhibits C was published to the jury.)

BY MR. SCHIFERL:

Q. Tell us if you need to some see other page.

A. Please scroll down. Next page.

MR. SCHIFERL: Well, let me just stop it, I guess. Go to the next page.

THE WITNESS: Next page.

Okay. Next page.

A. So the upper extremity motion that was demonstrated that day in the office is consistent with that video. The cervical range of motion and examination that's -- that's documented in that visit is consistent with the video. The lumbar range of motion and straight leg raising testing is consistent with that video, yes.

BY MR. SCHIFERL:

Q. Well, among the things in your chart were also back-specific findings, in which Mr. Sayles told you that he could not stand for more than five -- less than five minutes without pain, correct?

A. Can you go back to that section? I think it's two pages back.

Q. It's actually, I think, page 2 of the record. But, yeah.

(Whereupon a portion of Exhibit C were published to the jury.)

A. Yeah. He said that he starts having pain when he walks a block and when he stands more than five minutes.

BY MR. SCHIFERL:

Q. Okay. I've saved some time, but I'm happy to show you all two hours of the video.

Did you know that he was preaching for two hours that day?

A. No.

Q. That would be inconsistent with not being able to stand for five minutes, correct?

A. Not being able to stand without pain and without pain medicine, right.

MR. SCHIFERL: If we can also show clip C8.

BY MR. SCHIFERL:

Q. This is also, again, from before you did your neck surgery, sir.

(Whereupon a portion of Exhibit C were published to the jury.)

MR. SCHIFERL: Stop it right there. Stop. Go back.

BY MR. SCHIFERL:

Q. Mr. Sayles is the gentleman in the back, looking at the photo on the right, with the light frock with the black.

Did you recognize him?

A. Yeah, I recognize him.

Q. Did you see Mr. Sayles having his arms lifted up?

A. I saw his right arm lifted, yes.

Q. Well, let's look at it. Both right and left, right?

A. Just right arm -- oh, is he on the right side or the left side? He's the right side? I see on the right side there.

MR. SCHIFERL: I was blocking the video.

A. Yeah. Okay. Is that him with the black vest?

BY MR. SCHIFERL:

Q. Mr. Sayles identified himself as the man with both arms up in the air.

A. Okay. Yeah. I thought you meant behind the preacher. Okay. Yes, I see him.

Q. That's demonstrative on that day of what his range of motion would be, correct?

A. Yes. And in the -- and in the note that you're referencing, it does say that he has no problem with his shoulders that day.

Q. So your findings with regard to what led to the neck surgery do not implicate anything with regard to arm movement?

A. So, actually, patients that -- I mean, this is just technical. But patients that have radiculopathy, they actually feel better when their arms are up over their head. That's a known fact.

MR. SCHIFERL: If we can go show clip -- I think I'm done with my C clips. I'll move on from there.

BY MR. SCHIFERL:

Q. You did your neck surgery then.

Did you give any restrictions to Mr. Sayles about travel?

A. I don't -- I mean, I -- if patients ask me, if they do plan to travel, I normally say that they should try to wait a week to ten days before they travel.

Q. Okay. Did Mr. Sayles ever represent to you his travel to Caribbean destinations during the time that you were caring and treating for him?

A. I don't remember.

Q. Did Mr. Sayles ever represent to you his travel for purposes of preaching at their various locations in New York, New Jersey, and at least Humble, Texas?

A. I mean, I certainly wouldn't restrict him from doing that.

Q. Okay. My question, sir, was did he ever tell you about those?

A. I don't recall.

Q. Okay.

MR. SCHIFERL: If we can go to page 193 of Exhibit A.

THE COURT: Did you say Exhibit A?

MR. SCHIFERL: I'm sorry. I did say Exhibit A. I meant Exhibit 2, Your Honor. I make my A's like that. Exhibit 2.

(Whereupon a portion of Exhibit 2 was published to the jury.)

BY MR. SCHIFERL:

Q. In this report -- and this is from July 30 of '25 -- Mr. Sayles reported to you or your office on that occasion that he had sustained a fall at a family event, correct?

A. Yes.

Q. Okay. Do you know anything about the nature and extent of that fall?

A. I don't remember at this moment the full extent of the what we discussed. We did discuss it, and it's my understanding that he fell. His back was aggravated by it.

Q. Did you discuss whether he sought any emergent care as

a result of this fall at his family event?

A. I -- as I said, I don't remember the details. But I -- if -- if he told me he went to the emergency room when we discussed it, then I would have tried to put that in there, yeah. I think that we probably asked him. I just -- I don't recall for sure.

Q. Do you know if there is any records of medical care or treatment for this fall at the family event?

A. I don't think he required it. I think he just reported it to us.

Q. So --

A. He had an appointment with us three weeks later.

Q. Sorry.

When you say, "I don't think," do you know if he sought medical care or treatment?

A. I don't recall. I mean, I know that he was being treated by us. So, I mean, he may have called our office. I have no way of knowing.

Q. And this fall at a family event predated any determination by you of an alleged need for further surgery, correct?

A. No. I don't think that's true.

Q. Well, your recommendation for surgery, which is allegedly scheduled in November, is a fairly recent one in the year 2026, correct?

A. Yes, I believe so. I don't recall exactly when, which visit.

Q. It is true that the recommendation for surgery in 2026 followed the fall at the family event in July of '25, correct?

A. If it was in '26, yes. I think that that's true.

Q. That is what I'm trying to establish.

Last area of questioning.

You were asked about -- or a question of did you review Dr. Barry Root's life care plan.

Do you remember those questions?

A. Briefly, yes.

Q. When did you review it?

A. Recently. I think two or three weeks ago.

Q. Two or three weeks ago.

When you met with the attorneys?

A. I think so.

Q. Have you --

A. If I recall. I don't remember whether I -- I don't think I saw it before that.

Q. And that was going to be my question.

Did you ever see it before that?

A. I don't recall.

Q. Did you ever personally provide any information to Dr. Root to include in his report?

A. I don't think so. I don't --

Q. I know, Dr. Gerling, you said you reviewed it. We now established you just did review it in the last two and a half weeks ago or so.

You said yesterday on review that, "There's parts of it I agree with, the parts that pertain to me."

Do you remember that statement?

A. Repeat the last thing. "The parts of it" --

Q. "That pertain to me."

A. Right. Exactly, yes.

Q. And what I'm trying to discern, to be fair, is what parts pertain to you versus pertain to other medical practitioners?

A. So, as I said, I don't know -- I'm not a physiatrist. So certain types of accommodations that are made for people that have disabilities and what not, I don't -- like, I wouldn't even know how much, for example, a walker costs. I don't know.

I -- I agree with the -- with the portions of it that refer to his follow-up and the typical cadence of imaging studies that I would expect to order for him. I felt it was reasonable.

Q. And, again, that is nothing you did when it was being developed. You looked at it afterwards when the attorneys showed it to you, correct?

A. I think so. I -- I think that is probably correct.

Q. You don't recall a call with Dr. -- as a matter of

fact --

A. No.

Q. -- I think you said you never talked to the gentleman?

A. No. It wouldn't have been a direct -- I did not have a direct call with him, no.

MR. SCHIFERL: Sir, thank you for your time and attention.

Your Honor, that is all of the questions I have.

MR. McCRORIE: Kevin, can you help me get that over here?

THE COURT: Thank you.

MR. SCHIFERL: It's easier if I just do it.

MR. McCRORIE: Thank you.

THE COURT: Just be careful. We don't want any injuries in the courtroom.

All right.

REDIRECT EXAMINATION

BY MR. McCRORIE:

Q. When we met with you two weeks ago, did we show you still pictures of the videos that you just saw?

A. Yes.

Q. Did we show you Dr. Root's report --

A. Yes.

Q. -- to see if you would have any problems with the recommendations?

A. Yes.
Q. I'd like to be clear so things aren't confused.
Have you ever had a license suspension of your medical license anywhere: New York, New Jersey, Ohio, anywhere?
A. No.
Q. Have you ever been disciplined by any professional discipline committee: New York, New Jersey, Ohio, anywhere that you've been licensed?
A. No.
Q. And your current position at the hospital in Jersey --
A. Yes.
Q. -- what is your current position?
A. Hudson -- the director of musculoskeletal care in the Hudson Health System.
Q. Only because it was quoted that you said, "We can all see," I'll submit as an officer of the court your -- your transcript of yesterday doesn't have the word "all" in it. It doesn't have the word "see" in it. Okay?
Did you ever --
A. Yes.
Q. And it doesn't have the word "burst" in it.
Can we talk about a herniated disc. Okay?
Does a herniated disc burst, or does the outer annulus fibrosus tear, and is the material pushed out?
A. I think that just the burst is a laymen's expression, a

dramatization.

Q. Does it burst, or does it tear, and fluid leaks out -- gel material?

A. It just -- it's semantics.

Q. Understanding you come to court if called by attorneys for your patients, are you aware of the court rules that require both sides to have the doctors who are coming in to prepare a narrative report, a "to whom it may concern"?

A. I'm aware of that, yes.

Q. Okay. And is that -- when you write "to whom it may concern" -- and assume that their doctors, who will be here tomorrow, wrote reports to them -- there is nothing wrong with complying with what the Court rules are, is it?

A. No.

Q. That's all you did. You wrote a summary of your treatment to that date, true?

A. That's what -- that's what it is, yes.

Q. I'm going to try to save the time instead of pulling it up.

Did you document the risks of surgery -- of the surgery, both cervical and lumbar, in your notes?

A. Yes.

Q. You say that to each patient, tell them in detail what the risks are?

A. Yes.

Q. You're going to be operating near the spinal cord, correct?

A. Yes.

Q. Okay. Death -- I'm not even going to read them all -- brain damage, disfigurement, wound-healing issues --

THE COURT: Also, when you display something, you need to tell us for the record what we're looking at.

MR. KULLER: It's page 17 of 362 of Dr. Gerling's chart in evidence.

THE COURT: Thank you.

MR. McCRORIE: Thank you.

(Whereupon a portion of Exhibit 2 were published to the jury.)

BY MR. McCRORIE:

Q. It says, "I had a discussion with the patient."

I'm going to not just paraphrase. I'll skip some.

Death, brain damage, paralysis, damage to vital organs. Underneath there is also a separate one for people with diabetes, separate risks, correct?

A. Yes.

Q. And have you had patients that are afraid to have their spinal cord exposed up by the brain?

A. Of course.

Q. And have you had patients that are nervous about having back surgery, metal inserted into their back?

A. All patients.
Q. Okay.
MR. McCRORIE: We can shut that off.
BY MR. McCRORIE:
Q. Is it typical to see blood in an MRI from a herniated disc?
A. No. It would be extremely rare. I don't know that I've actually ever seen one.
Q. So we don't have to go over it. I think that -- the attorney for Schindler -- I'm sorry. I can't pronounce your last name right now, Kevin.
Kevin, the attorney, was asking you about the first note.
From the very first note, you called his back an exacerbation and, later on, a severe exacerbation of his preexisting back problems, true?
A. Yes.
Q. And when we say it was never hidden from you -- or that's what their words were -- Mr. Sayles told you, "That's what I know. I was treated during that time," true?
A. Yes.
Q. And two separate reports you ordered told you, "Oh, at our facility at a prior date, Mr. Sayles had an x-ray or an MRI," true?
A. Yes.

Q. And you said something about, "It's more than seven years."

I'd like you to assume we all have subpoena power, and both sides subpoenaed all the --

MR. SCHIFERL: Your Honor --

BY MR. McCRORIE:

Q. -- anything each of those facilities had, and we have everything here, and they didn't show up.

Do facilities get rid of their -- back in -- withdrawn.

Back in 2014, were they using digital emails, or is that something that's come about more recently?

A. You know, I don't know what they were doing in 2014. I mean, we did have digital x-rays at that point, but I don't know how they were communicating.

Q. And I know you're not that facility, but what was the significant of seven years with records?

A. Well, I mean, in -- our records, we're supposed to keep them for seven years. I don't know what the amount they're required to. I assume it's seven years for radiology facilities. And it's a huge amount of data that they have to save on their system for all of these imaging studies that are old and outdated that you clinically would not use.

So, you know, clinically, we would not use an MRI or an x-ray that's seven years old or ten years old. I mean, if a patient has a one-year-old MRI, I'd order a new one, just like I

did in this case.

So I think that that's the reason, just because it's so much data that has to be stored. So I think, at some point, they purge it.

Q. So I'd like you -- you don't have to assume. It's in evidence.

The Garden State Pain Control Center did the EMG on 2/13/25. You also did an EMG in the last year, correct, at your facility and signed a report?

A. I think we did. I think we did.

Q. I'll pull that up in a minute.

And I'm not saying -- the Garden State EMG report is unsigned. That is unusual for a doctor to sign it if it's a final report -- to not sign it, correct?

A. Correct.

Q. Okay. And could we -- you talked and showed the jury the progression of Mr. Sayles's neck injury, correct?

A. Yes.

Q. There was a herniation touching the cord in 2021 when you did an MRI, true?

A. Yes.

Q. Touching the cord.

You took it off the cord and -- so just so -- I'm holding up 19B. And --

(Whereupon a portion of Exhibit 19B was published

to the jury.)

BY MR. McCRORIE:

Q. And you showed the jury there was a herniation on the cord, right?

A. Yes.

Q. At the time it was on the cord, there would have to be radiculopathy or myelopathy on that one, right? There would have to be if the disc is touching the cord, true?

A. When -- when the cord is being compressed, it's -- it's really common and normal for them to have myelopathy, and it presents the way he was presenting.

Q. Okay.

MR. McCRORIE: Could you just go, please, Dylan, to -- to 26. It's the MRI in evidence of 28. And it's an MRI taken in 2025.

(Whereupon a portion of Exhibit 19B was published to the jury.)

BY MR. McCRORIE:

Q. At the time the unsigned EMG says there is no radiculopathy in his neck -- and this is taken in 2025 -- you had showed the jury it is off the cord, and it has been off the cord, even the discs above it, true?

A. Yes.

Q. You removed the disc that was pressing on the nerve, causing the radiculopathy, and you removed the disc that was

pressing on the disc -- pressing on the exiting nerve root?

A. And the spinal cord.

MR. McCRORIE: Could you please, Dylan, go to Number 30. I think this is it.

(Whereupon, a portion of Exhibit 19B was published to the jury.)

BY MR. McCRORIE:

Q. Okay. And now we are in 2026; August 6th, this is. And the level above is now touching the cord when previously nothing was touching the cord, true?

A. Yes.

MR. McCRORIE: Could you please go, Dylan, to the doctor's notes, Plaintiff's 2, page 302.

(Whereupon a portion of Exhibit 2 was published to the jury.)

MR. McCRORIE: You can go to the next, where he signs the report with the other electronic -- okay. Right there.

BY MR. McCRORIE:

Q. So 2025, it's totally off the cord. You -- does this represent an adjacent-level breakdown when the level above, I'll say, doesn't burst. It leaks out from the pressure and -- of taking all of the stress.

Is that how a segment breakdown occurs? I'm sorry. I'm going quickly. Okay.

A. So EMGs --
Q. I want you out of here --
A. EMGs are not the most sensitive test. In this particular case, the test did find chronic radiculopathy that is likely residual. The fact that it wasn't found in '25, I think, is secondary the to fact that we did take the pressure off the nerves. And I think that it's just a progression.
Q. Okay. Understood. That was -- okay.
MR. McCRORIE: Dylan, can you please pull up number 14, which is 18A, the MRI of August 13th -- August 13, 2018.
(Whereupon Exhibit 18A was published to the jury.)
BY MR. McCRORIE:
Q. And just so we're clear, 2018 MRI would be the one closest in time to his 2015 accident, which would have been a few years before, true?
A. Yes.
Q. And that one, the L4-5, the jury knows what they are now. But the bottom two discs are a certain level.
(Whereupon Plaintiff's Exhibit 19 was published to the jury.)
BY MR. McCRORIE:
Q. And Plaintiff's 19 is now taken. There were several taken in between. But this is the 7/14/23. It's now much larger. It has grown or progressed as -- in size, yes?
A. Yes.

Q. And it's -- even on the sagittal view, but the axial views, it's touching the nerves, true?

A. Yes.

Q. And that's what's called a progression, and that would be started by the trauma, yes, aggravated?

MR. CASCONE: Note my objection to form. But --

THE COURT: The objection to form is sustained. I understand you're trying to --

MR. McCRORIE: It's a bad question. I'm trying to finish.

BY MR. McCRORIE:

Q. So -- okay. And then let's do this. In any event, you removed that -- those discs -- or that disc, the big -- you removed it. You fused it, correct?

A. Yes.

Q. And since that time, in 2026, you took x-rays in 3/11, and you didn't say for all to see, but I'll say you drew an arrow. And it's bone on bone, correct? Because you say it collapsed.

A. Yes.

Q. And you didn't just take the x-ray. You did a follow-up MRI and this MRI 4/30/26, a month later. And it has something that has progressed. I'm pointing to it, yes?

A. Yes. We reviewed all this yesterday.

Q. Yes.

MR. SCHIFERL: Objection. Outside the scope of cross.

THE COURT: Overruled for the moment. I believe we're almost done. I'm going to --

MR. McCRORIE: Yes. Yes, Your Honor.

BY MR. McCRORIE:

Q. Okay. Regardless of any of the questions the defense attorney asked you, whether they were collateral, having to do with this case or not, do you see objective findings -- forget what anyone else can see.

Do you see them where you made these markings, objective findings of herniations, progressions, and adjacent-level breakdown on both the neck and the back?

A. Yes.

Q. Does any of the cross-examination change any of your opinions about the causation of the exacerbation of his previous back injury with new stuff also caused? Does it change any of those opinions?

MR. SCHIFERL: Objection. Argumentative.

A. No.

THE COURT: Overruled.

BY MR. McCRORIE:

Q. And does it change any of your opinions regarding the neck, the herniations, and the symptoms it caused and the need for surgery and all the future treatment?

A. No.

MR. McCRORIE: Nothing further.

MR. CASCONE: I have one question. I can do it right from here.

THE COURT: What is it? I need an offer of proof for recross.

MR. CASCONE: I have to ask the question.

THE COURT: You have to tell me what the subject matter is that you want to inquire about because the redirect was very brief.

MR. CASCONE: That he's aware that the HIPAA privacy laws prevent the defense from obtaining any records without Mr. Sayles --

THE COURT: All right. No, no, no. The question is stricken. The jury will disregard the question.

All right. Well-deserved lunch break for everybody. I will see you at 2:15. Thank you for your time.

THE COURT OFFICER: All rise.

(Whereupon, the jury leaves the courtroom at this time.)

(Witness excused.)

* * * * *

(Whereupon, a luncheon recess was taken.)

* * * * *

AFTERNOON SESSION

THE COURT: Let's go on the record.

Good afternoon. How may I help the parties?

MR. SHELBY: Blake Shelby on behalf of Defendant Schindler, Judge.

The next witness is Dr. Barry Root. He's the life care planner for the plaintiffs. He has a life care plan that he has tendered in this case.

We are moving to preclude -- to strike him because there's lack of foundation in the record to support the life care plan.

And so what typically happens is Dr. Gerling or an expert will come in -- a doctor will come in and testify about the costs of surgeries and the cost of certain care, or there will be documentation in the record supporting the cost of care, and that has not happened here.

THE COURT: Don't we have the bills in the record?

MR. McCRORIE: We have all of the bills, all of them from the hospitals to -- even Dr. Gerling. It's in his file. I mean, we couldn't speak to him in between the thing but when they were -- he -- it's -- at the end of his record, it's his billing. And every single radiology facility sent their certified bills.

THE COURT: I mean, I saw a lot of bills.

MR. McCRORIE: We put them in.

MR. SHELBY: There are some bills. I'm not going to tell you that there's not. I don't think there's the sufficiency to cover everything in the life care plan that will be covered. And so, you know, I think that's a problem.

And I think when you look at the sources, there's a number of sources that this expert is -- or this doctor is relying on that are definitely not -- not in evidence. And so for that reason, foundationally, we're moving to strike him.

THE COURT: Well, not everything normally that a life care planner testifies to is based on facts in the evidence. You know, medication, for example, usually comes from the life care planner, what the cost is. Or maybe, you know, equipment, that kind of thing.

I mean, the surgeries, I agree, that would have to come from the doctor. But I do think that there are bills in the record that covers -- that covers that.

MR. McCRORIE: The cost doesn't have to come from the doctor himself of a future surgery; the cost comes from the life care planner. That is what they're doing. They're giving the --

THE COURT: Well, I mean, given that we know who is doing the future surgery in this case, I mean, the best evidence would be -- right?

MR. McCRORIE: No, we would have to get into the difference between comp rates and -- Judge, I think -- everyone keeps saying for 30 years -- I've never -- it would be cumulative. This -- you put in here the costs, the services, and when you see his background, you'll understand that he ran the whole rehab facility of North Shore University. He was the head, the chair. He knows the cost of surgery. He's kept up with them. And he has the basis in his report. I don't think he's -- this is what he does. And --

MR. SHELBY: He just highlighted the problem, Judge. The costs that are in the report are not the ones in evidence, to my understanding, because, like he just said, there's workers' compensation involved here, which has different numbers than what this expert is going to come in and talk about. So because of that, there needs to be foundation. And Dr. Gerling did not provide it.

THE COURT: Do you have any case law to support your request to preclude the doctor on the -- on the life care planner?

MR. McCRORIE: She's asking them, not you.

MR. SHELBY: On the -- on the spot, Judge, as I sit here right now, I do not in my back pocket. But I have tried a lot of cases. And I know Mr. Cascone has tried a lot more than me. And what typically happens is a doctor

will sit on the stand, and it's almost like an auction, from my experience, "$5,000 for an injection," "$6,000 for this," and it just goes on and on about what it's going to cost. And it serves as the basis for --

MR. McCRORIE: Can I state something?

MR. CASCONE: I think I'm next.

THE COURT: Gentlemen, let's just take it one at a time, please. Let me hear from the plaintiff and then, Mr. Cascone, I'll hear from you.

MR. McCRORIE: In the Hudson Hospital is the amount they billed, the amount they billed, the general rate, and then they got less than that from comp. But the amount they billed is what they expect to get if it's not comp. That is in the record.

But it -- and it's -- it's more than this. But I -- I believe Dr. Root is qual- -- if this was so commonplace -- they're acting like we sprung this on them -- they would have brought the case law, Judge.

THE COURT: I mean, I also agree. I mean, I guess you could say you didn't know that the doctor was not going to testify to specifics about the surgery, but the rest of what's in the life care plan --

MR. KULLER: Could I --

THE COURT: -- you should have known, and you could have moved in limine when I set the in limine schedule.

MR. CASCONE: May I, Your Honor?

THE COURT: Yes, Mr. Cascone.

MR. CASCONE: So I was fully expecting Dr. Gerling -- I was fully expecting Dr. Gerling to say, in an itemized fashion, This surgery was $30,000; it was medically necessary; the cost was reasonable --

THE COURT: I'm saying that even if the doctor did say that, there's a whole bunch of other stuff in the life care plan that wouldn't have been covered by that testimony, and you didn't make any motion. So --

MR. CASCONE: I understand.

We can't make a motion when it only happens a few moments ago.

THE COURT: As to Dr. Gerling, it only happened a few moments ago.

As to everything else in the life -- and as to Dr. Gerling, we do have some bills.

But as to everything else in the life care plan, that's not changed by Dr. Gerling's testimony. Equipment, medications, all of those kinds of things are not things that we would have expected Dr. Gerling to testify to.

MR. CASCONE: So when Dr. Root begins to talk about an aspect of a bill, if there's no proper foundation, meaning that there's no medical testimony that that fee was medically reasonable and necessary, there's no foundation

for it, so I fully expected to hear from Dr. Gerling -- testify to that.

THE COURT: You expected Dr. Gerling to testify to the cost of physical therapy, for example?

MR. CASCONE: No. But his surgeries.

THE COURT: So -- so now we -- now I'm understanding that the motion is limited only to the cost of the future surgeries. That's what you're saying? Because everything else is --

MR. CASCONE: Limited -- limited to what was provided in evidence.

So if Dr. Gerling, as he has testified at prior trials, that an MRI costs $1500, that's the reasonable cost for an MRI.

THE COURT: Don't we have the bills in the records?

MR. McCRORIE: Yes. But, Judge, under their theory I would have to call in the radiology place. This is never done. Never ever. This is a tactic at the end to -- I submit, a life care planner is allowed -- I have in the record two surgeries -- they challenge the causal relation, if it's causally related, two surgeries, all the treatment, even injections in the past.

I have that he is going to have permanent issues with limitation, pain into the future, in both the neck and the back.

I have that he's going to have the need to follow up with an orthopedic, to get follow-up x-rays, to get follow-up MRIs, to get follow-up physical therapy, and to have two surgeries, one of which is authorized.

I do not need -- even if we didn't have the certified bills here, to have a doctor -- I would have to call in someone who does epidurals, "How much do you charge?" This man is familiar with it. He's got a background.

And if Your Honor thinks he doesn't have a background to do it, that would be something else once he testifies, but I would like to proceed --

THE COURT: I have to say, I agree with the plaintiff. I -- I generally, the focus is not on past cost or projected cost. The focus is on how certain it's been established that the future care will be necessary. That's generally the focus.

MR. CASCONE: Your Honor, I have to respectfully disagree with you. I believe the entire testimony is based on the past costs and the reasonableness of the future costs.

So unless we have evidence that a certain amount was paid -- that's one way you could do it, or somebody else to say -- or the same doctor to say what was billed was reasonable and necessary.

I believe counsel just stated that just because there is a bill in there that that covers it; it doesn't. Anyone could put in a bill for anything, any amount, and then the life care planner could just jump off those numbers. That's not -- never how I've seen it. So we're going through an itemized bill.

So perhaps Your Honor doesn't want to preclude Dr. Root in his entirety, but if he's going to give us a laundry list, each item has to be looked at separately to see if there's a proper foundation laid. That is the argument.

THE COURT: Given the lack of authority cited to support the motion, I'm going to deny the motion and allow Dr. Root to testify.

MR. McCRORIE: And just so there's notice, over the lunch we got a new report from Dr. Lubliner. It's not for films. It's not for the things they say. It -- I didn't even read it fully yet. But all we are going to tell the Court -- and defense counsel will be making a motion either tonight or tomorrow on the four corners -- that he's limited to the four corners of their reports, any doctor that comes in as a pure expert. And we just don't want to be surprised with opinions. I don't even --

THE COURT: Wait. I --

MR. McCRORIE: I'm just --

THE COURT: It sounds to me like you've moved on to an entirely different topic, which has nothing to do with the witness that we're waiting to hear from.

MR. McCRORIE: That's right. I just want to -- so no one -- not you, so no one says we didn't tell you; we just got it over the lunch break.

THE COURT: All right.

I don't know that this is the time to get into this. But I did -- I did give them -- because I allowed the plaintiff to -- at the pretty much last minute -- dump on them additional records, through 2026. I conditioned that ruling on giving their experts the ability to amend any previous reports to address the newly dumped documents. And I stand by that ruling. But I really feel like we should deal with this witness first --

MR. McCRORIE: Yes.

THE COURT: -- and then address remaining issues after.

MR. McCRORIE: I think he's in -- I don't know if he's in the waiting room or whatever.

THE COURT: All right. I don't know either. Let's see -- am I doing this, Chris, or are you doing this?

MR. KULLER: I'm going to tell him -- if everyone is ready, I'll tell him to log on, I guess.

THE COURT: Hello.

THE WITNESS: Hello.
THE COURT: We'll be with you in a moment, sir.
THE WITNESS: Thank you.
THE COURT: Do you have some documents you would like to address before we bring in the jury?
MR. McCRORIE: Yes, Your Honor.
THE COURT: Okay.
MR. McCRORIE: What is the next number?
THE COURT: I have we're up to 37. So -- we're on 44?
MR. McCRORIE: 44, Your Honor.
THE COURT: So what are we marking as 44?
MR. McCRORIE: The most recent 9/24/26 life care plan, and that will be a 44A; is that right? Guys, we'll just call it 44A?
MR. SHELBY: That's fine.
THE COURT: What is 44A?
MR. McCRORIE: I don't know the date of it. It is the life care plan of 5/6/25.
THE COURT: And is that coming in on consent?
MR. SHELBY: Yes.
MR. CASCONE: Yes.
(Whereupon, Plaintiff's Exhibit 44, document, was received into evidence.)
(Whereupon, Plaintiff's Exhibit 44A, document, was

received into evidence.)

THE COURT: So, then, are we now ready to bring in the jury and start?

Let's bring in the jury.

Dr. Root, we're just waiting to bring in the jury, and then we'll swear you in and get started.

THE WITNESS: Thank you.

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury enters the courtroom at this time.)

THE COURT: Please be seated. We are prepared to hear from Plaintiff's next witness.

We've opened the windows in the courtroom because some of the people said that they were warm. There is a band playing right outside. So if --

MR. McCRORIE: Setting the mood.

THE COURT: -- that interferes with your ability to hear the testimony at any point, just let me know, and we will close the windows. Or -- let me or let the officer know.

MR. McCRORIE: It's getting louder.

MR. SCHIFERL: It's louder.

THE COURT: You can go ahead and call your next witness.

MR. McCRORIE: Thank you, Your Honor.

Plaintiff calls Dr. Barry Root, M.D. He's on the Zoom.

THE COURT: Yeah.

THE CLERK: Could you please stand and raise your right hand, Doctor. Stand. Thank you.

Do you swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

THE CLERK: Could you please state your first and last name, and spell it for the record.

THE WITNESS: Barry Root, R-o-o-t.

THE CLERK: Can you state your address, please.

THE WITNESS: 6315 Indian Neck Lane, Peconic, New York 11958.

THE CLERK: Thank you. You can be seated.

DR. B A R R Y R O O T,

having been first duly sworn/affirmed by the Clerk of the Court, took the stand (via Teams) and testified as follows:

THE COURT: And you may inquire.

Dr. Root, if you're having a problem hearing us, you'll let us know too, okay.

THE WITNESS: So far so good, Your Honor.

THE COURT: All right. Great.

You may inquire, Counsel.

DIRECT EXAMINATION

BY MR. McCRORIE:

Q. Good afternoon, Dr. Root.

A. Good afternoon.

Q. It seems like there is a little delay. I don't know if there is.

But for the record, you are not a treating physician of Gordon Sayles, correct?

A. That's correct.

Q. And so this isn't the first time you've done this, correct, or even done it with me?

A. That's correct.

Q. You will not be asked opinions about the causation of his injuries. Just once we qualify you, you will be asked opinions about other things. Okay?

A. Yes, sir.

Q. Could you please -- and for the record, you're being called as a life care planner.

Could you please tell the jury your educational background starting with college. Take it through -- as succinctly as you can -- medical school. You don't have to define any terms. If there is a term they haven't heard, I'll ask you. Okay?

A. Yes.

Q. You don't have to do any anatomy. We're going to try

to go right through this. Okay?

A. Okay.

Q. And so after getting through your residency, your fellowship, can you tell the jury where you started working, and then we'll take it from there. We'll go through your work history. Okay?

A. Okay.

Q. Thank you. Please proceed.

A. I went to college in Case Western Reserve University in Cleveland, Ohio. I was there from 1973 to 1977. I graduated with honors with a degree in natural sciences and a concentration in genetics.

My third year of college I was away from Cleveland doing genetics research at Ulster University in England.

After graduating from college, I was accepted to City University of New York, into their graduate program in genetics. And I studied at both Brooklyn College and Mount Sinai Medical School. I stayed at this program for one year. And then I left to go to the Ohio State University College of Medicine, having been accepted there.

I graduated from the Ohio State University College of Medicine in 1984 and proceeded to return to New York.

I did my medical internship at Nassau University Medical Center in Long Island. And at the end of the year of internship, I was in the residency program in physical medicine

and rehabilitation.

My last year in the program, I was the chief resident of the program. I graduated from the program in 1987.

In 1987, I was eligible to take the board exam for specialization in physical medicine and rehabilitation. It was a two-part exam. Part one was in 1987. And I passed it at the first try.

The second part was an all-weekend oral examination in Minneapolis, which I took in 1988 and also passed on the first try.

I've been licensed to practice in the State of New York since 1986. My license is uninterrupted since that time. I've had continuing medical education throughout my career. And I think that -- that hits the points that you asked about.

Q. Okay. Can you please tell the jury -- it's one question with an acronym and -- what is physiatry? What does PM&R means, and is physiatry the same as physical medicine and rehabilitation as a specialty, if you can answer that all?

A. PM&R stands for physical medicine and rehabilitation. Physical medicine and rehabilitation doctors are called physiatrists. People in New York are often familiar with the Rusk Institute. The Rusk Institute is an institute of rehabilitation medicine. And it's an institute that trains doctors in rehabilitation medicine.

Rehabilitation medicine is all about getting patients

in whatever condition you find them, frequently following severe trauma or major medical catastrophic conditions, and helping them through whatever means, including medications injections, physical therapy, occupational therapy, speech therapy, and making referrals to whatever doctors they need to see, helping get patients who have had catastrophic and severe conditions obtain as functional a status as they can obtain using those various techniques.

Q. Before when you said "the board," does that mean you're board-certified in physiatry?

A. Yes. I'm board-certified in physical medicine and rehabilitation since 1988.

Q. In addition to being board-certified in physical medicine rehabilitation, can you tell the jury any either accolades or certificates or -- that you have with regard to the spine, any specialty?

A. Okay. For 19 years running, I was voted onto the Best Doctors in New York list. The first year that my department offered a -- an award for teacher of the year, I won the teacher of the year award.

Q. I'm sorry. You might have misheard me. That's -- I'm not asking for your CV. For the spine, the neck and back, what, if any, training do you have in that or specialty?

A. My career has been focused on management of spinal conditions. In 2012, Northwell started a spine program. I was

one of the ten doctors initially chosen to be in the spine program for Northwell Health Care System.

I've been board-certified also in spinal cord medicine from 2003 until 2013. And I've had extensive continuing education and management of the spine.

Q. And I didn't mean to cut off your accolades. We're not going to ask those.

Thank you for that.

Doctor, you told us about Rusk Institute. And can you please now take us through your work history, beginning with Northwell, as you said, take us through your time at the Glen Cove Hospital, and all the way through a practice that you had and even a retirement from that practice?

A. In 1987, when I finished my residency training, I took a job at then Glen Cove Hospital, which shortly thereafter became part of the Northwell Healthcare system.

At Glen Cove Hospital, my job was to establish a department of rehabilitation medicine. At the time that I started at Northwell, I was the only rehabilitation doctor at Northwell. And -- and at Glen Cove Hospital, I started a -- what was then a division, and then it became a section, and then it became a department.

I practiced at Glen Cove Hospital from 1983 until 2016. During that period of time, we established an inpatient rehabilitation unit. That inpatient rehabilitation unit became

the biggest unit in the hospital. The rehabilitation medicine department became the biggest department in the hospital. And the rehabilitation department at Glen Cove Hospital became the biggest rehabilitation department in Nassau County or Queens.

I was the chairman of that department until 2016 when I retired and practiced privately from 2016 until 2020 when the pandemic interrupted lots of things.

And since that time -- in 20- -- in 2020, I turned the practice over to my partner, and we downsized from two offices to one. He continues to practice, and I've transitioned to writing life care plans when required for matters such as this on patients that have had catastrophic and severe medical conditions.

Q. Do you hold or have you held any teaching positions? We're just going through your background. We'll get to the plan in a minute.

A. When I was chief resident, I was an instructor, an instructor at Stony Brook College of Medicine.

When we opened the rehabilitation unit, I was asked to apply for faculty status at Cornell University College of Medicine. We have Cornell residents rotate to Glen Cove Hospital for ten years despite the distance involved. They had a requirement for their residents training and inpatient rehabilitation, and so I taught those residents for ten years.

At the end of those ten years, North Shore and LIJ

combined. And LIJ had a residency program in rehabilitation medicine. I was asked to switch my allegiance from Cornell to -- to that program.

And in the meantime I continued to teach at Cornell, going to do a clinic there once or twice a month for numerous years.

And since that time, Northwell has combined with Hofstra University to each its own medical school. And I've been an assistant clinical professor of rehab medicine at the Hofstra Northwell College of Medicine since that school opened. I continue to be on their faculty.

Q. In case anyone was familiar with the -- with hospitals, is Northwell, what formerly was called North Shore University, which was formally a separate hospital such as Glen Cove, are they all the same system that you work within?

A. That's correct. I understand now there are about 29 hospitals in the health care system.

Q. And did you say -- I don't know when you were -- you were director of rehab, I think you said -- was it North Shore University at Manhasset, formerly called North -- well, it was formally called North Shore, were you the --

A. I was.

Q. -- direct --

A. I was the chairman of re- --

Q. Chairman?

A. I was the chairman of rehabilitation medicine at Glen Cove Hospital, which was the primary rehabilitation site for the Northwell Healthcare system.

Later, at the very end of my career, Northwell hired a system chairman for rehabilitation medicine, and he still holds that role.

Q. As the chairman of the largest rehabilitation center in Nassau County, was it one of your positions to be familiar with the costs of medical care that you would be ordering for patients or performing or suggesting that they have, whether it's x-rays, MRIs, physiatry, things like that?

A. Yes, it was.

Q. And for the patients that were having surgery, have had surgery, or were going to need surgery, were you also familiar with the costs of surgery?

A. Absolutely.

Q. We're going to get to your sources and qualifications now. But when you were in your private practice -- when did you -- for how long did that go, again? You were seeing patients --

A. Until 2000 -- in the middle of 2020.

Q. And when did it begin, your practice?

A. Oh, my private practice began in 1989. And I practiced privately as well as having a chairmanship at Northwell.

Q. And you said something about a partner. Your partner

continued with the practice through today?

A. That's correct.

Q. When you were in your private practice and even through today, did you keep yourself familiar with first the costs of physical therapy and what people were coming to you for?

A. Yes, I did.

Q. The costs of surgery?

A. Yes, I did.

Q. The costs of diagnostic testing? MRIs? X-rays?

A. Yes, I did.

Q. And how about the cost of medications?

A. I've kept track of all of the costs of ongoing medical care for people with serious injuries.

Q. And one last one, injections?

A. I've kept track of those costs as well.

My partner continues to practice. I have access to the costs associated with the care that he provides, which would include all of those matters that you just mentioned.

Q. Did there come a time in your career when you started doing life care plans?

A. Yes, there was.

Q. And if you can tell the jury, what is a life care plan?

A. A life care plan is a documents that's frequently required in situations such as this whereby the future --

MR. McCRORIE: Judge, I hate to do it, but it might

be -- I don't --

THE COURT: I mean, usually that happens when the bride and groom come out, so I'm assuming that means --

MR. McCRORIE: That is what it was?

THE COURT: -- we're past the worse of it.

MR. McCRORIE: That's fine, if it's a marital ceremony. I thought it would be going on for hours.

THE COURT: They pop the thing when they come out of --

MR. KULLER: There's only one marriage today?

THE COURT: I honestly couldn't say that. It could be a series of marriages. But probably only one band.

MR. McCRORIE: Dr. Root, we're outside city -- close to city hall, but there are marriages going on outside.

BY MR. McCRORIE:

Q. If you could just continue telling what a life care plan is, if you have to back up a little, you can do so.

A. A life care plan is a document that following careful review of the records and a careful examination of the patient, addresses the patient's current conditions and their future medical needs.

And a life care plan is really not terribly different than from what a rehabilitation medicine doctor does when a patient is discharged from the unit that is organizing and

arranging the care, what a patient needs. Only in this case it is identifying the needs of a patient that has had serious injuries and the costs that will be associated with the needs that are identified.

Q. Can you tell the jury for how long you've been testifying in the courts of New York State and -- state and federal courts as a life care planner?

A. I can't tell you exactly. But I would say more than 20 years.

Q. And could you please tell the jury the qualifications of a -- of -- what makes you qualified to give a life care plan in addition to everything you've told them about your education and work experience?

A. What makes me qualified is the similarity that it has to taking care of patients that have complex and multi-disciplinary needs and transitioning that for the care of an individual patient to the writing of a report for an attorney such as yourself. The qualifications are keeping track of costs; keeping track of medical trends and medical care; and the careful reading of documents, communication through charts regarding patients that have been injured or are catastrophically ill, identifying them and -- and reporting on them in an organized fashion.

Q. And we stated it at the outset, but you did not provide treatment to Mr. Sayles, true?

A. That's correct.

Q. And as you do each time you come as an expert -- and I'm not declaring you an expert -- that is what we call the people that come in to testify. Each time you come in, you do so based on assumptions based on what the treating physicians have testified to, true?

A. That's correct.

Q. And you said you've been testifying for 25 years. Can you give the jury like an example now how many times have you testified this year?

A. I believe this is the third time.

Q. And the jury will learn from everyone that comes, you're certainly being paid for your time to testify here today, yes?

A. That's correct.

(Senior Court Reporter Karen Perlman was replaced by Senior Court Reporter Alan Bowin.)

(Transcript continues on the following page.)

Q. And you were paid to do two reports, over the years?
A. That's correct.
Q. Including the time to review records and at least one time, recently, examining Mr. Sayles?
A. That's correct, yes.
Q. You said for me (indicating). In this case, you were hired by the Kuller -- K-u-l-l-e-r -- Kuller Law Firm. You can't see him, but Brett Kuller (indicating)?
A. That's correct.
Q. Okay. He's in the courtroom, too; I'm just doing the examination.
So at what rate are you being compensated to testify here today, to give your opinion?
A. I'm compensated at the rate of $9500 for testimony.
Q. And did that include any preparation time, any review time?
A. It included all the preparation and review time, yes.
Q. And, separately, you were paid for the time -- we already went over it -- to do the reports; correct?
A. That's correct.
Q. Do you do work for plaintiffs and defendants?
A. Yes, I do.

Q. Is it primarily one party as opposed to the other? Do you do more for plaintiffs, more for defendants?

A. Significantly more for plaintiffs' attorneys, yes.

Q. Do you charge -- sorry.

Do you charge the same -- plaintiffs and defendants -- the same exact costs; same hourly, all of that?

A. Yes, I do.

Q. Do you have -- they're both in evidence, I will tell you. You wrote two life-care plans in this case; correct?

A. That's correct.

Q. You don't need to refer to them now, but whenever you do refer to them, we'll make sure you're on the right document.

Plaintiff's 44 in evidence will be the most recent life-care plan -- you don't have to look at it just yet -- September 4th, 2026; and Plaintiff's 44-A will be the one you performed -- or prepared -- May 6th, 2025. Okay?

A. Okay.

Q. During these cases -- you said there was a pandemic, but even without a pandemic, most litigation

cases take several years; true?

A. That's been my experience, yes.

Q. And is it common for you to do a life-care plan -- could be in the middle of a case, could be -- and as the case comes up to trial, to examine the plaintiff to give a more accurate, current assessment? It could be the same; it could be different?

A. That happens with some frequency, yes.

Q. Okay. Did that happen in this case?

A. It did.

Q. Okay. Very briefly, can you tell the jury when you were first retained by the Kuller Law Firm?

And I would say this: For your reports, not the life-care plans, please don't read from them. You can look down and refresh your recollection as to dates and, maybe, documents you had; but you're not supposed to read from anything not in evidence. Okay? I know you know that but, um --

So tell us when you were first retained; you can either go by the report, your memory or something else.

A. I can't tell you the exact date, but it would have been early 2025 that Mr. Kuller contacted me to do this work.

Q. Were medical records provided to you when Mr. Kuller contacted you, and are they noted in your

report?

A. Extensive records were provided, as I -- as I listed in my report.

Q. Just for the record, did you have the Presbyterian emergency room records, the operative reports of Dr. Gerling, all of the physical therapy records from something called Breakthrough Physical Therapy, also referred to as "Twin Boro Physical Therapy," University Pain Management?

A. Yes. I saw those records.

Q. Okay. And extensive records and therapy from Advanced Back, Neck and Care [sic], Garden State Pain Management, Shahid Mian, an incident report, and diagnostic-imaging reports? You had all of those?

A. Yes, I did.

Q. Okay. In order to do the life-care plan, at that time, did you do anything else in addition to -- well, did you review those records and write a report?

A. I reviewed the records. I contacted Mr. Sayles on March 5th of 2005, and again on March 15th of 2025, to clarify records and to have an accurate, at that time, list of his current medications, his treatment and what was anticipated, and then I wrote a report in 2025.

Q. And although I said "Advanced Back," did you also have Dr. Berkowitz's records?

A. I did.

MR. SHELBY: Your Honor, I can't tell what the doctor's looking at.

MR. McCRORIE: I --

THE COURT: Doctor, are you looking at a document in assisting you to answer these questions?

THE WITNESS: I'm -- I'm peeking down at the report that I wrote in 2025 to make sure that I'm giving accurate information.

THE COURT: Okay. If you reference, or feel the need to reference, anything else as we continue, will you let us know that?

THE WITNESS: Sure.

THE COURT: Thank you.

Q. Okay. I'll ask you these questions because it's a -- in addition to the records and contacting Mr. Sayles on two occasions before --

Did you do that before rendering the report?

A. Yes, I did.

Q. And did you --

Do you have a section in your report, as each of your reports do, after the record review, of Employment History, Pre-accident Medical History?

A. Both of those are in the report, yes.

Q. Okay. In the Pre-accident Medical History, did

you know about any conditions he had before the accident?

A. I'm looking at my initial report to answer this.

Q. Just don't read from it. You could look up.

A. Um, Mr. Sayles had a history that included diabetes, hypertension, and hypercholesterolemia; and he reported a prior 2015 workplace accident with, um -- that caused left-leg and lower-back pain.

Q. You were just looking at it, so if it refreshed your recollection, when did he get his diabetes diagnosed?

A. 2009, according to my records.

Q. Okay. Pre-accident, the MRI history, did he tell you -- it's already in the record from Dr. Gerling, but did he tell you that he had a previous MRI?

A. Yes, he told me that he had an MRI associated with his 2015 workplace injury.

Q. Okay. Continuing on -- you don't have to look down -- you have -- there's other things you do: Pre-accident psychiatric was denied; medication use, post-accident medical history, current medications, things like that; right?

A. Those are all included in my report, yes.

Q. Okay. In addition to the other medications that the jury's already heard about, gabapentin --

Well, was he on -- on -- was he taking Celebrex?

A. At the time I saw him in 2025, he was taking Celebrex, yes.

Q. Just, what is Celebrex? What is the purpose of that?

A. Celebrex is an antiinflammatory medication that's mildly pain-relieving. Um, it is slightly more protective to the lining of the stomach than the other antiinflammatory medications.

Q. Was he in therapy at that time? I mean, you said you had the records, but did you take a -- ask --

MR. McCRORIE: Withdrawn.

Q. In addition to asking the patient and looking at the records, do you ask the patient if they're in -- the subject, if it's not your patient -- if they're currently doing physical therapy?

A. Yes. I did ask that, and he was doing physical therapy at the time I saw him.

Q. Okay. And do you -- you're not going to testify to them, but did you speak to Mr. Sayles about his complaints, his symptoms, and any ADLs? And tell the jury what that is.

A. Um, I took a history that included his various complaints, and I also took a history that addressed his activities of daily living, or what we call "ADLs."

ADLs come into several categories: What I would call "self-care activities of daily living," which would include hygiene, dressing, feeding, showering, using the toilet. Then we have what we call "light instrumental activities of daily living," which would include things like carrying a laundry basket or carrying groceries into the house or trash out of the house. And then we have "heavier instrumental activities of daily living," which would -- which would be heavier-duty activities around the home: moving furniture, things like that.

Q. Okay. Just recently, were you informed that a trial date had been set and that your testimony would be needed in the court in New York County?

A. Yes, I was informed of that.

Q. Okay. Well, let's also do this: Have you ever testified on behalf of -- as a life-care planner -- on behalf of a client of mine -- either it was my private firm or someone I was doing a trial with -- in the past 20 years?

A. Yes, I have.

Q. Okay. In the --

A. Yes, I have.

Q. In the past 20 years, how many times has that occurred?

A. I couldn't tell you exactly, but I would guess,

about five to six times.

Q. And when was the last time you and I even spoke before an involvement with the Kuller Law Firm?

A. I would say, it has to be five or six years ago.

Q. I meant regarding your testimony.

Wait. So you said you last testified five or six years ago?

THE COURT: No. I think that was the last time --

A. No.

THE COURT: -- he communicated with you.

MR. McCRORIE: Oh, okay.

THE COURT: Is that right, Doctor?

THE WITNESS: The last time I had a case where I testified, that Mr. McCrorie was the attorney, was five or six years ago.

Q. And did you ever have a matter where you testified, ever, for Mr. Brett Kuller or the Kuller Law Firm? Is this the first time?

A. Never before. This is the first time, yes.

Q. All right. Okay. And if you and I happened to --

MR. McCRORIE: Or withdrawn.

Q. Was there one matter that you and I have had, in the last few years, a gentleman with traumatic brain

injury? Did it go to trial?

A. Yes.

Q. All right.

A. I recall writing the report for you on that case, yes.

Q. Okay. Just recently, can you tell the jury what you did to --

MR. McCRORIE: Withdrawn.

Q. Were updated medical records, from May of 2025 through September of 2026, sent to you by Mr. Kuller?

A. Yes, they were.

Q. And understanding the trial was coming up, was it arranged that you could do a physical examination of Mr. Sayles (indicating)?

A. That's correct.

Q. It's 3:15, and we're going to get to your life-care plan.

I'm not going to have you go through the examination, but were you sent updated -- you already said it -- the updated records?

Were you given Dr. Gerling's records, the Advanced -- Advanced Orthopedics, and Advanced Back and Neck? One is Dr. Berkowitz; one is the physical therapy records. Were you given all of the --

A. I --

Q. -- updated notes?
A. All those records were forwarded to me. I requested all medical records between the date of the initial report and, at that time, the present.
Q. And can you just tell us when --
Oh. When did you do the examination -- the physical examination -- after reviewing the records of Mr. Sayles?
A. I'm referring to my report. I examined him on August 10th of this year.
Q. And when did you write the report?
A. The report is dated September 4th of this year.
Q. Okay. Can you just tell us -- you have it in -- in the Current Complaints. Just briefly, what were Mr. Sayles' complaints to you?
A. His complaints included --
I listed four complaints, but I have a lot of details about each of them; if I could look at my report, I could expand on them.
MR. McCRORIE: With the Court's permission.
THE COURT: You can take a look at your report, refresh your recollection, and then put it down and answer the question.
Q. You don't need to list the whole, long thing. You could just list the main complaints.

A. His complaints referred to his lower back, his neck, his left shoulder, and his frustration and anxiety regarding his incomplete recovery.

Q. Okay. And I don't mean to rush you, but the "lower back," can you just be a little more specific without me telling you? It's in your report. Was he complaining of pain, anything else, any sensations?

A. He -- he described pain. He described muscle spasms. He described restricted motion. He describes sensory changes and weakness in the lower extremities and radiating pain down the legs, and he described limited mobility, limited or restricted ability to walk a distance.

Q. Your report always goes from most severe to least severe. At least in August of 2026, what was the main -- chief -- complaint, or most severe?

A. His lower-back pain was his biggest complaint at that time.

Q. What was the next? And you could summarize just as you did with the back. What was related to the neck?

A. His neck complaints included axial pain which stayed in the neck. He described muscle spasm, stiffness. He described restricted motion. He describes radiation of pain to the shoulder areas of the scap -- the shoulder blades, and he described pain down

the left arm. He described weakness in both upper extremities, more severe on the left.

Q. And finally, it was -- it went from most to least -- what was bothering him less than anything else?

A. His next complaint was shoulder pain in the front of the shoulder that he associated with a stiffness and limited motion. He described clicking and painful rotation. He described pain with overhead activities and pain with rolling over in bed.

Q. Did he ever tell you he couldn't do overactivity -- overhead activities -- or just that there was pain if he did do it, at that time?

A. He reported that overhead activities increased his pain.

Q. Did he also tell you anything about whether or not the surgery, at least to his shoulder, was helpful, understanding he had these other complaints to the back and neck?

A. He reported some improvement following his past shoulder surgery.

Q. And lastly -- you were looking at him in the whole -- what was the fourth complaint? The last.

A. That he had -- that he had frustration and anxiety regarding having chronic pain and having functional limitations.

Q. Okay. Doctor, I'm going to get to your life-care plan, but you went through the same history with him for this exam as you did for the other, with the medications he was on and all of those things we listed; is that correct?

A. That's correct, yes.

Q. And then it came time for a physical examination and did you examine, at least, those three body parts that you spoke about: the neck, the back, the shoulder?

A. Yes, I did.

Q. I'll ask it to you this way: Did you find limitations in the movement of the neck?

A. Yes, I did.

Q. Did you find limitations in the movement of the back?

A. Yes, I did.

Q. Did you find what was called -- and the jury knows the term -- "spasm" in the neck area?

A. Yes, I did.

Q. And did you find spasm in the back, or the thoracolumbar? It's one and the same; correct?

A. Yes, I did.

Q. I want to the now ask you questions about your life-care plan -- okay? -- and I just want to state:

I would like you to assume that --

Dr. Berkowitz was scheduled to testify in the morning, but it's going to now happen next week, so he has not testified; the shoulder surgeon. Okay?

A. Yes.

Q. Okay. But I'd like you to assume that Dr. Michael Gerling, whose records you reviewed -- I'd like you to assume he testified yesterday and today. All right?

A. Yes.

Q. I'd like you to assume that Gordon Sayles -- I think we're all -- I don't know if I'm doing the math right, but I'll just give you -- was born September 8th, 1963; and he had a workplace accident on May 11th, 2018.

You knew about the accident; the elevator falling several floors, coming to an abrupt stop, and him --

A. Yes, I was -- I was familiar with his history.

Q. Okay.

I would like you to assume that -- all of the records you reviewed, including the incident report, as you laid out, the New York-Presbyterian Hospital record, all of the records of Dr. Michael Gerling, all of the Advanced Back and Care, the University Pain Center, the Twin Boro Physical Therapy, the Breakthrough Physical Therapy, the Garden State Pain Management, Shahid Mian, Hudson Regional Hospital, Dr. Demesmin; even the -- I

guess -- the clearance for the -- the hospital, the radiology reports, and any of the updated medical records from some of those facilities, including Dr. Gerling, Dr. Berkowitz, from 2005 to 2026.

I'd like you to assume that all of the complaints of pain and -- were in -- from those records are -- were present and are present. Okay?

A. Yes.

Q. I'd like you to assume that Dr. Gerling testified that he -- we'll just stick with the neck and back for right now -- that he had a severe exacerbation to a preexisting condition of his lower back, causing symptoms -- new symptoms -- constant radiation, and the need for all of the treatment Mr. Sayles has had through today. Okay?

A. Yes.

Q. I'd like you to assume, there was similar testimony about the treatment to the neck and that there were both myelopathy -- the jury knows what that is; you don't have to define it -- both myelopathy and radiculopathy in the neck, and radiculopathy to varying degrees in the low back through present. Okay?

A. Okay.

Q. And that at -- that after each of the surgeries, the radiculopathy got somewhat better and that,

currently, there's been adjacent-level breakdown, with both -- to both the neck and the back. Okay?

A. Yes.

Q. I'd like you to assume that Dr. Gerling testified that there -- with a reasonable degree of medical certainty, as a board-certified spine surgeon, having treated Mr. Sayles and having gone over all of the MRI films showing progressive adjacent-level breakdown to both the neck and the back -- that it's his opinion that Mr. Sayles will need -- will have pain over the course of his life, permanently -- okay? -- to both the neck and the back.

A. Yes.

Q. I'd like you to assume that the doctor testified, it would be advisable to follow up with an orthopedic surgeon and to get future diagnostic testing in the form of X-ray and MRI. Okay?

A. Yes.

Q. I'd like you to assume, Dr. Gerling said it would be advisable to do physical therapy to those body parts; and that --

A. Yes.

Q. -- Mr. Sayles has recently only had two injections that were somewhat helpful but not permanently helpful to his back. Okay?

A. Okay.

Q. I'd like you to also assume that Dr. Gerling has recommended, and the client has scheduled, a lumbar-revision surgery; and that there is a tilting of the bone, a collapsed disc space and that as far as -- as -- as discussed by Dr. Gerling, there is bone on bone in the L4-5, that the disc has collapsed and the bone is touching it, and that the herniation has now progressed from when he did the surgery in 2023 through today; and that he's going to do a revision surgery to the lumbar spine: take the hardware out, clean up the disc that's underneath it, put the hardware back in, I assume, for the -- for the next level and extend it up. Okay?

A. Yes.

Q. And I'd like you to further assume that, after the surgery in 2022 to the neck, that he had -- the disc was touching the cord, causing myelopathy; touching the exiting nerve root, causing radiculopathy; and that in 2025, there are MRIs that showed the disc was off the cord and, in fact, there is -- it might be less than it was, but it's got free space in the spinal canal for the discs above the level of the fusion. Okay?

A. Yes.

Q. And I'd like you to assume that MRIs done recently, in August of 2026, show that the level above

the C5-C6 that was fused is now starting to touch the cord and limit the space and cause increased symptoms, and he said that that was also adjacent-level breakdown. Okay?

A. Yes.

Q. Do you have an opinion, with a reasonable degree of medical certainty, as to what his life-care plan should be, based on all of --

A. I --

Q. -- based on your examination, based on Dr. Gerling's reports and everything you've reviewed -- his testimony and everything you've reviewed?

A. Yes, I do.

Q. Okay. I'm going to be asking you what that opinion is.

MR. McCRORIE: With the Court's permission -- it's in evidence as 44. Can we -- I don't know; I guess it would be -- since he's up there (indicating), we can't really publish it. We can publish it after, maybe.

THE COURT: You can publish it by sharing the screen. I'm not a total techie, but there is a way to --

MR. McCRORIE: It's not that complex; it's general care with costs. I -- it's not that

demonstrative.

And it's almost 3:30. I'll just do the testimony.

THE COURT: That's fine.

MR. McCRORIE: Yeah.

BY MR. McCRORIE:

Q. Okay. So there are two reports. We're just going to do the current report, okay, Doctor? It's in evidence, so you're allowed to read from it.

A. Yes.

MR. McCRORIE: And if the jury can see, Judge, just for publishing -- I'll just show -- it's just pages with recommendations, costs, and durations (indicating).

THE COURT: Okay.

MR. McCRORIE: Okay.

Q. So, with a reasonable degree of medical certainty, can you tell the jury your testimony?

Go slow enough for the court reporter to get it all down, and just tell them your testimony for recommendation of orthopedic-spine routine care, and then tell them what "perioperative care" is, and what the cost is, and the frequency, in your opinion, all with a reasonable degree of medical certainty, so I don't have to keep asking it. Okay?

A. Okay.
Q. Was the entire life-care plan done within a reasonable degree of medical certainty?
A. Yes, it was.
Q. And within a reasonable degree of certainty, as a life-care planner and a board-certified physiatrist, are you familiar with the costs and treatment?
A. Yes, I am.
Q. Okay. I won't ask it again; if it ever isn't, you'll have to tell us. But you said the whole report is.

So tell us about routine spine care and perioperative care, the frequency, the unit cost.

A. For orthopedic spine care, I have advised that Mr. Sayles see his doctor once to twice a year, plus as needed. The unit cost for such care would be $250 per visit and -- so the annual cost for an average of one to two times a year would be $375 per year.
Q. Is it --
A. For perioperative care ...

For perioperative care, meaning visits surrounding a repeat surgery, whether it's for the back or the neck, I've advised that he have four to six visits, to both organize that surgery and to -- while he's recovering from that surgery, after which he would

go back to the once to twice per year. Those visits also would be $250 per year, and the annual cost, based upon two surgeries to his spine and a life expectancy of 21 years, would be $119 per year.

Q. And I just want to ask you two questions before you go forward:

Is it your understanding that after your testimony in a case, whether it's for plaintiff or defendant, you're going to give the current costs, but an economist would come and give what those costs would be as we go into the future, assuming it is granted by a jury? It's always up to them, and no one is saying it's needed but them. Okay? Is that your understanding?

A. That's -- yes, that's my understanding.

Q. Regarding the shoulder, based on recent reports of improvement and -- we're going to have you give the number -- the number quickly -- but it would be dependent upon whether Dr. Berkowitz says he's recommending a surgery. Okay?

A. Yes.

Q. So the shoulder and the orthopedic, it's sort of similar: same money, less frequency; true?

I'm just going to move along so I don't have to go through everything.

A. Correct.

Q. Okay, pain management. Do you have -- just tell the jury your opinion for that and then we'll go to the next page.

A. I've advised that Mr. Sayles see his pain-management doctor two to four times a year. The unit cost for each visit would be $250. For an average of three visits per year, that would be $750 per year.

Q. Okay. And just -- the life expectancy, this is something that -- the Court will instruct the jury as to what an expected life expectancy could be, but where do you get that number from: 21 years of a life expectancy?

A. His 21-year life expectancy is based upon the Social Security Administration, which has a life-expectancy calculator, and it's as simple as going to the Social Security Administration's website and adding his age and --

Q. Okay.

A. -- and whether the patient is male or female.

Q. All right. So total lifetime costs for the general care over 21 years, without inflation, is what? It's just math, but ...

A. $1554 for the annual cost and the lifetime cost would be $32,634.

Q. And all listed where, if the jury thinks it hasn't been proven or he's not entitled to, it could be

zero, but they could also take off any ones they don't agree with; true?

A. That's correct.

Q. Okay. The second page is Diagnostic Testing. You do not need to go over all of it, but can you please tell the jury your opinion with regard to -- it's quite the same for cervical and lumbar -- X-rays, MRIs, and CT scans? You don't have to go through each one; just -- and now that they know your method, you can just tell them frequency, annual cost, etcetera.

A. So, for the cervical spine, I've advised that he have X-rays every two to three years, an MRI with contrast every three to five years, and a CAT scan of the cervical spine every three to five years. The costs are listed; both the unit costs and the annual costs. I could provide them if you would like.

Q. Just the unit costs. You gave it to them. The rest is math and the rest is an economist doing it.

What is the --

A series -- a full series -- for the neck, of X-rays, once every two to three years, how much is that?

A. The X-rays would be $250; the MRI would be, with contrast, $1300; and a CAT scan would be $600.

Q. And that's assuming --

A. I --

Q. -- private-pay rates; correct? The Court will instruct the jury on all of the other stuff, but that's private-pay rates.

A. That's correct.

Q. Understanding -- yeah.

Okay. Same exact opinion with the lumbar spine; true?

A. For the lumbar spine, I've advised X-rays once a year --

Q. It's the same --

A. -- MRI -- and MRI every -- the frequency is different.

-- the MRI every three to five years, and the lumbar CAT scan every three years. The unit costs are the same as above.

Q. Shoulder MRI appears to be less money than a cervical MRI; true?

A. That's correct, because there's no contrast involved.

Q. Okay. And that opinion is there, but it's in evidence, and I'm just going to try to save some time.

The medications costs, can you please give your opinion?

And I'd like you to assume you gave an opinion as to Neurontin, but, although it is used for nerve pain

and helps his neck and back, we're going to cross that one off because he takes Neurontin for diabetes. Okay?

A. Okay. "Neurontin" was removed from my 2026 report.

The Celebrex is $10 a month and the Tylenol was $5 a month, so the annual costs are based upon that.

Q. And just like only during a surgery, for very limited periods of time, are there other higher-level, either -- narcotic painkillers, for very short times, that are prescribed?

A. I've added Percocet, which is an opioid painkiller, for one to two weeks following any major operations.

Q. And --

A. Those tablets are -- are a dollar each.

Q. Yeah, and not -- okay.

So let's get to the surgical recommendations and the costs of surgery; and I'd like you to give the costs, inclusive of surgeon fee, hospital, anesthesia, postsurgical hospital stay, and anything they do in the hospital, if they start you off on physical therapy, etcetera.

So, first, start with your opinion as to lumbar decompression/fusion; and, as I've told you, that is scheduled for November of 2026, but you could talk about

what you wrote and what the cost is.

A. For the lumbar-spine surgery, inclusive, including hospital fees, radiology fees, anesthesia fees, I have put down the unit cost of "$150,000."

Q. And how about for the cervical discectomy and fusion?

A. For the cervical discectomy and fusion, the extension surgery, the inclusive cost is $125,000.

Q. And is it so that the protocol for a cervical surgery is a one-day stay or an overnight and a lumbar is generally three to four days?

A. That's correct.

Q. Again, if the shoulder surgery is recommended by Dr. Berkowitz, that'll be for next week, although understanding that it's feeling better and he just recently reviewed a new MRI. You have the costs there, but that's much less expensive; true? It's an arthroscopic?

A. That's correct.

Q. What's the cost for that?

A. The shoulder surgery, if required and advised by his treating surgeon, would be twelve-and-a-half thousand to seventeen-and-a-half thousand dollars, inclusive.

Q. Okay. And you have two others: Joint

Injections. The jury saw, briefly, that he had some injections, and some illustration. But those are cheap, as well, or cheaper? I'm not ...

A. The -- um ...

Q. Okay. Continue and then --

A. When I saw Mr. Sayles in August, the records reflected that he was advised to undergo left SI-joint injections, and the SI-joint injections are $400 each.

And there was also discussion that he -- depending on the outcome of those injections -- he may need left SI-joint fusion surgery, and this is not unusual: that the patient has an injection; it's helpful but only temporarily. So it's a good prognosticator that the surgery will help. If he was to have SI-joint fusion surgery, the cost of that -- the inclusive cost -- is fifteen thousand to twenty-one thousand dollars.

Q. Okay. We'll just go a little quickly here:

Physical Therapy: You have recommendations for outpatient physical therapy; you call it "episodic." That would be yearly, assuming he's in the pain Dr. Gerling says he would be in, neck and back; true?

A. I've advised that he have access to 24 to 36 sessions per year. The average would be 30 sessions per year. At $200 per session, the cost would be $6,000 per

year.

Q. And only for the -- we'll take them for the back, the neck surgery. I don't know; is it the same -- is that inclusive, if he has a shoulder surgery, which -- we'll see what Dr. Berkowitz says?

A. Were he to have neck, back, and shoulder surgery, I put down for an additional 25 physical-therapy sessions per operation.

Q. So those would be one time each; correct? Twenty for the neck, twenty for the back?

A. Twenty-five, yes.

Q. Okay. I'm not going to go through the costs of -- some of them are so cheap (indicating); the collars and things like that.

Up until this point, have each of the life-care plans been virtually similar, other than costs going up a little?

A. And in some cases down, but, yes, similar.

Q. Yeah, medication.

And that is what occurs, but the cost of medical care, typically, has gone up --

Well, we're going to save that for the economist, okay? You're putting the current costs, as you know them to be, based on your experience and based on the sources you list at the end of your plan (indicating);

true?

A. That's correct.

Q. Okay. There was, from May of '25, when you did your first report, I'll say, according to Dr. Gerling, according to what he talked about in this court, an apparent adjacent-level breakdown to both the neck and the back. We've already put in the record -- I told you in the hypothetical -- what he testified to.

Did that change anything, going forward?

Understanding Mr. Sayles' current age of 63; that he's going to be facing these two future surgeries; that once it starts breaking down it could even be, beyond that, more surgeries, but certainly more limitations, did you have further opinions as to what would be advisable going forward?

A. I advised that Mr. Sayles have access to home care, mostly because of his chronic pain, his limited mobility, and the fact that he's facing additional surgeries. So I've advised that he have access to home care, starting at age 65, for one to three hours a day. The unit cost for home care in the New York area is twenty-five to twenty-eight dollars an hour, and so I calculated out the annual costs.

I, similarly, said that at age 70, the number of hours should be increased to two to four hours per day;

and that at age 75, it should be advanced to three to six hours a day, for home care, to assist him in -- in caring for himself and maintaining independence following all of these operations.

Q. Have you worked in --

The Glen Cove Hospital, does that rehab also have a nursing center to it -- a nursing home -- or a nursing-home component?

A. Glen Cove Hospital does not have a nursing home. There are three nursing homes across the street that -- that some patients needed to be transferred to.

Q. I think -- I just wanted to clarify something: Is -- I -- I might be wrong. Is gabapentin the same drug as Neurontin, or are they separate?

A. They're the same drug.

Q. Okay. That's what I thought. It says "Neurontin" in the plan. That is gabapentin; true?

A. That's correct.

Q. Okay. And do you -- you just gave this plan two weeks ago, or -- or -- whatever -- a month ago. Do you stand by your opinions in these plans: that if he has these future surgeries, if it continues to progress, that he should, according to your opinion, have these medical -- this medical care, these medical procedures and the medical providers, including the home care, to

whatever degree: an hour, two hours; it could be taken off totally or reduced by a jury?

A. That's -- that's correct. These were the costs for home care in the New York area.

MR. McCRORIE: Thank you. Nothing further.

THE COURT: Thank you.

MR. McCRORIE: Thank you.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. CASCONE:

Q. Hello, Mr. Root [sic]. How are you?

A. Good, thank you. And you?

Q. Good.

My name is Len Cascone. We've met before; correct?

A. I don't recall, but I'm sure you're right.

Q. Well, maybe after you hear some of my questions and my examples, you'll remember me from prior trials.

So I think I can get this thing -- our conversation here before this jury -- done within the next 15, 20 minutes, but just let me make sure that we're on the same page, okay?

A. Yes.

Q. You are not testifying today as to the severity of the elevator accident; correct?

A. That's correct.
Q. All right. So you're not here to talk about whether his current condition is because of the elevator accident, a dog attack, his work history. That's not what we're discussing; correct?
A. That's correct.
Q. Good. So that saves me about an hour of fighting with you. So I'm going to move on to other things.
Your testimony is based on the assumptions given to you by the plaintiff's lawyer; yes? At least in part?
A. I wouldn't describe it that way.
Q. I was sitting right there (indicating) and this attorney (indicating) said, "I'd like you to assume this and this and this and this and this," and then you gave your answers. So --
A. Oh, okay. Understood.
Q. All right. So, if those assumptions are incorrect, then your conclusions are incorrect.
That's fair; correct?
A. I -- I suppose so.
Q. When you just told the jury that the cervical surgery or the lumbar surgery is going to cost $150,000, or thereabout, you're not telling the jury that Mr. Sayles is going to come out of his bank account to

pay $150,000, are you?

MR. McCRORIE: Objection.

THE COURT: I'm sorry; could you repeat the question?

MR. CASCONE: Sure.

Q. You had mentioned some number, 150,000, 130,000, whatever it was, for a future surgery. You're not suggesting that Mr. Sayles is going to actually pay that money out of his bank account.

THE COURT: Sustained.

The objection is sustained.

Q. You gave other numbers based on other scenarios. I believe you said -- and correct me if I'm wrong -- that, "Depending upon the success of this, he may need this."

Again, I'm just trying to move as quickly as possible, because another attorney's going to follow me and we want to get you out of here by four o'clock, so I'm paraphrasing.

Did you say something to that effect?

A. I said that regarding the SI-joint injections and the SI-joint fusion surgery, yes.

Q. All right. So when you say, "Depending upon A, B, C," you're not testifying to anything certain. We don't know what the future's going to bring; correct?

Is that fair?

A. Well, that's correct regarding his SI joints, yes.

Q. Right. So, if he has Treatment A and Treatment A is successful, then Treatment B, C, may not even be necessary; is that fair?

A. I -- I think it's the opposite: If the injection is successful, it would imply that the surgery would benefit him.

MR. McCRORIE: I don't know if this makes it go quicker: The doctor didn't testify to SI-joint surgery, so we can --

We'll withdraw that, just for ...

THE COURT: Okay.

Q. You did a physical examination of Mr. Sayles?

A. Yes, I did.

Q. Where did that physical examination take place?

A. Um, I don't know.

Q. Well, was it at your house? Did he come to you house? Did you go to his house? Did you meet in a doctor's office?

A. I think he came to my home.

Q. Well, the physical examination was in August. Do you remember?

It was this August, right?

A. That's correct.
Q. So you don't remember if Mr. Sayles came to your house last month?
A. I -- I believe he did.
Q. Are you certain?
A. I believe so, yes.
Q. Where in your house did the exam take place; in the kitchen?
A. In -- no, in the office that I have in my house.
Q. Who was with him, if anybody?
A. I don't recall.
Q. Was he alone?
A. I said I don't recall.
Q. How long was he examined?
A. I usually schedule it for an hour and a half.
Q. That's not what I asked you.
How long was the exam that you performed on Mr. Sayles in your house in August? Not "usually"; what was the exam time?
A. I reviewed his history with him.
Q. That's not what I asked.
How long --
A. And --
Q. -- did you have your hands on him?
A. Twenty minutes.

Q. Now, if this jury was to award Mr. Sayles a sum of money, there's no guarantee that Mr. Sayles would actually use that money for any medical treatment in your plan; correct?

MR. McCRORIE: Objection.

THE COURT: Overruled.

A. Oh, that's between him and his treating doctor.

Q. Right. So any money that the jury would give him, maybe, if they give him anything, it's not mandatory that he pays for surgery or a neck collar or a toilet-bowel seat. It's not mandatory; correct?

A. As I said, that's between him and his treating doctor.

Q. So he can use the money to go to Aruba or Barbados.

MR. McCRORIE: Objection.

THE COURT: Sustained.

Q. The plaintiff's attorney mentioned to you whether you understood that after you testify, an economist comes in, and I believe you said yes, that's your understanding; is that fair?

A. That's correct.

Q. Okay. So you give the jury a number and then, after you leave us, an economist comes, takes your number, blows it up to a bigger number. You understand

that; correct?

MR. McCRORIE: Objection.

THE COURT: Sustained as to the form of the question.

MR. CASCONE: Okay.

Q. You understand that an economist comes in here, takes your number and makes it even bigger.

MR. McCRORIE: Objection.

THE COURT: Sustained as to form.

MR. CASCONE: Okay.

Q. You think that the economist is going to come in here and take your number and make it lower?

MR. McCRORIE: Objection.

(Noise heard in courtroom; pause.)

THE COURT: Okay. You can go ahead and restate your objection.

MR. McCRORIE: Doing the math. She's compounding. She's not "blowing it up." It is what it is.

THE COURT: That sounds like testimony.

MR. McCRORIE: She's not "blowing it up."

THE COURT: I think what Mr. Cascone is trying to ask you is: What is the economist going to do with the data you've provided?

MR. CASCONE: I accept that question. That

was great.

THE COURT: Sir, that's for you.

THE WITNESS: Is that for me to answer?

THE COURT: What do you understand the economist is going to do with the numbers you provided to us?

THE WITNESS: It's my understanding that the economist applies inflation rates and -- based on data that they -- that they're familiar with -- and adjusts the numbers based upon that.

BY MR. CASCONE:

Q. Adjusts the numbers up or down?

A. Medical costs, unfortunately, in this country continue to go up. I'm aware of that.

Q. Okay. So you are part of a process: The treating doctor, Dr. Gerling, comes in -- and maybe this is where you're going to remember me from: He's the bottom of the pyramid, you're the middle of the pyramid, and the economist is at the top of the pyramid (simulating).

You remember me using that example with you on prior trials?

MR. McCRORIE: Objection.

THE COURT: Sustained.

MR. CASCONE: All right.

Q. You're relying on the testimony and documents provided by Dr. Michael Gerling; yes?

A. Oh, that's correct.

Q. Okay. So, if the bottom of the pyramid is knocked out, like Jenga (simulating), you fall down, too.

MR. McCRORIE: Objection; the "pyramid."

THE COURT: Sustained.

Q. If we can't trust Dr. Gerling's numbers, then your numbers mean nothing; correct?

MR. McCRORIE: Dr. Gerling -- objection.

He didn't testify to numbers.

THE COURT: Sustained as to form.

MR. CASCONE: Sure.

Q. If what Dr. Gerling told us is unreliable, then everything you're telling us is equally unreliable; is that fair?

MR. McCRORIE: Objection.

THE COURT: Overruled.

A. I -- I wouldn't agree with that.

MR. CASCONE: Thank you.

THE COURT: Cross-examination by co-defendant.

CROSS-EXAMINATION

BY MR. SHELBY:

Q. Good afternoon, Dr. Root. How are you doing?
A. Good, thank you. How are you?
Q. Good.
I'll try and make this as fast as possible, so -- I want to go through a quick timeline, though.
You prepared your first, initial life-care plan on May 6th, 2025; correct?
A. That's correct.
Q. Okay. And then, subsequent -- subsequently -- you prepared a second life-care plan on September 4th of 2026; right?
A. That's correct.
Q. All right. When you prepared your first life-care plan, in 2025, did you have any discussions with Mr. Sayles' treating physicians?
A. No, I did not.
Q. So you never spoke to Dr. Gerling about what he thought Mr. Sayles' future care may be; correct?
A. That's correct.
Q. And you never spoke with Dr. Berkowitz about what he thought Mr. Sayles' future care may be, right?
A. That's correct.
Q. But you completed that life-care plan, projecting what you believed the care may be; correct?
A. That's correct.

Q. And you had never examined Mr. Sayles, at that point in time?
A. That's correct.
Q. You do examine patients, though; don't you?
A. Yes, I do.
Q. Okay. Now, after you completed that plan, you then sent it to Mr. Kuller; correct?
A. Yes, I did.
Q. Okay. And are you aware if Mr. Kuller sent that to Dr. Gerling?
A. No, I'm not familiar with that.
Q. Okay. And then a period of time goes by and then you prepared that second plan that we've been talking about; correct?
A. That's correct.
Q. Now, isn't it true, sir, that the initial plan that you prepared projected a life-care plan of approximately $507,000?
A. I'm -- I'm sure you're right.
Q. Okay. And the second plan you prepared, almost a year later -- a little over a year later -- doubled that number; didn't it?
A. I'd have to look at my sheets, but I'm sure you're right.
Q. I've got it right here (indicating), Doctor.

I've got it at approximately $1 million, right?
A. Okay.
Q. Okay. And within your plans, you're listing the assumptions that you're relying on -- correct? -- with respect to each section?
A. That's correct.
Q. And when we go to the "Home Health" portion of the life-care plan, you list your assumptions; correct?
A. That's correct.
Q. Okay. So, if we go to the "Home Health" section of your 2025 life-care plan, it says, "assumes one anticipated orthopedic surgery"; correct?
A. I'm getting that out now.
(Pause.)
Q. Did you find the section, Doctor?
(Pause.)
A. Yes.
Q. And so it says, again, you assumed one anticipated orthopedic surgery; correct?
A. That's correct.
Q. And it says you assumed two anticipated spine surgeries, right?
A. That's right.
Q. Okay. And you had a total lifetime cost of $1,669; correct, Doctor?

(Pause.)
A. Yes.
Q. All right. When we go to 2026, just a little over a year later, you have the same slide -- correct? -- for "Home Health."
A. That's correct.
Q. Okay. And it says, "assumes one anticipated orthopedic surgery"?
A. Correct.
Q. And it says, "assumes two anticipated spine surgeries"; right?
A. Correct.
Q. That's the same assumptions as in 2025, right?
A. That's correct.
Q. And yet, you have a total annual cost of twenty-two thousand -- just about $23,000; don't you?
A. That's correct.
Q. For a total annual of $482,000, with the same assumptions; correct, Doctor?
A. That's correct.
Q. Okay. And that's the difference between the two plans, primarily; isn't it?
A. Yes, it is.
Q. All right. And isn't it fair, Doctor, that in that one year leading up to this trial, you doubled your

life-care plan under the same exact assumptions?

A. That's correct.

MR. SHELBY: Okay. Nothing further.

MR. McCRORIE: Very briefly, your Honor, for a minute ...?

THE COURT: Yeah, redirect.

MR. McCRORIE: Okay.

REDIRECT EXAMINATION

BY MR. McCRORIE:

Q. Doctor, in addition --

MR. McCRORIE: I'm looking here (indicating).

Q. -- in addition to Dr. Gerling's testimony previously, you issued this report based on your own assessment, based on the record, your exam, and your opinions -- correct? -- based on the records you reviewed.

A. That's correct.

Q. Okay.

A. That's correct.

Q. I asked you, in the -- just one more question and it was what the attorney who was just speaking to you just ended with: Is there another difference in the rapid breakdown --

So, in 2025, you did not know that the disc in

the cervical spine was on the cord because it wasn't on the cord; it only showed up in the August 2026, for the neck -- correct? -- right before your exam. The breakdown.

A. That's correct.

Q. And when you wrote the 2025 report, the March X-rays of the back, showing the tilting, bone on bone; and the April MRIs of the back, showing the adjacent-level breakdown and the further herniation, that hadn't occurred yet; true?

A. That's correct.

Q. Does that change the timing of his surgeries and his breakdown and what will happen in the future?

Was that a difference? Is that the other difference?

(Pause.)

A. When I saw him in 2025, no additional surgery was planned and when I saw him in 2026, additional surgery was planned. When I saw him in 2025, there was concern about adjacent-level disc disease and progression of his spinal pathology. When I saw him in 2026, this was confirmed, including pressure on the spinal cord, and additional surgery is now scheduled.

And having had the opportunity to examine him and recognize his limited mobility and spinal restrictions

in motion, I came to the conclusion that he will need assistance in the home, and that is what my opinions were based on.

MR. McCRORIE: Nothing further, Doctor.

THE COURT: I just want to clarify something: You just said, "When I saw him in 2025 and then when I saw him in 2026 ..." You didn't see him in 2025, right?

THE WITNESS: No. When I wrote the initial report in 2025 and then having seen him in 2026, I, um -- my opinions about his need for future care became much stronger.

THE COURT: Thank you, Doctor.

You're excused. Thank you, sir.

THE WITNESS: Thank you very much.

(Witness excused.)

THE COURT: I'm under the impression that we can excuse the jury for the day?

MR. McCRORIE: Yes. We have one more witness, though (indicating). Kidding.

THE COURT: All right, thank you very much, ladies and gentlemen. You're excused for the day. Have a nice evening.

Remember not to discuss the case.

COURT OFFICER: All rise.

(The jury left the courtroom.)

THE COURT: Okay. Is there anything else we need to --

Oh, yes. You wanted to put something on the record earlier.

COURT OFFICER: 9:30 tomorrow?

THE COURT: 9:30, yes, sir.

Well, actually, I have something I want to put on the record.

MR. SHELBY: You want to go first, Judge? As long as I can speak.

THE COURT: Yes.

I would like to cite, in support of my earlier decision denying your application to preclude that witness, a 2025 Appellate Division decision, 242 A.D.3d 1398, where the court held it was reversible error to strike Dr. Root's testimony and found that Dr. Root's testimony in that case, which was based on very similar factors as in this case, was supported by an adequate foundation.

Having said that, I turn it over to you (indicating).

MR. SHELBY: Thank you, your Honor.

Blake Shelby, on behalf of the Defendant Schindler.

We've now had testimony from two witnesses in this case -- Mr. Sayles and, most recently, Dr. Gerling -- about the elevator free-falling; and Dr. Gerling, today, further testified that if the elevator didn't free-fall, that would change things. And so, in that regard, we are requesting again to be able to call Mr. Jon Halpern to address that this elevator can't free-fall. It's a material issue in the case. I understand your prior ruling; I want to raise that.

And then, secondarily, I am making a request right now to make an offer of proof if you deny that or you continue to deny that; and what I mean by that --

THE COURT: You can't just make the offer of proof right now?

MR. SHELBY: No, it's not an offer of proof, your Honor. An offer of proof is me taking three to five minutes, or whatever, explaining what Mr. Halpern would say if allowed to be called, so that then we'd have a record for appellate purposes that the appellate court, or the Appellate Division, can consider in understanding --

THE COURT: I understand your application.

The 3101(d) is supposed to tell me what

Mr. Halpern is going to testify to, right? That's just like an offer of proof. The 3101(d) disclosure is what I rely on -- what you said Mr. Halpern would testify to -- in making my decision. In reviewing that, I did not find anything that went to the damages in this case; I found it was more based on liability.

So I didn't -- I didn't feel an additional offer of proof was necessary, because we already have a 3101(d) in the record and I took that to be your representation of what Mr. Halpern would testify to.

MR. SHELBY: And, your Honor, to that point, nobody's changed anything from the 3101(d). Okay? I want to make sure that's very clear.

THE COURT: Right.

MR. SHELBY: I also do not believe the 3101(d) is a part of this trial record right now. It would need to be a court exhibit; it would need to be somehow incorporated in this record. That's number one.

But, number two, with respect to what the 3101(d) said and how it pertains to this, it definitely pertains to the incident and the severity of the injuries because Mr. Halpern would testify, if allowed, that this is a counterweighted traction elevator. The only way it can move in a downward

direction -- because the counterweight significantly, by thousands of pounds, outweighs the elevator car, the only way it can move in the down direction, as Mr. Sayles testified happened, is if the motor drives it down. Okay? If it moves too fast in the down direction, it has safety devices that would be deployed at ten to 25 percent over the rated speed. So we're talking about, right around the same speed, they would be deployed and the elevator would stop in place. It would never be able to stop at a floor, open its doors, and let him out.

So we know that it never went faster than its rated speed, and because it never went faster than its rated speed, it couldn't have free-fallen.

And this all relates directly to the severity of the incident or, should I say, lack of severity of the incident. And that's why we want to call Mr. Halpern, and that's why it's highly relevant to rebut the "free-falling elevator" and this horrible, severe accident that caused all of these injuries. And we are requesting again to be able to call Mr. Halpern for those reasons.

THE COURT: All right, I just want to address one thing. It is in the record because my ruling was based on a motion. The motion was in

writing and had exhibits attached to it. It was digitally filed, but there were exhibits that were referred to in the motion papers which are preserved for the record for appellate review:

You have another expert -- right? -- that I didn't preclude, that is going to testify. The way I interpreted the 3101(d) representation was that it really went to the cause of the accident, the cause of the elevator problem, and not the issue of whether plaintiff's alleged damages were proximately caused by the elevator. I felt that the second expert that you have did address that and would be sufficient to address those issues for this jury. That was my rationale for ruling the way I did.

MR. McCRORIE: Can we be heard?

MR. SHELBY: Can I just --

THE COURT: Wait. Who --

MR. SHELBY: There's a lot of people.

THE COURT: I'll let everybody have a chance to be heard.

So are you -- do you want to continue before your other --

MR. SHELBY: I would. I would like to clarify the point that you just raised.

While, no doubt, Bob Cargill --

Dr. Cargill -- will address mechanism of injury -- okay? -- there is a foundational element for what he will be talking about that stems from what I just explained: that this elevator couldn't have been moving faster than its rated speed and how Mr. Halpern, based on the design of the elevator, knows that. Okay? And so it's armed with that foundation, then, that then employs some, but not all, of the opinions that Dr. Cargill has.

And so it's no different than an accident reconstructionist in a rear-end collision, let's say, who comes in and -- liability's established in that situation; got hit in the rear -- the accident reconstructionist comes in and says, "Well, I know, for these reasons," based on physical evidence or whatever it may be, "the speed was three miles an hour." The biomechanic then takes that and says, "Well, we know, under that scenario, there's no mechanism for injury, and here's why:"

Mr. Halpern would be filling the accident reconstruction-type role in that regard but in an elevator context. Okay? It's not -- it's not a normal accident reconstruction, like you have on the street in a car accident, but nevertheless, that's his role and it serves as foundation for Dr. Cargill, who

would then address the damages.

There is no aspect of what we intend to call Mr. Halpern for having anything to do with liability. We will tell you that right now. It would solely be design of the elevator and how it can operate and, based on Mr. Sayles' (indicating) description of the incident, couldn't have free-fallen, couldn't have gone faster than its rate of speed.

That's it.

MR. CASCONE: Your Honor, Len Cascone for the defendants.

We (indicating), as the defense team, are in no way trying to upset the prior motion for summary judgment that has granted liability. This is a damages issue only.

I was very careful with Dr. Gerling, yesterday and today, to have him testify as to the methodology of the injury.

Right here (indicating), at page 104 of this trial transcript, lines 7 through 10, the plaintiff testified on direct examination:

"The elevator stopped, but it went into -- like it hit a brick wall or something like it. It went into concrete or something. And it made an abrupt stop. And it jolted and it bounced back."

This testimony is the basis for Dr. Gerling's opinion that the methodology of the sudden stop into what feels like concrete caused the axial load to the spine.

So, while your Honor made that ruling earlier, that was before all of this testimony came out; and since a trial is fluid and we're getting more and more information, it makes our re-application timely.

(Continued on next page.)

MR. McCRORIE: Your Honor, I know we said this over and over again. This was all litigated in the summary judgment. We won summary judgment. And the Appellate Division, on page 2, found the personal -- I'll read it. It's second paragraph. "The personal injury stems from an accident that occurred when an elevator in which plaintiff was a passenger abruptly dropped four floors." I --

THE COURT: The Appellate Division also said whether any, any of the alleged damages is a result of this accident is the issue at the trial that we are now conducting.

MR. McCRORIE: Judge --

THE COURT: Proximate cause is always damages.

MR. McCRORIE: Understood.

There -- there are -- in the weeks and days leading up to this, this elevator jumped, bounced, fell, we have -- in their -- that was all part --

MR. CASCONE: Now you're re-litigating liability.

MR. McCRORIE: I know. But it -- they're saying it can't happen. This would change the trial after all of our evidence is in. We were told there's no elevator experts. The operat- -- the operation of the elevator is not to -- I'd say it shouldn't come before this jury.

THE COURT: Are why wouldn't --

MR. McCRORIE: It's spoliated. No one tested it.

THE COURT: Wait --

MR. McCRORIE: That's another thing.

THE COURT: Could you just indulge me for a moment?

Why wouldn't it be relevant to the determination that this jury has to make to hear a witness say that it can't have happened the way that your client says it did?

MR. McCRORIE: It has been found to have happened -- this is -- because this is all -- they've set it up to be fraud from the beginning.

I don't think it can be litigated that the accident didn't happen the way the plaintiff says. It went in unrebutted. They had experts; they had elevator experts; they have biomechanicals with affidavits. We had all of the priors where it was jumping, bouncing, and someone claimed --

THE COURT: The issue before us is not whether it happened and whether the defendants are liable.

The issue before us is what if any of the alleged injuries are the result of what happened?

MR. KULLER: Can I just make a quick point, if I may, please?

THE COURT: I mean, I --

MR. KULLER: It's going to be --

THE COURT: It's a little unusual for two of you to be arguing for the same person, but I will indulge you this

time --

MR. KULLER: I appreciate that.

THE COURT: But in the future, one person.

MR. KULLER: I appreciate that.

The only reason, frankly -- and this is briefed in full in my motion in limine to preclude their biomechanicals and their engineers.

The only reason that we're in this position is because after my lawsuit was filed, and after they were on notice of an elevator accident, and then after we demanded an inspection so that we could go in there and perform the proper analysis to get all of these determinations --

THE COURT: If you're going towards spoliation --

MR. KULLER: I'm not asking for spoliation.

THE COURT: I'm saying --

MR. KULLER: I'm not asking for spoliation. I'm saying the reason that all of this testimony would be completely speculative is because their own experts put in all of these affidavits in connection with other elevator inspections where they go in, they have a triaxial accelerometer, they do an inspection, they test the loading. This elevator has been held -- and I agree with you about the proximate cause on damages. But it was held that this elevator was a negligently maintained elevator. And their whole position-

THE COURT: Whatever went wrong with it is their fault. I agree with that.

MR. KULLER: You can't come in now where -- we had a summary judgment motion where we moved and the burden shifted to them to come forward with evidence in the form of all of these reports that they never served, and I just want to pull it up.

THE COURT: That's all on liability, Counsel. We're not here on liability.

MR. KULLER: You can't have an expert come into court and talk about how an elevator moved when they never inspected the elevator, and the elevator has been held to have been negligently maintained. And, frankly, you have complaints in the record -- and I'm going to read from one of them. This is from July 13, 2017 --

MR. SCHIFERL: This is --

MR. KULLER: No, no, no. This is from -- because you're saying it can't happen that way. This is one of the elevators -- "I was just in the tower. It plummeted at a fast rate of speed from floors 21 down to 17. It slammed me down because it fell so fast, and then it stopped so hard. My neck and my shoulders are in pain, and I need to see a doctor."

This is from July of 2017, from the building. And if they want to start going down that route, then they're

going to open up Pandora's Box, and we're going to going up to their experts, and I'm going to go to all of Schindler's work records -- I'm not done. They're going to say the elevator couldn't have done this. I'm going to note and this is really important for this point, okay? This is from -- this is from March 20, 2018, of their work records, because this is the box we're going to open up now. "Elevator 8 out of service. It's bouncing and jumping."

This is from 4/25/18: "Elevator 8 is out of service. It's bouncing" --

THE COURT: Wait, wait. First of all, lower your voice. Calm down.

MR. KULLER: This is from May 7, 2018.

THE COURT: Bouncing and jumping is not the same as free-fall, right?

MR. KULLER: I've got it right here. "It plummeted at a fast rate of speed from 17 to 21, and my neck is all messed up and it slammed me down on the ground."

THE COURT: I mean, I don't know how anyone would know what the rate of speed was when they were in the elevator.

MR. KULLER: Because it's a negligently maintained elevator. And I just want to note this last point --

THE COURT: No. The fact that it is negligently maintained does not mean if I'm in an elevator and it drops

and then it opens I automatically know what the speed is, right? I would have no idea what the speed is. I don't know how any layperson would.

MR. KULLER: So that's the exact point. There are -- and their experts know this. And I attached their affidavits from other cases, where they were allowed to give this testimony. And the reason they were allowed to give the testimony is because an elevator accident happens. Then they go in; they take their tools; they take their triaxial accelerometers; they test the a -- leveling unit; they test the governor; they test the brakes. And then they can come into court and say, "We went in there, and the conditions haven't changed."

THE COURT: The general appellate's holding about that is that goes to the weight, not the admissibility.

MR. KULLER: Nah, nah, nah, nah, nah. I cited -- and I can cite it to you tonight at least 15 cases that held -- the cases that I cited held that an inspection conducted two years post accident is too remote in time. One year after the accident is too remote in time.

THE COURT: I'm sorry. You're saying --

MR. KULLER: They didn't even do an inspection.

THE COURT: Counsel, I need you to stop yelling. I need you to stop talking over me, and just take a deep breath. I'm going to give you a chance to say whatever you

want to say, so you don't have to be all crazy about it.

Are you saying you have appellate case law --

MR. KULLER: I'll read it right now.

THE COURT: -- that says that I should preclude this witness from testifying in a case where liability has already been determined -- is that what you're saying.

MR. KULLER: Yes. And I'm going to read it into the record right now.

THE COURT: I mean, you know what, you don't have to read it in.

MR. KULLER: Can I please?

THE COURT: No. What I'm going to do -- I'm going to take another look at this issue. I'm going to give you each the opportunity to re-brief it. I would like the briefs --

MR. McCRORIE: Judge, this is improper at the end of our trial.

MR. KULLER: I -- if I may --

THE COURT: No, no, no, no, no, no.

The two of you really need to learn -- right? -- that I am in charge. And I am directing how this is going to go.

What I am directing you to do is instead of shouting at me, like you have been for the past 15 minutes, to calmly go back and, in writing, put forth your argument.

They are correct. There is new you information in front of me from the last time I made the decision. And even if there hadn't been, a trial judge always retains the right to make a different decision on any in limine rulings.

So I'm going to let you make your full and best argument in writing, as with them. And I will take a look at the appellate case law that you're referencing.

Shouting a cite at me right now wouldn't be helpful, but I'll look at the cases and read them carefully. And then I'll make a decision.

What time do you guys think you can commit to filing such documents on NYSCEF?

MR. KULLER: Two things, real quick. Number one, I wasn't yelling at you. I wasn't yelling --

THE COURT: I know you're excited.

MR. KULLER: I was just asking. I was not yelling. And I apologize if that's how it came across.

And just so I'm clear -- just so I'm clear, what is the -- the new evidence that you think --

THE COURT: He -- there -- there were many things. I can start with your opening, not only your opening, but your questioning where you slammed down, bang -- right? -- you're saying it was a -- like hitting concrete. That was -- that was your -- that is the theory -- your theory of the case.

There was, as he agreed -- as he pointed out, Dr. Gerling's testimony that his opinion is based on the witness's description which he accepted unchallenged. So those are two things that were maybe -- maybe you guys knew beforehand based on deposition testimony or whatever but that were not in front of me at the time that I made the ruling. And in any event, I want to get it right.

So I'm going to give you a chance to put everything in writing. I'll take a look at it. And I'll get back to you in the morning.

MR. CASCONE: That's more than fair. Thank you.

MR. KULLER: Do you want me to cite any of these cases or no?

THE COURT: No. Just give them to me in writing. Give me the citation.

What time -- what time can you both agree to submit?

MR. KULLER: Give me like an hour or two.

MR. SHELBY: Can we do like the 9:00 o'clock deadline we had the other night. Is that okay?

THE COURT: I mean, that's a little difficult for me. How about 8:00 o'clock.

MR. SHELBY: 8:00 o'clock, Judge.

THE COURT: All right, 8:00 o'clock? Thank you, gentlemen.

MR. KULLER: Okay. Can I make one more statement for the record?

THE COURT: Wait. You your counsel is walking out. Go ahead, sir.

MR. KULLER: The one statement I have to make is this: The -- they represent the building. In terms of all of these other witnesses, they had more access to witnesses than we ever did. They had access to the elevator.

You know, they had all of the information available to them to conduct the analysis. We didn't find out the thing was gone until after we filed the complaint. And they didn't get rid of it until after we filed the complaint. That's it.

Thank you.

I'll submit my motion.

THE COURT: I just think that is a spoliation issue.

Thank you.

(Whereupon the trial is adjourned for Friday, October 9, 2026 at 9:30 a.m.)

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