

In The Matter Of:

Elkin v.

Lee

September 19, 2016

Diane Kavanaugh - Senior Court Reporter

60 Centre Street

Room 420

New York, New York 10007

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 6

-----X
MICHAEL ELKIN,

Plaintiff,

-against-

Index No. 800272/11

STEVE K. LEE, M.D. AND NEW YORK UNIVERSITY HOSPITAL
FOR JOINT DISEASES,

Defendants.

-----X
JURY TRIAL

60 Centre Street
New York, New York
September 19, 2016

B E F O R E:

HONORABLE JOAN LOBIS,
Supreme Court Justice

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

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Senior Court Reporters

Proceedings

1
2 MR. NEWMAN: Could you mark these exhibits,
3 please. Could you mark this as 24 for identification.
4 This is Dr. Haber's Power Point.

5 (Whereupon, the item referred to was marked
6 Plaintiff's Exhibit 24 for identification.)

7 MR. NEWMAN: Could you mark this as 25. 25 is
8 the 4-4-11 MRI Columbia Presbyterian disk, in evidence.
9 26 is the 9-9-13 MRI White Plains Radiology disk, in
10 evidence. And could you mark this as 27 in evidence.
11 27 is the MRI film dated 4-4-11 in evidence.

12 (Whereupon, the items referred to were marked
13 Plaintiff's Exhibit 25 through 27 in evidence.)

14 COURT OFFICER: All rise. Jury entering.

15 (Whereupon, the jury enters the courtroom.)

16 THE COURT: Good morning, everybody.

17 Everybody else in the room may be seated.

18 I am going to ask that the court officer open
19 the blinds.

20 Thank you all for getting here on time. It is
21 such a dreary morning, especially with what may be some
22 difficulties traveling around the city for the next
23 couple of days. I appreciate everybody being on time.

24 We have heard from Juror No. 6. She is fine.
25 That's good, too.

26 With that, I believe we are taking a new

Proceedings

1
2 witness.

3 Mr. Newman, please call your next witness.

4 MR. NEWMAN: Yes, Judge.

5 Dr. Haber, will you step up, please.

6 (Whereupon, the witness takes the stand.)

7 THE COURT: Remain standing.

8 COURT CLERK: Please raise your right hand.

9 Do you swear or affirm that the testimony you
10 are about to give will be the truth, the whole truth,
11 and nothing but the truth?

12 THE WITNESS: I do.

13 J O R D A N H A B E R, having been first duly
14 sworn/affirmed by the clerk of the court, testified under
15 oath as follows:

16 COURT CLERK: State your name and address for
17 the record.

18 THE WITNESS: Jordan Haber, 1 Greenbriar Lane,
19 Dix Hills.

20 COURT CLERK: Thank you.

21 THE COURT: Doctor, you may be seated.

22 There is a microphone, which it would help if I
23 would turn on, which I will do now, which is in front of
24 you. It's helpful if you speak toward it. If you speak
25 to either side, it won't pick up. If you get too close,
26 all we will hear is this. So the best solution is try

1 Dr. Haber - Direct/Mr. Newman

2 to speak in a loud voice.

3 We don't usually have the blinds up because the
4 sun comes right in and right at you. But on a dreary
5 day, like today, any little bit of light helps.

6 With that, Mr. Newman, you may inquire.

7 MR. NEWMAN: Thank you, Judge.

8 Good morning.

9 DIRECT EXAMINATION BY

10 MR. NEWMAN:

11 Q. Dr. Haber, good morning.

12 A. Good morning.

13 Q. Are you licensed to practice medicine in the State
14 of New York?

15 A. Yes.

16 Q. When were you so licensed?

17 A. 1976.

18 Q. So the jury has some idea of your educational
19 background, tell us where you went to school, starting with
20 college.

21 A. I went to City College of New York. Then I went to
22 St. Louis University Medical School.

23 Q. When did you graduate medical school?

24 A. I graduated medical school in 1972.

25 Q. After graduating medical school, what did you do
26 next in terms of your medical training?

1 Dr. Haber - Direct/Mr. Newman

2 A. I did a straight year of internal medicine as an
3 intern at State University of New York at Downstate.

4 Q. And after that internship -- was that rotating, was
5 it a general internship?

6 A. It was a straight medical internship.

7 Q. What did you do next after that year of internship?

8 A. After that, I stayed at the State University of
9 New York at Downstate. And I spent three years in a
10 residency program of diagnostic radiology.

11 Q. When did you finish that residency program in
12 radiology?

13 A. 1976.

14 Q. What did you do next in terms of your practice in
15 radiology?

16 A. I joined a group in 1976 as a junior associate. I
17 stayed on for 30 years. And I became a managing partner.
18 And I stayed on through 2006.

19 Q. Can you give us an idea in that 30-year stint of
20 what you did in this radiology practice?

21 A. I was a general radiologist. And I interpreted
22 x-rays, ultrasounds, nuclear medicine, CAT scans, MRIs.
23 Everything that was put in front of me I basically
24 interpreted for 30 years.

25 Q. And that took us to 2006.

26 What have you been doing since 2006?

1 Dr. Haber - Direct/Mr. Newman

2 A. In 2006, I left with a disability. And I had
3 surgery after that, in 2007. In 2014, I became a professor
4 of medical imaging at Long Island University.

5 Q. What is a professor of medical imaging; what do you
6 do?

7 A. I teach x-ray technicians, technologists what is
8 expected of them from a clinical perspective. I bring
9 cases, review cases with them. I teach them radiographic
10 anatomy, clinical anatomy, clinical radiographic pathology.
11 And I have a lot of fun teaching.

12 Q. You used the term clinical a few times. Clinical
13 radiology as opposed to diagnostic radiology. Tell us the
14 difference.

15 A. There really isn't all that much difference. They
16 are almost interchangeable. What I do is I take actual
17 cases, clinical cases. And this is for the end of the year.
18 In the beginning of the year it's mostly teaching them
19 anatomy. But at the end of the year, it's much more
20 interesting to see patients. And a radiologist sees
21 patients by x-rays or MRIs.

22 So I bring actual cases that have been published
23 and non-published. And I show them findings. I call them
24 up, as a teacher, and I ask them to review it. And I walk
25 them through it, as if they were a virtual radiologist. And
26 it is a wonderful learning experience.

1 Dr. Haber - Direct/Mr. Newman

2 Q. Doctor, are you board certified in radiology?

3 A. Yes.

4 Q. When were you board certified?

5 A. 1976.

6 Q. Would you tell us, what is board certification?

7 A. Board certification means you pass oral and written
8 boards. You are -- the oral part, you are basically
9 reviewed by leaders in the field. We met in Chicago -- I
10 remember it as if it happened yesterday. We met in Chicago.
11 And the people who write the books are the people that
12 actually interview you. And they give you cases. And they
13 expect you to read the cases. And they look for strengths
14 and weaknesses. And they evaluate you. That's the second
15 part.

16 The first part is the written part. It's mostly
17 didactic questions and answers, things you would have to
18 study for. The second part is much more demanding,
19 obviously.

20 Q. Is that the same as being a diplomate in radiology,
21 board certification?

22 A. Yes. When you pass your boards, you become a
23 diplomate.

24 Q. Are you also a fellow of the American College of
25 Radiology?

26 A. Yes, I am.

1 Dr. Haber - Direct/Mr. Newman

2 Q. Tell us what that is.

3 A. It is an award I am proud of. Only about
4 10 percent of board certified radiologists become fellows.
5 They have to excel in something, teaching or working with
6 public relations issues. And I was awarded a fellowship.
7 And I'm happy about it.

8 Q. Have you been selected to America's top
9 radiologists?

10 A. Yes. I have been awarded America's top
11 radiologist, I think it's 2009, 2010, '11 and '12.

12 Q. Have you also served as a medical director at a
13 hospital?

14 A. I was a medical director at the Mather Memorial
15 Hospital. I was president of the staff. And I've been
16 involved in state and national issues regarding radiology.

17 Q. Now, radiology, tell us, what is the field of
18 radiology?

19 A. Radiology has changed quite a bit. Conrad
20 Roentgen, in the turn of the 20th century, was the first
21 radiologist. Radiology started with ionizing x-rays. Then
22 we got into sonography and fluoroscopy. We got into nuclear
23 medicine. We got into CAT scans, MRIs, PET scans. And I
24 couldn't even begin to tell you what we are going to be into
25 next. Radiology is basically imaging. I am a radiologist,
26 but I don't confine myself to radiology, which is now only a

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2 small part of imaging.

3 Q. What is the purpose of -- what are radiographs?

4 A. Radiographs technically are x-rays. And the
5 radiograph or the roentgenogram is the standard x-ray, say,
6 of a cervical spine or knee. And that's what the
7 radiologist will initially look at. You always start off
8 simple. You are not going to start with an MRI or a
9 CAT scan. If you have pain in the knee or pain in the neck,
10 you are going to get an x-ray. An x-ray is a radiograph.

11 Q. We are not dealing with CAT scans in this case. I
12 am going to ask you -- we are not going to talk about that,
13 unless when you are answering you feel the need.

14 Let's talk about an MRI.

15 What is an MRI?

16 A. An MRI is a relatively new sophisticated
17 computerized evaluation of hydrogen imaging, water and
18 hydrogen imaging, where you put the patient through a very
19 strong magnetic field and you see what the magnetic field
20 does to -- it's complicated by dipole interactions of water
21 and hydrogen. And these very sophisticated computers can
22 actually now make very high resolute images, that you will
23 soon see, of it parts of the anatomy.

24 Q. And these high resolute images, what are you
25 radiologists able to tell from them?

26 A. We work with the emergency room doctor, the

1 Dr. Haber - Direct/Mr. Newman
2 orthopedist, the general surgeon. Very rarely do I see
3 patients. I look at the images. I speak with the doctor.
4 And we are part of the clinical team in terms of providing
5 care. So we have strengths and weaknesses. Since we don't
6 have the opportunity to meet the patient, which is both good
7 and bad, we look at the images, not taking into account how
8 the patient looks or their personality. We sit usually in
9 dark areas of the hospital. Most of us are rather
10 introverted. So we look at the films and we help the
11 clinician deal with the patient.

12 Q. In doing that, doctor, are you familiar with the
13 anatomy, and in this case I want to limit it to the spine,
14 are you familiar with the anatomy of the spine?

15 A. I've been working with spine anatomy for about
16 40 years.

17 Q. How long have you been reviewing MRIs? You said
18 it's relatively new. How long have MRIs been around?

19 A. When you are my age, you say relatively new, you
20 think in terms of decades. So relatively new for me is
21 25 years.

22 Q. So MRIs, have they been around for 25 years?

23 A. They have been around for 25 years.

24 Q. Have they developed in their sophistication?

25 A. Initially the images were hardly readable. There
26 were only a few centers in New York that had MRIs. And they

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2 were Columbia. That was mostly of the brain. Now we're
3 doing MRIs of the extremities. You will soon see very, very
4 highly resolute images with a lot of clinical data.

5 Q. And the MRIs and their resolution, you know we are
6 going to be looking at some films from 2011 and 2013, how
7 was the resolution in 2011 and 2013?

8 A. Excellent. Still getting better, but it was
9 excellent then.

10 Q. How many MRI films, if you can estimate, have you
11 reviewed in the last 25 years?

12 A. It's hard to imagine. I would say tens of
13 thousands.

14 Q. I didn't hear you.

15 A. Tens of thousands.

16 Q. Now, have I asked you to review some films relative
17 to Michael Elkin?

18 A. Yes.

19 Q. Have you done that?

20 A. Yes.

21 Q. And have you also seen the reports of those films
22 by a radiologist, or two different radiologists, regarding
23 2011 and 2013?

24 A. Yes.

25 Q. I placed those reports in front of you.

26 MR. NEWMAN: They are marked in evidence,

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2 Judge.

3 Q. Let me ask you this, doctor, in order to explain
4 what's being seen in these films that we are going to look
5 at, first 2011, have you put some slides together to explain
6 to the jury the anatomy and vis-a-vis what we are seeing on
7 those films?

8 A. Yes, I have.

9 MR. NEWMAN: Judge, we have marked that for
10 identification.

11 And with the Court's permission, I would like
12 the doctor to come down to explain the anatomy.

13 THE COURT: Without displaying it to the jury
14 at this point? If they are for identification, before
15 they see it, there would have to be a foundation and
16 admission of the Power Point.

17 If there is any question of its admissibility,
18 I would like to do it now before we start showing it.

19 Is there a problem, Mr. Goldsmith? Have you
20 seen it?

21 MR. GOLDSMITH: Yes, I've seen it. There is no
22 problem with the Power Point presentation.

23 THE COURT: So it is admitted.

24 MR. NEWMAN: For demonstrable reasons only.

25 THE COURT: Then we can show it.

26 MR. NEWMAN: Thank you.

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2 Q. If you would like, you can come down.

3 This Power Point presentation we are now going to
4 show the jury, this is something you have put together,
5 correct?

6 A. I will come down and answer it.

7 Yes.

8 Q. Before we get to it, will you tell the jury what
9 you did and how you put it together?

10 A. Yes.

11 Is it possible to lower the lights or not?

12 THE COURT: Sure.

13 THE WITNESS: We as radiologists sit in dark
14 rooms.

15 MR. GOLDSMITH: Objection, your Honor. He is
16 talking to the jury.

17 THE COURT: Yes. Don't talk until there is a
18 question. They are the rules we have to obey.

19 For those of you who are note taking, would you
20 like some light in the room? It's okay?

21 JURORS: We're good.

22 Q. Doctor, I want to remind you, stay back, if you
23 can, or get yourself in a position where all the jurors are
24 able to see you.

25 A. Right.

26 Q. What have you done to put this together before we

1 Dr. Haber - Direct/Mr. Newman

2 get to it?

3 A. What I've done is I've taken -- you presented to me
4 two CDs. And I cut and pasted the images from the CD. Cut
5 and paste means digitally. You acquire it and you put it
6 from one medium, which is the CD, you put it into a Power
7 Point. There's been no manipulation of any of the data.

8 MR. NEWMAN: Your Honor, for the record, we
9 have marked in evidence the two CDs for record purposes.
10 We have those in evidence.

11 THE COURT: Doctor, may I ask, the images
12 about to be displayed, does some kind of identifying
13 number appear on each image, so if they wanted to see
14 the images that you are referencing, we could easily
15 find them on the disk?

16 THE WITNESS: Yes.

17 THE COURT: Usually there is something, a
18 number.

19 THE WITNESS: Yes.

20 THE COURT: Fine.

21 Q. I would like to clarify.

22 The images we are about to see, are they, but for
23 an occasion you will explain, you have put a marking to
24 highlight something, are the images, though, the exact data
25 digital information that the radiologist back in 2011 was
26 looking at?

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2 A. Yes.

3 Q. And the same with 2011?

4 A. And 2013.

5 Q. The same data?

6 A. Yes.

7 Q. So with that, why don't you show us, and I am going
8 to ask you as you go, about the anatomy and what it means in
9 terms of the slides and films. Okay?

10 A. That's fine.

11 I am going to suggest, this is a laser --

12 MR. GOLDSMITH: Objection. There is no
13 question pending.

14 THE COURT: I think we are not allowed to use
15 lasers in the courtroom.

16 THE WITNESS: Okay. Fair enough.

17 MR. NEWMAN: I think that's what he was going
18 to ask. Okay.

19 Q. Let's go, doctor. Tell us what you have here.

20 If you need to stand over here --

21 A. One thing, will somebody be advancing the slides
22 for me?

23 Q. Yes. Unless you would like to. Mary will do it.

24 THE COURT: You are blocking some of the
25 jurors.

26 THE WITNESS: Can I move over to the screen?

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2 THE COURT: Sure. If you want an
3 old-fashioned yardstick, we have that.

4 THE WITNESS: I would love that. That would be
5 great.

6 THE COURT: Our low tech stuff strikes again.

7 THE WITNESS: Thank you.

8 Q. Doctor, what we have up now on the screen are
9 images of the spine, correct?

10 A. That's correct.

11 Q. Why have you chosen this?

12 A. I chose these images to give you an overview of the
13 spine. Before we get to specific anatomy, I wanted you to
14 have an understanding from an artist's perspective what the
15 spine looks like.

16 These are the vertebral bodies. You have seven
17 cervical vertebral bodies. You have twelve thoracic
18 vertebral bodies. And you have five lumbar vertebral
19 bodies. And you have your sacrum over here (indicating).

20 Q. We will go to the next slide.

21 Now what do we see?

22 A. This is a lateral view of the cervical spine.
23 Everything is numbered. We see 1. We see 7. These are the
24 spinous processes. You can actually put your hand in the
25 back of your neck, if you feel a bony density there, it's
26 your spinous process. These -- the biggest one is at C7.

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2 Q. The next slide, please.

3 A. This is an oblique view. Once again, the seven
4 cervical vertebral bodies. And this is a hole, literally a
5 hole between the vertebral bodies. That's called a neural
6 foramina. Through that hole the nerves exit. There are
7 holes throughout on the right side. And if this was rotated
8 the other way, you would see holes on the other side.

9 Q. What comes out of those holes?

10 A. Out of those holes come out the nerves. And those
11 are critical holes. As we get older or we have trauma, we
12 can get degenerative changes, which will cause compromise of
13 the nerves that exit via these holes. That's a normal hole.
14 This is a cervical spine, I would say, in a 15-year-old kid.

15 Q. The next slide, please.

16 A. This is a view looking down at the cervical spine.
17 And this is the fourth cervical vertebral body. This is the
18 area where the cord would live. There is going to be fat
19 around the cord. Nothing is in there right now. This is
20 just bone. These are blood vessels, holes for the blood
21 vessels. These are articulations. And that's the spinous
22 processes back here.

23 Q. Doctor, so we understand, this is a view if you
24 were to cut me in half across, looking straight down from
25 the ceiling down?

26 A. This is precisely, if you look at my neck right

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2 now, if you see the wood crossing the long axis of the
3 cervical spine, that's exactly what that is.

4 Q. Okay.

5 Next slide, please.

6 Now what do we see?

7 A. This is a lateral view. Once again, we chose C4.
8 We could have chosen any vertebral body. Here is the body,
9 the spinous process. The articulation here. And that's all
10 that I want to show on this one.

11 Q. Next slide.

12 Now what do we see?

13 A. Now it's getting a little more interesting. You
14 have the vertebral bodies. You have the spinal canal. The
15 blue is blood vessels. The white are disks. Once again,
16 they chose a young kid. The disks are well hydrated. When
17 I say hydrated, there is water in the disk, which is normal.
18 These disks are big, fat, and supportive.

19 The reason we have disks conceptually is we protect
20 the vertebral bodies from trauma. You don't want vertebral
21 bodies to be hitting each other. As we get older, these
22 disks lose water and they get closer, the vertebral bodies
23 get closer to each other. When that happens, you get
24 degenerative changes or disk osteophyte complex. I will
25 show you.

26 Q. Vertebral bodies, is that bone?

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2 A. This is all bone, bone, bone, disk, disk, and disk
3 up there (indicating). Once again, the spinous processes.
4 And here, once again, similarly is a horizontal section
5 where you have your vertebral body. You have your venous
6 complex there. You have where the cord lives.

7 And this is a nice image right here where you have,
8 this one includes -- this is basically the same as this, but
9 the artist put in the spinal cord. Here is the spinal cord.
10 You have dorsal and ventral roots where the exiting major
11 trunks come out, through the neural foramina that I showed
12 you before, the holes. You have plenty of room. They
13 didn't show the fat. They are just showing where the nerves
14 are. And there is fat above. This area would be filled
15 with fat. This area below would be filled with fat. The
16 neural foramina, the holes have fat in them as well as
17 virtual shock absorbers. So you don't have bone hitting the
18 nerve. The last thing you want is bone hitting the nerve.
19 The nerve likes to breathe. The nerve likes space around
20 it.

21 Q. Can we go to the next slide.

22 What does this show?

23 A. This is a very schematic view. It is an artist's
24 rendering. Here is the disk. Here is the cord. Here are
25 the nerve roots coming out. This blue is basically fat. So
26 when you see blue in here, it's fat. And you see the trunk

1 Dr. Haber - Direct/Mr. Newman

2 coming out here. And you have fat in front, fat below.
3 This is perfectly normal. This is at C7. These are the
4 apophyseal joints, all of which are normal. This is a kid,
5 not me.

6 Q. Next slide.

7 What is that?

8 A. The same thing. Cord, roots coming out. Nothing
9 is new here.

10 Q. Next slide, please.

11 A. Once again, an artist's drawing here. This is just
12 an image of the cord. You have dorsal and ventral roots.
13 You have the cord. Once again, this air in here would be
14 where the nerve comes out through the neural foramina.
15 There's no bone here. It is just to show you from the
16 schematic perspective how the nerves come out.

17 Q. Next.

18 A. You asked me before about radiograph. You go to
19 the emergency room. You have neck pain. The first thing
20 that the ER doctor will do is take an x-ray. This is an
21 x-ray. This hasn't changed in about 90 years. This is,
22 once again, a kid. C2, 3, 4, et cetera. These are the
23 spaces between the vertebral bodies. These are where the
24 disks are. You don't have any spurring here. I will show
25 you spurring subsequently, but this is perfectly normal.
26 These are the apophyseal joints that you are seeing. And

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2 this is where the cord would live right behind the vertebral
3 bodies. Once again, the spinous processes. It's perfectly
4 normal.

5 Q. Doctor, just so we understand and for our record,
6 this is not Michael Elkin, this is just a film that you
7 chose for demonstrable purposes?

8 A. Yes. This is a kid, maybe 10, 15 years old.

9 Q. Next slide.

10 What does this show?

11 A. This is probably the same kid. It's an oblique
12 view. The reason I chose to show you this is I told you the
13 nerves come out through the holes. Here are the holes. The
14 black is holes, fat. These are the vertebral bodies. As we
15 get older, you get spurring between the vertebral bodies and
16 the spurring doesn't just stay behind -- between the
17 vertebral bodies. It extends into the neural foramina and
18 into the spinal canal.

19 So as we get older, you are going to get spurs
20 coming into this. And it could present with radiculopathy.
21 Radiculopathy is pathology. Radiculopathy is pathology of
22 the nerves.

23 You can present with a radiculopathy in the
24 shoulder in or the radius, the radial nerve or the ulnar
25 nerve, and it could all present from the cervical spine.
26 You can get neuropathies that have nothing to do with the

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2 spine. But when you have impingement and compromise at the
3 neural foramina, they frequently will cause a neuropathy.

4 Q. Are we done with this one?

5 A. Yes.

6 Q. Let's go to the next.

7 What are we looking at here?

8 A. This is an AP view. AP is front to back. Here is
9 the mandible, right here (indicating). And, once again, it
10 is a very nice example of the holes where the neural
11 foramina are, where the nerves could be coming out, C2, C3,
12 C4, C5, up through C7 and T1. These are where the nerves
13 come out.

14 You see -- let me focus on this for a second, if I
15 can. You see this little triangular bony density, this
16 sitting here, this is normal (indicating). But as you get
17 older, that will no longer be a little triangle like that.
18 That triangle will be a virtual micro mountain. Where will
19 it go? It will go into the hole. This is a very important
20 slide. I would like to focus on this for a second, if I
21 could.

22 Q. Go ahead.

23 A. As this develops with age, as we get into our
24 thirties, forties, fifties, et cetera, and older, this spur
25 needs somewhere to go. The spur will go into the neural
26 foramina. When it goes into the neural foramina, the nerves

1 Dr. Haber - Direct/Mr. Newman
2 are already there. They are not going anywhere. There's
3 not enough room, very frequently, for the nerve to feel
4 comfortable in the neural foramina when you have a big
5 osteophytic spur there.

6 What the spur will do is it will impact on the
7 blood supply of the nerve and will cause irritation to the
8 nerve.

9 When the nerve becomes irritated, it will present
10 as neck pain, shoulder pain or a peripheral neuropathy,
11 depending upon the extent of pressure.

12 Q. Let's go to the next slide, please.

13 We have seen something like this, and we have it in
14 evidence, what are you showing us here?

15 A. These are the vertebral bodies coming across right
16 here. These are the nerves that are coming out. Once
17 again, these are the neural foramina. The nerves come above
18 the vertebral body. So the fifth nerve will come out
19 between C4 and C5. The neural foramina are just spaces that
20 are created between the vertebral bodies.

21 So at C4, C5, you will have this fifth cervical
22 nerve come out. Between C5 and C6, you will have the sixth
23 nerve come out. When these nerves come out, they will
24 re-form into trunks and they will present, as we proceed
25 downward, we will see on subsequent slides they will develop
26 into the radial nerve, the median nerve, the ulnar nerve.

1 Dr. Haber - Direct/Mr. Newman

2 This is the anatomic -- this is a Netter diagram, it is a
3 classic diagram, it's been around for 60 years, of how the
4 nerves re-form, re-fuse and present themselves more
5 peripherally, or more distant in the arms.

6 (Continued on next page.)

7

8

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10

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1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)

2 Q Can we go to the next slide?

3 A Please.

4 Q What do we see here?

5 A Another diagram and here are the nerves coming out.

6 These are the branches of the nerves presenting. All of these
7 nerves start centrally higher up at C3 4, 5, 6 and 7.

8 Q Okay. Next slide.

9 A Same as above. You have your nerves coming down.
10 Here's your radial nerve. The pressure that you have you can
11 have on occasion. Cervical spine can present as a radial nerve
12 palsy or inflammation.

13 Q Next slide should we go to. What is this showing,
14 Doctor?

15 A This shows on a schematic basis. What happens higher
16 in the cervical cord can't present in the thoracic cord or the
17 lumbar cord. Present with degenerative changes anywhere at L3 4
18 and 5. Many of us have leg pain. Very frequently the source of
19 the leg pain is not the muscles, knees or ankles, but you
20 present to your local MD or orthopedist with bilateral, both
21 side, leg pain. The first thing you'll get is lumbar spine to
22 see from a imaging. Extra perspective. How much degenerative
23 changes is presently there and what can he anticipate that
24 presents peripherally is, in fact, an extension of something
25 central.

26 Q Let's go to the next please. What does this show us?

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)

2 A More of the same. Some redundancy. Brachial plexus
3 here. Nerves coming down. These are dermatomes. Dermatome is
4 area of the skin which has sensory nerves motor invasion
5 muscular innervation into the arm. Also bring sensation. Hot
6 cold, pain, prickly sensation. This is more of the same good.

7 Q Next slide please.

8 A Dermatome. Hand. Radial. Once again, brachial
9 plexus. At the brachial plexus you have the roots. It's in
10 your armpit where the nerves fuse, redistribute and present more
11 peripherally. So here you have brachial plexus, clavicle,
12 shoulder joint, and you have the distribution of your nerves and
13 that's all in this slide.

14 Q This is where we would locate the blue on the hand. Is
15 that the dermatome associated with the radial nerve?

16 A Yes, it is.

17 Q Ready for the next slide, Doctor. What are we looking
18 at?

19 A Once again, this is just focusing on dermatomes. So we
20 have C4, nerve coming above C4. We have C5, 6, 7 and 8. Once
21 again, the nerves come above the vertebral body with the
22 exception of the C8, which goes below the vertebral body. This
23 is showing how you can have pain sensation reflecting issues
24 that are located centrally. Once again, these are the same
25 colors. If you take a look, same color here in the hand that
26 you have in the forearm and the midarm and you have basically

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)
2 paraspinal soft tissues. So it's along the nerve distribution.

3 Q And the nerve distribution what we're looking at here
4 regarding C6, which I will call -- let's look at the, there's
5 two images on this slide that you are showing you us. Top one
6 on the right with the person facing us, the top of the arm has a
7 purplish color to it. Is that C6? We're looking at the bottom.
8 I think it's a little clearer.

9 A That would be C6, yes. That's C6 and that will be
10 distribution of the radial nerve.

11 Q Next. What are we now looking at?

12 A Once again, dermatomes and we're looking at the
13 distribution of the nerves C5, C6, C7. It's not projecting all
14 that well.

15 We can go to the next slide.

16 I brought this slide in because it's a slide of the
17 cervical spine, once again, in a ten-year-old, where white is
18 fat. The gray is the cord. There's plenty of room behind.
19 This is spinal process here. This is a transaxial image where,
20 once again, it's cut through neck this way. Transaxial. Axial
21 is up and down. Transaxial is crossover.

22 So you have fat surrounding a cushion cord. The cord
23 here has plenty of latitude. I told you about those holes.
24 I've been focusing on the holes and it's a important part of
25 this case.

26 The holes are the neural foramina. What exits the

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)
2 neural foramina are the nerves. So here is a neural foramina.
3 I put those red arrows there just to so show you normal neural
4 foramina. This is not healthy.

5 Q Next slide?

6 A Please.

7 Once again, I put these arrows here. This is not the
8 patient. This is the cord. This is fat neural foramina.
9 Perfectly normal. Ten to 12-year-old kid.

10 Q Next slide. So what we're about to do next, the images
11 that we're going to see are the films or the MRI of April 4th
12 2011 of Michael Elkin; correct?

13 A Correct.

14 Q So let's go to this next one.

15 Now, Doctor, before you begin, because counselor and I
16 had had conversations, we agree. So, for instance, on the slide
17 to the left where you see the number C4, C5, C6 on the spine.

18 A Yes.

19 Q Did you put those there?

20 A Yes.

21 Q So as the radiologist looked at this film back in April
22 of 2011 that C4, C5, C6 would not had been there?

23 A Correct.

24 Q Yellow line across. Did you put that there?

25 A Yes.

26 Q So other than that, what we're looking at, other than

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)
2 C4, C5, C6 and the yellow line across, would that be the digital
3 exact image that the radiologist was looking at?

4 A Yes.

5 Q So tell us what we're looking at and why you put that
6 there.

7 A Well before I do that I just want to tell you what I
8 didn't do. I didn't put any of this demographic material in. I
9 cut it from digital data that was submitted to me on the CD. I
10 pasted it a into power point. This is exactly what the
11 radiologist and all the other images. Not going to repeat this
12 every time obviously.

13 This is what the radiologist had. He had this data.
14 And for demonstrative purposes so we're all communicating
15 clearly, hopefully, I put C4, C5, C6. This yellow line here was
16 put here to tell the computer what is the transaxial slice. The
17 computer will put this together just as the radiologist does
18 when you see the transaxial images. Want to know what level
19 you're at. The computer will match it. When you put the yellow
20 line there the computer will match it. This is called a
21 sagittal view, which means if you are to take my head and slice
22 it from right to left or left to right, slice it through with my
23 nose in front or here you can see the tongue, everything on the
24 left side is in the front, everything on the right side is the
25 back. Sagittal imaging.

26 You have C4, C5, C6. Now I'm going to focus on the

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)
2 neural foramina. Here is C2 all the way on top. Remember the
3 diagrams? C2 all the way on top. And this is a neural
4 foramina. Where is the fat is. This sequence. And there's
5 different sequences in MRIs, but in this sequence fat will show
6 up white.

7 So you have a neural foramina here and you have a nerve
8 coming out today. There's plenty of room for that nerve.

9 Q At the C2 level.

10 A C2-C3. There's plenty of room. Here is C3. Here is
11 C4. You can see and you have a better analysis on subsequent
12 images, but you see there is a posterior going back. Spur.
13 Disk osteophyte complex, which is going to cause narrowing of
14 the cord, the spinal canal.

15 When the spinal canal become narrower this cord like
16 the nerves coming out of the neural foramina the cord has
17 nowhere to go. The nerves aren't moving. They're stuck. The
18 cord is not moving. So when you have a spur coming out and we
19 have, once again, better examples of this right here, you can
20 see there's plenty of room over here but they're starting to
21 look like there's some compromise at C4-C5 and C5-C6. C5 and C6
22 is frankly worse. See that white in here. That's the only area
23 where fat is present. Compare this fat in here at C5-C6 between
24 fat of C3-C4. There's plenty of fat here. There's paucity of
25 fat here. That means nerves have nowhere to go and can become
26 compromised.

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)

2 What we have here is a handful of space of the left
3 neural foramina. On this particular case. Not all slices at
4 C4-C5. That's the neural foramina. See that little whisk
5 there, that's the nerve. Not too much of a osteophyte over
6 here. An osteophyte is a bony extension. Osteophyte disk
7 complex/osteophyte I was them interchangeably. It just means
8 that there's bone and disk material extending into the neural
9 foramina and the spine.

10 There's plenty of room here. On the left neural
11 foramina. Beginning to see compromise on the right. Not
12 dramatic on this particular slice, but you'll see it more on
13 another slice.

14 Q We'll go to the next film. Red arrows you placed in
15 there.

16 A I put the red arrows entirely for demonstrative
17 purposes.

18 Once again, on this slice here there's some compromise
19 here. Some compromise over here. More compromise here of the
20 right foramina. You don't even see the fat over there right in
21 the middle of the right neural foramina. That's compromised.
22 You're at C5-C6 compromised here on the sagittal view. Take a
23 look at C4-C5. There's hardly any room for that nerve there.
24 Compare that to C4. Here's C3, here's C4. Take a look all
25 where is the room here. That fat just isn't there.

26 Q Next slide, please.

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)

2 A Here's a blowup. When I did blowups, the radiology,
3 it's all digital data. Anything I do here with blowups is what
4 the radiologist does at his own workstation. If you're into
5 photography you know you can do blowups easily nowadays. So you
6 just blow it up on the workstation.

7 I put the arrows in here for demonstrative purposes.
8 Can see plenty of space here. Loss of space here. And there's
9 considerable loss of space here at C5-C6. That should be as big
10 as this.

11 Q For our record purposes, you did say C5-C6. You said
12 there's loss of space here.

13 A There's also loss of space between C4-C5. There's
14 plenty of space on this image between C3 and C4.

15 Q Next slide we're ready for. What are we looking at?

16 A This is a very good slide. It's going to take some
17 orientation. It's not front/back or left/right. It's somewhere
18 in the middle. And the body frankly doesn't work front back
19 left right. The body makes its own rules.

20 So we, as images, like to work within the rules of the
21 body. Neural foramina come out on a old white plane. So if you
22 reconstruct your sagittal views on a angle you're going to have
23 greater chance of seeing the neural foramina.

24 This is C2, where I'm pointing to right now. That's
25 C3. Look at that neural foramina. You can fit a mac truck
26 through there.

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)

2 THE COURT: It would be uncomfortable.

3 THE WITNESS: It would be uncomfortable but you can
4 try. You can fit a pencil right there.

5 A That's C2-C3. Look at how big that is. Look at C3-C4.
6 Little bit narrower but you're not going to complain about that.

7 This basically is a illustrative example of the
8 pressure of the nerves at C4-C5 and C5-C6. Here's C4-C5.
9 Here's C6. Told you about the osteophytes going into the neural
10 foramina. Compare the neural foramina C5 to C2 three. Remember
11 the mac truck. Remember the pencil. C4-C5 you can put some
12 dental floss in there. Same thing. You have big osteophytic
13 spur. Loss of fat. You have that nerve that that's pressed and
14 osteophytes and posteriorly there are osteophytes off the
15 esophageal joint.

16 So you have compromise from front. You have compromise
17 from the back. You have a very compromised right nerve root
18 here.

19 Q Where's "here"? You have to the tell the jury.

20 A At C4-5. A very compromised nerve root at C5-C6 with
21 and a big osteophyte extending off of C5, all of which are
22 compromising neural foramina on the right side.

23 Q Maybe this is a appropriate time to ask you this
24 question, Doctor.

25 Osteophyte. Is that used interchangeable with a spur?

26 A Yes.

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)

2 Q How would you characterize the nature and extent of the
3 osteophytes in Mr. Elkin as shown on this image that we're
4 looking at C4-C5 and C5-C6.

5 A They are very large. They are very large and they are
6 causing significant severe compromise of the neural foramina at
7 C4-C5 and at C5-C6.

8 Q And Doctor, this osteophyte or spur that you just
9 described as large, or very large, how long does it take for
10 such a spur to develop to this extent?

11 A To this extent, this would be a matter of years, three
12 four years or more.

13 Q Let's go to the next slide.

14 What do we see here?

15 By the way, this is still April 4, 2011, Michael Elkin?

16 A Yeah. When I blew it up this is an exact image of the
17 other. Just magnification. Can't obviously include all the
18 demographics but this is the same slide and I put arrows in here
19 only because it really captures the nature of the occlusion,
20 interruption.

21 Let's compare -- I don't even want to focus on C4-5 and
22 C5-C6. Let's look at C3. And let's look at C2 which we could
23 barely see here. Remember that mac truck. Here it is. Plenty
24 of room. Fat. Nerve. Nerve. Fat. This is C3 where I'm
25 pointing to and that's C2, which is off the screen. That's
26 where the neural foramina is plenty of room here. C3-C4 not so

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)
2 bad at all. I'd be happy with 14 of those in my neck right now.

3 C4-C5. Here, black is cortical bone. There are two
4 types of bone. There's medullary bone and cortical bone. On
5 MRI cortical bone would be darker. This is spur. Very little
6 blood in there. Very little of the inner part of the vertebral
7 body. It's where bone hits bone. Bodies respond. When bone
8 hits bone is to create more bone. Bone doesn't care where it
9 wants to go. It just goes. And it will go into fat because fat
10 is not going to cause any problems. Fat sees bone coming that
11 way, it just let's it come in. Bone on bone is problem. Bone
12 to fat. Will go to a safe harbor and fat is a safe harbor.
13 Here is the right neural foramina. Here's the nerve. That
14 nerve has no place to go. There's no fat around it. And once
15 again, C5-C6, little bit more fat here on this particular slice
16 but it's also very compromised.

17 Q So, Doctor, I think we have a couple of more slides,
18 few more slides regarding 4/4/2011. We'll go through them but
19 if we can, if you've already explained what you need to explain
20 just tell us next.

21 Let's go to the next slide.

22 A We can almost say next again. You have compromise at
23 spinal canal, C4-C5. Here's the spur on the right extending to
24 the right neural foramina at C4-C5.

25 Next.

26 Q Okay. This is showing us again?

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)

2 A This is more of the same. C4-C5. Big spur.
3 Compromised spinal canal. Takes years to develop this. You
4 have spur into right neural foramina. This is a good example.
5 This is narrow here on the right. That's narrow. On this slice
6 it's not so bad.

7 Q On the left.

8 A On the left.

9 So depends on which particular slice you're at which
10 will show more or less narrowing. So if I were to leave this
11 image alone out of context, which we don't do it we --

12 MR. GOLDSMITH: Objection to "we don't do it."

13 THE COURT: Doctor, when you say right left on this
14 slide you pointed to the right and said left. Can you
15 explain that to the jury?

16 THE WITNESS: Yes.

17 A Right and left isn't seen here. Way imaging is done
18 took few years to figure this out. Right is your left. Left is
19 your right. So this is the patient's right. This right neural
20 foramina at C4-C5 on this transaxial image is very compromised
21 compared to the left.

22 Q All right. And just we do have and maybe for record
23 purposes there's a little R, capital R. That stands for right?

24 A R stands for right.

25 Q Next please. Again, Doctor, if it's more of the same
26 tell us and we'll go to the next, unless there is something you

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)
2 want to tell us about this.

3 Should we go to the next?

4 A Yes.

5 (Pause in proceedings.)

6 A More of the same. More of the same.

7 Here, right is more compromised. Talking about
8 transaxial image. Right is more compromised than the left. And
9 here there's very significant compromise at C4-C5.

10 Blowup. Normal left on this particular slice, left
11 neural foramina. Very comprised right neural foramina.

12 We're done.

13 Q So that finishes April 4, 2011?

14 A Yes.

15 Q We've also looked at 2013 films, right?

16 A That's correct.

17 Q So you've reviewed those, correct?

18 A That's correct.

19 Q You have some images of those.

20 A Right.

21 Q I would like to go through those with you and the jury.
22 Just tell us what's being shown.

23 A We can do it a lot easier. We went over all the
24 anatomy. Sagittal view. Some spurring at C4-C5, C5-C6. On
25 this particular slice it's more prominent at C5-C6.

26 Next.

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)

2 At C5-C6 you have major compromise of the spinal canal
3 which has increased compared to the study of 11. You can see
4 nice and open. Take a look at the spinal canal and C5-C6 see
5 how compromised that fat is.

6 Next.

7 More of the same. C4-C5, C6. Very significant
8 compromise at the right neural foramina at C4-C5.

9 Next.

10 We're at C5-6. Have compromise of both neural foramina
11 the at C5-C6, which has increased compared to the study of 2011.

12 Next.

13 Q If I may just so we have for the record and the jury,
14 on the bottom right, way bottom right is the date 9/9/2013. Is
15 what we're looking at now?

16 A That's correct.

17 Q Just need that for the record. Go ahead.

18 A Extensive compromise here C4-C5 large osteophyte disk
19 complex.

20 More of the same. C4-C5, C5-C6. Over here major
21 compromise at C5-C6.

22 Q What we're looking at there in this slice between C4-C5
23 the black indenting into white. The white is the cord?

24 A Yes.

25 I didn't comment before but I would like to comment
26 that all of the disks here -- Remember, I showed you the disk on

1 J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)
2 the diagram, filled with fluid. All of these disks here are
3 black. They're all degenerative. As the body disk degenerate
4 they lose water. When you lose water on this sequence it gets
5 darker. So all of these disks are degenerative disks and it's
6 consistent with what you see at the vertebral body. It's all
7 degenerative process taking years to develop.

8 Q Next please.

9 A Spurring, C5-C6, black extending to the neural
10 foramina. And more of the same.

11 Big spur. This is 3, 4, 5, 6, big spur coming into the
12 spinal canal and here you have big spur. See that black, right
13 over here into the neural foramina, big spur.

14 Q Doctor, I would like to move this along. If you think
15 you've already described them, just say next.

16 A You got it.

17 Next.

18 We're near the end and what you have here is
19 degeneration of the vertebral bodies. See how these vertebral
20 bodies are white. Well, these are gray in here. We're at level
21 4, 5, 6.

22 At C4-C5 you have the disk actually extending into the
23 bone. Bone is getting soft. Bone is weak and this is the same
24 level where they have prominent spurring, which is not evident
25 on this particular slide. It's further degenerative changes of
26 the vertebral bodies. Magnification would be the same.

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J. Haber, M.D. - for Plaintiff - Direct (Mr. Newman)

We're done.

(Continue on next page.)

1 Dr. Haber - Direct/Mr. Newman

2 MR. NEWMAN: May I have the doctor step back
3 up, your Honor.

4 THE COURT: Yes. And we are returning with
5 the lights on.

6 (Whereupon, the witness takes the stand.)

7 Q. Doctor, in front of you I have put several items.
8 One is Plaintiff's Exhibit 14 in evidence, which is the MRI
9 report of the April 4, 2011 films that you showed us, and
10 Plaintiff's Exhibit 15 in evidence, which is the report of
11 the September 9, 2013 films that we went through at the end.
12 I have also put in front of you, and we have marked in
13 evidence as Plaintiff's Exhibit 27, a hard film, which is
14 dated April 4, 2011.

15 So first, doctor, the reports, Plaintiff's Exhibits
16 14 and 15 for April of 2011 and the report, Exhibit 15 in
17 evidence, for 2013, have you read those reports?

18 A. Yes.

19 Q. Without going through them in any real detail, do
20 you agree with what those reports say?

21 A. Substantially, I do.

22 Q. And what you have shown us in terms of looking at
23 the films, is that also, in sum and substance, reflected by
24 these reports as interpreted by those radiologists back in
25 2011 and 2013?

26 A. Yes.

1 Dr. Haber - Direct/Mr. Newman

2 Q. Now, Plaintiff's Exhibit 27 in evidence, what do
3 you call that?

4 A. This is -- there really isn't a good name for this
5 anymore. It is a hard copy of the digital data.

6 Q. And that is dated April 4, 2011 regarding Michael
7 Elkin, correct?

8 A. Yes, that's correct.

9 Q. Now, I asked you, because we have all of the hard
10 copy of the film that is on disk in evidence, I asked you to
11 pick out one of the hard copy films that you thought
12 demonstrated what we were talking about in this case, yes?

13 A. Yes.

14 MR. NEWMAN: Do we have the shadow box?

15 THE COURT: If you want to use the shadow box,
16 the officer will help set it up.

17 MR. NEWMAN: Thank you, Judge.

18 THE COURT: Members of the jury, if you want
19 to move around so you can see the shadow box, feel free
20 to do that.

21 MR. GOLDSMITH: Your Honor, with the Court's
22 permission, I am going to move.

23 THE COURT: You may.

24 Q. Doctor, would you be mindful, if you would stand so
25 the jury can see.

26 What are we looking at in Plaintiff's Exhibit 27 in

1 Dr. Haber - Direct/Mr. Newman

2 evidence.

3 A. When I was initially presented with disks, DVDs and
4 I did the Power Point, what we have here is the
5 old-fashioned way of looking at these. We were looking at
6 these on the screen.

7 Q. I am going to stop you.

8 MR. NEWMAN: We have in evidence, your Honor,
9 Plaintiff's Exhibits 26 and 25, which are the two film
10 dates we are talking about.

11 THE COURT: Fine.

12 Q. So when you look at them as a radiologist doing
13 your job, you do it off these on a screen?

14 A. That's correct.

15 Q. Does anyone print these out anymore?

16 A. Not for 20 years.

17 Q. I did that for us here.

18 MR. NEWMAN: So this is, your Honor, 27 off of
19 Plaintiff's Exhibit 25 in evidence, which is the
20 April 4, 2011 films.

21 A. The body doesn't think in terms of front or back or
22 left or right. The body has its own language. So the
23 neural foramina, they come out the side in an oblique plane.

24 These images that you are looking at here are those
25 images that were well thought by the radiologist, who did a
26 fine job in interpreting this, to get that plane, that

1 Dr. Haber - Direct/Mr. Newman
2 perspective of the nerve that's going to show the greatest
3 normalcy or the greatest pathology.

4 I showed you that on the images on the Power Point.
5 So what you have on this, I will point with my pen, I won't
6 mark anything up here, this is an oblique view of the
7 cervical spine. And it's showing compromise.

8 Once again, we talked about that Mack truck
9 somewhere around C2-C3. Here is C2-C3. And we have C3-C4.
10 Now you have compromise once again at C4-C5 and C5-C6, just
11 like I showed you on the MRI Power Point, on the MRI images
12 that I got. It's exactly the same.

13 MR. NEWMAN: For our record purposes, your
14 Honor, the doctor, when he just testified --

15 Q. How would you describe this image on this? Would
16 you call it 1, 2, 3, 4?

17 THE COURT: There is a number.

18 A. I can read it right here. It's image 3 of 12. And
19 it's -- let's see. Image 3 of 12 SE7/8. So this will
20 clearly reflect what I showed on the Power Point. This is
21 image 3 of 12. It shows exactly the same thing.

22 Q. So in the old days, when you were looking at a hard
23 copy of film, was there a way that you marked it up?

24 A. Yes. And it just so happens I have my wax pencil.
25 We don't use these anymore.

26 Q. Those are the arrows that are placed on what we

1 Dr. Haber - Direct/Mr. Newman

2 looked at, you do that with the computer?

3 A. When I'm showing this to a doctor, and he doesn't
4 appreciate it all that well, I will put an arrow there with
5 the computer. If I'm speaking to a colleague 10, 15 years
6 ago, the wax pencil. I'm not going to mark on here.

7 Q. No.

8 MR. NEWMAN: Unless with permission of the
9 Court, I am going to ask that the doctor place a circle
10 around C4-C5, C5-C6.

11 MR. GOLDSMITH: No objection.

12 THE COURT: Fine. Go ahead.

13 A. (Indicating). I put a square.

14 Q. You put a square?

15 A. And an arrow.

16 Q. And that is where, if the jury chooses to look at
17 that film, that red square shows the area of compromise at
18 C4-C5, C5-C6?

19 A. Yes, it does.

20 MR. NEWMAN: We can take that down, Judge, at
21 this time.

22 THE COURT: Okay.

23 Q. Doctor, the osteophyte complex at C4-C5, C5-C6 or
24 the spurring in C4-C5, C5-C6, which you told us took years
25 to develop, do you have an opinion, doctor, with a
26 reasonable degree of medical certainty as to whether or not

1 Dr. Haber - Direct/Mr. Newman
2 the spurring or osteophyte complex at C4-C5, C5-C6 was
3 present and compromising nerve roots in August and September
4 of 2010?

5 A. I do have an opinion.

6 Q. And your opinion, please?

7 A. It preexisted it for at least a few years.

8 Q. And to the nature and extent where it would be
9 compromising nerve roots in 2010?

10 A. For years. It compromised it for years.

11 Q. I am going to ask you again, because I want it for
12 my record purposes, was it compromising it in 2010, August,
13 July of 2010?

14 A. Yes.

15 Q. Now, doctor, again, I have asked you to review
16 these records and the materials that you reviewed and put
17 together this Power Point, yes?

18 A. Yes.

19 Q. And I am paying you for your time in doing that,
20 reviewing and your presence here in court today?

21 A. Yes.

22 Q. At what rate am I paying you?

23 A. You are paying me for this testimony \$5,000.

24 Q. For your day here?

25 A. For the day here.

26 Q. And did you bill me at some rate before we have

1 Dr. Haber - Direct/Mr. Newman

2 met, correct?

3 A. That's correct.

4 Q. And you put together this and did some research to
5 do that, the Power Point?

6 A. Yes.

7 Q. And at what rate and hour have you been charging
8 me?

9 A. \$500 an hour.

10 MR. NEWMAN: I have nothing else, Judge.

11 THE COURT: This would be a good time to take
12 a brief recess.

13 Members of the jury, then we will have cross
14 examination.

15 We will take ten minutes.

16 COURT OFFICER: All rise. Jury exiting.

17 (Whereupon, the jury exits the courtroom.)

18 (Whereupon, a recess was taken.)

19 MR. NEWMAN: Judge, can we step up for one
20 minute?

21 THE COURT: Sure.

22 (Whereupon, an off-the-record discussion was
23 held at the sidebar among the Court and all counsel.)

24 COURT OFFICER: All rise. Jury entering.

25 (Whereupon, the jury enters the courtroom.)

26 THE COURT: Welcome back.

1 Dr. Haber - Cross/Mr. Goldsmith
2 Everyone else in the room may be seated.
3 Mr. Goldsmith, you may inquire.

4 MR. GOLDSMITH: Thank you, your Honor.

5 CROSS EXAMINATION BY

6 MR. GOLDSMITH:

7 Q. Good morning, doctor.

8 A. Good morning.

9 Q. You and I have never met before, correct?

10 A. Correct.

11 Q. But you have been in a courtroom before, correct?

12 A. That's correct.

13 Q. You have appeared as an expert witness on behalf of
14 plaintiffs, correct?

15 A. Correct.

16 Q. Doctor, fair to say that you retired from the
17 active practice of medicine, treating patients, in 2006?

18 A. That's fair.

19 Q. I'm sorry?

20 A. That's fair.

21 Q. So at the time of Dr. Lee's treatment of Mr. Elkin,
22 you were retired from the practice of medicine, correct?

23 A. That's correct.

24 Q. And from 2006, from the time you retired, up until,
25 let's say up until today, other than the professorship that
26 you have, have you actively practiced medicine, treating

1 Dr. Haber - Cross/Mr. Goldsmith

2 patients, doctor?

3 A. No.

4 Q. Doctor, you are not presently affiliated with any
5 medical institution, are you?

6 A. No.

7 Q. You do not teach residents, residents training in
8 radiology, correct, doctor?

9 A. That's correct.

10 Q. In fact, you've never trained residents in
11 radiology, correct?

12 A. That's correct.

13 Q. And, doctor, when you talked about your position
14 that you acquired in 2014, that's a position involved in
15 teaching undergraduates how to be radiology technicians,
16 correct?

17 A. That's correct.

18 Q. Doctor, you haven't published any article in the
19 field of radiology in a peer review journal, correct?

20 A. That's correct.

21 Q. And when we say peer review journal, one of the
22 things that doctors do, some doctors do, they do research,
23 and they are involved in training and education and the
24 advancement of that area of medicine, correct?

25 A. That's correct.

26 Q. And some doctors actually publish the results of

1 Dr. Haber - Cross/Mr. Goldsmith

2 their studies so that other doctors can learn from the
3 experiences, correct?

4 A. That's correct.

5 Q. And if you are at an academic institution, like
6 New York Presbyterian Hospital, that's one of the things
7 doctors do, correct?

8 A. That's correct.

9 Q. And the other thing doctors do is they teach
10 residents how to be radiologists, correct?

11 A. That's correct.

12 Q. And there are residency programs where doctors
13 supervise and determine whether someone is competent enough
14 to be a radiologist, correct?

15 A. That's correct.

16 Q. And New York Presbyterian Hospital, that's where
17 that April 2011 study, that MRI study, was conducted in this
18 case, correct?

19 A. That's correct.

20 Q. A fine institution?

21 A. Excellent institution.

22 Q. Excellent institution.

23 One of the leading medical institutions in the
24 New York City area, correct?

25 A. That's correct.

26 Q. Perhaps in the country, correct?

1 Dr. Haber - Cross/Mr. Goldsmith

2 A. Yes.

3 Q. NYU, is that an excellent medical institution?

4 A. Yes.

5 Q. They teach residents, they have residency training
6 programs there?

7 A. That's correct.

8 Q. They have excellent physicians caring for their
9 patients there?

10 A. They have an excellent reputation.

11 Q. In fact, the Hospital for Joint Diseases is one of
12 the leading orthopedic institutes, correct, in this country?

13 A. That's correct.

14 Q. The Hospital for Special Surgery, you are familiar
15 with that institution?

16 A. I am.

17 Q. One of the leading orthopedic institutes in this
18 country, correct?

19 A. Absolutely.

20 Q. Top doctors there, correct?

21 A. I'm not sure what you mean by top doctors. It has
22 a wonderful reputation.

23 Q. Some of the best orthopedic surgeons in this
24 country, who are doing cutting-edge research and surgical
25 procedures, are at the Hospital for Special Surgery; is that
26 correct?

1 Dr. Haber - Cross/Mr. Goldsmith

2 A. As you defined the question, yes. But there are
3 issues.

4 Q. And what about radiologists, do they have excellent
5 radiologists at the Hospital for Special Surgery?

6 A. They do.

7 Q. NYU, too?

8 A. They do.

9 Q. So when you mentioned earlier on direct examination
10 by plaintiff's counsel about showing MRIs to doctors,
11 showing scans to doctors, discussing what is seen on an MRI,
12 you haven't done that since 2006, correct?

13 A. That's correct.

14 Q. And in 2006, doctor, you were in private practice,
15 correct?

16 A. That's correct.

17 Q. You were not hospital based, correct?

18 A. No, that's incorrect.

19 Q. Well, when you were in private practice, were you
20 functioning primarily out of a private radiology practice?

21 A. To answer your question, I was hospital based.

22 Q. Were you working out of a hospital or were you
23 working out of a private radiology practice since graduating
24 from medical school and doing a residency?

25 A. 1976 through 2006, I spent 30 years in a hospital.

26 Q. But when --

1 Dr. Haber - Cross/Mr. Goldsmith

2 A. Two hospitals.

3 Q. When you say you spent 30 years in a hospital, you
4 were not employed by a hospital, you were working in a
5 private practice radiology group, is that a fair statement,
6 yes or no?

7 A. No, it's not fair. I would like to answer your
8 question.

9 THE COURT: Doctor, to make this go more
10 smoothly, I hope, when counsel for the defendant is
11 asking you a question and it is a yes, no or it asks for
12 a specific area of response, and you can't give him an
13 answer in the fashion the question asks you to, you can
14 say that.

15 It would be up to the questioner to decide
16 whether he wants you to expand and explain why there was
17 a premise that was wrong or something else was wrong
18 with the question.

19 Explaining is something Mr. Newman can ask you
20 to do, if he believes appropriate, when he does
21 redirect.

22 THE WITNESS: Okay.

23 Q. Doctor, when you were affiliated with hospitals up
24 until 2006, none of those hospitals were major medical
25 academic centers where residents were being taught, is that
26 a fair statement?

1 Dr. Haber - Cross/Mr. Goldsmith

2 A. Yes.

3 Q. In radiology?

4 A. Correct.

5 Q. Fair to say, doctor, from 2006 to 2011, you were
6 involved in managing your private investments and your
7 real estate; is that correct?

8 A. Yes.

9 Q. And sometime in either 2011 or 2012, you set up a
10 company known as Consulting Radiologist, correct?

11 A. That's correct.

12 Q. And does that company still exist?

13 A. Yes.

14 Q. You are the sole employee of that company, correct?

15 A. That's correct.

16 Q. And that company, that consulting company, is based
17 out of the address that you gave, Dix Hills, correct?

18 A. That's correct.

19 Q. That's your private home, correct?

20 A. That's correct.

21 Q. And, doctor, does your private home have a CT
22 machine?

23 A. No.

24 Q. Does your private home have an MRI machine?

25 A. No.

26 Q. Does your private home have a PET scan machine?

1 Dr. Haber - Cross/Mr. Goldsmith

2 A. No.

3 Q. Does your private home have an x-ray machine?

4 A. No.

5 Q. Consulting Radiologist, that's a company that
6 advertises your services as an expert witness; is that
7 correct, doctor?

8 A. Yes.

9 Q. And, doctor, you actually advertise your services
10 on the Internet, correct?

11 A. That's true.

12 Q. And, doctor, one of the things that you advertise
13 and state on the Internet is that an expert's opinion should
14 not be based on retrospective or preconceived biases,
15 correct?

16 A. That's correct.

17 Q. You would agree with me that it would be wrong to
18 look back with 20/20 hindsight and criticize medical care,
19 correct?

20 A. Absolutely.

21 Q. You've been sued yourself, doctor, right?

22 A. Yes.

23 Q. Just because someone has been sued doesn't mean
24 they committed medical malpractice, correct?

25 A. That's correct.

26 Q. And it would be wrong for a physician to look back

1 Dr. Haber - Cross/Mr. Goldsmith
2 on a physician like yourself and say you misdiagnosed
3 something based on after acquired information, correct?

4 A. Correct.

5 Q. It should be based on the information at the time
6 of presentation?

7 A. Precisely.

8 Q. By the way, you are not here to offer any criticism
9 on the issue of liability about my client, Dr. Lee, correct?

10 A. I'm just looking at imaging.

11 Q. So you are not here to criticize Dr. Lee on his
12 care and treatment, correct?

13 A. That's correct.

14 Q. You are not here to criticize New York Hospital
15 Center based on anything, correct?

16 MR. NEWMAN: Excuse me. You mean Joint
17 Diseases.

18 Q. New York Hospital, the Hospital for Joint Diseases,
19 you are not here to criticize them, correct?

20 A. I'm not an attorney. I'm just reviewing imaging.
21 I'm not criticizing the hospital. I'm reviewing the imaging
22 and giving my personal opinion.

23 Q. Personal opinion?

24 A. That's right.

25 Q. But you are not as a medical expert criticizing
26 either the doctor or the hospital in terms of the medical

1 Dr. Haber - Cross/Mr. Goldsmith

2 care and treatment that was rendered in this case, correct?

3 A. That's correct.

4 Q. Now, in addition to advertising your own services
5 on the Internet, you subscribe to various services that also
6 advertise experts such as yourself to lawyers, correct?

7 A. That's correct.

8 Q. You use a company called JurisPro out in
9 California, correct?

10 A. Yes.

11 Q. Are you familiar with their slogan "Where Attorneys
12 Look to Find Experts"?

13 A. I'm not at all familiar with it.

14 Q. Excuse me?

15 A. I am not at all familiar with their slogans.

16 Q. But that is a company in California that you pay a
17 fee for for them to match you up with experts to testify in
18 court, correct?

19 A. You'll have to repeat that question, please.

20 Q. Sure.

21 There are various expert services that you pay
22 money for them to advertise you as a potential expert,
23 correct?

24 A. Correct.

25 Q. And you pay a fee to them, the services charge a
26 fee to the lawyers, correct?

1 Dr. Haber - Cross/Mr. Goldsmith

2 A. I'm not sure what they charge to the lawyers.

3 Q. Well, but are you aware of the fact that they
4 charge a fee to the lawyers when they match up someone like
5 Mr. Newman and yourself on a plaintiff's case?

6 MR. NEWMAN: Objection.

7 THE COURT: Sustained.

8 MR. NEWMAN: It didn't happen here.

9 Q. Are you aware of whether these services charge a
10 fee to the law firm that is looking to find an expert?

11 A. Many of them do charge. I'm not familiar with the
12 details.

13 Q. In addition to JurisPro, you also subscribe to
14 Expert Pages, correct?

15 A. Yes.

16 Q. Are you familiar with their slogan "The Leading
17 Online Directory of Expert Witnesses"?

18 A. You are asking me am I familiar. And the answer is
19 no.

20 Q. Your photo is on their website, though, you are
21 familiar with that?

22 A. I put it there.

23 Q. How about Seak, S-E-A-K, that's another expert
24 service that you subscribed to you; is that correct?

25 A. That's correct.

26 Q. You testified that you spent \$2,000 to \$3,000 a

1 Dr. Haber - Cross/Mr. Goldsmith

2 year paying them to advertise for you to be an expert; is
3 that correct?

4 A. Yes.

5 Q. And there is also ALM Experts, are you familiar
6 with them?

7 A. Yes.

8 Q. Are you familiar with their slogan, "Your Source of
9 Expert Consultants and Litigation Support," are you familiar
10 with that?

11 A. No, I'm not.

12 Q. Doctor, since 2011, 2012, your professional
13 practice of medicine has been limited to coming in to court
14 and reviewing cases in the legal medical context, correct?

15 A. No.

16 Q. Doctor, is it fair to say that since 2011, 2012 you
17 have not rendered any care and treatment in connection with
18 a patient, is that a fair statement?

19 A. Yes.

20 Q. You have done work for the government in terms of
21 criminal prosecutions in terms of child abuse; is that
22 correct?

23 A. Yes.

24 Q. You've defended people accused of child abuse,
25 correct?

26 MR. NEWMAN: Excuse me, Judge.

1 Dr. Haber - Cross/Mr. Goldsmith

2 THE COURT: Sustained.

3 Q. You have participated in criminal matters, is that
4 correct, doctor, as an expert?

5 A. I can't answer that question the way you asked it.

6 Q. Doctor, is it fair to say that in terms of your
7 participation in civil matters, civil litigation, that your
8 experience has been in terms of coming to court and giving
9 depositions, it has been entirely on behalf of plaintiffs,
10 is that correct?

11 A. No.

12 (Continued on next page.)

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1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)

2 Q Doctor, you've testified in the state of Texas;
3 correct?

4 A That's incorrect.

5 Q Have you reviewed cases on behalf of litigants that the
6 case arises out of Texas?

7 A Yes.

8 Q Have you reviewed cases in which the claims and
9 allegations concern care and treatment rendered in New Mexico?

10 A Yes.

11 Q Have you reviewed cases in which the care and treatment
12 involves claims arising out of claims in the state of
13 Pennsylvania?

14 A Yes.

15 Q Have you reviewed cases, Doctor, on behalf of litigants
16 where the claims arise out of the state of Connecticut?

17 A Yes.

18 Q Have you reviewed cases, Doctor, where the claims arise
19 out of the state of Florida?

20 A Yes.

21 Q Have you reviewed cases in which the claims arise out
22 of the state of Maryland?

23 A Yes.

24 Q Have you reviewed cases which the claims arise out of
25 the state of Mississippi?

26 A Maybe. I'm not sure.

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)

2 Q How about Washington state?

3 A That was for the defendant.

4 Q You've reviewed cases where the claims arise out of
5 Washington state?

6 A For the defendant.

7 Q So that's a yes.

8 A For the defendant.

9 Q How about Massachusetts? Have you reviewed claims
10 which the cases arise out of the state of Massachusetts?

11 A Yes.

12 Q And I'm correct, sir, that you are not licensed or have
13 never been licensed to practice medicine in any of those states?

14 A You don't have to be.

15 Q That's not what I asked you, Doctor.

16 Am I correct, sir, in that you have never maintained a
17 license to practice medicine in those states?

18 A Yes.

19 Q You've reviewed several cases a week, don't you,
20 Doctor, in terms of your consulting practice; correct?

21 A That's correct.

22 Q Is it fair to describe that consulting practice as a
23 medical/legal consulting practice?

24 A I wouldn't define it like that.

25 Q Would it be fair to describe it as a practice that
26 involves you rendering expert opinions?

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)

2 A Yes.

3 Q And expert opinions in the context of litigation.

4 A How the attorney interprets my opinion is his
5 prerogative. I'm not an attorney.

6 Q But you're being asked to give an expert opinion in a
7 setting of a lawsuit, a dispute. Is that a fair statement?

8 A No. That is not a fair statement.

9 Q Doctor, is it fair to say you earn between \$200,000 and
10 \$300,000 a year based on your estimation of your legal/medical
11 work? Is that a fair statement, Doctor?

12 A Yes.

13 Q Doctor, have you given us all your qualifications that
14 you believe make you out to be a expert in the court of law in
15 radiology?

16 A I can't answer that, the way the question was asked.

17 Q Is there any other basis in terms of your medical
18 background that serves as making you in your opinion an expert
19 in the field of radiology?

20 A Other than spending 40 years in radiology. I don't
21 understand the question.

22 Q Fair to say MRI machines, CT machines, the study of
23 their use and radiology, that wasn't part of your residency
24 training; correct?

25 A Correct.

26 Q You learned on the job after graduating from medical

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)
2 school and doing a residency; correct?

3 A Yes.

4 Q And, Doctor, you mentioned in terms of background,
5 there are radiologists, fellowship training, advanced training
6 in areas of radiology; correct?

7 A That's correct.

8 Q You didn't do that; correct?

9 A No.

10 Q I think you mentioned that you're a member of the
11 American Academy of radiologist, ACR.

12 A American College of Radiology.

13 Q Excuse me, American College of Radiology. Is that
14 correct, sir?

15 A That's correct.

16 Q Doctors that are board certified and in diagnostic
17 radiology join this organization; correct?

18 A They're asked to join once they pass the boards.

19 Q This college is part of the continuing education for
20 radiologists in terms of advancement in radiology; correct?

21 A That's incorrect.

22 Q Do they give courses, Doctor, in which they teach or
23 have noted physicians come teach in the field of radiology in
24 terms of advancements in that field?

25 A Yes.

26 Q And doctors in order to stay up on the state of the art

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)
2 of medicine, they attend these classes, they attend these
3 courses and learn about cutting edge medicine; correct?

4 A That's one way.

5 Q And, Doctor, the American College of Radiology, they
6 published guidelines as to what a person should be able to say
7 in a court of law as an expert; correct?

8 MR. NEWMAN: Objection.

9 THE COURT: Sustained.

10 Q Doctor, you're aware of the fact that American College
11 of Radiology publishes guidelines to their radiologist stating
12 the basis for what one needs to be to give an opinion as an
13 expert in the field of radiology; correct?

14 MR. NEWMAN: Objection, please, Judge.

15 THE COURT: Let's have a side bar on this.

16 (Whereupon, off the record discussions were held
17 outside the hearing of the jury between the court and both
18 parties.)

19 THE COURT: Mr. Newman's objection is sustained.

20 Mr. Goldsmith, move on.

21 MR. GOLDSMITH: Yes, your Honor.

22 Q Doctor, you agree with the April 11th, excuse me, April
23 2011 interpretation of the MRI performed at New
24 York-Presbyterian Hospital; is that correct, sir?

25 A By in large.

26 Q You have that report in front of you, Doctor?

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)

2 A I do.

3 Q Okay. Doctor, do you have the indications for why that
4 MRI report was ordered?

5 A I do.

6 Q And the radiology study, that MRI of April 2011, was
7 ordered by a Dr. Weinberger; correct?

8 A That's correct.

9 Q And there's an indication on that MRI report; correct?

10 A Yes.

11 Q And the indication on that MRI report, the reason why
12 Dr. Weinberger stated he was ordering the report was for upper
13 extremity pain and numbness; correct?

14 A That's correct.

15 Q There is no description, no indication for any motor
16 deficits; correct, Doctor?

17 A That's correct.

18 Q Just pain and numbness. These are sensory complaints;
19 correct, Doctor?

20 A That's correct.

21 Q Sensory complaints can be subjective; correct, Doctor?

22 A I'm not a clinician.

23 Q Well, would you agree with me, Doctor, as a physician
24 that the complaint of pain is a subjective complaint? Yes or
25 no. If you can't answer it, you'll let us know.

26 A I can't answer it what?

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)

2 Q You'll let me know.

3 A I can't answer it.

4 Q When you say you're not a clinician, you're not a
5 neurologist; correct, Doctor?

6 A Correct.

7 Q You're not a pain management specialist; correct?

8 A That's correct.

9 Q You're not the guy that puts the pieces of the puzzle
10 together after ordering a MRI study; correct?

11 A That's correct.

12 Q And Doctor, you'd agree with me that judging an MRI in
13 isolation without the clinical, without looking at it in a
14 clinical setting is problematic and wrong; correct?

15 A I would thoroughly disagree with that.

16 Q Would you agree with this statement, Doctor: That the
17 single most important component of the imaging is it's integral
18 relationship to the clinical presentation. Would you agree with
19 that statement, Doctor?

20 A Would you repeat it?

21 Q Single most important component of the imaging is its
22 integral relationship to the clinical presentation?

23 A Sounds like something I wrote.

24 Q Something that you might have advertised on your site.

25 A I wrote it. I didn't advertise it.

26 Q And it's on your web-site.

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)

2 A That's right.

3 Q So would you agree with me now, Doctor, that it would
4 wrong to judge a radiology study in isolation; you got to
5 evaluate it in a clinical setting, too. Correct?

6 A Not at all. As a radiologist --

7 Q Yes or no. Can't answer that's fine.

8 A No.

9 Q Doctor, are there times when you can have radiological
10 findings that don't correlate with any clinical symptoms?

11 A Yes.

12 Q And that's why it's important for the clinician to be
13 involved in assessing the significance of the MRI in the context
14 of the complaint and in the contents of the physical
15 examination; correct?

16 A I would agree with that, yes.

17 Q And Doctor, let's look at the actual MRI report that
18 you spoke to this jury about. Let's look at some of the
19 findings on this radiology report.

20 Under impression, Doctor, am I correct that Dr. Deepa
21 Chadha, in her interpretation of the MRI, performed on April
22 2011 when she was looking the C5-C6 area that you've discussed
23 with this jury that she found that there was severe left greater
24 than right C5-C6 foraminal narrowing; is that correct, Doctor?

25 A That's right.

26 Q That would mean that the narrowing seen on the MRI was

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)
2 more severe on the left than the right; correct, Doctor?

3 A That's right.

4 Q And Doctor, am I correct that this study there was no
5 clinical indication, no complaint, of left-sided deficit for
6 this patient; correct?

7 A Yes.

8 Q Doctor, the radiologist also speaks of severe C4-C5
9 narrowing, correct, on the right side; correct?

10 A That's correct.

11 Q You agree with that interpretation; correct?

12 A I do.

13 Q You're not qualified, though, to give an opinion, an
14 expert opinion, as to whether C4-C5 corresponds with any of this
15 patient's, this plaintiff's complaint; correct?

16 A No. That's incorrect.

17 Q So, Doctor, you're qualified when you were up before
18 this jury and you were talking about dermatomes as a
19 radiologist, someone who is not treating patients now, you
20 believe you're qualified to give expert opinions about
21 dermatomes and whether the nerve affects the person; correct?
22 Is that your position?

23 A I can't answer the question specifically the way you're
24 asking it.

25 Q Well, I'll ask it in a more general way.

26 As a board certified radiologist who hasn't practiced

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)
2 medicine, treating patients since 2006, do you believe that you
3 are qualified to come into this court and say that there's a
4 nerve injury and correspond that nerve injury, connect that
5 nerve injury with the physical part of the body that's being
6 complained about?

7 A As a radiologist I can comment on the nerve
8 distributions at C4-C5 and C5-C6 and say it's the radial nerve.
9 I can't precisely reflect dermatomes that's not in the area of
10 my expertise, but within the area of my area of expertise I can
11 say C4-C5 and C5-C6 those nerve roots compromise the radial
12 nerve.

13 Q That's your testimony, Doctor.

14 A Yes.

15 Q So it's your testimony that it's those nerves that you
16 just specified that innervate the radial nerve?

17 A C4-C5, C5-C6 are part of a radial nerve distribution.

18 Q Are those the nerves that innervate the radial nerve?

19 A C4-C5, C5-C6 are among those that innervate the radial
20 nerve.

21 Q Are you suggesting to this jury that there may be other
22 nerves that innervate the radial nerve, Doctor?

23 A Yes.

24 Q So it would be fair to come into this courtroom and say
25 C4-C5, C5-C6 are the nerves that innervate the radial nerve.
26 That would be an incorrect statement.

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)

2 MR. NEWMAN: Objection.

3 THE COURT: Sustained, as that form.

4 Q If an expert came into court said C4-C5 C5-C6 innovates
5 the radial nerve that would be incorrect statement.

6 A I can't hear you when you walk away.

7 Q If an expert came into this court and said C4-C5,
8 C5-C6, those are the nerves that innovate the radial nerve, that
9 person would be wrong; correct?

10 A No, that's not wrong. That is correct.

11 Q And Doctor, when the jury was shown diagrams earlier
12 during plaintiff's presentation of the case, and I think you
13 showed them to us, too, does it also show the main nerve that
14 innovates the radial nerve the main branch is C7?

15 A There are components that can be at C6-C7, yes.

16 Q No. What I'm asking you is the main branch, the main
17 cervical branch that innovates the radial nerve, is that C7,
18 sir?

19 A Is that your question?

20 Q Yes.

21 A No. That's wrong.

22 Q How about the ulnar nerve, Doctor? What nerves
23 innovate the ulnar nerve?

24 A C7-C8-T1.

25 Q And are you aware of the fact that the plaintiff was
26 complaining preoperatively of ulnar problems, Doctor?

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)

2 A Yes.

3 Q And would it be fair to say, Doctor, based on the MRI
4 that was carried out in April of 2011, there is no indication of
5 any ulnar nerve compromise in the neck; correct?

6 A That's correct.

7 Q And if there was ulnar nerve compromise you'd expect it
8 to show up on your MRI.

9 A I would.

10 Q And Doctor, you've told this jury about what's in the
11 cervical area. Also mentioned the brachial plexus. Cervical
12 nerves then go to the brachial plexus; correct?

13 A That's correct.

14 Q Doctor, do you recall ever previously testifying that
15 you are unable to give an opinion as to what parts of the body
16 are innervated by C8?

17 A I don't recall that. I may have said it. I have no
18 recollection of that at this point.

19 Q So let me ask you if you recall if this refreshes your
20 recollection that on September 25, 2015 at a deposition in the
21 matter of Maude F. Collis versus Cynthia Ronin, M.D., and
22 Griffin Hospital in the United States District Court For the
23 district of Connecticut. If you recall giving this testimony.

24 MR. NEWMAN: May I read along with you?

25 MR. GOLDSMITH: No. Are you questioning?

26 THE COURT: Just ask the question. And then show

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)
2 it to Mr. Newman.

3 MR. GOLDSMITH: Sure.

4 Q Page 114:

5 "Question: Okay. Do you know what muscles C8
6 innervates?

7 "Answer: No.

8 "Question: Do you know what one would expect to see in
9 a patient whose C8 nerve is completely transected?

10 "Answer: No."

11 Does that refresh your recollection, Doctor?

12 A Yes.

13 Q So fair to say, Doctor, in September 2015, almost a
14 year ago at that point in time your expertise was not on the
15 level that you could tell what muscles the C8 innervates;
16 correct?

17 A I would defer to an orthopedist as to which muscles are
18 innervated.

19 Q And you would presently do the same thing. Is that a
20 fair statement?

21 A I would.

22 Q So you can't come into this court and give an expert
23 opinion about what muscles are innervated by what nerve in the
24 spine; correct?

25 A That's correct.

26 Q In fact, you've testified, Doctor, that you don't have

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)
2 the expertise to come into a court of law and to state what
3 muscles are innovated by what nerve root; correct?

4 A I would defer to a orthopedist for that.

5 Q Let me ask you if you recall giving this testimony
6 again September 2015:

7 "Question: Would you have the expertise to give
8 testimony about what muscles are affected or innovated by which
9 never root?

10 "Answer: That's right, I would not."

11 Truthful testimony; correct?

12 A That's correct.

13 MR. NEWMAN: Are you done with that?

14 MR. GOLDSMITH: No.

15 THE COURT: Just before you do redirect if you're
16 willing to review the transcripts Mr. Goldsmith is utilizing
17 I'll give you time.

18 MR. NEWMAN: Can I get the page.

19 MR. GOLDSMITH: Happy to do it. Date of the
20 transcript was September 25, 2015. What I just read to the
21 doctor on page 79, line 9.

22 MR. NEWMAN: I'm will not be asking you to read it
23 again.

24 MR. GOLDSMITH: Line 9, through line 12.

25 Q Said you would defer to an orthopedist.

26 Would you also defer to a neurologist? Someone who is

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)
2 trained in analyzing the physical examination findings, the
3 history and radiographic evidence.

4 A I'm not sure I understand that question.

5 Q You said that you would defer to a orthopedist with
6 respect to what muscles are innovated by which nerve roots and
7 I'm asking, are there other medical doctors such as neurologists
8 who can come and tell us what never root is connected to what
9 muscles; correct?

10 A Correct.

11 Q There are pain management specialists, people trained
12 ine evaluating nerve that connect radiological findings, history
13 and history of physical examination finding to a conclusion;
14 correct?

15 A That's correct.

16 Q Doctor, I want to hand you up what's been marked as
17 Plaintiff's Exhibit 19 in evidence which is Dr. Weinberger's
18 records.

19 MR. GOLDSMITH: With the court's permission.

20 Q Have you seen these records?

21 A I briefly scanned them.

22 Q What records were you sent to review, Doctor, that
23 served as the basis for your opinions here and your power point?

24 A Vast majority of the focus of my record were the images
25 that were made on the two occasions of 2011 and 2013, the
26 subsequent reports. I looked at everything else, but I didn't

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)
2 focus with the intensity.

3 Q What specifically did you look at?

4 A I looked at everything that I was given by Mr. Newman.
5 Did I spend hundreds of hours? No. I was given a specific task
6 that Mr. Newman outlined.

7 Q What records did you review, Doctor, in addition to the
8 MRI images? What records did you review?

9 A It depends how you define "review." It was a rather
10 cursory review. Not anywhere to the extent that I reviewed the
11 records of my colleagues, which I agreed with. The records that
12 were here, I agree with after I looked at the images. I'm in
13 agreement with the leading radiologist.

14 Q I'm asking you to identify for us which medical records
15 you reviewed before coming here to court today. Can you tell us
16 those records? You had identified those records.

17 A It depends how you define reviewed.

18 Q Let's do it little differently. Can you tell us what
19 records were sent to you by Mr. Newman?

20 A I cannot give you an entirely complete list. A lot of
21 records, a lot of papers. Once again, as I've told the jury
22 many times, 90 percent of the time I review images and the
23 reports which I agree with.

24 Q Do you think it would be important for this jury to
25 hear the other 10 percent of your review? What it was?

26 A Do I think it's important?

1 J. Haber, M.D. - for Plaintiff - Cross (Mr. Goldsmith)

2 Q Yes or no.

3 A I'll let you make that call.

4 Q Okay. Doctor, can you identify for us what records
5 were sent to you by Mr. Newman that contributed 10 percent of
6 your expert opinion that you've rendered here today in the
7 court?

8 MR. NEWMAN: Objection. Form of the question.
9 That is not what he said.

10 THE COURT: Sustained. Before you answer why don't
11 you move the microphone a little further away.

12 Q Can you identify, Doctor, the other records that you
13 reviewed, the 10 percent that you mentioned that you reviewed
14 that was sent to you by Mr. Newman?

15 A Not at this time.

16 (Continue on next page.)

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1 Dr. Haber - Cross/Mr. Goldsmith

2 Q. Can you tell us when you were retained by
3 Mr. Newman?

4 A. Within the last six months.

5 Q. Can you be any more specific? Do you have any
6 documents, any billing records that would show us when you
7 were retained by Mr. Newman?

8 A. No.

9 Q. Well, don't you have records showing the amount of
10 time that you spent creating that Power Point, a billing
11 record showing us how much time you invested in your review
12 of this case?

13 A. I didn't bring them with me. But if you ask me, I
14 can give you a number.

15 Q. So do you have a record documenting the amount of
16 hours that you spent reviewing this case?

17 A. The record is in my head.

18 Q. In addition to the record being in your head, is it
19 in your head your findings when you went through the MRI
20 study?

21 A. I'm not sure I understand that question.

22 Q. Did you make any notes, doctor, when you sat down
23 to review this case?

24 A. It's all in my head.

25 Q. And you do recall reviewing Dr. Weinberger's
26 records, correct?

1 Dr. Haber - Cross/Mr. Goldsmith

2 A. As I told the Court, I did a very cursory review of
3 Dr. Weinberger's report.

4 Q. Why don't you turn to page 12, doctor, of
5 Dr. Weinberger's records.

6 MR. NEWMAN: Bear with me, Mr. Goldsmith.

7 A. Did you say page 12?

8 Q. Correct.

9 In addition to Dr. Weinberger being the physician
10 that ordered the MRI study, he's the patient's treating pain
11 management specialist, correct?

12 A. It's my understanding.

13 Q. And he's a physician affiliated with Presbyterian
14 Hospital, correct?

15 A. My understanding.

16 Q. And page 12 of Dr. Weinberger's records has at the
17 top of it the radiological study, correct, the report of the
18 radiological study, the MRI study, correct?

19 A. I see it on page 11.

20 Q. Do you also see it at the top of page 12?

21 A. Part of it, yes.

22 Q. It starts on page 11, right, and we see the
23 clinical indication again, right upper extremity pain and
24 numbness, correct?

25 A. Yes.

26 Q. And this is, on the bottom of page 12 it has part

1 Dr. Haber - Cross/Mr. Goldsmith
2 of the MRI study and at the bottom it has something called
3 discussion, correct?

4 A. That's correct.

5 Q. And this is Dr. Weinberger, the man who put his
6 hands on the patient, who took a history, who ordered the
7 MRI, and is now discussing the MRI results, is that a fair
8 statement, doctor?

9 A. That's correct.

10 Q. Am I correct that Dr. Weinberger states, under
11 discussion, imaging of cervical spine and brachial plexus
12 are negative, do you see that written, sir, yes or no?

13 A. I do.

14 Q. Now, doctor, sometimes physicians can make honest
15 mistakes when they write things down. They could mean
16 something else and make a mistake, correct?

17 A. That's correct.

18 Q. So now let's look to page 15 of Dr. Weinberger's
19 records. And this is the date of service from May 15th of
20 2011.

21 Do you have that in front of you?

22 A. I do.

23 Q. And am I correct, doctor, that Dr. Weinberger, on
24 his May 15, 2011 visit with the plaintiff, his evaluation of
25 the plaintiff on that day, he refers to the previous
26 cervical MRI study, correct?

1 Dr. Haber - Cross/Mr. Goldsmith

2 A. I'm not sure where you are getting that from.

3 Q. Okay. I will point that out to you.

4 A. Please.

5 Q. Do you see assessment?

6 A. No.

7 Q. On page 15, doctor, do you see where it says
8 assessment?

9 A. I see assessment, yes.

10 Q. It says assessment, and then below that, below the
11 assessment, it states, "45 year old presenting for follow-up
12 complaints of right upper extremity pain," correct?

13 A. Yes.

14 Q. And further down it says, "cervical MRI
15 unremarkable," correct, doctor?

16 A. That's correct.

17 Q. Dr. Weinberger, the treating pain management
18 physician, on two occasions writes that the MRI is not
19 remarkable to explain the plaintiff's complaints, correct,
20 doctor?

21 A. That's correct.

22 Q. Doctor, have you seen the records of any subsequent
23 treating neurologist who equates the MRI findings with the
24 physical examination findings and the history?

25 A. I haven't done an exhaustive review to comment on
26 that.

1 Dr. Haber - Cross/Mr. Goldsmith

2 Q. But you haven't been supplied by plaintiff's
3 counsel, by any treating neurologist, who said that the
4 patient's complaints are connected to the cervical spine,
5 correct?

6 A. I haven't done the review in the chart that would
7 give me an opportunity to say that with definition.

8 Q. But what you are saying is you haven't seen, right,
9 it hasn't been shown to you?

10 A. I answered the question.

11 Q. How about an orthopedist, have you seen any
12 orthopedist that's treated Mr. Elkin that somehow links the
13 MRI findings with the patient's complaints and history; has
14 anyone done that, doctor, that you have seen the records
15 from?

16 A. My cursory review would not be enough for me to
17 substantiate or deny that statement that you made.

18 Q. I am not asking you to deny it.

19 All I want to know is have you seen a medical
20 record by a treating physician after the MRI study was
21 conducted, that first one that says that the MRI findings in
22 any way explain the plaintiff's complaint, have you seen any
23 medical record to support that proposition, yes or no,
24 doctor?

25 A. The question is answered three times.

26 Q. So I presume the answer is no, doctor, you haven't

1 Dr. Haber - Cross/Mr. Goldsmith

2 seen the record?

3 A. Whatever presumptions you want to make, you can. I
4 have not done an exhaustive review to comment with any level
5 of authenticity about your question.

6 Q. I am not asking about authenticity.

7 Have you seen anything, doctor --

8 MR. NEWMAN: Judge --

9 THE COURT: Counsel, he answered your
10 question. Move on.

11 Q. Doctor, are you aware of the term idiopathic
12 peripheral neuropathy, are you aware of that term?

13 A. Yes.

14 Q. That's a peripheral neuropathy, a problem, a
15 neuropathic problem, correct?

16 A. That's correct.

17 Q. Unknown cause, correct?

18 A. That's correct.

19 Q. And do you see that Dr. Weinberger, throughout his
20 record, states idiopathic peripheral neuropathy?

21 A. You are asking me have I seen Dr. Weinberger use
22 that term. And I am saying my cursory review wouldn't give
23 me the opportunity to answer that question with any level of
24 authenticity.

25 Q. Okay.

26 Do you see that Dr. Weinberger documents that the

1 Dr. Haber - Cross/Mr. Goldsmith
2 patient's complaints regarding his ulnar nerve were resolved
3 by Dr. Lee's surgery, did you see that?

4 MR. NEWMAN: Judge, may I make the same
5 objection?

6 THE COURT: Counsel, I assume there is a
7 good-faith basis for your question based on the record?

8 MR. GOLDSMITH: Yes.

9 THE COURT: Can you answer the question.

10 A. My cursory review of Dr. Weinberger's notes
11 wouldn't give me the opportunity to make any definitive
12 statement.

13 Q. Would that be something important to look at,
14 doctor, if you were trying to criticize a doctor and say
15 that his surgery was unnecessary, would that be something
16 important to determine, whether complaints were resolved by
17 surgery, is that something important to look at?

18 MR. NEWMAN: Excuse me.

19 THE COURT: Counsel.

20 MR. NEWMAN: He said he is not here to
21 criticize. That wasn't his role.

22 THE COURT: It's sustained.

23 I ask that you not do that kind of speaking
24 objection, please.

25 Q. And, again, doctor, I don't want to parse words,
26 but you are not criticizing the interpretation by the

1 Dr. Haber - Cross/Mr. Goldsmith
2 attending physician at New York Presbyterian Hospital who
3 interpreted that April 2011, study, correct?

4 A. That's correct. I am agreeing with you.

5 MR. GOLDSMITH: Thank you, doctor.

6 THE COURT: Mr. Newman.

7 MR. NEWMAN: Yes, Judge.

8 REDIRECT EXAMINATION BY

9 MR. NEWMAN:

10 Q. Doctor, did I ask you to interpret the films only
11 in this case?

12 A. Yes.

13 MR. NEWMAN: By the way, can I have an
14 opportunity to read what counsel said I could read?

15 THE COURT: Yes, absolutely. Do you want to
16 do it now, with the jury in the box?

17 MR. NEWMAN: Yes. If I could have 30 seconds.

18 MR. GOLDSMITH: I would rather take a break so
19 I can pull out the pages I am referencing.

20 THE COURT: I thought you had them,
21 Mr. Goldsmith. It would be nice if we could finish the
22 doctor before lunch.

23 MR. GOLDSMITH: I am going to try to find it
24 right now.

25 MR. NEWMAN: Pages 79 and 114.

26 THE COURT: Yes. The deposition taken on

1 Dr. Haber - Redirect/Mr. Newman

2 September 25, 2015.

3 MR. NEWMAN: While he is looking I will ask a
4 question.

5 Q. Doctor, did you come into this courtroom and tell
6 this jury what nerves innervated what muscles?

7 A. I never did that.

8 MR. GOLDSMITH: Objection, your Honor.

9 THE COURT: Overruled.

10 MR. NEWMAN: He didn't.

11 MR. GOLDSMITH: Objection, your Honor, to the
12 speech.

13 MR. NEWMAN: Here is the question --

14 THE COURT: Before this is deteriorating --

15 MR. NEWMAN: Here is the question --

16 THE COURT: Don't speak over me.

17 Refrain from speaking objections and colloquy
18 with each other. If there is something that needs to be
19 ruled on, we can do it in sidebar.

20 At this point, Mr. Newman, do you have a
21 question for the witness?

22 MR. NEWMAN: Yes. He pulled out one page,
23 Judge. I would like the transcript.

24 THE COURT: He is entitled to the transcript
25 to see the context.

26 MR. NEWMAN: You can't just give me one page.

1 Dr. Haber - Redirect/Mr. Newman

2 THE COURT: That's the kind of remark you will
3 refrain from.

4 Mr. Goldsmith, give him the full transcript so
5 we can see the context.

6 MR. GOLDSMITH: Okay.

7 MR. NEWMAN: Should I continue while he is
8 looking, Judge?

9 MR. GOLDSMITH: I have the full transcript. I
10 have my stickies on them. I have to take them off and
11 if there are highlights.

12 THE COURT: Mr. Newman, go ahead.

13 Q. Doctor, when counsel asked you questions about
14 nerves innervating muscles and you said you couldn't do
15 that, and what he is about to give me is that September 2015
16 transcript, did you do that in this case?

17 A. No, I didn't.

18 Q. Are you, as a radiologist, able to tell this jury,
19 as you did, what branches of the nerves, what their
20 distribution is?

21 A. I could say that there are certain nerves that are
22 located at various levels which centrally fuse and form more
23 peripheral nerves. My training and expertise, I was very
24 clear, will not give me the opportunity to speak with any
25 authority on which muscles are innervated. I'm consistent
26 with my testimony from 2015. When I don't know something,

1 Dr. Haber - Redirect/Mr. Newman

2 I'll just tell you I don't know it.

3 Q. You do know that the nerves of C4-C5, C5-C6 become
4 distribution of the radial nerve; is that correct?

5 A. That's basically as far as my competence goes. My
6 competence does not go beyond the distribution of what
7 muscles are innervated once they are in the arm. I could
8 say definitively that C4-C5, C5-C6, and there are
9 variations, are the nerves that are centrally rooted at the
10 cervical cord, which form the radial nerve.

11 Am I in my clinical practice going to comment on
12 muscular innervation? The answer is no. I am consistent
13 with the former testimony. And I am going to continue
14 supporting that position.

15 Q. Counsel asked you about your practice, that you
16 haven't practiced since 2006, you have not treated patients.

17 Actually, did you ever treat patients?

18 A. I never treated patients. I sat in the basement of
19 a hospital and I looked at images.

20 Q. And counsel asked you about 30 years in a hospital,
21 that you have never been in the hospital. And you disagreed
22 with that. What did you want to say?

23 A. I wanted to say that not only was I in the
24 hospital, but I spent the vast majority of my time, from
25 2006 to -- from 1976 to 2006 at Mather Memorial and
26 St. Charles Hospital. Not only was I in the hospital, but I

1 Dr. Haber - Redirect/Mr. Newman
2 was president of the medical staff.

3 Q. Doctor, you obviously don't have a PET scan or MRI
4 machine at home, do you?

5 A. No. My wife wouldn't let me put one in.

6 Q. Does that, in any way, affect your ability to
7 interpret MRIs?

8 A. I think 35 to 40 years of experience with imaging,
9 25 of which were focused on MRIs, gives me ample opportunity
10 to present myself in this court as an expert.

11 Q. Counsel asked you whether you reviewed cases. And
12 he named some states, Texas, New Mexico, Connecticut,
13 Pennsylvania, Florida, Maryland. And then he asked are you
14 licensed in any of those states. I think your answer was
15 no, correct?

16 A. That's correct.

17 Q. Do the films of the body, the images, let's just
18 talk about an MRI, your interpretation change based on
19 whether a person is being imaged in one state or another?

20 A. No. A compromised neural foramen in C4, 5 and 6 in
21 New York is a compromised neural foramen in any state.

22 And to add to your question, you don't have to be
23 licensed in a state to be an expert witness. I wouldn't be
24 testifying if I wasn't consistent with each of the
25 idiosyncratic laws of every state that I testified in.

26 Q. Doctor, turning to the reports that you have up

1 Dr. Haber - Redirect/Mr. Newman
2 there, I think they are 14 and 15 in evidence. Counsel
3 asked you about the specifics of the report. At one point
4 he asked you whether it was greater on the left or right, do
5 you remember that?

6 A. I do.

7 Q. And turning to the report, and I am on the April 4,
8 2011 report, the second page, where it says, there are two
9 paragraphs --

10 MR. NEWMAN: Actually, Mary, could you put it
11 up.

12 We will put it up, Judge, so the jury can see
13 it.

14 THE COURT: Fine.

15 Q. If we can go to the second page, please, you will
16 see where it says at C4-C5?

17 A. I see that.

18 Q. And then there is C5-C6?

19 A. Yes.

20 Q. Where it says under C4-5, if you can move the arrow
21 to the word impinging. Here is the word impinging. Here is
22 the word impinging.

23 Did you agree with the radiologist's interpretation
24 at 4-5 that there is impinging, foraminal narrowing
25 impinging the exiting right-sided nerve root, do you agree
26 with that, yes or no, doctor?

1 Dr. Haber - Redirect/Mr. Newman

2 A. Yes.

3 Q. And did you agree at 5-6 there is also right neural
4 foraminal narrowing and impinging the exiting nerve roots?

5 A. I do.

6 Q. Counsel asked you whether the single most important
7 component of imaging is the integral relationship to the
8 clinical picture, do you remember that?

9 A. I do. It's a quote.

10 Q. What did you want to say about that?

11 A. I wanted to say that as a radiologist I'm not a
12 clinician. I don't see patients. All I do is look at
13 images. So I'm here to provide, in my clinical involvement,
14 an objective review of what I consider pretty confident
15 findings. Findings with decades I've become more and more
16 confident about. But that's not the end of the picture.

17 The end of the picture is I give the data to the
18 clinician. The clinician will put that in a clinical
19 context and see how the pieces fit together. It's my job to
20 give an objective assessment of the imaging findings.
21 That's what I do. It's part of a much bigger picture.

22 Q. Now I am going to read a couple of sentences above
23 what Mr. Goldsmith read at page 79.

24 MR. NEWMAN: Would you like to read along?

25 MR. GOLDSMITH: I would like to see it.

26 THE COURT: Counsel, show him what you are

1 Dr. Haber - Redirect/Mr. Newman

2 reading.

3 MR. NEWMAN: He should know. He read from it.

4 THE COURT: Counsel, that is not a necessary
5 comment. I ask that you refrain from it. You can think
6 them. Just don't say them out loud.

7 MR. GOLDSMITH: What are you planning on
8 reading?

9 MR. NEWMAN: The few sentences above that you
10 did not read.

11 THE COURT: Both of you, this is not
12 necessary.

13 MR. GOLDSMITH: Objection.

14 THE COURT: You are objecting to his reading
15 it?

16 MR. GOLDSMITH: Yes.

17 THE COURT: Let me see it.

18 (Whereupon, an off-the-record discussion was
19 held at the sidebar among the Court and all counsel.)

20 THE COURT: Counsel, you may read the section
21 you wish to to the jury and then ask your question.

22 Q. What was read to you, doctor, was this, page 79,
23 line 13:

24 "QUESTION: So, for example, if the injury in
25 this case was hypothetically to C8, okay, would you be
26 able to tell us what type of deficit the child would

1 Dr. Haber - Redirect/Mr. Newman

2 have?

3 "ANSWER: No."

4 Reading before this, starting at line 4:

5 "QUESTION: You've never practiced neurology?

6 "ANSWER: That's correct.

7 "QUESTION: You wouldn't consider yourself a
8 specialist in neurology?

9 "ANSWER: That's correct.

10 "QUESTION: Would you, however, have the
11 expertise to give testimony about the muscles or
12 affected innervated by which nerve root?

13 "ANSWER: That's right, I would not."

14 Is that what you said there?

15 A. Yes.

16 (Continued on next page.)

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1 J. Haber - for Plaintiff - Recross (Mr. Goldsmith)

2 Q Let me look at 114, please, Judge.

3 Doctor, when you look at these films, whether this case
4 or any other case in any other state do you call it like you see
5 it on the film?

6 A Yes.

7 Q Lastly, turning, for instance, to Dr. Weinberger, page
8 12, which you were asked about and counsel read to you imaging
9 of cervical spine and brachial plexus are negative. And he is
10 referring, I think we can agree to the April 4th, 2011 film,
11 your Honor.

12 Doctor, did the radiologist, namely, Dr. Deepa come to
13 that conclusion? Was that Dr. Deepa's impression?

14 A No, it wasn't.

15 MR. NEWMAN: I'm just going to look at my notes,
16 Judge and I think I'm done.

17 Nothing further, Judge. Thank you.

18 RECROSS EXAMINATION

19 BY MR. GOLDSMITH:

20 Q Counsel had up a few moments ago the MRI report. In
21 which he referred to C5-C6 right foraminal narrowing. Do you
22 recall that?

23 A Yes.

24 Q Can you turn to that part of the report, sir, the MRI
25 report?

26 A I didn't hear your last statement.

1 J. Haber - for Plaintiff - Recross (Mr. Goldsmith)

2 Q Can you turn to that MRI report that references --

3 A 4/4/11?

4 Q Yes.

5 A It's right here.

6 Q Do you have the reference to C5-C6 foraminal narrowing?

7 Do you have the reference in that report?

8 A Yes.

9 Q When plaintiff's counsel just questioned you and when
10 it was up on the screen before this jury and before this court,
11 he left out the words "left greater than right." Correct?

12 MR. NEWMAN: Excuse me, Judge.

13 THE COURT: I'll allow the question.

14 Q Left greater than right.

15 THE COURT: Mr. Newman, sit down.

16 MR. NEWMAN: I was referring to the paragraph
17 before. That's why I'm objecting.

18 THE COURT: Mr. Goldsmith.

19 Q Words left greater than right were not brought to your
20 attention.

21 A Was it brought to my attention? Is that the question?

22 Q Yes.

23 A I don't recall whether they were brought to my
24 attention.

25 Q In fact, the foraminal narrowing C5-C6 is left greater
26 than right; correct?

1 J. Haber - for Plaintiff - Recross (Mr. Goldsmith)

2 A That was the interpretation of the interpreting
3 radiologist. My interpretation is they were bilateral.
4 Radiology felt they were worse --

5 Q Are you now telling this jury, Doctor, that you
6 disagree with the radiologist's interpretation of April 2011
7 when the radiologist said that the foraminal narrowing at C5-C6
8 was with left greater than right? Do you disagree with that
9 now?

10 A My opinion is there was more narrowing on the right at
11 C5-C6, but they were present in both neural foramina as I showed
12 on the MRI were comprised. Severely compromised. Certainly
13 enough to cause integrity of the radial nerve.

14 Q It's your position, Doctor, that the radiologist who
15 looked at the study, who said left greater than right, foraminal
16 narrowing, was wrong; is that correct?

17 A No, that's not correct.

18 Q So you disagree with the interpretation or agree?

19 A I can't answer the question the way you asked me to.

20 Q Okay. But as a radiologist you're qualified -- You
21 just said in your opinion it shows foraminal narrowing that's
22 consistent with radial nerve problems?

23 A As a possible source. You can't have peripheral
24 neuropathy having nothing to do with the radial nerve. In this
25 case there is radial nerve impingement from the basis of the
26 nerve roots at C4-C5 C6, as well was clearly demonstrated on the

1 J. Haber - for Plaintiff - Recross (Mr. Goldsmith)

2 MRI.

3 Q Doctor, is it your opinion now as a radiologist that
4 the findings on the MRI are consistent with radial nerve problem
5 in the lower arm? Is that your opinion?

6 A That was never my opinion.

7 Q And you're not qualified, Doctor, as a radiologist even
8 though you want to help the plaintiff's case?

9 MR. NEWMAN: Objection.

10 THE COURT: Sustained as to form.

11 Q Are you qualified to give an opinion with respect to
12 the MRI causing radial nerve problem? Are you qualified,
13 Doctor?

14 MR. NEWMAN: Judge, objection.

15 THE COURT: I'll allow it it.

16 Q Yes or no. Are you qualified?

17 A I frankly forget your question.

18 Q I'll ask it again then.

19 A Please.

20 Q Are you qualified to come into this court to take the
21 witness stand and raise you right hand and give an expert
22 opinion as to whether the findings found on that MRI correlate
23 with radial nerve problem?

24 Are you qualified to give that opinion, sir? Yes or
25 no.

26 A I cannot answer the question the way you are asking me.

1 J. Haber - for Plaintiff - Recross (Mr. Goldsmith)

2 Q Doctor, do you feel that you are more qualified to give
3 an opinion than Dr. Weinberger, the person that ordered the MRI
4 and did a physical examination on plaintiff? Do you feel you
5 are more qualified than him to give an opinion as to whether the
6 MRI reflects any complaints the patient was given?

7 MR. NEWMAN: Objection.

8 THE COURT: Sustained.

9 Q Do you feel, Doctor, that -- Withdrawn.

10 Doctor, I'd like you to take a look at what I handed up
11 to you which has been marked as Plaintiff's Exhibit 3 in
12 evidence.

13 Do you see that, sir?

14 A I do.

15 MR. NEWMAN: What are you looking at?

16 MR. GOLDSMITH: Plaintiff's 3 in evidence.

17 THE COURT: It's the diagram of the nerves.

18 MR. NEWMAN: Is this beyond the scope?

19 THE COURT: I think it's connected in a way.

20 Q You mentioned, Doctor, C4-C5 pathology on the MRI;
21 correct?

22 A That's right.

23 Q C4 is not depicted on this diagram; correct?

24 A I said the innovation between --

25 Q Yes, no, or, I cannot answer it?

26 A I cannot answer it.

1 J. Haber - for Plaintiff - Recross (Mr. Goldsmith)

2 Q You see the marking C4 on what's been marked in
3 evidence, the anatomy of the nerves?

4 A No.

5 Q Okay. These are the nerves that are for the brachial
6 plexus that are depicted there; correct?

7 A Yes.

8 Q And C4 is not there; correct, Doctor?

9 A On some brachial plexus this is one -- I cannot answer
10 your question.

11 Q The C4 doesn't appear there, a marking for C4 on that
12 anatomy drawing doesn't appear; correct?

13 A This is one version. There are many versions. This
14 was submitted by somebody as evidence --

15 Q Doctor --

16 MR. GOLDSMITH: Move to strike, your Honor.

17 THE COURT: Sustained.

18 Q Doctor, are you saying this diagram is an inaccurate
19 diagram depicting the brachial plexus, the nerves, the cords?
20 Is that what you're saying, sir?

21 A I cannot answer that question.

22 Q Doctor, is there a nerve, an auxiliary nerve depicted
23 in that diagram?

24 A Yes.

25 Q Okay. And that nerve which innervates muscles in the
26 arm is innervated by C4-C5; correct, Doctor?

1 J. Haber - for Plaintiff - Recross (Mr. Goldsmith)

2 A As I made every attempt to clarify --

3 Q Doctor, yes, no, or you cannot answer?

4 A I cannot answer.

5 Q But you can look at the diagram and say there's
6 auxiliary nerve, radial nerve, ulnar nerve, medial nerve and
7 showing what nerve root innovates it; correct?

8 A Are you asking me to comment on this diagram?

9 Q Yes.

10 A I won't comment on this diagram.

11 Q You won't comment?

12 A No.

13 Q Because you don't think it's a reliable piece of
14 evidence?

15 A That's not correct.

16 Q But you won't comment on it?

17 A That's right.

18 Q Do you agree with the proposition that the C7 is the --

19 THE COURT: Counselor, this is beyond. I allowed
20 you to walk into some questioning based on the redirect but
21 I don't believe that's proper recross.

22 Q One last question based on the radiology report.

23 Does the radiologist comment on the brachial plexus,
24 the area that comes after the spinal process?

25 A Are you asking me a question, sir?

26 Q Yes.

1 J. Haber - for Plaintiff - Recross (Mr. Goldsmith)

2 A What is your question?

3 Q Does the radiology report of April 2011, does it
4 comment on the brachial plexus, the nerves in the brachial
5 plexus?

6 A Yes.

7 Q You've already told us the brachial plexus is the
8 division that comes after the spinal nerves; correct?

9 A That's correct.

10 Q And the radiologist interpreted the nerves in the
11 brachial plexus said the brachial plexus was unremarkable;
12 correct?

13 A Correct.

14 Q No admirable findings in the brachial plexus; is that
15 correct?

16 A That's correct.

17 MR. GOLDSMITH: Nothing further, your Honor.

18 THE COURT: You may step down and we can now have
19 our lunch recess.

20 See you at two o'clock.

21 COURT OFFICER: All rise. Jury exiting.

22 (Whereupon, the jury exited the courtroom.)

23 THE COURT: Two o'clock.

24 (Whereupon, lunch recess was held.)

25 THE COURT: For the record.

26 At the beginning of Mr. Elkin's cross-examination