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IN THE CIRCUIT COURT FOR BALTIMORE CITY
CASE NO. 24C15001990

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NOLAN REIMOLD, :
 :
 Plaintiff, :
 :
 -against-. :
 :
 JOHNS HOPKINS HOSPITAL, et al., :
 :
 Defendants. :
 :
----- x

DEPOSITION of JORDAN HABER, M.D., taken by
Defendants at the offices of Fink & Carney
Reporting and Video Services, 39 West 37th Street,
New York, New York 10018, on Wednesday, April 27,
2016, commencing at 9:40 o'clock a.m., before
Carol Mele, a Registered Professional Shorthand
(Stenotype) Reporter and Notary Public within and
for the State of New York.

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

MURPHY, FALCON & MURPHY
Attorneys for Plaintiff
One South Street, 23rd Floor
Baltimore, Maryland 21202

BY: NICHOLAS A. SZOKOLY, Esq.
-and-
NIKOLETTA MENDRINOS, Esq.
(via telephone)

PESSIN KATZ LAW, P.A.
Attorneys for Defendants Johns
Hopkins Hospital, Johns Hopkins
University and Ziya Gokaslan, M.D.
901 Dulaney Valley Road, Ste. 500
Towson, Maryland 21204

BY: NATALIE C. MAGDEBURGER, Esq.

1 Haber, M.D.

2 J O R D A N H A B E R, M. D., called as a
3 witness, having been first duly sworn by
4 Carol Mele, a Notary Public within and
5 for the State of New York, was examined
6 and testified as follows:

7 EXAMINATION BY MS. MAGDEBURGER:

8 Q All right, Doctor. I know you've
9 been deposed before, so I won't go through all
10 the ground rules, but if you don't understand
11 any of my questions can you just let me know so
12 I can rephrase it?

13 A Yes.

14 Q And if we can try not to talk over
15 each other, I'll try not to interrupt you, if
16 you can try not to interrupt me. We're going to
17 do it, but if you do, let's try not to, okay? I
18 know it will happen during the course of the
19 deposition.

20 A Okay.

21 Q If you need a break at any time,
22 let me know and I'll be glad to take a break,
23 but not while a question is pending, fair
24 enough?

25 A Yes.

1 Haber, M.D.

2 Q Okay. What did you bring with you
3 today?

4 A Let's see. I brought my CV.

5 Q Okay. We will mark that as
6 Exhibit 1.

7 (Curriculum Vitae of Jordan
8 Haber. M.D. was marked as Haber
9 Exhibit No. 1 for identification, as
10 of this date.)

11 Q We marked your CV as Exhibit 1.
12 What else did you bring?

13 A I brought in a copy of my report.

14 Q All right. We will mark that as
15 Exhibit 2.

16 (Report of Jordan Haber,
17 M.D. was marked as Haber Exhibit No.
18 2 for identification, as of this
19 date.)

20 Q What else did you bring?

21 A I brought in the certificate of
22 qualified expert.

23 Q Okay. We will mark that as
24 Exhibit 3.

25 (Certificate of qualified

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Haber, M.D.

expert was marked as Haber Exhibit No. 3 for identification, as of this date.)

Q And what else did you bring?

A I brought in two pictures.

(Discussion off the record.)

Q So we will mark these pictures as Exhibits 4 and 5.

(A photocopy of a scan was marked as Deposition Exhibit No. 4 for identification, as of this date.)

(A photocopy of a scan was marked as Haber Exhibit No. 5 for identification, as of this date.)

Q And now we're ready. What else did you bring?

A I brought copies of reports. Do you want those?

Q Of the --

A Of the radiologists' reports.

Q Those are the records that you reviewed?

A Yeah.

1 Haber, M.D.

2 Q I'll go through those in a second.
3 Anything else?

4 A No.

5 Q Did you receive any other medical
6 records other than the radiology reports and the
7 radiology films?

8 A I received them as a PDF. I don't
9 have them.

10 Q You didn't bring that with you?

11 A No.

12 MS. MAGDEBURGER: Can you
13 send me a summary of what he has?

14 MR. SZOKOLY: I think just
15 to clarify, he's saying he didn't
16 bring them with him printed, but he
17 has the records with him.

18 MS. MAGDEBURGER: On his
19 computer?

20 MR. SZOKOLY: Yes,
21 absolutely.

22 Q Anything else that you received?

23 A No.

24 Q Did you do any interviews in this
25 case?

Haber, M.D.

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A No.

Q Did you examine any individuals in this case?

A Oh, no.

Q Did you rescan anyone?

A No.

Q Did you talk to any healthcare providers that treated Mr. Reimold?

A No.

Q Did you receive any other items from plaintiff's counsel other than what you have produced today, as well as what's on PDF?

A No.

Q Have you had discussions with plaintiff's counsel?

A Yes.

Q How many different discussions have you had with plaintiff's counsel?

A When we initially started to work together and when I did my report, and we met last night before dinner just to go over the case.

Q And how long did you talk about the case last night?

1 Haber, M.D.

2 A About an hour.

3 Q Do you have any notes regarding
4 any of your review material or discussions with
5 counsel or any other notes relating to this
6 case?

7 A No.

8 Q Do you have any drafts of any
9 reports?

10 A No.

11 Q When you do your report, do you do
12 it -- you finalize it right when you have it
13 completed?

14 A Well, when I work on a report, I
15 look at it and I change it on a realtime basis.

16 Q Okay. And then you print it out
17 from there?

18 A And I print it out.

19 Q Did you discuss your report prior
20 to signing it with counsel?

21 A No.

22 Q What were you asked to do in this
23 case?

24 A I was asked to review the images
25 and -- I'm not even -- could I take this back?

1 Haber, M.D.

2 Q Sure.

3 A And I was given a set of images.
4 I don't even think I was given any of the
5 reports. Let me see my report. Let me see if
6 I -- let me see my report. I think you have it.
7 You have my expert report?

8 Q Do you need it?

9 A Yeah, if you don't mind. I mean,
10 everything that I gave you I was working on it.
11 Thanks. So I wasn't -- they sent me the images
12 and they asked me to go over the images and
13 that's all I have. That's all that I have.

14 Q I think my question was what were
15 you asked to do in this case?

16 A I was asked to review images of
17 the cervical spine.

18 Q Okay. And then to dictate your
19 findings of those images?

20 A I reviewed the images and after
21 reviewing the images I subsequently got medical
22 reports.

23 Q Okay. And in terms of contact,
24 you were contacted by telephone prior to
25 receiving the images?

1 Haber, M.D.

2 A Probably in an email. It may have
3 been a phone -- I think it was a phone call. I
4 can't recall.

5 Q Can you produce any emails that
6 you've had between counsel and yourself? Did
7 you bring those with you?

8 A I have no emails that I brought
9 with me.

10 Q Did you receive a copy of the
11 deposition notice in this case?

12 A Yes, I did.

13 Q You were asked to bring any and
14 all records relating to any correspondence with
15 counsel. Did you do so?

16 A I have -- we have some emails that
17 I could bring you. I don't have them with me.

18 Q Where are they?

19 A They're at home.

20 Q Is there a reason you didn't bring
21 them today, given the deposition notice?

22 A Yes. I forgot.

23 Q Okay. All right. I would ask
24 that you produce those and that's any and all
25 correspondence with counsel, whether it's by

1 Haber, M.D.

2 letter, email or any other format.

3 MR. SZOKOLY: That's fine.

4 A No problem.

5 Q Did you bring with you your
6 billing statements in reference to this case?

7 A No.

8 Q And why not?

9 A I forgot.

10 Q How much have you billed in
11 reference to this matter?

12 A Frankly, I don't know.

13 Q So you're not able to tell that
14 because you didn't bring the materials that were
15 requested in the deposition notice?

16 A That's right.

17 Q What else did you forget to bring?

18 A I don't recall what I forgot. If
19 I remembered what I forgot, perhaps I wouldn't
20 have forgotten.

21 Q How many depositions do you think
22 you've participated in?

23 A I would say four or so.

24 Q Just four depositions?

25 A Four, five, maybe six.

1 Haber, M.D.

2 Q And how many trials have you
3 participated in?

4 A I'd say about six.

5 Q You understand with the deposition
6 notice that it typically has a list of items
7 that you're supposed to bring with you to the
8 deposition?

9 A Yes.

10 Q And, so, you've been through that
11 process before?

12 A Yes.

13 Q Okay. I would ask you to produce
14 the billing statements as well and I'm going to
15 leave the deposition open so that I can look at
16 these materials, whether they're correspondence
17 or billing statements. If I have further
18 questions, I will let you know. We can probably
19 do it by phone.

20 MR. SZOKOLY: Sure. Can we
21 go off the record for one second?

22 MS. MAGDEBURGER: Sure.

23 (Discussion off the record.)

24 Q Did you bring any documents
25 relating to how much income you earn as a result

1 Haber, M.D.

2 of being an expert witness?

3 A No.

4 Q You forget those as well?

5 A Yes.

6 Q Okay. I would ask you to produce
7 that as well.

8 Can you tell me -- I understand
9 that you started serving as an expert witness in
10 about 2011, correct?

11 A That's correct.

12 Q And that was the first time that
13 you were asked to do expert witness service?

14 A Yes.

15 Q Since 2011, how much -- and I
16 don't want percentage, I want total dollars --
17 how much did you make in 2011 as an expert
18 witness?

19 A I can't recall right now.

20 Q You can give me an estimate, your
21 best estimate.

22 A Say about a hundred thousand.

23 Q Okay. And in 2012 how much money
24 did you make?

25 A I would say 200,000.

1 Haber, M.D.

2 Q And in 2013 how much income did
3 you make?

4 A Approximately the same.

5 Q And in 2014 how much money did you
6 make as an expert witness?

7 A Same, as I recall.

8 Q And in 2015 how much income did
9 you make as an expert witness?

10 A Probably more. I don't know
11 exactly, maybe 250,000.

12 Q Can you check those numbers and
13 produce -- a letter is fine, if you want to sign
14 it, give it to counsel so he can give it to me,
15 okay? And I'm going to ask for it on the
16 record.

17 MS. MAGDEBURGER: I don't
18 want to have to follow-up. I just
19 want to get that material.

20 MR. SZOKOLY: Well, he also
21 gets the errata sheet, too, to read
22 and sign, so he'll get the benefit
23 of seeing his testimony.

24 Q And I'm going to keep it open
25 pending the receipt of that information as well.

1 Haber, M.D.

2 I don't need to see W9s. If you give me your
3 best estimate, I'll take your word for it, okay?

4 A Appreciate it.

5 Q Now, I think I give you your
6 report back. Take a look at it and that's
7 marked as --

8 A Two.

9 Q -- Exhibit 2.
10 Have you reviewed your report in
11 preparation for the deposition?

12 A Yes.

13 Q And do you need to add, modify,
14 amend, or in any way change your report?

15 A No.

16 Q Did you have any opinions above
17 and beyond what is contained in the report?

18 A No.

19 Q Have you asked for any additional
20 documents to be provided to you?

21 A No.

22 Q Have you reviewed any depositions
23 in this case?

24 A I've gotten some depositions, but,
25 frankly, I haven't reviewed them.

Haber, M.D.

1
2 Q Do you know what depositions
3 you've reviewed --

4 A No.

5 Q -- or what you've gotten? I'm
6 sorry. You haven't reviewed any of them?

7 A I gave such a cursory review of
8 the depositions that, frankly, I couldn't even
9 comment on them.

10 Q Did you get a copy of the
11 deposition of Dr. Magid?

12 A If I did, I didn't, frankly, look
13 at it.

14 Q You understand that it's her read
15 that you are opining about, correct?

16 A That's right.

17 Q Did you not think it important to
18 review her testimony regarding her read?

19 A I did not think it was that
20 important.

21 Q And why not?

22 A Because I made an independent
23 assessment. I reviewed the images and it
24 mattered, frankly, little to me what she felt
25 about the job that she performed.

1 Haber, M.D.

2 (Whereupon, Attorney
3 Mendrinos joins the deposition via
4 telephone.)

5 BY MS. MAGDEBURGER:

6 Q Did you review or receive the
7 deposition of Dr. Gokaslan?

8 A I couldn't, frankly, tell you
9 whether I did or I didn't.

10 Q You understand that Dr. Gokaslan
11 is being criticized in this case as well,
12 correct?

13 A I'm not sure that that doctor's
14 being criticized by me.

15 Q Okay. Did you think it important
16 to review his testimony regarding his
17 interpretation of the films?

18 A No.

19 Q And why not?

20 A Frankly, it mattered very little
21 to me what they felt as a response to the
22 allegations.

23 Q You're a member of the American
24 College of Radiology, correct?

25 A That's correct.

1 Haber, M.D.

2 Q Have you reviewed the American
3 College of Radiology's expert witness
4 affirmation statement?

5 A Yes.

6 Q And as part of that statement are
7 you to review all information relating to a case
8 that's available to you?

9 A I don't have the ACR guidelines in
10 front of me, so I couldn't comment on it.

11 Q So you can't remember one way or
12 the other?

13 A That's right.

14 Q So is it fair to say that the
15 guidelines regarding expert witness testimony is
16 something that's unfamiliar to you as you sit
17 here today?

18 A No, that's not fair.

19 Q All right. What do you remember
20 about the guidelines?

21 A Well, I know they stress the
22 importance of honesty and openness and candor.

23 I'm just writing these things down
24 for a second.

25 Q Anything else that you recall that

1 Haber, M.D.

2 the guidelines said?

3 A And I couldn't be more precise in
4 my review. I try to be as honest and open and
5 reflective of the case as possible. I don't
6 have any other specific information available to
7 me at this point.

8 Q When was the last time that you
9 practiced as a radiologist?

10 A It depends how you define
11 practicing as a radiologist.

12 Q All right. Why don't you tell me
13 how you define it?

14 A The last time I saw active
15 clinical patients that I was taking direct
16 control and involvement was in 2006.

17 Q Okay. And then how else do you
18 define it?

19 A I define radiology, practicing
20 radiology as, number one, keeping my license
21 active, keeping up with the literature and, as I
22 defined it, reviewing images. And those images
23 can be reviewed on patients that you're actively
24 participating in a clinical fashion. And as I
25 define practicing radiology, it could imply

1 Haber, M.D.
2 working with attorneys and insurance companies
3 and the VA Hospital that I had worked -- the VA
4 Hospital system, or working with the military
5 that I've worked with in terms of imaging
6 review.

7 Q The work with the military that
8 you've done has been asked to render opinions
9 regarding certain imaging involved with court
10 martials, correct?

11 A That's correct.

12 Q And that's two cases?

13 A That's correct.

14 Q Do you have any current cases with
15 the military now?

16 A No.

17 Q And did you make a determination
18 that the images supported child abuse or did not
19 support child abuse?

20 A I'd rather not go into it.

21 Q Okay. Did you testify in those
22 cases?

23 A I was brought to testify in
24 Germany and I was brought to testify and
25 traveled to Japan to testify. And as a function

1 Haber, M.D.

2 of the logistics of the case, it was decided by
3 counsel that they didn't want me to testify.

4 Q And which counsel did not want you
5 to testify?

6 A Both.

7 Q Both the counsel for the military,
8 as well as counsel for the individual being
9 charged?

10 A The way it works in the military
11 is that the military has military counsel for
12 both sides.

13 Q JAG Corps.

14 A So it was a strategic decision
15 that the -- I was defending -- in a position of
16 defending the allegation -- I was in the
17 position of defending the alleged regarding
18 child abuse, and it was the attorneys that I was
19 working with chose from a tactical perspective
20 that my testimony would not be helpful in this
21 particular case at the time.

22 Q And why was that?

23 A I don't know.

24 Q Was that the Japan case or the
25 Germany case?

1 Haber, M.D.

2 A Both.

3 Q Both. So you were defending the
4 alleged who was alleged who have abused their
5 children or child, correct?

6 A Correct.

7 Q And in both of them those
8 attorneys chose not to use you in actual
9 testimony?

10 A That's right.

11 Q Did you submit a report in lieu of
12 testimony?

13 A No.

14 Q Have you been asked to defend
15 anyone else in the military?

16 A No.

17 Q When were those cases complete?
18 Let me make it an easier question.

19 A It's on my curriculum vitae and it
20 was July 2013 and January 2014.

21 Q Now, you said that you also worked
22 with the VA. Tell me about that.

23 A The VA had asked private companies
24 to do independent auditing of ongoing clinical
25 cases and they wanted outside radiologists to

1 Haber, M.D.

2 perform such an audit. And, periodically, they
3 were sending me films with a minimal amount of
4 history and asked me to do, basically, a blind
5 read.

6 Q And when was the last time that
7 you did a blind read for a VA case?

8 A It's been over a year ago.

9 Q And how frequently were you doing
10 blind reads of VA cases?

11 A When I was actively doing them,
12 they would be coming in every few weeks. It
13 slowed down measurably.

14 Q During what period of time were
15 you doing VA review?

16 A I think it was around 2014.

17 Q And how were you paid for that?

18 A I was paid by check.

19 Q Who paid you? I'm sorry.

20 A The company.

21 Q Which company?

22 A Lumetra, L-u-m-e-t-r-a.

23 Q L-u-m --

24 A E-t-r-a.

25 Q -- e-t-r-a? And where are they

1 Haber, M.D.

2 located?

3 A San Francisco.

4 Q So you started in 2014 and they
5 stopped over a year ago. So in 2014 or 2015 did
6 they stop sending you cases?

7 A I can't recall. I know it's dried
8 up measurably. I enjoyed working with them. I
9 don't know what happened, but I think it dropped
10 off at the beginning of 2015. I'm still on --
11 still working with them, but they keep my name
12 and you have to do periodic assessments, so I'm
13 still active in the organizational sense with
14 them, but I haven't gotten any work in over a
15 year.

16 Q So you haven't gotten any new work
17 from them since the beginning of 2015?

18 A To the best of my recollection.

19 Q Okay. How many total cases did
20 you do for them between 2014 -- do you remember
21 what month in 2014 you started?

22 A It may have -- it may have been in
23 2013, for all I can recall right now, and I
24 would say about a dozen cases or more.

25 Q And do you remember how much

1 Haber, M.D.

2 income you earned from them?

3 A Not enough.

4 Q I understand that, but how much
5 income did you earn from them?

6 A A hundred dollars a case or
7 something like that. I just did it because I
8 was enjoying doing it.

9 Q How many hours total do you think
10 you devoted to looking at those films from 2013
11 or 2014 to 2015?

12 A Are you asking the total number of
13 hours? I'd say --

14 Q Twelve cases?

15 A -- twelve cases. I would say two
16 to three hours a case, so under 50 hours.

17 Q You took two or three hours to
18 review each case?

19 A They wanted reports and in
20 addition they had a -- such a secured collection
21 of firewalls. In the VA system, there are many
22 firewalls, so it was such a tedious process of
23 getting the images on my computer that it took
24 me much longer to access these images than to
25 read.

1 Haber, M.D.

2 Q Than normal, okay. So it was
3 actually downloading them that was the problem?

4 A It was a pain in the you know
5 what.

6 Q Okay. Now, how did you get
7 affiliated with doing those reviews with
8 Lumetra?

9 A To the best of my recollection,
10 they reached out to me.

11 Q And how did they find out about
12 you?

13 A I have no idea.

14 Q Do you know anybody at Lumetra
15 that knew you?

16 A Did I know them before? No.

17 Q Did they reach out to you to
18 respond to your website?

19 A As I -- as I just mentioned, I
20 don't know how they reached me.

21 Q Okay. So we talked about the
22 cases for the military and we talked about the
23 VA. Let me go back to your answer about the
24 practice of -- and then the other thing you
25 talked about is that you work with attorneys in

1 Haber, M.D.

2 terms of the practice of radiology.

3 How many active cases do you have
4 going on right now? With attorneys, I'm sorry.

5 A I would say 10 or -- around 10.

6 Q Do you have any other cases with

7 Mr. --

8 MS. MAGDEBURGER: I can
9 never say your last name.

10 MR. SZOKOLY: Just call me
11 Nick.

12 MS. MAGDEBURGER: I don't
13 want to do that on the record.

14 (Discussion off the record.)

15 BY MS. MAGDEBURGER:

16 Q You have 10 cases with counsel --

17 A With --

18 Q -- general counsel?

19 A General counsel.

20 Q And then cases with Mr. Szokoly?

21 A Correct.

22 Q And no other cases with his firm?

23 A That's correct.

24 Q Do you have cases in Baltimore?

25 A Yes.

Haber, M.D.

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Q Who do you have cases with?

A I had a case with Dan Miller, the Miller Group.

Q Anybody else?

A No.

Q Have you had any other cases in Baltimore?

A There's another case that I'm working on with Miller. I forgot the name. We had a case that went to trial and there's another case I have with them. I forgot the name.

Q Did you go to trial -- you didn't go to trial with Dan Miller in the case in Baltimore, correct?

A I went down to Baltimore to consult on the case, but I did not go to trial.

Q Do you know why it was he didn't call you to testify?

A Strategies. I'm not good at strategizing.

Q You're aware I was involved with that case, right?

A No.

1 Haber, M.D.

2 Q Yes.

3 A Oh, it's a good thing I'm so
4 honest here about all this.

5 Q It's a good thing.

6 In terms of your CV, do you have
7 another copy of it?

8 A Yes.

9 Q Okay. So I can look at this copy
10 while we're talking about it?

11 A Yes.

12 Q Do you currently have an active
13 license in New York State?

14 A Yes.

15 Q Is there some sort of
16 semiretirement provision that you're able to
17 utilize?

18 A Frankly, I'm not sure I understand
19 the question.

20 Q Sometimes you can have what's
21 considered an active license, but it's a retired
22 license. In other words, you still can say that
23 you're licensed, but you're not actively working
24 on the license. Is there anything like that in
25 New York?

1 Haber, M.D.

2 A Not that I'm aware of. I'm paying
3 600 bucks, so it should be a full license for
4 \$600.

5 Q Do you have any privileges
6 anywhere to practice medicine?

7 A No.

8 Q And when is the last time you had
9 privileges?

10 A 2006.

11 Q Do you currently retain --

12 MS. MAGDEBURGER: You can
13 have an objection to this.

14 Q -- any medical malpractice
15 insurance on you as a clinician or treater?

16 MR. SZOKOLY: Objection as
17 to relevance.

18 Go ahead.

19 A No.

20 Q When is the last time you had
21 malpractice insurance?

22 MR. SZOKOLY: Same
23 objection.

24 A 2006.

25 Q Do you have to take continuing

1 Haber, M.D.

2 medical education to keep your license active in
3 New York?

4 A Not if I'm not seeing patients.

5 Q Okay. That was sort of what I was
6 trying to get to. So do they have a status of
7 license that it remains active, but you don't
8 see -- they understand that you're not seeing
9 patients?

10 A If they do, I don't know of it.

11 Q If you're seeing patients, do you
12 have to do CME credits?

13 A Yes.

14 Q And have you done any CME credits?

15 A No.

16 Q Okay. When is the last time you
17 did CME credits?

18 A 2006.

19 Q Prior to 2006 had your license or
20 privileges ever been acted on unfavorably in any
21 manner?

22 MR. SZOKOLY: Objection,
23 relevance.

24 You can answer.

25 A No.

1 Haber, M.D.

2 Q And prior to 2006 -- I always have
3 to ask this question -- have you ever been
4 convicted of a crime?

5 A No.

6 Q I didn't think so, but you never
7 know.

8 Have you ever taken any lengthy
9 times off from the active practice of medicine
10 prior to 2006?

11 A No.

12 Q Now, I understand that you retired
13 from the clinical practice of medicine in 2006
14 as a result of your own back injury?

15 A That's correct. Injury, I'm not
16 sure I would use the term injury.

17 Q Back issue?

18 A Yes.

19 Q I understand you had surgery
20 yourself?

21 A I had surgery -- I had a
22 laminectomy and a fusion at L5, S1.

23 Q And that you suffered
24 complications from that?

25 A Post-operative, chronic, virtually

1 Haber, M.D.

2 anticipatable complications, back pain, but it's
3 much better.

4 Q How did you do that?

5 A I had to get better because of the
6 surgery.

7 Q So it just took time?

8 A Took time. Exercising.

9 Q Now, I understand that at one
10 point in time you were with a Radiological
11 Health Services, PC, correct?

12 A That's correct.

13 Q And they had some private offices
14 and were also affiliated or providing
15 radiological services to two hospitals?

16 A That's correct.

17 Q How many individuals were in that
18 group?

19 A It depends. I was with them for
20 30 years, so we started maybe eight or nine,
21 then we went up to 14 eventually, I think 13 or
22 14 radiologists.

23 Q And then I understand in 2007 the
24 group disbanded, correct?

25 A That's fair.

1 Haber, M.D.

2 Q And there was -- it was not a
3 pleasant disbandment, correct?

4 A There were some unhappy people.

5 Q How were you in that?

6 A Well, I had left in '06. I still
7 was a share owner in 2007 and it was -- it was
8 sad. It was very sad. I was saddened by it.

9 Q And was there any criticism of
10 your conduct, or care, or your involvement in
11 Radiological Health Services that led to the
12 break-up?

13 A No.

14 Q You indicated that you were still
15 a share owner, but you weren't actually able to
16 do any readings at that time, correct?

17 A Well, I had put in my notice that
18 I was leaving on a disability, so I left on a
19 disability. So as of June 2006, I was no longer
20 working, so I wasn't seeing patients.

21 Q And were your partners concerned
22 about you taking -- well, strike that.

23 Did you take fees generated from
24 the business when you were no longer able to
25 work?

1 Haber, M.D.

2 A No.

3 Q Okay. As a share owner you didn't
4 get any profits from the business?

5 A Well, when the group broke up, I
6 had share profits, you know, but it's not share
7 profits. I had share equity and that was
8 distributed.

9 Q Was that on the property?

10 A There was a piece of property as
11 well. You've done your homework.

12 Q Right. The share equity that you
13 had, was that based on profits of the company?

14 A The share equity that I had was
15 based on the residual cash that was left after
16 the company was no longer actively practicing as
17 an entity.

18 Q So, basically, the profits after
19 disbandment?

20 A Right.

21 Q And had they not disbanded, would
22 you have continued to receive certain amounts of
23 share equity even though you were disabled, you
24 were out on a disability?

25 A No.

1 Haber, M.D.

2 Q Now, I understand that you did
3 your training at the -- well, you graduated from
4 medical school at the St. Louis University
5 School of Medicine, correct?

6 A That's correct.

7 Q And then you went to the State
8 University of New York to do your internship
9 year, correct?

10 A That's right.

11 Q And an internship year is just
12 basically learning. You're doing all sorts of
13 medicine. It's not focused in radiology
14 specifically, correct?

15 A Correct.

16 Q And then you did your diagnostic
17 radiology residency from 1973 to 1976 also at
18 the State University of New York, correct?

19 A Correct.

20 Q So you found your calling while
21 doing your internship and that was radiology?

22 A That's right.

23 Q There's something called a
24 fellowship that can be done following training
25 and diagnostic radiology residency, correct?

1 Haber, M.D.

2 A Correct.

3 Q Did you do a fellowship?

4 A No.

5 Q And why is that?

6 A I was frankly anxious to go out
7 and make some money. And at the time, in 1976,
8 you didn't need a fellowship to get a good job
9 and I got a wonderful job without a fellowship.
10 And if I needed a fellowship to get a job, as
11 you do right now, I would have taken a
12 fellowship. So I got a wonderful job and I was
13 happily employed, became a managing partner. I
14 was there for 30 years.

15 Q Right. And that was the only
16 place that you worked, right?

17 A That's right, one job, 30 years.

18 Q Not a lot of people can say that
19 any longer.

20 A Right.

21 Q Now, you have referenced here that
22 you are an adjunct full professor of clinical
23 imaging at Long Island University. What is it
24 that you do for Long Island University?

25 A I teach.

1 Haber, M.D.

2 Q And what do you teach?

3 A I teach radiology to x-ray techs,
4 x-ray techs in training.

5 Q Is it fair to say that Long Island
6 University does not have a medical school?

7 A That's correct.

8 Q You're not teaching residents or
9 medical students at Long Island University,
10 correct?

11 A Correct.

12 Q What courses do you teach there?

13 A I teach a course that I refer to
14 as clinical imaging and I teach it from
15 September through May. And I go over human
16 anatomy and I relate it to radiology and imaging
17 anatomy and I show cases of actual patients and
18 pathology. That's in the second term. These
19 are seniors that I'm dealing with, so I go over
20 x-ray findings and I put it in a clinical
21 context from a perspective of human anatomy and
22 radiographic positioning, something the
23 technologists would learn and appreciate, and I
24 try to make it as interesting as possible.

25 Q How long is the technologist

1 Haber, M.D.

2 training that is offered by Long Island
3 University?

4 A Four years.

5 Q So you're dealing with fourth year
6 students, you said seniors?

7 A Yes.

8 Q Okay. And how often do you teach
9 this course?

10 A I teach it once a week. It's an
11 hour. It runs over an hour, but it's an hour.

12 Q And what day of the week is that?

13 A It is Tuesday.

14 Q And what time does the class meet?

15 A Eleven o'clock.

16 Q Are there any other staff members
17 that participate in that class?

18 A I have an assistant professor or
19 associate professor who sits in. His name is
20 John and I frankly forgot his last name, and he
21 sits in with me and he helps me set the
22 computers up. John O'Shea, O-s-h-e-a, John
23 O'Shea.

24 Q O-s-h-e-a?

25 A O-s-h-e-a. So he helps me set up

1 Haber, M.D.

2 and he tells me when to start, tells me when to
3 stop, because I don't work off the clock. And
4 sometimes if he has more time, I just continue.
5 After 40 years of experience, there's plenty I
6 can work with and I don't really have to -- I
7 don't need a clock to start and I don't need a
8 clock to stop.

9 Q And how did you get the title of
10 adjunct full professor?

11 A They gave it to me.

12 Q Are you paid for teaching?

13 A A nominal amount.

14 Q What's that?

15 A I think it's about a hundred
16 dollars. I do it because it's a way for me to
17 give back to the community.

18 Q A hundred dollars for the whole
19 course?

20 A A hundred dollars per class, but
21 when you consider the amount of preparation, it
22 takes me a day to prepare. It's a regular class
23 and you have to prepare the slides and Photo
24 Shop -- I'm sorry, PowerPoint. With the
25 preparation and research and getting the cases,

1 Haber, M.D.

2 it takes me about a day.

3 Q And you're paid a hundred dollars
4 per class?

5 A Right.

6 Q And how many classes are there in
7 a term?

8 A Well, I don't know how many
9 classes. That's a reasonable question, I guess.
10 It starts in September, it ends in December,
11 starts again in January, ends at the end of
12 April.

13 Q And it meets each Tuesday?

14 A Yes.

15 Q And then you don't teach during
16 the summer, right?

17 A Right.

18 Q So the only activity you do in the
19 summer is litigation-related activity?

20 A It depends what you define as
21 activity.

22 Q Well, how do you define it?

23 A I didn't use it. I didn't use the
24 word, so how would you define it?

25 Q So what do you do in the summer?

1 Haber, M.D.

2 How do you define it?

3 A Well, I do a lot of walking. I
4 have loads of hobbies.

5 Q Okay. How about work-related
6 issues in the summer?

7 A Work-related, working with
8 attorneys and insurance companies is 12 months a
9 year.

10 Q Has this schedule -- well, when
11 did you start doing your teaching at Long Island
12 University?

13 A Around September of '14.

14 Q And have they asked you to
15 continue through next term as well?

16 A Frankly, they're asking me to
17 spend more time there. I don't know if I have
18 the time to offer them, but absolutely they
19 asked me, yes.

20 Q Do you have a contract with them
21 or anything?

22 A No.

23 Q I noticed -- I went to their
24 website -- that the other individuals and the
25 professors that are in the program have -- you

1 Haber, M.D.
2 click on their name, they've got a picture and a
3 bio and all kinds of information about what they
4 are, who they are and what they're there to
5 teach. When you click on yours, it just says
6 adjunct full professor. There's not even a
7 picture. Do you know why that is that way on
8 the website?

9 A I'm glad you told me because I
10 like my picture. I'm going to ask them to put
11 my picture and my CV which I'm proud of.

12 Q Do you know why it is that way?

13 A I have a possibility. Mary, who
14 was their administrative aide, retired after 40
15 years and it's an issue with getting the right
16 person to put the right information next to the
17 right person. I don't think there's any
18 intentional effort to keep that off, but I'm
19 happy you told me.

20 Q Now, the last time you would have
21 taught this class would have been yesterday?

22 A Last week.

23 Q Why not yesterday? That was a
24 Tuesday.

25 A Their finals.

1 Haber, M.D.

2 Q Do you issue a final in your
3 class?

4 A No. I don't have exams either.

5 Q No exams, why is that?

6 A It's wonderful. Why do they ask
7 me not to do exams? I don't know. They
8 probably made an administrative decision. I
9 certainly -- I don't even give grades. I teach
10 and the students love it and I love it, but I
11 don't give grades, nor do I give finals.

12 Q So what kind of course is this
13 that you're teaching; is it for credit?

14 A Oh, they're obligated to go there
15 and there are questions on their examinations
16 that relate to what they see in the conferences.
17 And that's why John O'Shea is there, so he
18 extracts particular issues that he wants to
19 focus on, so the kids are attentive.

20 Q So what kind of course is this
21 considered? You say they're obligated to go,
22 but you don't give grades?

23 A Right.

24 Q And you don't do finals?

25 A Right.

1 Haber, M.D.

2 Q So what kind of course is that
3 with no grades, no finals and I assume it
4 doesn't get -- does it have hours attached to
5 it, credit hours attached to it?

6 A It's part of their curriculum,
7 yes. It's a pretty open-ended question. I'm
8 not sure -- you said what sort of courses and
9 I'm not sure how to answer that question.

10 Q What is the name of the course?

11 A The name of the course is the name
12 that I gave it, Clinical Radiological Imaging.

13 Q And what is it known there as?

14 A I have no idea. It's on Tuesdays
15 and John knows who's there and who's not there
16 and he asks questions I understand, he told me,
17 on tests material that's gone over in class.

18 Q Are you the only speaker in the
19 course?

20 A Yes.

21 Q If somebody doesn't show up, do
22 they get in trouble for not coming to the
23 course?

24 A It's an administrative question.
25 You'd have to ask John that question.

1 Haber, M.D.

2 Q You don't know one way or the
3 other?

4 A I have no idea.

5 Q How many students come and are in
6 the class at any given time?

7 A I would say around 25.

8 Q Now, you said that the work that
9 you do with attorneys and insurance companies --
10 the insurance companies you're doing IMEs for,
11 correct?

12 A Depends how you define an IME. As
13 a radiologist, I just look at pictures. If an
14 independent medical examination is a third-party
15 review of imaging, then it's an IME.

16 Q Okay. And those are cases
17 involved in litigation or being assessed for
18 litigation or claims made?

19 A Claims made, not necessarily
20 litigation.

21 Q Somebody is making a claim for
22 damages and they're trying to assess whether
23 there's damages there and the extent of the
24 damages in order to do an evaluation of the
25 value of the case; that's your understanding,

1 Haber, M.D.

2 correct?

3 A My understanding is they want to
4 see if the accident, usually a motor vehicle
5 accident, is the source of the radiographic
6 findings.

7 Q Right. So it's involved somehow
8 in the litigation process, fair?

9 A No, that's not fair. Well --

10 Q How are you separating it?

11 A Because you're using the word
12 litigation. I wouldn't characterize it, but
13 with all due respect, if you use litigation I'm
14 sure you're comfortable with the word
15 litigation --

16 Q I am. Been doing it 30 years.

17 MR. SZOKOLY: I think she
18 has a tattoo --

19 MS. MAGDEBURGER: That says
20 L.

21 A As a radiologist, they want me to
22 tell them from a clinical perspective -- I have
23 40 years of experience -- do I see the findings
24 and, if so, are they related to the accident.

25 Q Okay. So let me make my

1 Haber, M.D.

2 definition a little broader and clearer for
3 you --

4 A Please.

5 Q -- since you're not an attorney
6 and that's a fair assessment. You're working
7 for insurance companies who have been presented
8 with a claim from a plaintiff or from an injured
9 party in which the injured party is seeking
10 monetary relief, and the insurance company is
11 asking you to look at those pictures to make a
12 determination as to whether the injured party's
13 injury was causally related to an accident,
14 fair?

15 A Fair.

16 Q Okay. That's the litigation
17 process.

18 A Okay. Thank you.

19 Q Thank you. So how many hours a
20 week do you do working for insurance companies
21 looking at pictures and assessing claims?

22 A I would say it comes in -- I could
23 spend -- I could spend five hours some weeks and
24 spend three hours other weeks. It's between
25 three and five hours a week I would say.

1 Haber, M.D.

2 Q And what insurance companies do
3 you work with?

4 A I don't work with the insurance
5 companies, per se. I work with a clearinghouse
6 that gets the work from insurance companies.

7 Q What's the clearinghouse that you
8 work with?

9 A There are two of them. It's D&D.

10 Q D&D?

11 A D&D, like the letter D and the and
12 sign, D, and Examworks.

13 Q Examworks?

14 A That's another company.

15 Q So D&D is one?

16 A And Examworks, E-x-a-m-w-o-r-k-s.

17 Q So at Examworks?

18 A No, no, and. I'm sorry.

19 Q Sorry. Your New York accent is
20 getting me a little bit. Long Island. Some of
21 my best friends are from there, but I have to
22 stop and listen.

23 A We are still on the record, ma'am.

24 Q That's okay. That's okay. I'm
25 not saying anything disparaging.

1 Haber, M.D.

2 A I don't have an accent.

3 Q So he says.

4 MS. MAGDEBURGER: Madam
5 Court Reporter, do you attest to
6 that accent?

7 Q So D&D, D ampersand D?

8 A Yes.

9 Q And where are they located?

10 A Long Island. Long island.

11 Q Long island. My husband went to
12 the Merchant Marine Academy, so I had some
13 experience out there. You know where that is,
14 right?

15 A Yes.

16 Q It's beautiful, isn't it?

17 A Yes.

18 Q And then --

19 A Kings Point.

20 Q Kings Point.

21 And then Examworks, where are they
22 located?

23 A I think they're located throughout
24 the country.

25 THE WITNESS: Counsel, can I

1 Haber, M.D.

2 take one of your candies?

3 MR. SZOKOLY: That's why I
4 brought them.

5 A I think they're located throughout
6 the country.

7 Q And where do you get work from?

8 A Locally on Long Island.

9 Q Okay. Is there an office that you
10 work with out of there?

11 A They send the work to me.

12 Q And how much income do you earn
13 from doing insurance company review in any given
14 year?

15 A I would say under -- under
16 \$50,000.

17 Q And was that encapsulated in the
18 other numbers we talked about?

19 A Yes. Yes.

20 Q So it's under 50,000?

21 A And that's included in that 200.

22 Q Okay. How long have you been
23 doing the insurance company work, since 2014 as
24 well?

25 A Oh, yes, I would say at least two

Haber, M.D.

1
2 years.

3 Q So since 2014?

4 A Probably even before that, maybe
5 '13.

6 Q Okay. And do you know how it is
7 that they came to provide you with that work?

8 A I reached out to the them.

9 Q And how did you find out about
10 them?

11 A I had heard about them -- I'm not
12 sure who had told me -- and I had time on my
13 hands.

14 Q Okay. And this was after you had
15 started your expert witness work in 2011,
16 correct?

17 A Correct.

18 Q And when is the last time you
19 received a case from the insurance company
20 asking you to make an assessment?

21 A Last week.

22 Q Okay. And how many cases do you
23 currently have active going on now?

24 A Well, the way it works with them
25 is they send you a case and they tell you when

1 Haber, M.D.

2 they need the report by. So to answer what I
3 think your question is, I have nothing active
4 because everything's been done.

5 Q Completed, okay. Do you usually,
6 typically do it in the same day?

7 A Within a week.

8 Q Okay. Is that part of your
9 contract with them or your agreement with them?

10 A Yes.

11 Q Do you have a written contract
12 with these clearinghouses?

13 A No.

14 Q So it's all just understood in
15 terms of how much you're going to get paid and
16 how it's done?

17 A That's correct.

18 Q Do they pay you a flat fee per
19 case?

20 A They pay me a fee per case.

21 Q And what is that?

22 A It's complicated, but the first
23 case on a particular patient they'll pay \$175,
24 and then a subsequent case on the same patient
25 at the same time they'll pay a hundred dollars.

1 Haber, M.D.

2 Q Okay. Any other fee structure
3 associated with them?

4 A No.

5 Q All right. So, then, let's talk,
6 then, about the work you do with attorneys
7 because that sort of summarizes all the work
8 that you do that is radiological in nature,
9 correct?

10 A Correct.

11 Q All right. So the work with
12 attorneys also that's -- those are cases
13 involved in the litigation process, either
14 pre-suit or suit up to verdict, correct?

15 A Correct.

16 Q And why was it that you decided
17 you wanted to get into working with attorneys in
18 2011?

19 A Frankly, I was bored.

20 Q Okay. Any other reason?

21 A No.

22 Q I understand that you had some
23 real estate investments that you got into in
24 2007 and 2008 and 2009, correct?

25 A Would you like to buy them?

1 Haber, M.D.

2 Q No. And I understand from
3 previous testimony that the real estate market
4 had become not good for you, right?

5 A If this is all related, I'll
6 certainly be happy to answer.

7 Q It will be.

8 A Okay. The real estate market in
9 Paterson, New Jersey, fell apart and I have
10 other assets, but that particular -- I was -- I
11 was running to Paterson, New Jersey, initially
12 once a week to deal with these investments and
13 try to keep them afloat.

14 Q How many properties did you have
15 in Paterson?

16 A Oh, I'd say I had about 13
17 properties.

18 Q Okay. And what area of town were
19 they in?

20 A Paterson, New Jersey.

21 Q Were they in low socioeconomic
22 areas?

23 A Yes.

24 Q Were these Section 8 properties?

25 A Yes, and other subsidies as well,

Haber, M.D.

but Section 8 was among the reimbursements.

Q Do you still own them?

A No.

Q When did you get rid of them?

A Last year.

Q The last one or all together?

A Well, I have a property in the Bronx that I'm prepared to sell you as well.

Q What's that, in the Bronx? Okay. You got rid of the properties in New Jersey last year?

A Yes.

Q All right. And do you have any other investment properties? You said you have one in the Bronx?

A I have one in the Bronx.

Q Is that it?

A And I sold an apartment house.

Q Also in the Bronx?

A In Manhattan.

Q Was that a good investment or a bad investment?

A It was a very good investment.

Q And then you have property in the

Haber, M.D.

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Bronx, too?

A Yes.

Q You just have one?

A Yes.

Q Do you have any other leased properties currently?

A No.

Q Okay. So just one property in the Bronx and then your own home?

A Yes.

Q Okay. Is it fair to say that the real estate market and its crashing was one of the reasons that you got into doing expert witness work?

A No.

Q Had nothing to do with it?

A No. Frankly, I thought it was going to be an excellent opportunity to make money, but I am -- I could have stopped work in 2006 and not worked another day in my life. I have considerable resources through inheritance.

Q Okay. So if you testified in a previous deposition that one of the reasons you got into expert witness work was because the

1 Haber, M.D.

2 real estate market had fallen apart, would that
3 just be inaccurate?

4 A If I said it, maybe I felt that
5 way at the time, but it gets complicated when
6 you have investments because there's a family
7 inheritance and there's active money and there's
8 family money. And when you're not working and
9 you have an inheritance in the millions, it's
10 still not part of your active cash flow, so I
11 wasn't in any way desperate for money. I had
12 more than ample resources. I sold a building
13 which was worth \$8 million. My brother and I
14 owned it, we sold it, so we had that money
15 available to us, and I'm living off of income.
16 And I could always have spoken to my brother and
17 say, "I want out," or "I want to sell." And we
18 were talking about various things and I had the
19 time, so that's why. I'm still reasonably
20 intelligent, in my opinion, so I felt I could
21 utilize my services.

22 Q So I think my question was a
23 little different. I know you're intelligent.
24 We'll talk about that, too. My question was
25 different which is, if you testified previously

1 Haber, M.D.

2 that one of the reasons that you got into expert
3 witness work was because the real estate market
4 had fallen apart and you lost money in
5 investments, would that be an inaccurate
6 statement of fact?

7 A I attempted to answer that
8 question. I did it in a circuitous route.

9 Q I was just wanting a direct route
10 because I'm blond and I'm tired and I had to get
11 up early.

12 A There aren't really direct answers
13 to your question.

14 Q Well, my question is really
15 different. It is, do you recall providing
16 testimony -- I'll rephrase it for you --

17 A You can --

18 Q -- saying that one of the reasons
19 you got into expert witness work is because you
20 lost money in the real estate market?

21 A If I said that at a prior
22 deposition, it may have been more concurrent
23 with an active loss that I was experiencing at
24 the time, but I would say at this point in a
25 global context far more important would be for

1 Haber, M.D.

2 me to enjoy my life.

3 Q I understand that, but the
4 question goes to why you got into expert witness
5 services in the first place. So if you gave a
6 statement previously that you got into expert
7 witness services because you had taken -- I
8 believe the word was a beating in the real
9 estate market, that's what you said at that
10 previous deposition --

11 A I believe it.

12 Q -- and it has to do with the
13 reason you got into expert witness work in the
14 first place. And that's what I'm seeking, not
15 why you're in it now, but why you got into it in
16 the first place?

17 MR. SZOKOLY: Hold on.

18 Which of the four questions do you
19 want him to answer?

20 MS. MAGDEBURGER: I'm giving
21 him context. I'm giving him
22 context.

23 MR. SZOKOLY: I gotcha.

24 Q So if you said earlier at a
25 previous deposition that you got into expert

1 Haber, M.D.

2 witness work because you took a beating in the
3 real estate market, would that be one of the
4 reasons that you got into expert witness work?

5 A That would have been a rather
6 nominal reason, but I can imagine I was
7 concerned about an investment at the time, but
8 it's a nominal reason. As I said before, at
9 this time that we're speaking about it, I enjoy
10 what I'm doing and I enjoyed it when I started
11 doing it. If I didn't enjoy it when I started
12 doing it, I wouldn't have continued doing it at
13 the time that I first started doing it.

14 Q Now, I understand that you have a
15 Social Security disability, correct?

16 A That's correct.

17 Q And that you also had two
18 disability policies that you had had, I guess,
19 written on yourself prior to your 2006
20 departure, correct?

21 A You used a term, written on
22 myself. That's not correct.

23 Q That you had available to you?

24 A Yes.

25 Q And do you still receive benefits

1 Haber, M.D.

2 from the Social Security as well as the policies
3 that you had?

4 A The policies that I had I no
5 longer am getting any benefits from. In terms
6 of Social Security, I'm above 65 --

7 Q So you get it anyway?

8 A -- and I get it anyway.

9 Q And did the policies end when you
10 turned 65?

11 A The policies ended when I turned
12 65, that's correct.

13 Q As part of receiving benefits
14 under the policies that you had, did you have to
15 attest that you were unable to do work in your
16 chosen field?

17 A No.

18 Q Did you have to attest that you
19 had or provide proof that you were physically
20 unable to perform your duties as a physician?

21 A Well, would you repeat the
22 question, please?

23 Q Can you read --

24 (The record was read.)

25 A I will answer that question. It

1 Haber, M.D.
2 was own occupation. The answer is I could not
3 function as a radiologist doing the tasks that I
4 was obligated to do.

5 Q And when did you stop receiving
6 benefits from those policies?

7 MR. SZOKOLY: Objection,
8 asked and answered.

9 A When I was 65.

10 Q What year was that? I'm sorry. I
11 don't know your date of birth.

12 A Let's see, born in '48, so add 65
13 years to that, 2013.

14 Q Okay. And did you have to do that
15 attestation each year that you received
16 benefits?

17 A Yes.

18 Q So you were physically unable to
19 provide -- do the work that you had to do to
20 function as a radiologist, correct?

21 A In a clinical setting.

22 Q Okay. Now, do you agree that the
23 current income that you receive from doing all
24 services involving any legal evaluation, so your
25 insurance company service, the VA service, the

1 Haber, M.D.

2 work with attorneys, that that is greater than
3 two-thirds of your total income?

4 A Yes.

5 Q Is it more like three-quarters of
6 your total income?

7 A These are accounting issues that
8 I'm not prepared to really comment on right now.

9 Q You don't know one way or the
10 other?

11 A No.

12 Q Do you agree with me that when you
13 are doing your work with attorneys that greater
14 than 90 percent of the work that you do is for
15 plaintiffs?

16 A No.

17 Q What is that breakdown?

18 A All the work that I do with
19 insurance companies or, say, the VA which is
20 nominal right now is for -- is for the defense.
21 And I have cases right now that are not through
22 insurance companies that are directly from
23 lawyers in terms of defense, so.

24 Q How many defense personal injury
25 cases are you involved with currently?

1 Haber, M.D.

2 A I think two or three.

3 Q And what attorneys are you
4 involved with?

5 A I couldn't recall right now.

6 Q And how many plaintiff's cases are
7 you involved with now?

8 A I thought that was asked before
9 and I said around 10 active.

10 Q Around 10 active plaintiff's
11 cases?

12 A Right.

13 Q Do you use a template -- well,
14 have you ever provided testimony that greater
15 than 90 percent of the work that you did for
16 attorneys -- I'm separating that out from the
17 insurance companies -- work for attorneys that
18 it is greater than 90 percent?

19 A I could have -- I couldn't tell
20 you whether I have said that in the past, but in
21 reflection I would say that's probably true.

22 Q So it is true?

23 A Yeah.

24 Q That greater than 90 percent of
25 the work that you have done for attorneys has

1 Haber, M.D.

2 been on behalf of the plaintiffs, correct?

3 A Yes.

4 Q And have you ever received a
5 hundred cases or more a year from plaintiff's
6 law firms to review?

7 A Are you asking me in a course of a
8 year have I received --

9 Q Over a hundred cases to review.

10 A Yes.

11 Q Okay. How many cases do you get a
12 year to review?

13 A I couldn't give you a number. A
14 few cases a week.

15 Q Is that two or three cases a week
16 that you get to review?

17 A As I can recall, yeah.

18 Q And what are your charges for your
19 initial review? And just so it's clear, I'm
20 focusing on cases that you get from attorneys,
21 not the insurance companies because we have
22 already talked about that, so I'm trying to
23 break it down by groups so it's easier for me to
24 understand later, but how are you paid when you
25 get a case from an attorney; how does that work?

1 Haber, M.D.

2 A I charge \$400 an hour. Also on my
3 website you might see that I'll charge \$250 for
4 an initial review. And if I feel that I can't
5 help the attorney, I just return the \$250. And
6 if I can, I'll put that \$250 as partial payment
7 to the hourly fee.

8 Q And then when you get these cases,
9 how long do you typically spend with a
10 particular case, so your initial review could be
11 how long?

12 A Initial review, if I can't help
13 them, could be under half an hour. I'll know
14 pretty soon whether I can see validity from a
15 cursory review, and so \$250 is fair to the
16 attorney and fair to me. And I would say a few
17 hours, or one or two hours.

18 Q Per case?

19 A Three hours, some cases one hour,
20 some cases could be five or more hours or 10
21 hours. I've had cases that are 15, 20 hours.

22 Q And you charge the \$400 an hour
23 for that?

24 A Yes.

25 Q In 2015 how many cases were you

1 Haber, M.D.

2 asked to review, all comers?

3 A We'll break it down. I would say
4 two to three cases from lawyers a week and two
5 or three cases from insurance companies.

6 Q Okay. And then how many hours a
7 week were you then working on the two or three
8 cases a week from the lawyers? I'm separating
9 them out.

10 A I understand. I would say it took
11 me perhaps a day-and-a-half to -- I would spend
12 on legal work for the lawyers. You're talking
13 about the insurance companies as well?

14 Q No, I'm talking about the lawyers.

15 A The lawyers? I would say about a
16 day, an eight-hour day.

17 Q A week?

18 A Yes, one day a week.

19 Q And then how much time doing the
20 insurance company work?

21 A Say a half-day. It's about a
22 day-and-a-half I would devote to insurance -- to
23 insurance and legal work, lawyer work.

24 Q How many hours did you bill for in
25 2015?

1 Haber, M.D.

2 A I couldn't tell you.

3 Q Who would have that information?

4 A Nobody.

5 Q Nobody?

6 A Nobody.

7 Q Well, we know it's over 300,000,
8 so if we do simple math by 400 --

9 MR. SZOKOLY: Over what
10 300,000?

11 Q That you made --

12 MR. SZOKOLY: In 2015? I
13 didn't hear that.

14 Is that what you said?

15 THE WITNESS: I said 200.

16 Q I'm sorry, 250.

17 MR. SZOKOLY: Well, either
18 one of those is not 300.

19 Q I take it back.

20 A Well, these are guesses, 200, 250.

21 Q Two-fifty.

22 A We can't do precise breakdowns
23 based upon guesses here. And I could tell you
24 that I worked about a day-and-a-half and I'm not
25 sure -- a day-and-a-half for the insurance

1 Haber, M.D.

2 company companies, D&D and Examworks in about a
3 day or so with the -- for the lawyers. I only
4 worked three, maybe four sometimes -- rarely
5 four days, but I worked a three- to four-day
6 week. I didn't have to work, so I'm just
7 explaining.

8 Q I understand that.

9 A So just to clarify, I would say a
10 day-and-a-half a week and -- it's about a
11 day-and-a-half a week.

12 Q So you only work three days a week
13 and then the rest I think you have other
14 pursuits. I think we talked about it in a
15 previous deposition.

16 A I'm not exactly a womanizer, so
17 the other pursuits are all --

18 Q Is it golf?

19 A I have loads of hobbies. Loads.

20 Q And golf being one of them?

21 A No.

22 Q No golf?

23 A No golf.

24 Q Tennis?

25 A I used to play tennis before the

1 Haber, M.D.

2 disability and herniated disk. I have -- would
3 you like to hear my hobbies?

4 Q Sure.

5 A All right. Might as well, right,
6 personalize this a bit. I'm an avid
7 photographer. I am a dog lover. I take my dog
8 to the dog park frequently. I cook. I play
9 competitive chess.

10 Q Chess, that's what it was.

11 A Did you read that?

12 MR. SZOKOLY: I like how you
13 went to golf right away, though.

14 A I know why. It's because I'm a
15 middle class Jewish guy from Long Island. I
16 know it.

17 Q Actually, I didn't do any of those
18 things.

19 A You did. You did. Upper middle
20 class Jewish --

21 Q A, I didn't know you were Jewish
22 and, B, I did know you live in Long Island,
23 but --

24 A I belonged to a wonderful golf
25 club, a few of them, but when I went out on

1 Haber, M.D.

2 disability I didn't have the --

3 Q Couldn't do it?

4 A -- I didn't have the money to
5 spend \$20,000 a year to play tennis.

6 Q So going back, then, to my
7 question that started all of this, how many
8 hours did you bill for medical legal work in
9 2015 to lawyers?

10 A I can't give that you number.

11 Q What's your best estimate?

12 A My best estimate is that I billed
13 around four -- my prices have been stable, so I
14 would say around \$400 an hour. And I'm billing
15 out two or three cases a week, so a case could
16 be an hour, a case could be more than -- more
17 than an hour, two hours, three hours or four
18 hours, so it's eight hours -- say eight to 10
19 hours a week, so that works out. If it's 10
20 hours a week, the numbers seem to work.

21 Q And do you have a template for
22 writing your reports?

23 A I wish I did. It would make life
24 a lot easier.

25 Q Do you use the same sort of

1 Haber, M.D.

2 methodology each time?

3 A Depends what you mean by
4 methodology. Every report is -- other than the
5 D&D reports and Examworks where they have
6 specific columns they want you to fill, you've
7 seen them, I'm sure --

8 Q Right. You have to hand type
9 everything?

10 A No.

11 Q Not there, but on your reports you
12 have to hand type?

13 A No, I don't. I use Dragon
14 Dictation for Medicine and it works out much,
15 much better. If I had to type this, I'd have to
16 choose another career.

17 Q Do you use the same format when
18 you do? In other words, you start with what
19 you've reviewed, and then you render your
20 opinions, and then you have the same attestation
21 at the end, correct?

22 A Yes.

23 Q Okay. Have you been involved with
24 providing any seminars or other presentations to
25 attorneys?

1 Haber, M.D.

2 A I did a seminar a year-and-a-half
3 ago to the Nassau County -- the Nassau County --

4 Q Bar Association?

5 A -- Bar Association.

6 Q And that was called Medicine in
7 the Courtroom?

8 A Yes, I think that was.

9 Q It was videotaped?

10 A It may have been.

11 Q It was.

12 A Yeah? Did you see it?

13 Q I don't have to answer any
14 questions today. I just get to ask them.

15 A Aren't you're cute.

16 MR. SZOKOLY: She hasn't
17 seen them.

18 Q You provided in that presentation
19 to Nassau a CV, correct?

20 A Would you repeat that, please?

21 Q With the Nassau County Bar
22 Association you provided the individuals with a
23 copy of your CV, correct?

24 A I may have.

25 Q And it's a different CV than what

1 Haber, M.D.

2 you are using today, correct?

3 A The CV changed a few times.

4 Things are added, things are taken off. It's

5 always in a state of flux.

6 Q Let me show you what I'm going to

7 mark as the next exhibit which is Exhibit 6.

8 (A second curriculum vitae
9 of Jordan Haber, M.D. was marked as
10 Haber Exhibit No. 6 for
11 identification, as of this date.)

12 (Discussion off the record.)

13 Q Are you familiar with this

14 curriculum vitae?

15 A Yes.

16 Q All right. On this curriculum
17 vitae you have referenced as experience visiting
18 radiologist at the State University of New York
19 Hospital at Stony Brook, September 2011 to the
20 present, correct?

21 A That's correct.

22 Q And were you in fact a visiting
23 radiologist at the State University of New York
24 Hospital at Stony Brook?

25 A Yes.

Haber, M.D.

Q And were you employed by the State University of New York Hospital at Stony Brook?

A No.

Q Did you receive compensation from them in any manner from the State University of New York Hospital at Stony Brook?

A No.

Q Did they have you listed anywhere as part of their faculty at the State University of New York Hospital at Stony Brook?

A No.

Q Did you ever seek credentials or privileges at the State University of New York Hospital at Stony Brook?

A No.

Q Did you ever fill in an application form at the State University of New York Hospital at Stony Brook?

A No.

Q Did you ever receive any sort of benefit from the State University of New York Hospital at Stony Brook for your services as a visiting radiologist?

A Yes.

1 Haber, M.D.

2 Q What did you receive?

3 A I received the opportunity when I
4 was getting back into medicine to go to
5 conferences and sit with attendings.

6 Q And those were basically lunch
7 conferences that they allowed you to come in and
8 talk to the individuals that were in the
9 conferences, correct?

10 A I participated in the conferences.
11 I was a member of the audience and asked
12 questions and on occasion, rare occasion, I sat
13 with attendings.

14 Q Okay. And when you say you sat
15 with the attendings, what do you mean?

16 A When they were going over live
17 cases, not in a conference mode, but when they
18 were going over cases in the very beginning,
19 just for the first few weeks, I would sit with
20 them and work one-on-one with them going over
21 cases. I wouldn't even say one-on-one. I would
22 listen to them dictate cases. I would ask them
23 questions and I stopped doing that within a few
24 weeks.

25 Q What's that?

1 Haber, M.D.

2 A I stopped doing the one-on-one
3 with the attendings after a few weeks.

4 Q Okay. What you did was you would
5 go to the lunch conferences that they had.
6 Those are their grand rounds; is that how you
7 say it?

8 A Weekly -- weekly -- it's frankly a
9 daily session, so I wanted to basically get back
10 into medicine. I wanted to see what was the
11 latest in terms of research and it was a
12 wonderful opportunity. So the chairman of the
13 department told me I can come in and visit and
14 go to conferences, so the word visiting
15 radiologist was used. I visited. I wasn't on
16 staff. I never made any allegations or
17 presentations that I was on staff and it was
18 perfectly obvious to anybody who wanted to do
19 their due diligence to look at the staff and see
20 that I was not on staff.

21 Q Okay. You provided testimony in
22 the past that you were involved with the
23 teaching of residents at the State University of
24 New York Hospital at Stony Brook. Is that
25 accurate that you were involved and that you

1 Haber, M.D.

2 that he was using it on his vitae?

3 MS. MAGDEBURGER: Right.

4 MR. SZOKOLY: Objection,
5 calls for speculation.

6 Go ahead. You can answer.

7 A I have no idea.

8 Q Were you asked to remove visiting
9 radiologist from your curriculum vitae?

10 A No.

11 Q Why did you remove it from your
12 curriculum vitae?

13 A Because I didn't want it to be
14 misinterpreted by a third-party or a lawyer that
15 I was on staff; that's one reason. And the
16 second reason was that I was no longer going to
17 conferences. I was getting busy and, frankly, I
18 didn't feel the need to go. So being that the
19 way it was worded, to present, and it was
20 ambiguous because when does the present end, the
21 new CV doesn't even refer to it. And since I'm
22 no longer going there and it was a source of
23 ambiguity, I decided to remove it.

24 Q You've gotten questions about that
25 before, correct?

1 Haber, M.D.

2 A Oh, absolutely.

3 Q Who gave you the title visiting
4 radiologist?

5 A I wouldn't characterize it as a
6 title. It was more of a job description, a --
7 not a job description, but an opportunity
8 description.

9 Q Who articulated visiting
10 radiologist?

11 A It was a title that I generated.

12 Q Okay. It was not a title that was
13 generated by the State University of New York
14 Hospital at Stony Brook, fair?

15 A And that's the reason --

16 Q Is that correct?

17 A And I would like to answer that,
18 if I can. It's a title that I gave myself
19 because I wanted to -- people would ask me what
20 am I doing and I said, "I'm going to conferences
21 and visiting."

22 And they said -- laypeople would
23 ask me, "What does that mean?"

24 So I said, "I'm a visiting
25 radiologist." And it became ambiguous and I

1 Haber, M.D.

2 didn't want to mislead people since I was not on
3 staff and I wasn't going there anymore, so I
4 just removed it.

5 Q Okay. During what period of time
6 did you go to SUNY for these lunch conferences?

7 A Lunchtime. And I would go --

8 Q I know lunchtime. During what
9 years, or days, or months?

10 A I don't know. It was around
11 '12 -- 2012, 2013.

12 Q Well, we have 2011 here.

13 A That may have been---

14 Q And then when did it stop?

15 A It didn't really stop. I just
16 stopped -- stopped going. I couldn't tell you
17 exactly when it stopped, certainly within the
18 last year and I don't think I've gone in 2015.
19 Maybe 2014. I was only going once every few
20 weeks, not on a daily basis.

21 Q And it was just at lunch?

22 A Yeah. I had lunch; saw my
23 friends; learned; got out of the house. It was
24 good. It was great.

25 Q Now, you have on both of your

1 Haber, M.D.

2 curriculum vitae that we have that you were
3 voted to Mensa International or that you were
4 part of Mensa International. It's on both of
5 your CVs, correct?

6 A Correct.

7 Q And Mensa International has to do
8 with IQ, right?

9 A That's correct.

10 Q And how was it you first got into
11 Mensa in 1982?

12 A I don't think you want to hear
13 that story.

14 Q Make it a quick summary. How did
15 you do that?

16 A My brother was telling me how much
17 smarter he is than I am and I said, "That's a
18 lot of B.S."

19 He said, "Well, I'm in Mensa."

20 So I said, "They'll let anybody --
21 if they let you in Mensa, they'll let anybody in
22 Mensa," so it was a sibling sort of rivalry. My
23 brother-in-law was in Mensa, my brother was in
24 Mensa, and I decided I had to prove to these
25 characters that I was at least as smart as they

1 Haber, M.D.

2 are, so that's why I decided to apply to Mensa.

3 Q And what did you have to do?

4 A I went to my high school -- if
5 this is all relevant, I'm happy to answer it. I
6 went to my high school and I asked them to fill
7 out a form. At that time, if you had a certain
8 IQ you can get in Mensa based on your IQ -- I
9 don't know if it's still the case -- so they
10 checked my IQ -- I don't know how much it was --
11 and they filled out the forms and sent it to
12 Mensa.

13 Q And you were approved?

14 A Yes.

15 Q Did you have to pay for it?

16 A Yes.

17 Q How much?

18 A People from Mensa don't have much
19 money, they have much more brains than money, so
20 about \$175. I don't know.

21 Q And then you went through the same
22 process in 2013 as well?

23 A Well, I found out there was an
24 American Mensa in addition to a local Mensa, so
25 I said, "Well, I could have Mensa times two,"

1 Haber, M.D.

2 and that was another hundred bucks.

3 Q And what did you have to do to get
4 Mensa times two?

5 A Show them Mensa number one.

6 Q That was it?

7 A That was it.

8 Q You didn't have to take another
9 test?

10 A No more tests. I didn't take any
11 test the first time.

12 Q The high school just said you were
13 smart enough?

14 A They gave an IQ number. They
15 gave --

16 Q You had taken a test at some
17 point?

18 A No.

19 Q So how did the high school give an
20 IQ number?

21 A I took an IQ -- Mensa has their
22 own tests. Maybe I'm not expressing this so
23 well. Mensa has tests, but if you have an IQ
24 above a certain number, 130 or 140, then you can
25 get in just on the basis of a standardized IQ

Haber, M.D.

1
2 test.

3 Q And how did they get the
4 standardized IQ test on you in high school?

5 A Yeah, I don't remember.

6 Q Somebody did it?

7 A High school, junior high school.

8 Q Okay. So the other thing you have
9 listed here is America's Top Radiologists. Who
10 is that from?

11 A I got a -- I got a letter from a
12 company and they said, "We are pleased to
13 announce that you have been selected by an
14 independent auditing company as among the top
15 radiologists in the country."

16 So I asked them, "Who's doing
17 this?"

18 And they said, "So and so and so
19 and so."

20 So I said, "Well, I don't know."

21 And they said, "If you're
22 interested --" I think -- I don't even think you
23 had to pay anything for this -- "you'll be
24 inducted into America's Top Radiologists."

25 I don't know how -- their precise

1 Haber, M.D.

2 criteria of the selection process, but it was
3 something nice that somebody would say something
4 about me. And being an egoist, egotist, I said,
5 "Thank you for the compliment."

6 Q Who was it that contacted you and
7 said that you've been inducted into the top
8 radiologists?

9 A The organization.

10 Q What's the name of it?

11 A I don't know. Maybe that is the
12 name. That is the name of an entity, America's
13 Top -- America's Top Doctors or Physicians.

14 Q Do you have a copy of the letter
15 that you got?

16 A No.

17 Q Do you have any material to
18 support that you were named to America's Top
19 Radiologists in 2009 and 2010 other than what
20 appears on your curriculum vitae?

21 A No, but you're free to contact
22 them.

23 Q I have. They don't have any
24 record of you, so that's why I'm asking.

25 A Well, I will look. I may -- you

1 Haber, M.D.

2 know, if I saved it, fine. I wouldn't put it in
3 unless I received that invite overture. I may
4 have saved it. They should keep a record when
5 they bestow --

6 Q Do you know what organization in
7 particular it was?

8 A No, but I can tell you that my
9 cardiologist is among America's Top
10 Cardiologists as well, so I don't know what it
11 means.

12 Q Well, there actually is an
13 organization with that copyright.

14 A I'm going to reach out to them.

15 Q Do you know why you would have
16 been selected by America's Top Radiologists some
17 three and four years after you had retired from
18 the active clinical practice of radiology?

19 MR. SZOKOLY: Objection,
20 asked and answered. He's already
21 told you he does not know the
22 criteria.

23 THE WITNESS: Can I answer
24 that?

25 MR. SZOKOLY: Yes, you can

1 Haber, M.D.

2 answer it again. Why not?

3 A I don't know the criteria.

4 Q That's good testimony from Mr.
5 Szokoly.

6 MR. SZOKOLY: You're getting
7 it.

8 MS. MAGDEBURGER: I'm
9 getting it.

10 Can we take a bathroom
11 break?

12 (Whereupon, at 11:20 o'clock
13 a.m., a recess was taken to 11:25
14 o'clock a.m.)

15 (The deposition resumed with
16 all parties present.)

17 J O R D A N H A B E R, M. D., resumed
18 and testified further as follows:

19 BY MS. MAGDEBURGER:

20 Q So the group who reference -- you
21 reference on your CV as America's Top
22 Radiologists, you can't identify that group,
23 correct?

24 A That's not correct.

25 Q You can identify that group?

1 Haber, M.D.

2 A When I put it on my CV, I had
3 paperwork to reflect that I was elected or asked
4 to become a -- in that organization, so I was
5 flattered and I put it on my CV. If that's the
6 question you're asking me, I hopefully have
7 answered it.

8 Q Well, that's not the question. My
9 question is, can you identify for me today the
10 organization that you believe asked you or
11 offered to you to be part of America's Top
12 Radiologists in 2009 and 2010?

13 A I think I've answered that.

14 Q I don't understand your answer, so
15 please answer it again.

16 A When I put together my CV, I had
17 paperwork to reflect that I was asked to be in
18 that organization. Are you asking me did I
19 bring that paperwork with me now -- I'm not
20 finished -- or do I have access to that
21 paperwork now three years later? I can't tell
22 you, but at the time that I wrote the CV I had
23 validation that I was asked to be in that
24 organization.

25 Q Okay. So my question is different

1 Haber, M.D.

2 and let me rearticulate it for you.

3 As you sit here today under
4 oath --

5 A Yes.

6 Q -- are you able to tell me what
7 the name of that organization was that suggested
8 that they would hold you as America's top
9 radiologist?

10 A Whatever's written on the CV.

11 Q It just says, America's Top
12 Radiologists, so I'm asking you to answer me
13 directly with a yes or no answer. Can you as
14 you sit here today under oath tell me and
15 identify for me the organization that you
16 believe offered to put you into America's Top
17 Radiologists?

18 MR. SZOKOLY: And I'm going
19 to object. While your answer needs
20 to be responsive, don't feel
21 constrained by Ms. Magdeburger's
22 rules of a dichotomous variable, or
23 yes, or no, or no further words.

24 THE WITNESS: I understand.

25 A As I sit here today, I'm telling

1 Haber, M.D.

2 you that in good faith I put something on my CV
3 that I was proud of. At the time I put it on
4 the CV, I had validation of it. If you're
5 asking me can I give you the precise name of the
6 organization, is it America's Top Doctors,
7 America's Top Physicians, America's Top
8 Radiologists? If you're asking me this date --
9 I'll look at my watch -- the 27th of April, do I
10 know the name of the precise organization, I do
11 not have that precise name. It may be America's
12 Top Doctors. I don't know if they have a
13 sub-category of America's Top Radiologists, but
14 there is an entity I was asked to be -- at the
15 time I filled out in good faith, I wouldn't put
16 it in unless I had verification -- I was asked
17 to be and I was proud to put it in.

18 Q So sitting here today you can't
19 articulate what the name of that organization
20 was?

21 A I think I answered that question.

22 MR. SZOKOLY: Multiple
23 times, asked and answered.

24 Q I don't think you ever answered
25 it, Doctor, so I am looking for yes or no.

1 Haber, M.D.

2 A You're entitled --

3 MR. SZOKOLY: Hold on.

4 Before we all speak over each other,
5 objection, asked and answered.

6 Go ahead.

7 A You've asked it many times and I
8 thought I answered it well many times. You may
9 disagree --

10 Q I do.

11 A -- from your perspective that it's
12 been answered correctly and you're entitled to
13 disagree with me. You're entitled to disagree
14 with me.

15 Q Actually, I'm entitled to an
16 answer. So if you're not going to provide me
17 with a yes or no answer, then I'm going to
18 certify the question and I'm going to move to
19 compel the answer because I think that I'm
20 entitled to know as you sit here today whether
21 you can identify for me the organization which
22 you believe held you out to be America's top
23 radiologist because I have contacted the
24 organization that has copyright to that name and
25 they have no record of you. So I would like to

1 Haber, M.D.
2 know where and by what organization you believe
3 that you were asked to be America's top
4 radiologist, part of that group.

5 MR. SZOKOLY: Are you done?

6 MS. MAGDEBURGER: I'm done
7 and you can object.

8 MR. SZOKOLY: Actually, it's
9 more than an objection, so --

10 Q All right. Doctor, you're going
11 to need to go out of the room.

12 MR. SZOKOLY: It will just
13 take us a second.

14 (Whereupon, the Witness left
15 the room.)

16 MR. SZOKOLY: Just to
17 respond to the objection/lecture to
18 the witness and I don't mean that in
19 a derogatory way, but it was clearly
20 a lecture. He's answered the
21 question multiple, multiple times.

22 With regards to your
23 certifying the question which last
24 time I checked is not actually in
25 the Maryland rules anymore, you are

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Haber, M.D.

more than welcome to file whatever motion seeking whatever relief you think is appropriate. However, he has answered your question multiple times and there is no requirement in law or rule that he's limited to the two answers that you would like him to provide to you, so that's all I have to say on it.

MS. MAGDEBURGER: Actually, you're quite wrong about both.

MR. SZOKOLY: I have the rules. Do you want to show me where the certification is?

MS. MAGDEBURGER: Do I get to speak now?

MR. SZOKOLY: I'm sorry.

MS. MAGDEBURGER: I am going to move to compel.

MR. SZOKOLY: Okay.

MS. MAGDEBURGER: For purposes of what he needs to know in New York, it's not a certification which is why I used that terminology

1 Haber, M.D.

2 so you'd know what I was talking
3 about. It is a motion to compel and
4 he's been very evasive and, Nick,
5 this is pretty serious.

6 MR. SZOKOLY: Actually, it's
7 not really serious and he has
8 answered your question multiple
9 times. So if your question -- hold
10 on. I want to --

11 MS. MAGDEBURGER: I'm not
12 done with my --

13 MR. SZOKOLY: Colloquy? Go
14 ahead.

15 MS. MAGDEBURGER: Well, you
16 had yours and you're the master and
17 the wit at words, but you've got an
18 expert here who's got things on his
19 resume that aren't accurate, okay?

20 MR. SZOKOLY: That's your
21 position and I understand that.

22 MS. MAGDEBURGER: That is
23 way my position. And if you're
24 going to allow him to continue to
25 hide my attempts at getting to the

1 Haber, M.D.

2 truth, then you're part of that,
3 too.

4 MR. SZOKOLY: Well, first of
5 all, I have no idea what you're
6 talking about saying that I'm part
7 of that, too. I know you threaten
8 witnesses on a daily basis --

9 MS. MAGDEBURGER: I don't
10 threaten witnesses

11 MR. SZOKOLY: I wasn't
12 finished. Threatening other lawyers
13 is new one, so you file whatever you
14 think you're entitled to file. If
15 certifying the question -- first of
16 all, we're not using New York law,
17 we're using Maryland law. If what
18 you mean is you intend to file a
19 motion to compel an answer to the
20 question of do you know the
21 organization that offered that
22 certification, he has answered you
23 multiple times and the answer has
24 been, "I don't know," so you go on
25 whatever --

1 Haber, M.D.

2 MS. MAGDEBURGER: That's all
3 I want him to say --

4 MR. SZOKOLY: I'm not done.

5 MS. MAGDEBURGER: That's all
6 I want him to say.

7 MR. SZOKOLY: So here's my
8 suggestion to you. If you feel
9 sufficiently aggrieved, I will not
10 stand on procedure. If you want to
11 ask him one more time to confirm my
12 understanding as it's been embodied
13 in the record multiple times that he
14 does know the name of the
15 organization, you're welcome to it.

16 MS. MAGDEBURGER: That's
17 what I want.

18 MR. SZOKOLY: Okay. Go for
19 it, but it's not going to be yes,
20 no, I don't know or whatever answer
21 you want. The question is, do you
22 know the name of the organization?

23 MS. MAGDEBURGER: I think
24 that's what I asked him.

25 MR. SZOKOLY: It's not what

1 Haber, M.D.

2 you asked him.

3 MS. MAGDEBURGER: Absolutely.

4 J O R D A N H A B E R, M. D., resumed and
5 testified further as follows:

6 BY MS. MAGDEBURGER:

7 Q I think we've worked out our
8 disagreement on this point, but, Doctor, let me
9 ask the following question.

10 A Yes.

11 Q Is it fair to say that you do not
12 know as you sit here today the identity of the
13 organization that you have referenced on your CV
14 that you believe held you out to be America's
15 top radiologist?

16 A No, it's not fair.

17 MS. MAGDEBURGER: Okay. I
18 thought we had worked that out.

19 MR. SZOKOLY: I thought we
20 had, too.

21 THE WITNESS: We haven't
22 worked it out.

23 MR. SZOKOLY: Doctor, did
24 you understand her question? She's
25 asking you to confirm her

1 Haber, M.D.

2 understanding that you don't know
3 the name of the organization.

4 A I don't know the precise name
5 because it may have different names. I gave you
6 a few possibilities. It could be America's Top
7 Radiologists. It could be America's Top
8 Doctors. It could be America's Top Physicians.
9 To the best of my recollection, it's one of
10 those three.

11 Q Well, you have specifically on
12 your CV America's Top Radiologists and we're not
13 here about possibilities. I'm asking about
14 certainties. As you sit here today, can you
15 give me with certainty the name of the
16 organization that you believe held you out to be
17 America's top radiologist?

18 A I cannot with certainty give the
19 precise name of that. I could tell you,
20 however, that I did know its precise name when I
21 put it on the CV and will endeavor, if asked, to
22 research and find out the name of that
23 organization and the paperwork, if I still have
24 it, to reflect that I was elected into that
25 organization.

1 Haber, M.D.

2 Q You keep using the word elected.
3 I thought you said earlier you didn't know the
4 criteria?

5 A No, I didn't. I said you could be
6 elected and not know the criteria they choose
7 when they have that election process.

8 Q Okay. I would ask you to go and
9 find that material and to produce that to
10 Counsel so he can produce it to me.

11 A I will endeavor.

12 Q Thank you.

13 A Sure.

14 Q Now, there's a reference here that
15 you were the president of the medical staff at
16 Mather Memorial Hospital from 1989 to 1990?

17 A Yes.

18 Q And were you elected as president
19 of the medical staff?

20 A I don't know. I was appointed. I
21 don't know if it's an election on the part of
22 the board of directors after they spoke with the
23 administration, but there was a group of people
24 that chose me to be that president. I didn't --
25 I didn't seek that title myself.

1 Haber, M.D.

2 Q Was that of the entire hospital or
3 was that a group that was organizing to have a
4 speaker for the medical staff?

5 A The entire hospital.

6 Q Were you paid money to be the
7 president of the medical staff?

8 A There's no amount of money that
9 would reimburse me for the torture of being
10 president.

11 Q Were you paid?

12 A No.

13 Q And you held that position for a
14 year?

15 A Yeah.

16 Q A full year?

17 A Full year.

18 Q And then you stepped down after
19 that?

20 A Yes.

21 Q And why is that?

22 A It's a year service.

23 Q Does everybody do it?

24 A Does everybody do it?

25 Q Yes. Does everybody who is on

1 Haber, M.D.

2 staff at Mather serve as the president of the
3 medical staff for a year?

4 MR. SZOKOLY: Objection to
5 form. Calls for speculation.

6 Answer to the best of your
7 ability.

8 A I can answer very clearly. The
9 answer is no.

10 Q And was there an election of the
11 medical staff to appoint you as president?

12 MR. SZOKOLY: Objection,
13 asked and answered.

14 Go ahead.

15 A The way I think it works is that
16 the board of directors, in concert with the
17 administration -- the medical board -- let me
18 correct that. The medical board, in concert
19 with the administration, pick who they want and
20 they may ask, for the purposes of Roberts' Rules
21 of Order, for an approval from the medical staff
22 at the next medical staff meeting. Whether they
23 do that or not I can't recall, but I think it's
24 a process where the medical board, together with
25 the administration, pick who they think could

1 Haber, M.D.

2 best serve the interests of the hospital and the
3 medical staff.

4 Q And then what do you do as
5 president of the medical staff?

6 A Well, it's your job to act as a
7 liaison between the medical staff and the
8 administration, to represent the hospital at
9 hospital -- inter-hospital meetings, to deal
10 with many of the political issues that surface
11 in a hospital.

12 Q You get an office at the hospital?

13 A No, I just got aggravation.

14 Q How big is Mather Memorial
15 Hospital?

16 A At the time, I think it had around
17 250 doctors.

18 Q And you have afterwards Port
19 Jefferson. Is that just where the hospital is
20 located?

21 A It was a combined medical staff,
22 Mather and St. Charles.

23 Q And that was about 250 doctors?

24 A Yeah.

25 Q And then what was your role, to

1 Haber, M.D.

2 try to advocate for the doctors or the staff
3 with the administration of the hospital?

4 A I wouldn't necessarily say
5 advocate entirely for the doctors. I looked to
6 find a happy medium where both would find some
7 approximation of needs.

8 Q Okay. So if there were a group of
9 people that had complaints with the
10 administration, they could go to you and you
11 would then be the voice to the administration in
12 terms of some concerns that the staff had?

13 A If, in fact, I agreed with them.

14 Q Right. And, vice-versa, if the
15 administration of the hospital wanted to
16 communicate with the medical staff, they could
17 go to a point person who would then either send
18 a mailing, call a meeting -- 1989 was before
19 email -- and that was your role for a year?

20 A Is that in the form of a question?

21 Q Is my understanding correct?

22 A Yes.

23 Q Okay. What you have here, medical
24 director --

25 A Oh, that's in there, too.

1 Haber, M.D.

2 Q -- what was that?

3 A Who knows. I don't know what that
4 was. That was around the time where the
5 hospital -- every hospital needed to have a
6 medical director and the state Department of
7 Health wanted a medical director. And the
8 hospital administrator asked me if I would act
9 as a, quote-unquote, "medical director," and I
10 said I would.

11 Q Did you get paid for that?

12 A I got paid what I got paid for
13 being the president of the medical staff.

14 Q Nothing?

15 A Thank you.

16 Q Okay. Is that correct?

17 A That's correct.

18 Q All right. Did you have to attend
19 any meetings as the medical director?

20 A You know, I can't recall. It was
21 1990, 25 years ago. If I did, there weren't
22 that many.

23 Q Did you have to attend any
24 meetings as president of the medical staff?

25 A Yes.

1 Haber, M.D.

2 Q What were you attending for those
3 meetings?

4 A I was attending, obviously,
5 medical staff meetings. I was attending
6 meetings that were focused meetings on
7 particular issues. I was attending board of
8 directors meetings and I attended meetings to
9 represent the hospital, I think I recall, in
10 issues where the hospital needed a
11 representative from the medical staff.

12 Q Okay. And as medical director you
13 stepped down after a year?

14 A That's right.

15 Q Did you do it voluntarily or were
16 you asked to step down?

17 A The responsibilities, whatever
18 they were, which were ill-defined at the time,
19 were coincident with my being president. So
20 when I stepped down as president, they -- the
21 new president, I assume, took those
22 responsibilities over. Now they may have their
23 own medical director with the -- in the
24 hospital. I'm not sure.

25 Q Okay. So I understand when you

1 Haber, M.D.

2 were president of the medical staff you also got
3 the title of medical director?

4 A That's correct.

5 Q And it was basically one and the
6 same. They needed to have a title attached to a
7 name to submit to agencies to say they had a
8 medical director?

9 A If that's in the form of a
10 question, the answer is yes.

11 Q Okay. And then you have here
12 president, Long Island Radiological Society.
13 That was also that same year. 1989 to 1990 was
14 a big year for you.

15 A Wasn't it.

16 Q So how did you become president of
17 the Long Island Radiological Society?

18 A The board of directors of the Long
19 Island Radiological Society -- they must have
20 had over a hundred members there -- asked me to
21 be president.

22 Q So the board of the society asked
23 you to be president?

24 A You go up -- as you know, in any
25 organization, you go up: The first educational

Haber, M.D.

1
2 research?

3 A No.

4 Q Actually, can you give me that CV
5 back?

6 A Let's see. Do you want --

7 Q The other CV that I had for you.

8 MR. SZOKOLY: Exhibit 6?

9 MS. MAGDEBURGER: Six.

10 Q I think you have that. Is that
11 the one you have?

12 A Oh, here it is over here.

13 Q Is there any other difference
14 between the CV that's marked as Exhibit 1 that
15 you currently use and the CV that I've got where
16 you have the visiting radiologist? Is there any
17 other difference in these two CVs?

18 MR. SZOKOLY: You have both
19 copies. Can he---

20 A I can't tell you. I don't have
21 them in front of me.

22 Q Actually --

23 A I could look at them in realtime
24 and see if I can find any differences.

25 Q Okay.

1 Haber, M.D.

2 A Well, yes. There's one. I'm
3 adjunct full professor currently. It's right on
4 the top.

5 Q We've talked about that.

6 A All right. I don't know how
7 important it is, but I'll answer your question
8 as directly as possible. Initially, I practiced
9 radiology for 30 years and I say 35 years. In
10 some places, I say 40 years because I don't know
11 whether I should include my residency in it, but
12 it says 35 currently. Formerly, it said 30.

13 I have in here now forensic child
14 abuse imaging on the new CV. I enumerated the
15 places that I worked at the Air Force when I was
16 asked to work. Managing partner -- I'm just
17 reading that. I'm sorry. I dropped consultant
18 from MLMIC.

19 Q And why is that?

20 A It was a strategy decision I made.
21 I strategized.

22 Q About what?

23 A Whether or not I should keep it
24 in.

25 Q Why is that?

1 Haber, M.D.

2 A I strategized because, sadly, in
3 this world the industry that you're part of
4 doesn't want the expert to be both a defense and
5 plaintiff expert. They feel you could only be a
6 good guy or bad guy, depending on who determines
7 who's the good guy and who's the bad guy. So I
8 had wanted to basically provide services to both
9 plaintiff and defense. And being that most of
10 my work is plaintiff work, I was told that I
11 would antagonize certain lawyers by letting them
12 know that I do defense work as well for
13 insurance -- for insurance companies. MLMIC is
14 the biggest insurer of doctors in New York
15 State, so I strategized and I had to remove it,
16 as much as I'd like to keep it.

17 Q Who told you that you would --

18 A A lot of people.

19 Q -- antagonize --

20 A A lot of people.

21 Q Generally, what kind of people
22 were they?

23 A I'm sorry?

24 Q Generally, who were they?

25 A They were plaintiff attorneys.

1 Haber, M.D.

2 Q So in order not to antagonize any
3 future potential employers, so to speak --

4 MR. SZOKOLY: Objection.

5 Q -- you strategized to withdraw the
6 fact that you had done some consulting work for
7 the insurer that insures doctors in New York
8 State?

9 MR. SZOKOLY: Objection to
10 the term employers. It's neither
11 appropriate nor legally accurate.

12 Subject to that, you can
13 answer it.

14 A Yes.

15 Q Okay. I was going to use the word
16 clients, so I'll do it that way since
17 Mr. Szokoly objected.

18 A What's his last name, please?

19 Q Szokoly. I got it. You're going
20 to mess me up.

21 In order not to antagonize future
22 clients of yours from hiring you to review their
23 cases for their clients, you strategized that it
24 would be better to withdraw the fact that you
25 did some consulting work for the insurer of

1 Haber, M.D.

2 doctors in New York State, correct?

3 A Correct.

4 Q Okay. And the year that you did
5 the consulting work for the insurance company
6 for New York State was when?

7 A I didn't put it on here.

8 Q When was it?

9 A It was around 19 -- I think it was
10 around 2000.

11 Q 2000?

12 A I think.

13 Q Was it in the 1990s?

14 A Well, the answer to your question,
15 late 2000s are very close -- late 1990s are
16 close to 2000. I can't be more precise.

17 Q How many cases did you consult
18 with Medical Liability Mutual Insurance Company?

19 A It was under 10 cases.

20 Q And over what period of time?

21 A About a year.

22 Q And you were being asked to
23 determine whether or not there was negligence or
24 non-negligence in any particular case?

25 A That's correct.

1 Haber, M.D.

2 Q And why did you stop doing it?

3 A I did whatever work they asked me
4 and they stopped asking me. They have a
5 combination of in-house and out of house.

6 Q Outhouse lawyers?

7 MR. SZOKOLY: That was
8 there, right there.

9 MS. MAGDEBURGER: We're all
10 there.

11 MR. SZOKOLY: We're like
12 sixth graders. Sorry.

13 Q Did you pass your board
14 certificate on your first attempt?

15 A Yes.

16 Q Did you have to be recertified?

17 A No.

18 Q So you are what they call
19 grandfathered; you took the exam once and then
20 that was it?

21 A That's it.

22 Q Do you have any other board
23 certification other than diagnostic radiology?

24 A No.

25 Q Do you have any specialization

1 Haber, M.D.

2 within diagnostic radiology?

3 A No.

4 Q Now, we talked a little bit. You
5 have a website. I'm sure you have a couple
6 websites, don't you, where you reference your
7 willingness to serve as an expert?

8 A I'm only going to answer the
9 question you asked me. You made a statement.
10 If you want, I'll answer it as a statement.

11 Q Well, I think it's a question. Do
12 you have several websites in which you offer
13 yourself as an expert?

14 A Yes.

15 Q And tell me the names of the
16 websites that you manage, in other words, that
17 you created or had created on your behalf.

18 A Consulting Radiologist is the only
19 one that I know of, but I'm sure you're right
20 that there are a additional websites that are
21 connected in there, this computer matrix that we
22 have, Cloud matrix of connectivity to bring
23 people to the main website which is Consulting
24 Radiologist.

25 Q Well, actually, I looked last

1 Haber, M.D.
2 night and there were two. One was Consulting
3 Radiologist and then there was another one that
4 was actually different in design, so to speak.
5 Let me find the name of it.

6 Actually, why don't we go off the
7 record for a minute. I need to find it and pull
8 it up.

9 (Whereupon, at 11:59 o'clock
10 a.m., a recess was taken to 12:33
11 o'clock p.m.)

12 (The deposition resumed with
13 all parties present.)

14 J O R D A N H A B E R, M. D. , resumed
15 and testified further as follows:

16 BY MS. MAGDEBURGER:

17 Q When we broke, Doctor, we were
18 talking about your website. You have a website,
19 ConsultingRadiologist.com?

20 A That's in the form of a question?

21 Q Yes.

22 A Yes.

23 Q And did you design that website or
24 have it designed on your behalf?

25 A It was designed in my behalf.

1 Haber, M.D.

2 Q And did you personally review all
3 the information that was on that website --

4 A Yes.

5 Q -- to make sure it was accurate?

6 A Yes, I did.

7 Q How much did it cost to design the
8 website?

9 A A few thousand dollars.

10 Q Meaning what?

11 A Two, three.

12 Q Two or three thousand?

13 And do you have any other
14 websites?

15 A You just offered earlier this
16 morning that I have and I'm not surprised that I
17 do, but the way it works on the Cloud, the Cloud
18 wants you to have more than one website. So I
19 have no personal knowledge of additional
20 websites, but I'm not at all surprised that I
21 do.

22 Q There's another website called
23 ExpertRadiologist.com. Are you familiar with
24 that website?

25 A No.

1 Haber, M.D.

2 Q Did you design it?

3 A No.

4 Q Let me show it to you.

5 A Should I come over behind you?

6 Q I'll turn my screen around. Let

7 me show you the first one.

8 ConsultingRadiologist.com is the address.

9 That's the website that you designed?

10 A No, I didn't design that.

11 Q Or had designed on your behalf?

12 A Yes. And that is -- what is that

13 one called?

14 Q ConsultingRadiologist.com.

15 A That's the one I'm familiar with.

16 Q And let me show you what is

17 ExpertRadiologist.com. Did you design that

18 website or have it designed on your behalf?

19 A Yes. I didn't -- there are two --

20 there are two questions you asked me. It was

21 designed not by myself, but it was designed in

22 my behalf.

23 Q Did you pay for the second

24 website, the ExpertRadiologist.com?

25 A Yes.

1 Haber, M.D.

2 Q And how much did that website
3 cost?

4 A It was all on the same cost.

5 Q And what do you pay to maintain
6 those two websites on a yearly basis?

7 A I pay \$2,000 a month.

8 Q A month?

9 A A month, but there's a lot more
10 than those two websites.

11 Q What do you get for \$2,000 a
12 month?

13 A I've got about five computers at
14 home in a network and, frankly, I'm screwing my
15 network up all the time. There are computer
16 issues and logistical issues, so I need somebody
17 to maintain the hardware and the software. And
18 in addition, I have a high Google profile, so
19 people going to look for a radiologist doing
20 expert testimony, I'm going to be on page one.

21 Q And how do you do that?

22 A By paying this man \$2,000 a month.

23 Q What does he do to get you on the
24 first page?

25 A He doesn't tell me how he does it.

1 Haber, M.D.

2 These are -- it's search optimization tools.

3 Q What's the name of the company
4 that you pay \$2,000 a month to?

5 A His name is Lee Tate, L-e-e,
6 T-a-t-e.

7 Q And how did you come into contact
8 with Mr. Tate?

9 A I think that I was working with
10 his wife who at the time was a legal nurse and
11 she introduced me to him.

12 Q And where is she a legal nurse?

13 A She's in Kentucky.

14 Q And how did you come into contact
15 with his wife?

16 A I'm not sure. I think that I was
17 asked to speak at legal nurse conferences. I've
18 spoken at two or three of the legal nurse
19 conferences and she approached me and she asked
20 me about a case that she was working on.

21 Q What conferences were they?

22 A It's called JERK, J-E-R-K. I
23 don't -- I'm not happy with the name they use,
24 but it's their choice. It's the name of their
25 organization. It's an organization of legal

1 Haber, M.D.

2 nurses. They meet on an annual -- more
3 frequently -- they meet on a regular basis and
4 once a year they have an educational conference
5 and I've been asked to be a speaker there.

6 Q That's not on your CV, correct?

7 A That's right.

8 Q Why is that?

9 A No reason.

10 Q Any other conferences other than
11 JERK and that Nassau County Bar Association that
12 you've been asked to be a speaker and have
13 agreed to speak?

14 A I spoke at the AALNC, the American
15 Association of Legal -- I think it's called
16 AALNC, Legal CLNC or AALNC. I'll not sure of
17 the exact number of letters or vowels. That's
18 another organization of legal nurses. I spoke
19 once there.

20 Q Are there any other websites other
21 than the two that I've referenced for you that
22 bear your name and your contact information that
23 you're aware of?

24 A No.

25 Q Are you --

1 Haber, M.D.

2 A I am -- let me clarify that. I'm
3 also on Linked -- Linked In.

4 Q Right. Are you a member of any
5 expert witness services?

6 A Yes.

7 Q And what services are they?

8 A I'm a member, let's see, of --
9 let's see. I'm sure you can help me refresh my
10 memory. Help me out with some of the services
11 and I'll tell you if I'm still a member, please.

12 Q I'd rather you tell me what you
13 are a member of, with all due respect. I will
14 follow up with follow-up questions, but --

15 A That's fair enough. Let's see.
16 I'm trying to think right now. There are three
17 or four of them. Juris Solutions. SEAK,
18 S-E-A-K. LexPro, I think. Also I advertise on
19 Verdict Search. I just had a large award given
20 to an attorney that I worked with, so I
21 advertise that on Verdict Search. I'm sure
22 there are others that I can't give you right
23 now. Maybe could you help me with that.

24 Q How much do you pay to be on Juris
25 Solutions?

1 Haber, M.D.

2 A I don't know, maybe around \$800 --
3 \$500 to around \$800 a year.

4 Q And do they have a search engine
5 that they -- where your name appears on their
6 site?

7 A Yes.

8 Q And do you pay extra to be sort of
9 the first one on the page or the recommended
10 expert in radiology?

11 A Yes.

12 Q And how much extra do you pay for
13 that service?

14 A I don't really know. I think I
15 spend -- to answer what I would anticipate as
16 some of your questions to come, under \$10,000 a
17 year for all the advertising that I do and I
18 have no additional overhead. I'm working out of
19 home, out of my house.

20 Q Do you have any staff --

21 A No.

22 Q -- that work for you?

23 A No.

24 Q Well, you pay \$2,000 a month just
25 for your websites, so that's about \$24,000 a

1 Haber, M.D.

2 year?

3 A Twenty-four thousand, plus maybe
4 10 in advertising, something like that.

5 Q Do you consider the websites that
6 you have and the Google engine profile to be a
7 form of advertisement?

8 A I do.

9 Q Okay. Now, the SEAK group, how
10 much do you pay them?

11 A I'm not exactly sure, but I think
12 the whole thing would be -- all the advertising,
13 around \$10,000.

14 Q I'm just asking about SEAK. How
15 much do you pay for them?

16 A A few thousand.

17 Q And do you engage in buying a
18 package from SEAK that puts you on a specialized
19 list that pops up when anybody is looking for a
20 radiologist?

21 A I pay extra to be among the top
22 four or five radiologists, yes.

23 Q And with SEAK they have programs
24 available to their members, correct?

25 A That's correct.

1 Haber, M.D.

2 Q And how many programs have you
3 attended?

4 A None.

5 Q You haven't gone to any of the
6 programs?

7 A No.

8 Q Have you purchased or been given
9 as a result of your membership any of their
10 written material regarding being an expert?

11 A Yes.

12 Q And what have you been given
13 there?

14 A I spent about \$400 or \$500 with
15 some books on how to be a better expert witness.
16 I never read them.

17 Q What are the titles of the
18 materials that you got, How to Be a Better
19 Expert Witness?

20 A I'm not sure.

21 Q Is that one of them?

22 A It could be. If I were to write
23 the title of an expert witness book, that would
24 be a title I would use.

25 Q Is that what you received from

1 Haber, M.D.

2 SEAK?

3 A I'm not sure of the precise title.

4 Q Did you receive the materials from
5 SEAK on teaching you how to build a business in
6 expert witness work?

7 A I got about three or four titles.
8 It's conceivable that was among the titles.
9 Once again, I have not read them.

10 Q Did you receive a book that
11 explained to you how to be likeable to a jury?

12 A If I did receive a book, the title
13 is unfamiliar to me right now.

14 Q Okay. Did you receive any written
15 materials that helped you connect with a jury?

16 A Same answer.

17 Q Okay. You don't know?

18 A I don't know.

19 Q Did you review any materials that
20 taught you to make it personal, to share
21 personal stories with a jury?

22 A I never heard of that, no.

23 Q Okay. When is the last medical
24 conference you went to?

25 A I presume in early 2006 or late

1 Haber, M.D.

2 2005.

3 Q Okay. How much money did you
4 pay -- well, are you a member of any medical
5 societies currently?

6 A I think that I'm still a member of
7 the American College of Radiology emeritus, you
8 know, the fact that I'm no longer working, and
9 maybe the Radiological Society of North America.
10 I'm not sure. I'm not paying dues to any of
11 these societies.

12 Q That was going to be my next
13 question. When is the last time you paid any
14 dues to any societies?

15 A 2006.

16 Q And when you did pay dues, what
17 was the most amount of money that you paid for
18 medical dues total in a year?

19 A I'm not sure I understand the
20 question.

21 Q So all in, how much money would
22 you spend being members of medical societies
23 when you were a member of medical societies?

24 A Well, when you add up Suffolk
25 County Medical Society, which I was a member of,

1 Haber, M.D.
2 New York State Medical Society, which I was a
3 member of, Long Island Radiological Society,
4 American College of Radiology, Radiological
5 Society of North America, it adds up. I think
6 it was under \$2,000, but it adds up.

7 Q So with your website, your Google
8 profile and the expert witness services that
9 you're members with, is it fair to say that
10 you're spending on the order of \$35-\$40,000 a
11 year with those various services?

12 A Yes.

13 Q Is it more than that?

14 A No.

15 Q Is it less than that?

16 A Once again, I can't give you an
17 exact number, but if you add up, say, \$2,000
18 times 12 and you get the 24, and you add on the
19 search engines which I take advantage of, it's
20 going to amount to 34 -- around \$34,000.

21 Q Okay. And you said LexPro. Do
22 you pay to be a member of that service as well?

23 A I think it's a nominal amount, but
24 I pay -- it's going to be under a thousand
25 dollars if I do. I'm not even sure whether I do

Haber, M.D.

1
2 or not.

3 Q And with LexPro do you pay them
4 extra to be sort of one of their top radiology
5 referrals?

6 A I'm not sure. I hardly get any
7 work from them. Parenthetically, they're not
8 going to stay on the list for long.

9 Q Which one is the best service for
10 you in terms of bringing in business?

11 A SEAK, S-E-A-K.

12 Q And how many cases do you think
13 you've been referred by SEAK?

14 A I would say over the past few
15 years at least half a dozen.

16 Q Have you ever been involved with
17 teaching courses? And I'm talking about
18 didactic courses to residents.

19 A No.

20 Q Have you ever held an academic
21 position in a medical school?

22 A I think when I was a resident I
23 was maybe an assistant professor, but I'm not
24 sure. That was 30 years -- that was 40 years
25 ago.

1 Haber, M.D.

2 Q An assistant instructor?

3 A Yes, assistant instructor, thank
4 you.

5 Q That's the lowest on the totem
6 pole, correct?

7 A They couldn't find an entity low
8 enough to put me on.

9 Q Okay. Since graduating from
10 medical school and finishing your residency,
11 have you held any academic appointments?

12 A No.

13 Q You referenced that you are an
14 adjunct full professor in clinical imaging. On
15 the website it just said adjunct full professor.
16 It didn't have clinical imaging on it one way or
17 the other.

18 The name of your course, is that
19 clinical imaging?

20 A That's what I call it.

21 Q What do they call it?

22 A They call it what I call it.

23 Q Clinical imaging?

24 A Yeah. Yes.

25 Q Who is your direct supervisor

Haber, M.D.

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there?

A John O'Hare -- O'Shea.

Q The gentleman you mentioned

before?

A Right. And I'm going to make an addendum. If it's not O'Shea, it's O'Hare, and please don't tell him that I don't know his name.

Q Well, we all go by first names now anyway.

It's fair to say that while you

were at Stony Brook you did not perform any medical services for billing, correct?

A Right.

Q And it's fair to say that you did not read films for patient diagnostic services, correct?

A Correct.

Q And at Stony Brook you didn't have a title, an office, email or letterhead of any sort?

A Correct.

Q Is it fair to say that you've provided testimony in cases in which you have

1 Haber, M.D.
2 categorized your medical legal time as being
3 approximately 80 percent of your time,
4 work-related time?

5 MR. SZOKOLY: Objection to
6 the form of the question. What was
7 the question again?

8 MS. MAGDEBURGER: You can
9 read it back.

10 MR. SZOKOLY: Please. Thank
11 you.

12 (The record was read.)

13 MR. SZOKOLY: Object to
14 form.

15 A I don't understand the question.

16 Q Let me rephrase it for you. Have
17 you provided testimony under oath in front of a
18 court or while you were under oath in which you
19 have said that 80 percent of your work-related
20 time is spent doing medical legal work as
21 opposed to your hobbies?

22 A But I don't know if your question
23 asked that question precisely, your addendum.

24 THE WITNESS: Could we
25 repeat that question, please?

1 Haber, M.D.

2 (The record was read.)

3 A The question I have -- with all
4 due respect to the counselor, I think the
5 question is unanswerable because if it's my
6 professional work I would say a hundred percent
7 of my professional work -- the vast majority of
8 my work is professional work, so I can't say if
9 it's my professional work. My professional work
10 is medical legal. That's what I do.

11 Q Okay. So a hundred percent or
12 nearly a hundred percent of your professional
13 work is medical legal work; is that fair?

14 A Yes, 80 to a hundred percent,
15 yeah, if I understand the question correctly.
16 And I'm going to add to that if I may,
17 Counselor. May I add to that? If it's my
18 professional work, it's what I do professionally
19 and professionally I review cases for insurance
20 companies and lawyers. So the answer -- so is a
21 hundred percent of your professional work
22 professional work is another way to ask your
23 question, and my answer would be a hundred
24 percent of my professional work is professional
25 work, if I'm answering it correctly.

1 Haber, M.D.

2 Q The amounts of money that you
3 advised me that you had earned as an expert
4 witness, is that gross revenues or is that
5 revenues after you pay for the -- I'm just going
6 to broadly categorize it -- the advertising
7 services, the expert witness services and the
8 websites and the Google profile?

9 A It's gross.

10 Q Okay. And do you do any other
11 professional work that we haven't talked about?

12 A Any professional radiology work?
13 No.

14 Q I think you said that you do Juris
15 Solutions.

16 Are you familiar with ALM Experts?

17 A Oh, yes.

18 Q There you go.

19 A I knew it.

20 Q And do you pay them?

21 A Yes.

22 Q How much do you pay them?

23 A It's all incorporated into that
24 \$10-11,000, I think.

25 Q What's their specific, roughly?

1 Haber, M.D.

2 A I can't be specific and rough at
3 the same time, so the answer to both questions
4 is I'm not sure. I did recently sign up with
5 one of their publications, Verdict Search, and
6 Verdict Search has a page of classified -- I
7 don't know exactly what the charge is for that.
8 It's a few thousand dollars. I just recently
9 signed up with them. It's Verdict Search. I'm
10 sure you know the company.

11 Q And that's a few thousand dollars
12 to advertise in that journal or --

13 A Yes.

14 Q -- it's not even a journal, it's a
15 subscription?

16 A Right.

17 Q And then we have LexPro. Maybe
18 it's under LexPro, but it's actually LexVisio,
19 L-e-x-V-i-s-i-o.

20 A Some of these companies are so
21 nominal in their impact to me that I can't even
22 remember that I had anything to do with them.
23 And, frankly, in addition, they are doing such a
24 weak job, they'll keep you on their list just to
25 have you on their list even if you don't pay the

Haber, M.D.

1
2 dues.

3 Q Okay.

4 A So I don't know. I don't think I
5 ever got work from them.

6 Q How about TASA?

7 A I used to work with TASA and
8 there's no subscription for TASA. I used to get
9 cases from TASA.

10 Q And how about the Rozovsky Group
11 Risk Management Services, R-o-z-o-v-s-k-y?

12 A Oh, that company. You know, I
13 don't know what that company was about. They
14 asked me to become -- on their board when I was
15 first starting, I think, in 2011 and they said
16 they do some consulting work. And I started
17 getting emails from them and then I just dropped
18 them. I don't know what they were doing.

19 Q Did you have to pay them?

20 A No.

21 Q And the HG.com?

22 A HG.com I initially subscribed to a
23 few years ago. It's been over a year and I
24 never got a case. I don't think I'm paying them
25 now.

Haber, M.D.

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Q How much did you pay them initially?

A It was around \$500, something like that.

Q How about Lawyer Finder?

A Once again, such a nominal company, I don't think I'm paying them. I don't think I ever got a case from them. They're out there and they've had no impact to me.

Q But you've allowed them to use your name as a potential expert?

A Yes.

Q Why is that?

A Aside from word of mouth which is, frankly, increasingly the best form of referrals, the higher your Internet profile, the more work you can get. So the complicated algorithms that Google uses to keep you near the first page are dependent on your profile. And search optimization, whether it's Google or a company you hire to optimize you, wants as many profiles as they can recycle on the 'net.

Q Your website says that you're an adjunct full professor of clinical imaging at a

1 Haber, M.D.

2 major university in New York. What's the major
3 university in New York that you are full adjunct
4 professor with?

5 A Long Island University.

6 Q Okay. Is there a reason you don't
7 put Long Island University on the website?

8 A No. I think a lot of people
9 haven't heard of Long Island University, so it's
10 almost like a teaser, so they can ask me and
11 I'll tell them.

12 Q So saying it's a major university
13 is a teaser to have them follow-up with you?

14 A Right.

15 Q Teaser meaning an advertising --

16 A Right.

17 Q -- mechanism?

18 A Right. They ask in conversation
19 and so I tell them and before you know it we get
20 into discussing a case.

21 Q Do you consider Long Island
22 University to be a major university in New York?

23 A I do.

24 Q How many students do they have?

25 A It's my understanding, when you

1 Haber, M.D.

2 add up the Brooklyn campus and you add up the
3 campus in Nassau County, there are thousands of
4 students, many thousands of students. I don't
5 have an exact number.

6 Q Do they offer graduate level
7 degrees?

8 A I'm not sure. I think they do.

9 Q Your website also says that you
10 have a staff for your expert witness services.
11 I think you said earlier you don't have any
12 staff; it's just you?

13 A Well, I have a man called Lee
14 Tate.

15 Q That's your staff?

16 A I'm paying him \$25,000 a year. If
17 he wants to call himself on staff, he's on
18 staff. He does this.

19 Q But he doesn't do any of your
20 expert witness work?

21 A That's in the form of a question.
22 No.

23 Q Okay. Was that also a teaser to
24 say Dr. Haber and his staff?

25 A Frankly, it is a teaser.

1 Haber, M.D.

2 Q Okay.

3 A You look more successful when you
4 have at least one other person in your
5 organization.

6 Q You ever see Mr. Reimold on
7 television?

8 A No.

9 Q Do you know who he is?

10 A Do I know who he is?

11 Q Yes.

12 A Only through the association of
13 going over these cases.

14 Q What do you know about
15 Mr. Reimold?

16 A Nothing.

17 Q So you say you only know what you
18 know from this case. What do you know about in
19 terms of what he does for a living?

20 A I don't know anything that he
21 does.

22 Q Do you know if he's a baseball
23 player?

24 A I was told that he was a baseball
25 player. I'm not an avid sports fan.

1 Haber, M.D.

2 Q From New York, are you kidding me?
3 Do you know what team Mr. Reimold
4 plays on?

5 A No.

6 Q Were you told he was a Baltimore
7 Oriole?

8 A I may have been told, but,
9 frankly, I forgot.

10 Q Have you reviewed any of the
11 reports of any other expert that's been retained
12 by the plaintiffs in this case?

13 A I may have looked at them, but I
14 wouldn't even characterize it as a review. I
15 have no awareness of any reports, frankly.

16 Q Have you reviewed any of the
17 reports written by any of the experts on behalf
18 of the defendant or defendants in this case?

19 A I have no recollection of any
20 review.

21 Q Where did you get the films that
22 you reviewed?

23 A I got them from our attorney -- my
24 attorney here, Mr. Szokoly.

25 Q Is Mr. Szokoly representing you?

1 Haber, M.D.

2 You said "my attorney."

3 A I'm sorry. I misspoke.

4 Q You mean the attorney who retained
5 you?

6 A The attorney that retained me.

7 Thank you.

8 Q I have to note that I actually
9 looked up -- there was a nice article about your
10 house. You live in a town with celebrities?

11 A I do?

12 Q That's what I was told in that
13 article. Who are your neighbors?

14 A I don't know.

15 Q You don't know? There's no
16 celebrities there?

17 A Are we on the record here?

18 Q Yes, we're on the record. Michael
19 Douglas, have you seen him in person?

20 A Are you sure he lived in Dix
21 Hills? It's like a lower middle-class
22 neighborhood.

23 MR. SZOKOLY: I guess the
24 only way to answer that question is
25 to see the article.

1 Haber, M.D.

2 MS. MAGDEBURGER: We might
3 see it later.

4 A Do you have it? I'd love to see
5 it.

6 Q I don't have it with me. I just
7 had a note here.

8 A If we're on the record, I'm going
9 to add that my wife has money, so we're living
10 there because Mrs. Haber has money, all right?
11 So if -- if you wonder how somebody could live
12 in a house, make \$200,000, be Michael Douglas'
13 next door neighbor, which is news to me, I doubt
14 that that's correct, but if that were correct,
15 which it could be, we're comfortable people.

16 Q Right. She has family money, I
17 think?

18 A Yes.

19 Q What family does she come from?

20 A She comes from -- it's a name you
21 wouldn't know.

22 Q Okay.

23 A These are middle-class, Jewish
24 people in Queens. It's no names.

25 Q I think I'm getting through most

1 Haber, M.D.
2 of this section. I just want to make sure
3 before we move on.

4 Have you ever reviewed any
5 materials from SEAK entitled, How to Write a
6 Bulletproof Expert Witness Report?

7 A Everyone asks me that question.
8 I'm sorry that I ever purchased some of their
9 materials. It's embarrassing to even have my
10 name affixed to buying this. If I ever did buy
11 it -- as I told you before, if I bought it, I
12 never read it. If it's in my library, I don't
13 even know that it's in my library. So if I
14 reviewed it, never.

15 Q Did you purchase something called
16 How to Write a Bulletproof Expert Witness
17 Report?

18 A I may have.

19 Q Okay. Did you purchase How to
20 Start, Build and Run a Successful Witness
21 Practice?

22 A I may have. I have not the
23 inclination nor the time to have read it.

24 Q Do you agree that while you were
25 in the practice, clinical practice, of medicine,

1 Haber, M.D.

2 you weren't asked to do any expert witness work
3 then, correct?

4 A Well, it depends how you define
5 expert witness.

6 Q It always depends.

7 A Obviously.

8 Q Let me rephrase it for you. Did
9 you ever do any expert legal work while you were
10 in the actual clinical practice of medicine?

11 A Yes.

12 Q For who?

13 A For Medical Liability Mutual
14 Insurance Company.

15 Q Okay. Other than that?

16 A No.

17 Q I thought you didn't -- okay. All
18 right.

19 When were you first contacted in
20 this case?

21 A I don't have a precise date, but
22 it was within a few weeks of the report that I
23 submitted. I don't have that report in front of
24 me.

25 Q Your report is dated December 27,

1 Haber, M.D.

2 2015. Do you remember when you were contacted?

3 A Within a few weeks of that.

4 Q So in December 2015?

5 A That's reasonable.

6 Q Do you have anything, a cover
7 letter, anything of that sort that indicates
8 when you were contacted?

9 A No.

10 Q Did you receive a cover letter, or
11 an email, or some sort of --

12 A If I did, I don't have it right
13 now.

14 Q All right. I would like you to
15 find it because that was one of the items that
16 was asked for you to bring, so I would like to
17 see any and all correspondence written of any
18 sort, as broad as I can make it --

19 MR. SZOKOLY: Are we back to
20 this now?

21 MS. MAGDEBURGER: Yes.

22 Q -- between you and Counsel.

23 MR. SZOKOLY: I object as
24 asked and answered. It was covered
25 this morning.

1 Haber, M.D.

2 MS. MAGDEBURGER: And you're
3 going to produce it, right?

4 MR. SZOKOLY: He'll produce
5 to me what he has and I'll produce
6 it to you.

7 MS. MAGDEBURGER: Do you
8 have communications, copies of
9 communications with him?

10 MR. SZOKOLY: Don't know.
11 Didn't look.

12 MS. MAGDEBURGER: All right.
13 I've asked for that in discovery as
14 well, so either it's from you or
15 him. I don't care which, but I want
16 all of it, if you can provide that
17 to me.

18 MR. SZOKOLY: I heard you.

19 MS. MAGDEBURGER: Will you
20 do so?

21 MR. SZOKOLY: I will give
22 you what I have. You're making
23 something of nothing which you're
24 excellent at. I'll be happy to
25 look.

1 Haber, M.D.

2 Q Your report contends, if I'm
3 reading it correctly, that you believe that Dr.
4 Magid breached the standard of care in her
5 interpretation of a film of January 10th -- let
6 me get the right year --

7 A 2013.

8 Q -- 2013; is that correct?

9 A I'd have to see my report before I
10 can comment on that.

11 Q Do you remember what your opinions
12 were in reference to this case?

13 MR. SZOKOLY: Objection.

14 It's not a memory test. If
15 you need to see the exhibit that
16 Counsel is reading from, say so.

17 Q We are here for a deposition. Do
18 you remember the criticisms of care that you
19 believe were done in this case?

20 A As I mentioned to you, I'd like to
21 see my report.

22 Q And I'm going to let you look at
23 it, but I'm just asking from a perspective of a
24 memory test. Do you have a memory of what
25 criticisms you raised in this case?

1 Haber, M.D.

2 A My response to you is I'm not here
3 for a memory test.

4 Q So your answer is you don't
5 remember?

6 A My answer is we're not here for a
7 memory test.

8 Q Well, that was his answer.

9 A That's also --

10 Q My question is different, so you
11 have to answer mine and I'm entitled to know how
12 much you remember and how much you have to rely
13 on documentation to refresh your recollection
14 because that's an area that I'm permitted to
15 inquire into. So as you sit here today, without
16 benefit of your report, are you able to
17 articulate what criticisms you have regarding
18 the standard of care in this case?

19 A My response to your question is
20 I'm not here for a memory test. The report
21 involved many hours of focused work. In view of
22 the absolute precision that all of this is being
23 recorded with, I insist on being able to look at
24 the handiwork that I -- not the handiwork -- the
25 work that I did and I feel uncomfortable

1 Haber, M.D.
2 responding to a precise question when you are
3 holding my report.

4 Q Okay. So I think that's a long
5 way of saying you don't have a memory.

6 MR. SZOKOLY: No, that's not
7 what he said, nor is it appropriate
8 and I don't why we're playing this
9 game of chicken when you know that
10 he's entitled to the report and you
11 have it in front of you.

12 MS. MAGDEBURGER: Well, he's
13 not entitled to the report for this
14 question and I am entitled to
15 inquire as to his memory of his own
16 work.

17 Q How many hours did you spend
18 preparing for this deposition?

19 A I would say I prepared for this
20 deposition at least three hours over the weekend
21 and perhaps more, and I prepared one to two
22 hours when we met yesterday, so it's a total of
23 about five hours. Nonetheless, the words were
24 craftfully [sic] -- rather than craftfully, but
25 purposefully worded and I would not feel

1 Haber, M.D.
2 comfortable commenting on the precision of the
3 words without the words here in front of me.

4 MR. SZOKOLY: And not that I
5 don't enjoy this activity, but if
6 you'd like I can get you Zaya
7 Gokaslan's deposition where you
8 specifically refused to allow him to
9 answer questions unless he had the
10 entire chart in front of him, so I
11 don't know why we're doing this.

12 MS. MAGDEBURGER: Well, that
13 was on his medical records, not his
14 opinions. This is an expert.

15 MR. SZOKOLY: I think that's
16 a distinction without a difference.

17 MS. MAGDEBURGER: No, I
18 think it's very much.

19 Q All right. Well, let me show
20 you -- do you have a copy of your report or is
21 this the only one that's marked? Is that the
22 only copy you have?

23 A I don't know if I have one here.
24 I could look, or did you want me to take that
25 from you?

1 Haber, M.D.

2 Q You can. Okay. Got your report?

3 A Yes, thank you.

4 Q Has your recollection been

5 refreshed by reviewing your report?

6 MR. SZOKOLY: Objection,
7 inappropriate and mischaracterizes
8 what he said. He never said that.

9 A I don't want to have an
10 argumentative posture with you, Counsel, so if
11 you could rephrase the question, I'll be
12 prepared to answer it.

13 Q Have you refreshed your
14 recollection by reviewing your report?

15 A Yes.

16 MR. SZOKOLY: Same
17 objection.

18 Q Do you agree that your criticism
19 of care is limited to Dr. Magid?

20 A Yes.

21 Q And do you agree that your
22 criticism of care is limited to her
23 interpretation of the January 10, 2013, cervical
24 spine series?

25 A Yes.

1 Haber, M.D.

2 Q Okay. You agree you're not a
3 neurosurgeon, correct?

4 A Oh, I agree with that, of course.

5 Q Do you have any knowledge as to
6 whether Dr. Gokaslan relied on Dr. Magid's
7 interpretation of the January 10, 2013, cervical
8 spine series?

9 A Do I have any recollection whether
10 Dr. G. had any --

11 Q Either recollection or knowledge.

12 A I have no knowledge or
13 recollection.

14 Q Okay. If Dr. Gokaslan testified
15 that he reviews his own films before making
16 recommendations to his patients, would you agree
17 with me that whatever was in Dr. Magid's report
18 would have no bearing in terms of affecting Dr.
19 Gokaslan's care of Mr. Reimold?

20 MR. SZOKOLY: Objection,
21 incomplete hypothetical and calls
22 for speculation.

23 Answer to the best of your
24 ability.

25 Q You can answer.

1 Haber, M.D.

2 A I don't answer hypotheticals.

3 Q Well, in Maryland you have to. We
4 get to ask them. So, hypothetically, Doctor, if
5 Dr. Gokaslan did not rely on Dr. Magid's
6 interpretation of the January 10, 2013, study,
7 would you agree that whatever she wrote in terms
8 of her interpretation would be irrelevant to the
9 issues in this case?

10 MR. SZOKOLY: Objection.
11 That calls for a legal conclusion.

12 Q You may answer.

13 A The way it's worded -- I'm just a
14 radiologist. I have difficulty understanding
15 you sometimes in this particular case, so I
16 can't -- if I can't understand the question and
17 the implications of the question, I can't give
18 you a reasonable answer.

19 Q Well, if Dr. Gokaslan reads his
20 own films and does not rely on the radiologist,
21 would you agree that it would not have had any
22 impact on the care of Mr. Reimold?

23 A There are --

24 MR. SZOKOLY: Objection.

25 A There are too many factors that

1 Haber, M.D.

2 could be involved in the care of this patient.

3 And your presumption that you're implying to me

4 is Dr. Gokaslan is the only doctor taking care

5 of that patient. If that were the case,

6 possibly, but I'm not even sure that I could

7 agree with that even with the constraints that

8 you put on there. So to answer your question as

9 best as I can, number one, it's too highly

10 complicated and there's too many issues that I,

11 frankly, would have to sit for many hours

12 understanding and I can't answer it.

13 Q So you're not going to provide an
14 answer to the hypothetical?

15 A The hypothetical, with all due
16 respect, is poorly phrased and I refuse to
17 answer it.

18 Q Okay. Now, do you have any
19 criticisms of the care of how any of the other
20 images were read in this case by any other
21 healthcare provider other than Dr. Magid and the
22 January 10, 2013, study?

23 A No.

24 Q Do you know who was following
25 Mr. Reimold after he was released to play in

1 Haber, M.D.

2 January 2013?

3 A No.

4 Q Do you know whether or not
5 Mr. Reimold complied with the instructions that
6 were provided to him by Dr. Gokaslan to return
7 for follow-up?

8 A No.

9 Q Do you agree that typically
10 following a back surgery there is a period of
11 time that the patient is followed by the
12 physician and serial images are done over that
13 time period?

14 MR. SZOKOLY: Object to the
15 form of the question. It's
16 compound.

17 Go ahead.

18 A As a radiologist, I have no
19 opinion as to the frequency and the duration of
20 interval follow-up.

21 Q And I'm not asking you about what
22 the appropriate frequency or duration would be,
23 just the concept that, typically, a patient
24 following back surgery follows with the
25 neurosurgeon or spine surgeon over whatever

1 Haber, M.D.

2 period of time that doctor tells them to and
3 that imaging is typically done.

4 A I'm confining my presence here as
5 a radiologist. I'm not going to get into
6 clinical care at all.

7 Q Okay. But that still wasn't my
8 question.

9 You had back surgery, right?

10 A That's right.

11 Q Okay. Were you following with
12 your doctor over a period of time and they were
13 taking films of your back over time?

14 A Yes.

15 Q And over what period of time?

16 A Over a few years.

17 Q Five years?

18 A Three to five years.

19 Q And do you still follow-up with
20 them?

21 A As far as the relevance of this,
22 I'm not sure if I feel comfortable answering.
23 My -- the attorney I'm working with hasn't
24 criticized the question. Do I still follow-up
25 with him? The answer is no.

1 Haber, M.D.

2 Q But over a period of three to five
3 years in your personal experience you know that
4 a patient is typically followed by a physician
5 and additional images are done, either as a
6 result of or part of the appointment, correct?

7 MR. SZOKOLY: Objection to
8 the question as hopelessly compound.

9 Q You can answer.

10 MR. SZOKOLY: I'll let him
11 know when he can answer, don't
12 worry.

13 A I will answer. The fact that my
14 surgeon asked me to come back doesn't
15 necessarily mean that it's routine.

16 Q Do you agree as a general concept,
17 Doctor, that when a physician gives instruction
18 to a patient, the patient should follow those
19 instructions?

20 A I'm here as an expert radiologist.
21 I'm not here to practice clinical medicine other
22 than radiology and I'm not going to answer
23 questions between what goes on between a doctor
24 and his patients.

25 Q Well, I think you have to answer

1 Haber, M.D.

2 that question.

3 A I don't think I do.

4 Q So you're refusing to answer that
5 question?

6 A I think the question, with all due
7 respect, shouldn't be focused on a radiologist
8 to answer a clinical question.

9 Q Well, you were a physician --
10 well, you're still a physician, correct?

11 A Correct.

12 Q And you were a practicing
13 physician for 30 years?

14 A I'm a practicing radiologist. I
15 do not deal with patients directly. I don't
16 call them into my office and ask them to return.
17 I haven't asked a patient to return and visit
18 with me since 1973.

19 Q Do you agree as a general
20 medical -- strike that.

21 You trained as a medical doctor,
22 correct, not just a radiologist, but as a
23 medical doctor?

24 A That's correct.

25 Q And during your training as a

1 Haber, M.D.

2 medical doctor were you taught that it is
3 important for patients to comply with the
4 instructions that are given to them by their
5 physician?

6 A I won't comment on that.

7 Q Okay. You are refusing to answer
8 that question as well?

9 A I'm not refusing. With all due
10 respect, I am not a clinician. I have very
11 limited responses to patient care other than a
12 case of patient care that directly involves
13 imaging. I do not see patients on a regular
14 basis, I have no expertise, and the last time
15 that I dealt in any consistent way with patients
16 was 1973, which was 27-plus 16 -- 40 years ago.
17 You need a more experienced expert in clinical
18 care than Dr. Haber.

19 Q As a radiologist that interpreted
20 images, you would typically write a report,
21 correct?

22 A Correct.

23 Q And when you would write a report,
24 you would make it available to the physician who
25 had ordered the test, correct?

1 Haber, M.D.

2 A That's correct.

3 Q In terms of whether or not that
4 physician would review your report, that's
5 something that you wouldn't know one way or the
6 other; is that correct?

7 A No, that's not correct.

8 Q Okay. Tell me what you know.

9 A Depending upon the -- the
10 immediacy or impact of the report, it's my job
11 on some reports to follow the standards of the
12 American College of Radiology.

13 Q And call, okay.

14 A And call --

15 Q I'm separating that --

16 A No, but, please, I'm trying to
17 answer your question. You asked me once I issue
18 a report am I done, and the answer to that is
19 emphatically no.

20 Q Okay. In terms of once you issue
21 a report, whether or not a physician that
22 ordered it reads it or relies on it is out of
23 your control, fair?

24 A Fair.

25 Q Okay. That's what I was getting

1 Haber, M.D.

2 to. See, it was an easy question.

3 Tell me what your criticisms are
4 of Dr. Magid.

5 MR. SZOKOLY: And he's got
6 films. If you want him to do just
7 based on the reports or use films,
8 too, let him know.

9 MS. MAGDEBURGER: Whatever
10 he wants to do to explain it to me,
11 that's fine. I'm leaving it open.

12 MR. SZOKOLY: We've had a
13 day of some very limited options for
14 responding, so I wanted to make sure
15 the field was open.

16 MS. MAGDEBURGER: The field
17 is open.

18 A I'll refer to my report. Dr.
19 Magid compared the examination of 10/3/13 to the
20 prior of 9/26/12. And although she did report
21 straightening of the cervical spine and she
22 noted the anterior cervical fusion at C5, C6,
23 her conclusion was unremarkable post-operative
24 examination. She failed to correctly interpret
25 this examination and I enumerated all of her

1 Haber, M.D.

2 failures. If you'd like, I'll enumerate them
3 one by one?

4 Q That's fine.

5 A Dr. Magid failed to appreciate the
6 progressive loss in height at C5, C6 disc space.

7 Bullet number two: Dr. Magid
8 failed to comment on the penetration of the disc
9 allograft into the cortex and marrow of the
10 sixth cervical vertebral body.

11 Bullet number three: Dr. Magid
12 failed to comment on the absence of fusion at
13 either the superior or inferior aspect of the
14 disc allograft.

15 Bullet number four: Dr. Magid
16 failed to report the bony reabsorption at the
17 inferior aspect of the disc allograft.

18 Those, in my opinion, are the
19 mistakes that Dr. Magid made.

20 Q Do you have any other criticisms
21 of Dr. Magid's interpretation other than those
22 four bullet points?

23 A No.

24 Q Now, you went on to say in your
25 report, (reading) Each of these missed findings

1 Haber, M.D.

2 had critical implications to the neurosurgical
3 care of Mr. Nolan Reimold.

4 What is the basis of that
5 statement?

6 A It's my feeling with a reasonable
7 degree of confidence that the neurosurgeon would
8 want to know that the disc space is collapsing.
9 I'm not a neurosurgeon, but I would assume the
10 reason that he's sending me -- sending this
11 patient to me, if I were the reading doctor,
12 were to evaluate the allograft and the
13 implications on the cortex and the height of the
14 vertebral body. That's what I'm there to do.

15 The fact that Dr. Magid failed to
16 appreciate these, in my opinion, important
17 findings reflects serial omissions and
18 departures from the standard of good and
19 acceptable care. So, in my opinion, if the
20 surgeon would want to know about this, the
21 surgeon will look at the films presumably as
22 well, but he will -- what I say to him in my
23 report, in my 40 years, impacts whether he
24 follows me precisely or not, I can't speculate,
25 but I know it's my job to say what I see and

1 Haber, M.D.

2 offer it as medical information for him to make
3 the final decision whether or not to treat this
4 conservatively or conceivably replace it.
5 That's his call, not my call.

6 And I'll -- just to finish,
7 please, and as a consequence of failing to
8 comment in exquisite detail these findings which
9 were, in my opinion, obvious, Dr. Magid failed
10 to provide appropriate, important services.

11 Q Okay. Do you know whether or not
12 Dr. Gokaslan was intending to or did rely on Dr.
13 Magid's report?

14 A No.

15 Q If he did not do so, would you
16 agree that there were no critical implications
17 to the neurosurgical care?

18 A We have addressed that in the
19 past. I'm not comfortable dealing with
20 hypotheticals.

21 Q Well, I understand that, but you
22 made a statement that it had critical
23 implications, so I'm following up on your
24 statement in your report. If Dr. Gokaslan did
25 not rely on Dr. Magid's report, would you

1 Haber, M.D.

2 agree -- and read it on his own -- would you
3 agree that there were no critical implications
4 to the neurosurgical care of Mr. Reimold as a
5 result of Dr. Magid's report?

6 A I wouldn't word it like that.
7 This is how I would word it and perhaps I would
8 change the wording in my report here with your
9 input. Each of these missed findings may have
10 critical implications in the neurosurgical care
11 of Mr. Nolan.

12 Q Right.

13 A I think that's reasonable.

14 Q So if Dr. Gokaslan didn't look at
15 the report, didn't rely on the report, then
16 those admissions that you believe Dr. Magid made
17 wouldn't play a role, correct?

18 A No, that's not fair. He will
19 still see my report. Whether or not he wants to
20 follow my report, he certainly is going to get
21 this report. He's obligated to see my report.
22 And if he wants to deny what I see here, that's
23 his call, but I feel whether or not Dr. Gokaslan
24 made his clinical -- made his decision based
25 upon his own interpretation, he had to at the

1 Haber, M.D.
2 very least put some factor into the radiology
3 report which, in my opinion, was very, very
4 wrong and misleading.

5 So from a radiologist's
6 perspective, I am saying it's without any doubt
7 that Dr. Magid failed. It's my strong belief
8 that the surgeon will evaluate the x-rays, but
9 will also factor in the report of the
10 radiologist. That's the way it's been for 40
11 yours, in my experience. Whether he follows me
12 precisely or not is not my concern. My concern
13 is to read these images as well and as
14 accurately as possible and I would defer to the
15 surgeon to make his final decision.

16 Q These items that you reference,
17 the progressive loss in height of the C5, C6
18 disc space, I think you said that, in your view,
19 was obvious?

20 A It's obvious to me.

21 Q Okay. And the penetration of the
22 disc allograft into the cortex and marrow of the
23 sixth cervical vertebral body, you believe that
24 was obvious as well?

25 A Yes, ma'am.

1 Haber, M.D.

2 Q And the absence of fusion in
3 either the superior or inferior aspect of the
4 disc allograft you believe was obvious?

5 A Yes, ma'am.

6 Q And the bony reabsorption at the
7 inferior aspect of the disc allograft you
8 believe was also obvious?

9 A That's correct.

10 Q Okay. And that would be obvious
11 to anybody who has some level of training and
12 experience in reading cervical spine studies,
13 correct?

14 MR. SZOKOLY: I'm going to
15 object to the term some level of
16 training. I have some level of
17 training. Are you talking about
18 doctors like him, radiologists?

19 MS. MAGDEBURGER: No.

20 MR. SZOKOLY: So anyone with
21 some level of training, okay.

22 MS. MAGDEBURGER: And no
23 more speaking objections. You can
24 just put form and foundation.

25 MR. SZOKOLY: That was kind

1 Haber, M.D.

2 of a sneaky question.

3 MS. MAGDEBURGER: You can do
4 form and foundation.

5 Q You can go ahead, Doctor.

6 A My last memory is some formal
7 training? The way you phrase it, it's
8 obvious -- it should be obvious to an
9 experienced, board certified radiologist.

10 Q Okay. How about an experienced,
11 board certified neurosurgeon?

12 MR. SZOKOLY: Outside the
13 scope of his expertise. Objection.

14 A I will not comment on the
15 expertise of a neurosurgeon.

16 MS. MAGDEBURGER: From now
17 on, if you going to object other
18 than to form and foundation, asked
19 and answered, then I want you to
20 have the witness leave the room
21 because you are clearly educating
22 him.

23 MR. SZOKOLY: I don't think
24 he needs educating, but I will
25 respect your request.

1 Haber, M.D.

2 MS. MAGDEBURGER: Thank you.

3 I have no problem with putting what
4 we're supposed to put on the record,
5 but anything beyond that in this
6 area -- I let you go in the other
7 areas, but not in this area.

8 MR. SZOKOLY: All right.
9 I'm going to hold you to this rule,
10 right, in June? We're going to live
11 by this rule?

12 MS. MAGDEBURGER: I think
13 you see -- well, I'm not even going
14 to debate that with you. I follow
15 that rule.

16 MR. SZOKOLY: Just remember
17 we had this conversation.

18 MS. MAGDEBURGER: I follow
19 that rule.

20 Q Do you have any other criticisms
21 other than those four issues of Dr. Magid?

22 A I'm going to read for a moment the
23 rest of my comments regarding this examination.

24 No.

25 Q Now, you went on to review a

1 Haber, M.D.

2 number of other studies from 7/16/2013, and then
3 2/18/15. Did you receive the reports of those
4 studies at the same time that you were
5 interpreting them yourself?

6 A No.

7 Q You got reports later?

8 A Right.

9 Q Do you have any criticisms of the
10 reports that were generated in July of 2013?

11 A I'd have to see the report. I
12 don't have the -- shall I look at the report
13 here?

14 Q Sure.

15 A July '13, we have quite a few
16 studies. We have a cervical spine of 7/16. We
17 have an MRI of the cervical spine. We have a
18 CAT scan. We have the cervical spine. We have
19 fluoroscopy of cervical spine, so in my report I
20 only addressed the issues that I was concerned
21 about. I didn't comment in my report on any
22 other issues from July of '13.

23 Q I understand that you didn't
24 comment on your report. Did you have any
25 criticisms of the films that were read in July

1 Haber, M.D.

2 2013 and how they were interpreted?

3 A No. Let me -- I spoke too fast.
4 The cervical spine x-ray of 7/16/13 I just
5 reviewed and I wouldn't criticize it. The MRI
6 performed 7/16/13, I'm looking at it as we speak
7 right now. I'd have to look at the imaging, but
8 my report refers to concerns that I have on
9 7/16/13 regarding the integrity of C6, so I do
10 have some concerns about it.

11 Q Do you have criticisms regarding
12 how the MRI of 7/16/13 was read and interpreted?

13 A I would just add certain things.
14 I'm not going to criticize it, but there are
15 certain things that I see in the MRI of 7/16/13
16 which are an extension of the issues that could
17 have been addressed by Dr. Magid in January of
18 2013. It's further progression of the same
19 problem.

20 Q Okay. Was that noted -- well,
21 strike that. I'm asking you strictly on the
22 interpretation of the MRI of 7/16/13 that was
23 done by the healthcare provider who did it, do
24 you have any criticisms of care regarding that
25 healthcare provider's interpretation of the MRI

1 Haber, M.D.

2 of 7/16/2013?

3 A No, it's not in the form of a
4 criticism. I would have added my comments, but
5 I'm not criticizing him.

6 Q Okay. And the same thing on the
7 cervical spine, do you have any criticisms of
8 the interpretation that was done by the
9 radiologist on 7/16/2013?

10 A You're referring to the CAT scan?

11 Q The cervical spine.

12 A Plain films of the cervical spine?
13 Yes, I have the same comments. I would have
14 commented on the further loss in disc space that
15 I see on 7/16, which I put in my report. I
16 would have added that. I'm not criticizing it,
17 but I certainly would add -- I would have
18 included it.

19 Q You'd agree that several
20 radiologists can look at the same film and
21 describe it differently but still be within the
22 standard of care?

23 A Is that in the form of a question?

24 Q Yes.

25 A No, I don't agree with that.

1 Haber, M.D.

2 Q So the only way to describe it and
3 be within the standard of care would be how you
4 would describe it?

5 A No, I wouldn't say that either.

6 Q Okay. So how would you describe
7 when several radiologists are looking at the
8 same film and they describe a finding, must they
9 use the same language?

10 A Are we talking about this case or
11 in general?

12 Q I'm talking in general.

13 A It's important that radiologists
14 accurately assess the findings and there's a
15 certain amount of reasonable latitude, and
16 people express themselves differently. If,
17 however, important findings are omitted and, in
18 my opinion, in this particular case, certainly,
19 in January, it was omitted, if things are
20 omitted that are of consequence, then I think
21 the -- and there may be clinical implications, I
22 would criticize those reports.

23 Q Was there anything omitted in the
24 7/16/2013 read of Mr. Reimold's cervical spine?

25 A It wasn't omitted. It certainly

1 Haber, M.D.

2 wasn't included and it's a judgment call that I
3 made at the time that I was criticizing Dr.
4 Magid, whether or not I was going to criticize
5 the other doctors as well. I didn't criticize
6 them in my report and I'm not sure of the answer
7 to that. I certainly would have worded it
8 differently than those two doctors.

9 Q Is there anything that they failed
10 to place in their reports that you believed was
11 of critical significance that warranted being
12 reported?

13 A I think that these are important
14 findings that should have been addressed. In
15 terms of its critical nature, it's been over --
16 let's see. We're talking about 7/16 -- we're
17 talking six months at least after Dr. Magid
18 initially failed to appreciate the obvious, so I
19 wasn't entirely sure whether I should give her
20 the same -- in my report, I certainly commented
21 on all these findings that were missed. I
22 didn't know whether, in fact, I should be as
23 critical of them as I was of Dr. Magid who
24 initially missed this. I'm not sure of the
25 answer to your question. It's almost a

1 Haber, M.D.

2 philosophical question.

3 Q Well, it's not really
4 philosophical. It's actually direct for my
5 purposes.

6 A I understand.

7 Q So you have any criticisms of care
8 that you subscribe to the cervical spine
9 interpretation that was done on 7/16/2013?

10 A I think it's reasonable to be
11 critical of them. I don't know whether I would
12 call it a departure, but I certainly would
13 criticize it.

14 Q Well, that's what we're here about
15 is criticisms of care that rise to the level of
16 a breach of the standard of care. You
17 understand what a breach of the standard of care
18 is in a medical-legal context, correct?

19 A Right.

20 Q So do you believe that there's
21 been a breach standard of care in how the
22 cervical spine series was interpreted on
23 7/16/2013?

24 MR. SZOKOLY: Before you go
25 on to the next question, if you want

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Haber, M.D.

to finish your answer to the question before when you got interrupted --

THE WITNESS: If I can have somebody help me with that question.

MR. SZOKOLY: You were kind of in the middle of something when you jumped to the next question.

MS. MAGDEBURGER: I don't believe we did and I think you're interfering with his answers.

MR. SZOKOLY: No, I'm not interrupting.

MS. MAGDEBURGER: Can you read back my question, please?

(The record was read.)

A I would say the care was less than optimum, but it wasn't a breach.

Q Okay. And how about on August 30, 2013, do you believe that the standard of care was breached in the interpretation of the cervical spine x-rays performed on August 30, 2013?

A No.

1 Haber, M.D.

2 Q Do you believe that the standard
3 of care was breached in how the cervical spine
4 x-rays that were done on July 18, 2013, were
5 interpreted?

6 A I feel that care was suboptimal on
7 7/18. It didn't characterize itself as a
8 breach.

9 Q And how was it suboptimal?

10 A I'd have to see the films right
11 now. I'm going to refer to -- my recollection
12 is I was not happy with the films. Can I open
13 up the films?

14 Q Sure, whatever you want to do.

15 A Can we go off the record?

16 (Discussion off the record.)

17 A We're on the record?

18 Q Yes.

19 A 7/18/13, I have the same level of
20 concerns that I had with the prior imaging that
21 many of these studies didn't report on the loss
22 in height and at the disc space at C5, C6.

23 Q Okay. And is that the same
24 criticism you have as to the interpretation that
25 is done of July 16, 2013, as well?

1 Haber, M.D.

2 A Yes.

3 Q And do you have that same
4 criticism as to the film of August 30, 2013?

5 A August 30, 2013? No, I do not.

6 Q Okay. The disc height has been
7 restored at this point by virtue of this
8 intervening surgery?

9 A That's right.

10 Q How about do you have any
11 criticisms regarding the cervical spine series
12 done on October 2, 2013?

13 A Did you say October 2, 2013? Are
14 you referring to my report?

15 Q It's at the very bottom of page --
16 the pages aren't numbered. You have cervical
17 spine performed and then it flips over. I think
18 that's --

19 A Oh, thank you. Thank you.

20 Q -- what they call a hanger, when
21 something drops at the bottom of a page, but
22 doesn't go across, a hanger?

23 MR. SZOKOLY: Sure, if you
24 say so.

25 A October 2013 was after the second

Haber, M.D.

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surgery.

Q It was.

A So the answer is, I have no comment. I have no problem with that at all.

Q You mentioned in your report that technically the study was compromised, offering little information regarding bony integrity adjacent to the disc allograft placement at C5, C6. What do you mean by the study was compromised? What was wrong with it?

A If I were the radiologist, I would have insisted that the study be repeated. There was lack of appropriate penetration from a technical perspective and some of the bony details are missing.

Q Can you make a determination from the study of 10/2/2013, whether there was a loss in disc space?

A Not from these films, no.

Q Is that because the films lack the clarity to make that assessment?

A Yes.

Q Can you make a determination as to whether or not there is any penetration of the

1 Haber, M.D.
2 disc allograft into the sixth cervical vertebral
3 body in the October 2013 study?

4 MR. SZOKOLY: Before you
5 answer just -- is he to leave the
6 room or can he cover his ears?

7 MS. MAGDEBURGER: You can
8 just put in a form and foundation,
9 if you don't like it.

10 MR. SZOKOLY: No. It's not
11 just form, no. You misstated a fact
12 there and I don't know if it's
13 consequential or if you care.
14 That's why I'm asking if he needs to
15 leave the room.

16 MS. MAGDEBURGER: Can you
17 tell one way or the other?

18 MR. SZOKOLY: No, that's not
19 how this goes. I'll take charge.

20 Could you leave the room for
21 a second while I make an objection,
22 please?

23 (Whereupon, the Witness left
24 the room.)

25 MR. SZOKOLY: Mine was

1 Haber, M.D.

2 really a simple one. You said disc
3 space and it's not a disc space.

4 MS. MAGDEBURGER: I think I
5 said disc allograft.

6 MR. SZOKOLY: Trembular
7 metal spacing, not -- trembular, I
8 think t-r-e-m-b-u-l-a-r.

9 MS. MAGDEBURGER: I said
10 disc allograft.

11 MR. SZOKOLY: But it's
12 not -- oh, I get what you're saying.
13 See, we could have had this
14 conversation without sending him out
15 of the room. You're not talking
16 about the disc as in defining the
17 shape of the allograft. You're
18 talking become the allograft as a
19 replacement for the disc. I gotcha.
20 See? I figured that's what it was
21 going to be.

22 (Discussion off the record.)

23 (Whereupon, at 1:53 o'clock
24 p.m., a recess was taken to 1:56
25 o'clock p.m.)

1 Haber, M.D.

2 (The deposition resumed with
3 all parties present.)

4 (The record was read.)

5 J O R D A N H A B E R, M. D., resumed

6 and testified further as follows:

7 BY MS. MAGDEBURGER:

8 Q Can you answer the question?

9 A I can.

10 Q And your answer?

11 A It is penetrating.

12 Q Okay. And do you believe that
13 would be a breach of the standard of care for
14 the person reading the October 2, 2013, scan not
15 to mention that?

16 A I would characterize it as
17 something that should be mentioned. I'm not
18 going to characterize it as a breach of care,
19 but it certainly should have been mentioned.

20 Q Okay. Can you make a
21 determination in the October 2, 2013, study
22 whether there's an absence of fusion of the disc
23 allograft?

24 A No.

25 Q Is that because the study is

1 Haber, M.D.

2 compromised and you can't see it?

3 A Correct.

4 Q So that's why you think the study
5 should have been repeated?

6 A That's correct.

7 Q Okay. Can you make a
8 determination as to whether there is any bony
9 reabsorption on any aspect of the disc
10 allograft?

11 A No.

12 Q Is that because the study is
13 compromised?

14 A Yes.

15 Q And that's why it should be
16 repeated?

17 A Let me make sure that you and I
18 are talking about the same -- the case that
19 you're referring to is -- the date of the study
20 that you're referring -- I'm got to make sure --

21 Q The October -- that's the one
22 we've been talking about all along.

23 A Could we go back? I made a
24 mistake.

25 Q Sure.

1 Haber, M.D.

2 A And I'm also going to ask that we
3 refocus on all questions that you asked me about
4 October. I made a mistake here.

5 Q Okay.

6 MR. SZOKOLY: For the
7 record, you just might want to
8 clarify what happened.

9 A Yeah. I was looking at -- looking
10 at 12/13.

11 Q Well, I'm talking about October 2,
12 2013.

13 A Right. We're on the same -- could
14 you ask me the questions that you were focusing
15 on October '13 from the very beginning? I'm
16 sorry.

17 Q I'm not quite sure I follow you.

18 A I made a mistake. I was referring
19 to the wrong study when I was commenting on
20 October '13. I'm -- it's my mistake. I was
21 looking at a different study, so anything that
22 you focused on October 2013 -- I'm sorry. It's
23 my mistake.

24 Q We'll go back to the October 2,
25 2013, study.

1 Haber, M.D.

2 A Yes.

3 Q Do you believe that the study was
4 technically compromised?

5 A Yes, I do.

6 Q Can you make a determination as to
7 whether there is loss in height of disc space on
8 the October study?

9 MS. MAGDEBURGER: Just for
10 the record, he's reviewing the study
11 as the question is pending.

12 A I can see there's loss in height
13 at the disc space on the October study,
14 October 2013. There's loss in height at the
15 disc space at C5, C6 on the October 2, 2013,
16 study.

17 Q Do you believe that is something
18 that should have been articulated in the
19 interpretation?

20 A Yes.

21 Q And a failure to do so is a breach
22 of the standard of care?

23 A I don't know whether I would
24 characterize it -- I don't know whether I would
25 characterize it as a breach, but I certainly

1 Haber, M.D.

2 would have dictated it myself.

3 Q Okay. So mentioning whether or
4 not there's a progressive loss in height is not
5 required by the standard of care?

6 A I think it's an important point to
7 make. I feel that any examination should have
8 included that. And being that this has been
9 progressing on since January -- since January
10 '13, I'm not sure that it's a breach of care.
11 It certainly is an omission.

12 Q So going back to my question, does
13 the standard of care require not just what you
14 think, but what the standard -- let me go back.

15 How do you define standard of
16 care?

17 A After 30 years or 40 years of
18 practice, it's an understanding of what's
19 expected in the community. And, in my opinion,
20 this should have been commented upon. The fact
21 that it's been going on for 10 months and wasn't
22 mentioned here is a mitigating factor, but it
23 certainly is an omission and I feel that this
24 report is incomplete. If that incompleteness as
25 a -- if that -- some people may characterize

1 Haber, M.D.

2 this as a breach. I myself, I'm not entirely
3 sure that it's a breach. It's certainly an
4 omission.

5 Q So to not mention progressive loss
6 in height is an omission, but not a breach of
7 the standard of care; is that fair?

8 A The major omission was in January.
9 All of these are subsequent omissions which, in
10 my opinion, although noteworthy, may not fall
11 into a breach of the standard of care because
12 the major mistake was omitted long ago.

13 Q I understand that, but my question
14 was broader than that. I'm not talking about
15 January. I'm not talking about October at this
16 point. I'm just talking about a simple concept.
17 And the concept is, do you believe the standard
18 of care requires a radiologist to mention in the
19 report that there is a progressive loss in
20 height? In the disc space, I'm sorry. Maybe I
21 will make it complete.

22 MR. SZOKOLY: Yes.

23 A I think the standard of care is
24 such that it would be -- a complete report would
25 include that.

1 Haber, M.D.

2 Q You're avoiding the question,
3 Doctor, so I'm going to have to ask it again.

4 A The report is --

5 MR. SZOKOLY: Hold on.

6 Q It's real simple. I'm going to
7 let you explain, but I need you to start with a
8 yes or no and then you can explain, but I need
9 you to say either yes or no and then explain.

10 Do you -- is it your opinion that
11 a failure to -- strike that.

12 If there is a progressive loss in
13 height of the disc space, do you believe that
14 the standard of care requires the radiologist to
15 state that in their report?

16 MR. SZOKOLY: Objection to
17 the question.

18 The answer has to be
19 responsive, but you're not locked
20 into Ms. Magdeburger's format of
21 your answer.

22 Q For this one you are and I think
23 the Court would allow me to do that.

24 MR. SZOKOLY: Go ahead.

25 Your answer has to be responsive.

1 Haber, M.D.

2 A My answer to your question is that
3 it can't be answered.

4 Q Why is that?

5 A Because in this case this was not
6 the initial failure to demonstrate progressive
7 loss in disc space. That was Dr. Magid in
8 January of 2013. That's where, in my opinion,
9 the breach of care was.

10 Q I understand that.

11 A I'd like to finish, please. Each
12 of the subsequent omissions, in my opinion, fail
13 far short and they are omissions, but they fail
14 far short of meeting with what I construe is the
15 standard of care and a medical malpractice by
16 not mentioning it. It should have been
17 mentioned. The major offense, as confirmed at
18 least as voiced in my report, was initially with
19 Dr. Magid and everything else are something --
20 are findings that I would have mentioned, but I
21 would not characterize it as a failure of the
22 standard of care. Dr. Magid failed. Dr. Magid
23 was the first to have the opportunity to comment
24 on this. Other people omitted this. She made
25 the tragic omission. In my opinion, she is the

1 Haber, M.D.

2 one who I'm focusing on.

3 Q I understand that. So if I'm
4 understanding your answer, as of October 2,
5 2013, you do not believe that the radiologist
6 who interpreted that study breached the standard
7 of care in failing to note what you believe
8 shows progressive loss in height of the disc
9 space at C5, C6; is that correct?

10 A The radiologist omitted this -- it
11 should have been mentioned.

12 Q Do you believe it was a breach of
13 the standard of care for he or she not to
14 mention it in the October 2, 2013,
15 interpretation?

16 A No.

17 Q Okay. Do you believe in the
18 October 2, 2013, study that there is penetration
19 of the disc allograft into the sixth cervical
20 vertebral body?

21 A Yes.

22 Q And that's on the October 2nd
23 study?

24 A October 2nd, correct.

25 Q And you see that by virtue of the

Haber, M.D.

compromised study?

A Yes.

Q Do you believe that it was a breach of the standard of care for the radiologist who interpreted the October 2, 2013, study not to reference that there is penetration of the disc allograft into the marrow of the sixth cervical vertebral body?

A Didn't you just ask me that question?

Q I asked you whether it was there. Now I'm asking whether it was a breach for the radiologist not to reference that in their report.

A In my opinion, no.

Q Okay. And do you believe there is absence of fusion on any aspect of the disc allograft in the October 2, 2013, study?

A Cannot comment.

Q Is that because the study is compromised?

A Yes.

Q And so you can't articulate that information one way or the other?

1 Haber, M.D.

2 A Correct.

3 Q And given the level of compromise
4 in the study, do you think it was a breach of
5 the standard of care not to repeat the
6 October 2, 2013, study?

7 A No.

8 Q And why not?

9 A I think it's a poor study. I
10 would have repeated it, but I wouldn't
11 characterize it as a breach.

12 Q Okay. Well, if you can't see
13 whether there is absence of fusion one way or
14 the other, wouldn't that be a breach in terms of
15 the quality of the study?

16 A There's a gray area which
17 characterizes an omission on one end and a
18 definite breach on the other. So, in my
19 opinion, this was a less than optimum study. I
20 would not characterize it as a breach.

21 Q All right. Even though you can't
22 find information that is necessary to evaluate a
23 patient post-fusion, correct?

24 A That answer can't be asked --
25 can't be answered in a yes or no. As I said

1 Haber, M.D.

2 many times, I would have repeated it.

3 Q And do you believe the standard of
4 care would require it to be repeated --

5 MR. SZOKOLY: Objection.

6 Q -- by most similarly trained
7 radiologists?

8 MR. SZOKOLY: Objection,
9 asked and answered.

10 A I would say that most radiologists
11 in the context of the concerns clinically would
12 have repeated this.

13 Q Okay. Do you believe that the
14 October 2, 2013, study shows bony reabsorption
15 at the disc allograft?

16 A There's loss in height compared to
17 the normal height expected of C6. However, once
18 again, I have reservations commenting on this
19 study.

20 Q Why is that?

21 A Because it's under-penetrated.

22 Q All right. And, so, if the
23 radiologist did not reference that there's bony
24 reabsorption in the October 2, 2013, study, do
25 you believe that there was a breach of the

1 Haber, M.D.

2 standard of care?

3 A I'm looking right now at the
4 report of October 2nd. Please repeat the
5 question.

6 Q May I see the report that you were
7 looking at, Doctor, for my own edification?

8 THE WITNESS: Would you
9 please repeat the question?

10 (The record was read.)

11 A This is a chiropractic report and
12 I cannot comment on chiropractic
13 interpretations.

14 Q Okay. Well, I'm not even asking
15 about the chiropractor. I'm asking about the
16 radiological interpretation. Let me ask you
17 this: Did you ever get one for the October 2,
18 2013, study?

19 A The answer to your question, I
20 have this report as my understanding that this
21 is the chiropractor's x-ray report.

22 Q Okay. So we're going to need to
23 mark this report, if you don't mind. I'll put a
24 sticker on it and --

25 MR. SZOKOLY: I think you

1 Haber, M.D.

2 already marked it. It's inside the
3 folder of the reports he brought.

4 A I don't know that this was ever
5 marked.

6 Q I don't think we marked it, but
7 you know what? Do you mind if we go ahead and
8 mark that whole -- well, I'm going to mark seven
9 as the chiropractic report and then we'll mark
10 the whole folder with all the other reports.

11 Can I look through what reports
12 you do have?

13 A Sure.

14 (Chiropractic report dated
15 October 2, 2013, was marked as Haber
16 Exhibit No. 7 for identification, as
17 of this date.)

18 (Folder containing reports
19 was marked as Haber Exhibit No. 8
20 for identification, as of this
21 date.)

22 MR. SZOKOLY: And you can
23 mark away, but I assume we can get
24 copies of his --

25 MS. MAGDEBURGER: Yes, so

1 Haber, M.D.

2 you can get it back to him?

3 MR. SZOKOLY: Yes.

4 MS. MAGDEBURGER: Yes.

5 Q There's some handwritten notes on
6 some of these reports and some crayon numbers
7 like one, two, et cetera. The crayon numbers,
8 were they written by you?

9 A Yes.

10 Q And what is that, just to tell you
11 the different -- where the studies are?

12 A That's right.

13 Q And the handwritten notes, are
14 those your handwritten notes as well?

15 A I'd have to take a look at them.
16 If that's representative of everything else
17 that's written there, I would say -- you only
18 showed me one.

19 Q Yeah, C-spine.

20 A C-spine label number one is my
21 handwriting.

22 Q And the rest of them look pretty
23 similar, so that's your handwriting on number
24 two?

25 A I cannot comment without seeing

1 Haber, M.D.

2 it.

3 Q Well, number two is your
4 handwriting?

5 A Number two is my handwriting.

6 Q Number three is your handwriting?

7 A You want to give me the whole
8 folder and I can tell you in a second?

9 Q Well, I'm going to look through
10 some of this, so, if I can, three is yours?

11 A My handwriting.

12 Q I think the rest of it looks very
13 similar, so I'm assuming it's your handwriting.

14 MR. SZOKOLY: Assume at your
15 own risk. He asked to look at it.

16 MS. MAGDEBURGER: I'm trying
17 to move this along.

18 (Discussion off the record.)

19 Q Do you know how it was that
20 Mr. Reimold got a chiropractic study done?

21 A No.

22 Q Do you believe that an x-ray done
23 by a chiropractor is within the standard of
24 care?

25 A I only can comment on the standard

1 Haber, M.D.

2 of care in medicine. I'm not trained in
3 chiropractic medicine.

4 Q Okay. So you don't know whether
5 how they take films is different, how a
6 radiologist takes films?

7 A I have no idea.

8 Q Did you ever ask for a
9 radiological interpretation of the October 2,
10 2013, film?

11 A I frankly assumed that what was
12 written there was the radiologic interpretation.

13 Q But there is no interpretation
14 that you have from October 2, 2013, correct?

15 A May I see this?

16 Q Yes.

17 A I would disagree with you.

18 Q Okay. What's on there?

19 A It says, (reading) Radiographic
20 interpretation and, number four, cervical
21 surgical fusion noted at C5, C6. It's my
22 understanding that's his interpretation.

23 Q Do you believe that interpretation
24 complies with the standard of care expected of a
25 radiologist?

1 Haber, M.D.

2 A Oh, it does not.

3 Q Let's now turn to the -- if you
4 need to look at this again -- just for the
5 record, Exhibit 7 is the report dated October 2,
6 2013, and then Exhibit 8 is the folder with all
7 the other reports relating to studies that you
8 reviewed, correct?

9 A Can you hand it back to me?

10 Q Now, turn, if you will, to the
11 film of February 18, 2015.

12 A February 18, 2015?

13 Q Right.

14 A Okay.

15 Q Did you find it?

16 A Yes.

17 Q Do you believe that there is a
18 loss in height at the disc space of C5, C6?

19 A Yes.

20 Q And do you believe that it was a
21 breach of the standard of care for the
22 radiologist not to interpret the loss of disc
23 height at C5, C6?

24 A Do you have a report of that?

25 Q Not with me. Did you have a

1 Haber, M.D.

2 report of that?

3 THE WITNESS: Do you have a
4 report of that?

5 MR. SZOKOLY: Let me look.

6 Q Do you have a report of that,
7 Doctor?

8 A Oh, wait. Maybe I do. Yes, I
9 have a report. It's here.

10 Q Okay. Let me look at it.

11 A It's on the bottom.

12 Q So the report that you have from
13 2/18/15 reads, (reading) Postop follow-up fusion
14 check, good alignment and no evidence of
15 hardware fail.

16 That's the report, correct?

17 A That's correct.

18 Q And do you believe that that
19 report complies with the standard of care in
20 order to interpret the results that you see in
21 the 2/18/2015 study?

22 A As I noted on the prior comments,
23 I would have mentioned the fact that the
24 allograft was penetrating into the cortex of C6.

25 Q Okay. So you see the allograft

1 Haber, M.D.

2 penetrating into the cortex of C6 on the
3 February 18, 2015, study, correct?

4 A Correct.

5 Q And you see that there's a loss of
6 disc height in the C5, C6 on the 2/18/2015,
7 study, correct?

8 A Correct.

9 Q Do you believe that the
10 interpretation should have mentioned that there
11 was progressive loss in height at the disc space
12 of C5, C6, in order to comply with the standard
13 of care?

14 A Complicated --

15 Q On 2/18 -- let me finish because I
16 need to make sure the question comes in, so let
17 me strike it and start again for her reference.

18 Do you believe that the
19 interpretation of the 2/18/2015 study should
20 have included, in order to comply with the
21 standard of care, a reference that there was a
22 progressive loss in height at the disc space of
23 C5, C6?

24 A The answer can't be -- the
25 question can't, in my opinion, be answered

Haber, M.D.

1
2 clearly. When you term progressive, I'm left
3 with certain inherent ambiguities. Is it
4 progressive compared to the former examination?
5 Is it progressive compared to the study dating
6 back a few months ago? Is it progressive dating
7 back to January when the omission, in my
8 opinion, was made? These are difficult
9 questions. The first -- to answer your
10 question, the initial missing of this
11 compression and the penetration of the allograft
12 in January was the departure. All the
13 subsequent ones, including this one, should have
14 included the fact that the allograft is now
15 extending into C6. I wouldn't characterize each
16 and every one of these as omission -- as
17 departures. They certainly should have been
18 mentioned and, hopefully, that will clear any
19 ambiguities because I do not want to get into
20 responding to you subsequently in court when
21 some omissions -- some progressive loss in
22 height are -- are omission -- some omissions
23 are -- is medical malpractice and some aren't
24 and I don't want to be in that.

25 It's my opinion that the first one

1 Haber, M.D.
2 in January of 2013 was a departure. All of the
3 subsequent ones should have been mentioned and
4 many of them are loss in height, but I
5 personally wouldn't characterize each and every
6 one of those as departures.

7 Q Do you believe that the standard
8 of care would require that there be a mention of
9 loss of height of a disc space in C5, C6 in the
10 February 18, 2015, study as compared to the
11 study from July of 2013 post-second surgery?

12 A I'd have to look at the images.

13 Q Go ahead.

14 (Whereupon, at 2:33 o'clock
15 p.m., a recess was taken to 2:41
16 o'clock p.m.)

17 (The deposition resumed with
18 all parties present.)

19 J O R D A N H A B E R, M. D., resumed
20 and testified further as follows:

21 BY MS. MAGDEBURGER:

22 Q You've had an opportunity to look
23 at the 2/18/2015 study as compared to the
24 7/23/13 study, correct?

25 A Correct.

1 Haber, M.D.

2 Q All right. And I believe the last
3 question that I had -- I could be wrong -- was,
4 do you believe that the standard of care
5 required the interpretation to read that there
6 was a progressive loss in height of the disc
7 space from 7/23/13?

8 A No.

9 Q And why not?

10 A I would have included, for the
11 purposes of completion, I don't think it's a
12 violation of the standard of care.

13 Q And why is that?

14 A Because it's opinion of style and
15 I think the report would have been far more
16 complete and informative if they had mentioned
17 that, but I wouldn't characterize it as a
18 departure.

19 Q Do you believe that the report
20 should have shown in 2/18/2015 that there was
21 penetration of the disc allograft into the
22 marrow of the sixth cervical vertebral body?

23 A Yes.

24 Q And do you believe it was a breach
25 of the standard of care for the report of

1 Haber, M.D.

2 2/18/2015 not to mention that there was
3 penetration of the disc allograft into the sixth
4 cervical vertebral body?

5 A I'm going to refer to the report.

6 I wouldn't characterize it as a
7 departure. I certainly think it's valuable
8 information that was omitted.

9 Q And, again, is that a matter of
10 style?

11 A Yes.

12 Q Okay. Do you believe that there
13 was absence of fusion in the cervical spine
14 study that was done on 2/18/2015?

15 A It looks like there is fusion.

16 Q Okay. And you're able to see that
17 on the 2/18/2015 study?

18 A Yes.

19 Q If there was absence of fusion, do
20 you believe that the standard of care would have
21 required that to be written on the 2/18/2015
22 interpretation?

23 A I've answered that same question
24 many times. There are stylistic issues. I
25 would have included it. I don't refer to it as

1 Haber, M.D.

2 a departure.

3 Q Okay. Do you believe that there
4 is bony reabsorption of the disc allograft in
5 the 2/18/2015 study?

6 A There's loss in height at C6.
7 Whether -- when I say loss, we have to clarify:
8 Is it loss relative to the examination prior
9 dating back to January; is it loss compared to
10 the prior examination, the immediate prior
11 examination? But it's certainly not as high as
12 it should be, and I think it should be
13 mentioned. I would not characterize it as a
14 breach.

15 Q Do you believe that there was bony
16 reabsorption between 7/23/13 and 2/18/2015? And
17 bony reabsorption of the disc allograft, for
18 clarity of the question.

19 A The examination that was performed
20 2/18/15 was performed after surgery, the second
21 surgery, so I'm not exactly sure what he did
22 intraoperatively, so I couldn't characterize the
23 change of the end plate as necessary
24 reabsorption. He may have removed it
25 surgically.

1 Haber, M.D.

2 Q Okay. So you can't tell from the
3 2/18/2015 study whether there's been bony
4 reabsorption of the disc allograft?

5 A It would be very hard to say.

6 Q Okay. Is that because of the
7 nature of the plates that he used?

8 A It would be because I'm not there.
9 I'm not a neurosurgeon and I'm not sure how much
10 he actually decorticated that bone to get a good
11 purchase on the new allograft. I'm sure it's
12 very conceivable he may have removed something
13 and I don't want to call it reabsorption when,
14 in fact, it's something that he did
15 intraoperatively.

16 Q All right. So you can't tell one
17 way or the other?

18 A That's right.

19 Q And you've not reviewed any of the
20 operative reports from Dr. Kowalski?

21 A That's right.

22 Q If there was bony reabsorption, do
23 you believe that the standard of care would have
24 required that it be mentioned in the 2/18/2015
25 report?

1 Haber, M.D.

2 A We have addressed this so many
3 times, Counselor. It's a stylistic issue. I
4 would have mentioned it for the purposes of
5 completion.

6 Q But it's not a breach of the
7 standard of care not to?

8 A That's right.

9 Q Okay. How much review of cervical
10 spines did you do when you were in clinical
11 practice?

12 A You've going to have to help me
13 with that. How much of a review -- you have to
14 help me with that question.

15 Q I'm sorry. I'll rephrase it for
16 you.

17 How frequently were you asked to
18 review C-spine films following surgery when you
19 were in clinical practice?

20 A The first question you asked me
21 didn't refer to surgery. The second question --

22 Q That's why I rephrased it. You
23 didn't understand the first one, so I decided to
24 make it better.

25 A Hundreds.

1 Haber, M.D.

2 Q Hundreds?

3 A Hundreds.

4 Q When you were in clinical
5 practice, what type of readings did you do?

6 A I read tens of thousands of
7 cervical spines. I've read tens of thousands
8 of -- thousands, many thousands, of MRIs and
9 CTs. It's 35 years. You see them every day.

10 Q How would you break down your
11 clinical practice when you were in practice?

12 A In what sense break down?

13 Q In the type of films or studies
14 you were reviewing and interpreting.

15 A Well, when I first started, there
16 was no CAT scanning. CAT scanning was not
17 available. There was no MRIs. So it was -- the
18 x-rays of the extremities were all x-rays. In
19 the late '70s, CAT scan came as an available
20 technology, so I was reading, let's see, at
21 least five a day, maybe more, five a day -- 260
22 days a year, it's a thousand a year -- 30,000
23 CAT scans in the past 30 years.

24 Q And how about cervical spine
25 films?

1 Haber, M.D.

2 A Probably more than that, maybe
3 60,000, plenty of films. I can't give you a
4 precise, but they're routine. Cervical spine
5 x-rays are routine.

6 Q And then I distinguished it
7 earlier between reading cervical spine films
8 post-back surgery, post-fusion surgery. How
9 frequently did you do that?

10 A Not nearly as frequently.

11 Q Okay.

12 A I can't give you a number. I'm
13 sure hundreds.

14 Q And why is it that you looked at
15 those less frequently?

16 A Because in my hospital they didn't
17 have as many of those postoperative cases or
18 they weren't done in outside facilities. I
19 didn't see them all that much, but I'm sure I
20 read hundreds of them.

21 Q Did they do back fusions in your
22 hospital?

23 A I can't even tell you if they did
24 or they didn't. I know if they did them, it was
25 not as frequent as a major teaching hospital.

1 Haber, M.D.

2 This was a community hospital --

3 Q Right.

4 A -- but we got patients from Stony
5 Brook which is a major teaching hospital, and we
6 saw them as a follow-up of Stony Brook as well.

7 Q Okay. Do you know if there was
8 any neurosurgeons or spine surgeons affiliated
9 with the hospital that you were affiliated with?
10 That's Mather, right?

11 A Right. And St. Charles. Could
12 you ask the question again?

13 Q Did they have spine surgeons,
14 whether they be orthopaedists or neurosurgeons,
15 at the hospital you were affiliated with?

16 A Yes.

17 Q And did they do fusions?

18 A I know they did laminectomies and
19 fusions. Yes, they did.

20 Q Now, you agree that an x-ray is
21 two-dimensional, not three-dimensional, correct?

22 A A single x-ray is.

23 Q And on a two-dimensional x-ray,
24 can you tell whether or not there's actual
25 penetration versus the angle of the study?

1 Haber, M.D.

2 A Yes.

3 Q And you believe in this case that
4 when you indicate that there's penetration that
5 you're seeing penetration and not the angle of
6 the study?

7 A Yes.

8 Q Do you know the natural healing
9 process post-fusion in terms of bone remodeling?

10 A Do I know it? I've seen it. I'm
11 not sure when you say do I know it.

12 Q How does bone remodel
13 post-surgical fusion?

14 A There's new bone growth which
15 happens after -- you should see many of the --
16 there are different articles, but most articles
17 say 80 percent of fusions with allografts will
18 have some bony union at six months, but there
19 are different articles.

20 Q How long does it take for there to
21 be full bony union?

22 A I couldn't tell you.

23 Q You agree that bony union is a
24 continuum; there's little growth and then you
25 got more growth as time goes on?

1 Haber, M.D.

2 A It's a continuum until it matures.

3 Q Do you have an opinion as to
4 whether or not as bone remodels there's loss of
5 disc height as a natural result?

6 A Yes.

7 Q And what's your answer?

8 A It doesn't lose height. You can
9 have some cases where it may be one or two
10 millimeters, but this is a much more significant
11 amount and this is not projectional. This is
12 real.

13 Q Do you have an opinion as to
14 whether or not you can have penetration as a
15 natural result after fusion?

16 A Yes.

17 Q And what's your answer?

18 A Yes. It happens. Articles in the
19 literature, 10 to 20 percent, will have some
20 form of penetration. The fact that it happens
21 doesn't mean I shouldn't report it. If it's
22 happening, you report it and you let the surgeon
23 evaluate its significance.

24 Q Do you agree that the appearance
25 of penetration is part of the bone incorporating

Haber, M.D.

1 into the area below?

2 A No.

3 Q And what's your basis for that?

4 A Penetration is collapse of the
5 bone and you don't want the allograft to be
6 seated deep to the cortex into the marrow of the
7 vertebral body, so I would strongly disagree
8 with that. It does happen and the surgeon must
9 be apprised of it and make a clinical decision
10 as to the need to watch it or put in a
11 different -- there are many different allografts
12 and each allograft has its own distribution of
13 weight. So there are many choices that they
14 have, but they have to be informed of the fact
15 that it is penetrating.

16 Q What is your understanding of the
17 hardness of the graft versus the disc below?

18 A The graft is harder than the disc,
19 hence, the disc -- I think the question you're
20 asking me, what is the relationship between the
21 hardness of the graft versus the vertebral body
22 below -- is that what you meant to ask? You
23 said the disc below.

24 Q I'm sorry.

1 Haber, M.D.

2 A So the allograft is harder than
3 the vertebral body. So in the context of
4 pain -- of pressure, the allograft won't
5 collapse; the disc will lose height.

6 Q What is the expected -- well,
7 first of all, do you know what an axial force of
8 the head is?

9 A No. That's a clinical issue.

10 Q Do you know what causes a graft to
11 penetrate into the vertebral body below?

12 A Yes.

13 Q What's that?

14 A Weight.

15 Q Is that overhead weight?

16 A I'm not sure in terms of which
17 weight. There is weight, obviously, from the
18 head and the vertebral bodies above and it's a
19 distribution of weight of the allograft on the
20 cortex of the vertebral body immediately below.

21 Q When you had your own surgery,
22 were you cautioned about using overhead
23 activity?

24 A Yes, I was.

25 Q And what were you told?

1 Haber, M.D.

2 A For the first few months, don't do
3 any -- don't do any work with bar bells,
4 certainly, and keep your activity relatively
5 vigorous. I was told to walk quite a bit,
6 frankly, and I followed his orders and I did
7 fine.

8 Q Do you know whether penetration is
9 a good or positive factor for the healing
10 process?

11 A Where penetration of the disc
12 allograft into the vertebral body is good, is
13 that the question? I know it's not good.

14 Q And why is that?

15 A Because the whole point of putting
16 the allograft in is to keep the vertebral bodies
17 away from each other. What's the point of
18 putting the allograft in, if the vertebral body
19 is going to collapse underneath it?

20 Q You mention in your report that
21 the allograft extends beyond the cortex in the
22 marrow of C6, when you were interpreting the
23 January 10, 2013, study. What did you mean by
24 that?

25 A Just what I said. The allograft

1 Haber, M.D.

2 should be staying on top of the cortex and
3 shouldn't be going into the cortex and
4 eventually into the vertebral body.

5 Q And how is it that you can tell
6 that the allograft extends beyond the cortex?

7 A I'd have to look at the films
8 right now.

9 Q Go ahead.

10 A How is it that I can tell? I look
11 at a lateral view and I see the cortex, and I
12 see the allograft, and I know where the cortex
13 should be, and I see that the allograft is going
14 into the cortex, and I'm concerned about the
15 integrity of the cortex.

16 Q And does the angle of the film
17 affect the appearance of whether or not the
18 allograft appears to be going into the cortex?

19 A It can.

20 Q And how so?

21 A If the film isn't a good lateral,
22 you're not going to get -- you have to comment
23 that it could be projectional in nature.

24 Q And do you believe that the angle
25 of the film was in good alignment?

1 Haber, M.D.

2 A This is a perfectly well done
3 lateral, yes.

4 Q You mention in your report that
5 there is no evidence of bony union at the
6 superior or inferior aspect of the disc
7 allograft; is that correct?

8 A Correct.

9 Q Did you see any evidence of bony
10 union on any aspect of the fusion?

11 A On the examination of January 10,
12 2013?

13 Q Yes, sir.

14 A No.

15 Q So there's no new bone growth on
16 the film of January 10, 2013?

17 A That's right.

18 Q You said there's bony reabsorption
19 at the inferior aspect of the disc allograft.
20 Do you agree that reabsorption can be seen on a
21 perfectly healing fusion?

22 A Not to the extent that the
23 reabsorption is coupled with the disc actually
24 penetrating the cortex and going at or near the
25 marrow, no.

1 Haber, M.D.

2 Q Okay. Can reabsorption be seen in
3 the healing process in a perfectly normal
4 healing process, any amount?

5 A Probably yes, but not to the
6 extent that you see here. You see the disc as a
7 function of the reabsorption penetrating the
8 cortex and approximating the marrow. So from a
9 physiological perspective, the answer -- which
10 doesn't show up on x-rays that the bone is a
11 vital structure -- there's reabsorption.
12 There's new bone formation.

13 It's a living structure, so there
14 will be reabsorption on a microscopic level.
15 When the reabsorption as it's present in this
16 case is so consequential, then it results in
17 erosion of the cortex and the allograft which is
18 thicker and heavier goes into the cortex and
19 presumably into the marrow. Then you have
20 reabsorption overwhelming bony growth and you
21 have, basically, the disc slipping into the
22 vertebral body and that is my concern.

23 Q I may have asked this and, if I
24 did, I apologize. I'm getting tired. How long
25 does it take for there to be complete bony union

1 Haber, M.D.

2 typically following a fusion?

3 A You did ask it in a different way.

4 I would say within six months you would expect

5 to have at least some, but it's not definite.

6 Q And when would the process be

7 complete?

8 A Oh, I would expect within a year.

9 Q Do you know what a pseudarthrosis

10 is?

11 A It's a false joint. When you

12 create -- when there's a surgical -- when you

13 have fractures and it creates a new joint, a

14 pseudarthrosis. This is not a pseudarthrosis

15 and I wouldn't apply it here.

16 Q Do you believe that there is

17 evidence of pseudarthrosis at the February 18,

18 2015, film?

19 A I don't use that term when it

20 comes to the cervical spine, so.

21 Q You don't use it at all?

22 A No.

23 Q Do you see some degree of

24 reabsorption in a post-fusion patient as the

25 bone is remodeling? Do you expect to see that?

1 Haber, M.D.

2 A You did ask me that and I said on
3 a microscopic level you can see it, but not to
4 the extent where that allograft is penetrating
5 into the cortex.

6 Q Okay. But you can see it if the
7 allograft is not penetrating into the cortex?

8 A You can see some as part of an
9 overall process of healing, but you would also
10 expect to see some new bone growth at the same
11 time. Once again, as we said, the bone is a
12 very active process. You just don't have
13 osteoblastic -- sclerosis, osteoblastic changes.
14 You have new bone growth, you have some areas of
15 reabsorption, but overall you want to see
16 trending of new bone growth. What you have here
17 is trending of increasing penetration or stable
18 penetration, but it's certainly not getting any
19 better.

20 Q And you don't see any new bone
21 growth?

22 A On which examination are you
23 referring to?

24 Q The January.

25 A No. No.

1 Haber, M.D.

2 Q And is that as compared to the
3 study in September?

4 A No. There's no new bone growth at
5 all, so -- there's no new bone growth.

6 Q I would like you to look at the
7 June 14, 2012, MRI, presurgery MRI, if you
8 could.

9 A Okay.

10 Q Tell me how you would interpret
11 that MRI.

12 A I see a herniated disc at C5, C6,
13 pushing on the cervical cord on the left side of
14 the cervical cord, extending into the left
15 neuro.

16 Q And in layman's terms, what does
17 that mean?

18 A Means he's got a herniated disc
19 and it's affecting the root between C5 and C6.

20 Q So it's pressing on the nerve
21 coming from the C5, C6 root?

22 A That's right.

23 Q And if the patient had clinical
24 signs of numbness, tingling, weakness, atrophy,
25 would that correlate with what you see in the

1 Haber, M.D.

2 6/14/12 MRI?

3 A Yes.

4 Q The condition you see there is
5 typically surgical to repair?

6 A Very frequently surgery. I don't
7 want to get into typical versus atypical, but in
8 the light of positive, clinical findings, it's
9 more often the rule than the exception. They
10 could try to follow this conservatively as well,
11 but it's a surgical call, but it certainly is a
12 herniated disc.

13 Q And compression of the nerve at
14 the root of C5 and C6 can cause permanent
15 damage?

16 A Yes.

17 Q How would you categorize the disc
18 herniation in terms of mild, moderate, severe
19 that you see on the 6/14/12 study?

20 A Well, it's a relative term. I
21 would say it's moderate. I don't know what term
22 I used here.

23 Q How about the compression on the
24 nerve at C5, C6, how would you categorize that,
25 mild, moderate or severe?

1 Haber, M.D.

2 A Once again, it's rather arbitrary,
3 but at least moderate.

4 Q Could be severe?

5 A Could be severe, yeah. I would
6 characterize the overall findings, certainly, of
7 his cord itself as moderate at the neuroforamen
8 in the context of a positive clinical findings,
9 certainly sounds surgical to me.

10 Q You agree that this would be a
11 serious herniation and not a mild one?

12 MR. SZOKOLY: Objection,
13 misstates his testimony.

14 Go ahead.

15 A I would say I'm an anatomist. In
16 terms of seriousness, I don't really want to get
17 into seriousness so far as clinical issues. I
18 would at least -- from an anatomic perspective,
19 at the very least, moderate.

20 Q And there appears to be nerve root
21 compression on the film?

22 A Yes.

23 Q I assume based on your answer
24 you're not going to express any opinions as to
25 whether or not Dr. Gokaslan appropriately

1 Haber, M.D.

2 offered surgery to Mr. Reimold, correct?

3 A That's correct.

4 Q And you're not going to opine
5 whether or not Mr. Reimold had already sustained
6 permanent injury at the time of the 6/14/2012,
7 MRI?

8 A That's right.

9 Q Certainly, based on what you can
10 see, if he did have permanent injury, it would
11 be consistent with a nerve root compression,
12 right?

13 MR. SZOKOLY: Objection.

14 A I don't want to get into that.

15 Q You don't know?

16 A I don't know.

17 Q Okay. So you're not going to
18 offer that opinion, right?

19 MR. SZOKOLY: Objection,
20 asked and answered.

21 Q Nor are you going to say he didn't
22 have any permanent injury, correct?

23 MR. SZOKOLY: Objection,
24 asked and answered.

25 THE WITNESS: She's getting

1 Haber, M.D.

2 tired.

3 A You're getting tired.

4 Q Can you answer my question?

5 MR. SZOKOLY: Objection.

6 Answer it again, please.

7 Q Nor are you going to offer that he
8 did not have any permanent injury as of
9 6/14/2012?

10 A I'm not going to offer the status
11 and longevity of his findings.

12 Q Do you believe there was any
13 fusion at the superior or inferior aspect of the
14 January 10, 2013, study?

15 A I don't recall, but I will relook
16 at it again.

17 MR. SZOKOLY: And I would
18 object as asked and answered.

19 A In my opinion, there's no evidence
20 of fusion at all demonstrated on January 10,
21 2013.

22 Q Now, between -- actually, can you
23 measure the loss of disc height? How would you
24 measure it?

25 A It's rather imprecise. You get a

1 Haber, M.D.

2 feeling rather than an actual measurement. And
3 I see the allograft going through the cortex and
4 marrow, so I'm not going to measure it. I don't
5 offer measurements. I just give a comment that
6 it's penetrating the cortex and actually going
7 into the marrow.

8 Q Do you know if there was any loss
9 of height of disc space prior to the surgery
10 that was done in 2012?

11 A Yes, I do, and I have an
12 illustration for you.

13 Q Okay.

14 A I'd like to show it to you.

15 Q You want me to come over there and
16 see it?

17 A No. You will in a second.

18 Do you have the photographs -- you
19 have two photographs.

20 Q Sure.

21 A So look at the two photographs and
22 then --

23 Q So these are Exhibits 4 and 5?

24 A Right.

25 Q Actually, I put the sticker on

1 Haber, M.D.

2 upside down.

3 MR. SZOKOLY: Well, now
4 you've wrecked the exhibit. I hope
5 you're happy.

6 A Now, I'm going to show it to you
7 on the screen which has more resolution.

8 THE WITNESS: Is that --

9 MR. SZOKOLY: Yes, it's
10 fine.

11 Q So I'm looking at which one?

12 A Just hold on one second, please.
13 Counselor, could I ask you to come
14 over here?

15 Q Sure. Are they also depicted on
16 these pictures?

17 MR. SZOKOLY: Do you want to
18 come over my way? Don't move the
19 court reporter.

20 MS. MAGDEBURGER: Okay.

21 Q So we're looking at what is now
22 depicted in Exhibit 4 or 5. Are they the same
23 thing?

24 A Same thing, just different
25 technique.

1 Haber, M.D.

2 Q Okay.

3 A And I will describe the findings
4 which are most obvious on the actual computer.
5 We have a lateral view of the cervical spine
6 performed the day of the surgery, 6/25/12, on
7 your left.

8 Q Okay.

9 A You have a middle image that was
10 performed 9/26/12, and you have the January 10,
11 '13 lateral as well.

12 Q Okay.

13 A These three images were cut and
14 pasted off of the disc that Counsel has
15 submitted to me. There's been nothing that was
16 done to adulterate these.

17 Q Okay.

18 A At the time of the surgery -- if
19 you'd like, I will describe what I see here. On
20 the time of the surgery, there's very ample
21 separation of C5 to C6 with the disc allograft
22 well situated.

23 Q All right. Show me where you see
24 the disc allograft.

25 A Right here, this gray area, and

Haber, M.D.

there it is over here.

Q Okay.

A You see it?

Q I do.

A All right. There is very ample separation here.

Q Which would be expected because there's no bony growth?

A There's no bony growth and there's no bony destruction, osteopenia or collapse. The cortices there are well demonstrated and there's a normal cervical lordosis. You have a little bend in your neck. It's normal. This is the time of surgery, 6/25/12.

Q Okay.

A And, obviously, there's no bony union. That's when they did the surgery. This is done three months later, 9/26/12. All these demographics were the demographics that were on the film.

Q I got that. Just go ahead and explain it. I got it.

A I want you to totally understand here. There's a difference in the appearance of

1 Haber, M.D.

2 the disc, the allograft disc, which now, as
3 opposed to being parallel to the disc space as
4 it is on 6/25, now is tilted inferiorly
5 posteriorly; where, if you look carefully, and I
6 will blow that up for you -- I don't know if I
7 can -- I can't -- where the disk actually,
8 instead of resting on top of the bone, goes into
9 the bone and is angulated. In addition to
10 which, if you take a look at the disc space here
11 at C5, C6, where here is reference to the
12 6/25/12 image, there's ample widening
13 posteriorly in the back.

14 And on 9/26/12, there's obvious
15 compromise here. This is much narrower here.
16 There's angulation --

17 Q When you say here?

18 A At the posterior aspect of the
19 intervertebral disc space between C5 and C6. It
20 is narrowed. It is compromised. This, coupled
21 with the angulation of the allograft, makes it
22 clear to me that the allograft has moved and is
23 penetrating now into the cortex of C6 and is no
24 longer providing the support to separate C5 and
25 C6. The allograft is in front, there's collapse

1 Haber, M.D.

2 and the rear of the allograft isn't supporting
3 the disc space anymore.

4 Q Okay. And then you go to 1/10?

5 A Then you go to 1/10 and there are
6 dramatic changes here. The disc space which was
7 normally -- postoperatively was normal or
8 widened and here is only -- here on 9/26 is
9 narrow posteriorly, now the entire disc space is
10 terribly compromised. And this disc is further
11 penetrating into the bone, into the sixth
12 cervical vertebral body, and there's virtually
13 no separation here. There is the disc -- this
14 examination refers to the disc on January 10,
15 2013, and it's lost at least greater than 50 if
16 not 70 percent of its height compared to the
17 former examination of 6/25.

18 Q So you're talking about the disc
19 space that appears on these images as the dark
20 area between the C5 and C6?

21 A Precisely.

22 Q And you believe that because this
23 dark area does not appear in the January that
24 that's evidence of disc collapse?

25 A That's right.

1 Haber, M.D.

2 Q So do you know what -- well, with
3 a fusion that's done, do you know what the
4 intent is to happen between C5 and C6 with the
5 allograft?

6 A The intent, yes.

7 Q Is what?

8 A The intent to that you are to have
9 bony bridging and the disc allograft is to
10 maintain its position, and that disc space is to
11 maintain its height. It shouldn't go into the
12 vertebral body.

13 Q Do you agree that the intent --
14 well, strike that.

15 With new bone growth, when you're
16 looking at it on film, does it come in as a more
17 bright area?

18 A On -- on MRI it will be bright and
19 this is a -- these are plain films.

20 Q That's what I'm talking about.

21 A New bone growth will be white,
22 yes.

23 Q Okay. And do you see more white
24 on the 1/10/2013 film than you do on the
25 9/26/2012 film?

1 Haber, M.D.

2 A No. The differences that one may
3 perceive as being whiter are technical in
4 nature. There's really no increase in
5 whiteness. All the bones are a little whiter.
6 This examination was performed utilizing a
7 different technique.

8 Q Would you anticipate that once
9 there is complete fusion, you will not be able
10 to see any disc space?

11 A I can't imagine that to be the
12 case. Why put the allograft in there to
13 separate them if you're telling me that there is
14 to be no space? If you want this allograft --
15 the allograft has got to go somewhere, so the
16 allograft is going to keep the vertebral bodies
17 apart.

18 If you're stating to me that the
19 allograft should actually invade the bone and go
20 into the vertebral body below, I would have to
21 wonder why they ever put it in. So, no, it
22 doesn't make any sense to me. And why would you
23 be worried about weight distribution on
24 allografts if you don't mind them going to the
25 next vertebral body? You want to redistribute

1 Haber, M.D.

2 weight and that's why they're having the issues
3 with the allograft and the bones penetrating the
4 body of the allograft.

5 Q So if I'm understanding your
6 testimony, the reason you think that there is
7 evidence of penetration and lack of disc height
8 is that the area that appears black around the
9 metal bridge -- I'm calling it the metal
10 bridge -- becomes more white as we get to
11 January 10, 2013; is that correct?

12 A Becomes more white, did you say,
13 or becomes --

14 Q Yes, becomes more white.

15 A No, it's not white. It becomes
16 narrower. I still see the disc space. It's
17 just much narrower.

18 Q And it's your opinion that that
19 does not represent new bone growth?

20 A That's right. It means collapse.
21 And it's perfectly consistent with the allograft
22 penetrating into the cortex of C6. It has
23 nowhere to go but the weaker structure which is
24 the vertebral body. So as the allograft which
25 is meant to separate the vertebral bodies

1 Haber, M.D.

2 doesn't do its job, it falls into the cortex and
3 eventually into the marrow and the two vertebral
4 bodies coincide and become one.

5 Q So it's your understanding that
6 the allograft is meant to be a spacer between C5
7 and C6?

8 A Yes.

9 Q And it's your understanding that
10 if there is more brightness around the allograft
11 that that means that the allograft and the
12 fusion is collapsing?

13 A I never used the word brightness.
14 That's the word you're using. If I see the disc
15 getting compromised and narrower and the
16 allograft dipping into the cortex and the marrow
17 of the vertebral body below, I myself am
18 concerned enough to inform the neurosurgeon and
19 let him make a decision if he's worried. In my
20 opinion, these are reportable findings. These
21 findings should be conveyed actively to the
22 neurosurgeon. The surgeon should look at this
23 and say, "Well, I'm not too concerned about it,"
24 or, "I'm very concerned about it," but not to
25 mention it is the omission. Not to mention it

1 Haber, M.D.

2 is, in my opinion, the departure.

3 Q Do you know what happened to the
4 disc during the surgery of June 25, 2012?

5 A Intraoperatively? No. I'd love
6 to hear.

7 Q I'm asking you. Do you understand
8 what they do with the disc intra-operatively?

9 A I thought you asked me a different
10 question. Do I know what happened to the
11 disc --

12 Q Between C5 --

13 A The former disc --

14 Q -- and C6.

15 A -- the former disc? I'm sorry?

16 Q Let me rephrase the question. Do
17 you know whether or not Dr. Gokaslan removed the
18 disc that was between C5 and C6?

19 A From an imaging standpoint, it
20 looks like it's a new disc. If he kept the
21 former disc there and put this second disc in
22 there, I'd be surprised, but I do not know
23 precisely. I would imagine that he would remove
24 the disc and put in the new disc.

25 MR. SZOKOLY: Can I offer

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Haber, M.D.

just a thought because I think we're getting tired and talking at cross-purposes. I think your question, Natalie, is what did he do with the organic, native disc material that was there?

MS. MAGDEBURGER: No, it's different. I'll go back.

MR. SZOKOLY: All right. It seem like you're talking about a second allograft.

THE WITNESS: Yes.

BY MS. MAGDEBURGER:

Q Do you believe that the native disc is removed as a natural consequence of the surgery that was done in June of 2012?

A I'm not sure what he does with the initial disc.

Q Okay. And then it's your understanding that the replaceable disc is the allograft?

A Yes.

Q And is it your understanding that the intent is that there should be new bone

1 Haber, M.D.

2 formation that models around the allograft and
3 then fuses the C5 vertebra to the C6 vertebra?

4 A Eventually maintaining the widened
5 intervertebral disc space that the allograft is
6 meant to do. It's a widener, as we said before.
7 It increases the space between C5 and C6.

8 Q At some point with what is
9 intended to be a fusion process, will there just
10 be continuum of bone between C5 and C6; is that
11 your understanding?

12 A There will be healing. You'll
13 lose the radiolucent margin between the
14 allograft and the vertebral body. There's a
15 lucency between -- if you look carefully enough,
16 you'll see it between the graft and the
17 vertebral body. That would get lost as the
18 allograft actually fuses or heals onto the bone.
19 We don't see it here in January, but more
20 importantly than not is we see the allograft
21 penetrating into the sixth cervical vertebral
22 body.

23 Q Okay, I understand that. My
24 question is I'm focusing just on what you would
25 expect to see between the C5 and C6. Once

1 Haber, M.D.
2 there's complete fusion, would you expect there
3 to be a complete similar density, brightness,
4 between C5 and C6?

5 MR. SZOKOLY: Objection to
6 form and compound.

7 Answer the best you can.

8 A I can't answer that. I don't
9 understand the question.

10 Q Okay. Once there is complete bony
11 fusion formed, would you expect to see the same
12 level of brightness between C5 and C6?

13 A I would answer that a little
14 differently. I would expect that the
15 radiolucent line between the allograft and the
16 vertebral body above and the allograft
17 between -- between the allograft and the
18 vertebral body below to be obliterated. That
19 would indicate to me healing.

20 Q Okay.

21 A Healing is only of positive value
22 in the context of maintaining the disc space.
23 But if you see collapse and healing, then you
24 have to deal with the neurosurgeon and have him
25 make an assessment: Is he pleased; does he feel

1 Haber, M.D.

2 that it has to come out; does he want more space
3 there; how is the patient doing clinically; how
4 is the peripheral neuropathy? That's a clinical
5 decision whether or not he wants to replace it.

6 Q Okay. And did you see any changes
7 between the film of January 10, 2013, and the
8 first film that was done in July of 2013? And
9 can you bring those images up --

10 A Yes.

11 Q -- so I can look at what you're
12 looking at?

13 (Discussion off the record.)

14 A This is a lateral view of January
15 10, 2013.

16 Q Okay.

17 A What is the next series you want
18 me to show you, July?

19 Q Yes, before the 23rd.

20 A 7/16/13, is that what you want to
21 see?

22 Q Yes. Do you have one going in the
23 same direction?

24 A I'm going to do that now. January
25 10, 2013, 7/16/13, both technically good,

1 Haber, M.D.

2 lateral views of the cervical spine.

3 Q Okay. Do you see any changes
4 between the one in January and the one that's
5 taken in July?

6 A Pretty similar.

7 Q You believe it's similar?

8 A Yes.

9 Q Do you see any misalignment of the
10 hardware?

11 A What I do see, though, is I see
12 some healing. You asked about healing before.
13 Let me show you healing. You see there's a
14 black line above this allograft? You see that
15 black line there, the gray line?

16 Q Okay.

17 A You don't see it here. It's
18 healed. The top half is healed, so the top half
19 of the allograft has healed in July to C5.

20 Now, compare that. Do you see the
21 lucency here on the January 10, 2013, study?
22 There's a lucency below the allograft, the
23 little gray line here between this and here,
24 there's a gray line. If anything, the gray line
25 is bigger here.

1 Haber, M.D.

2 Q Right. And you see a change
3 there?

4 A I see that certainly there's no
5 better and for the purposes of completion I
6 would have added to that. I'm not going to call
7 it a departure, but I certainly feel the report
8 is incomplete.

9 Q Which report, the July?

10 A The July report.

11 Q Okay. Do you believe it was a
12 departure for the July report not to mention --
13 let me ask you this: Does there appear to be
14 separation or more separation in the -- it's the
15 superior aspect, right --

16 A The inferior aspect.

17 Q -- the inferior aspect of the
18 allograft as it is on the C6, correct?

19 A To answer your question, there is
20 further loss, some slight, further loss that I
21 see on 7/16 compared to January 10. I'm looking
22 a little more closer now and there is some
23 further loss in disc height at July 2013 disc
24 space compared to January 10, '13. There is
25 some further loss.

1 Haber, M.D.

2 And let me just see what I said in
3 my report here. I said there's further
4 reabsorption of the inferior aspect of the disc
5 allograft, yeah.

6 Q Okay. But you do see more healing
7 on the -- I'm going to use layman's terms -- in
8 the top half of the allograft between January
9 and July, correct?

10 A That's correct.

11 Q So the lack of healing or the
12 change in healing you see in the bottom half of
13 the allograft?

14 A The change in healing?

15 Q Or the lack of healing --

16 A The absence of healing. I'm
17 sorry. The absence of healing at the inferior
18 aspect and the further compromise of the disc
19 space is -- should have been reported.

20 Q Do you know what changes would
21 have been present had there been a film taken in
22 April of 2013?

23 A I have no idea.

24 Q Have you seen any other films
25 other than those that are referenced in your

1 Haber, M.D.

2 report?

3 A No.

4 Q Are you aware that there are other

5 films other than what's referenced in your

6 report?

7 A No.

8 Q In terms of providing testimony as

9 to what if anything a neurosurgeon should have

10 done with the report of disc height, loss and

11 allograft penetration, that's outside of your --

12 outside of your expertise, correct?

13 MR. SZOKOLY: Objection,

14 asked and answered.

15 THE WITNESS: Could I answer

16 it, Counselor?

17 MR. SZOKOLY: Go ahead.

18 A That's out of my bailiwick.

19 Q Okay. And you don't intend to

20 offer any causation opinions, correct?

21 A That's correct.

22 Q And you're not going to be

23 rendering any damage testimony in this case in

24 terms of what damage Mr. Reimold may or may not

25 have had; is that correct?

1 Haber, M.D.

2 A That's correct.

3 Q Now, when you interpreted the
4 September 25th film --

5 A The September 25th --

6 Q -- I'm sorry, September 26, 2012,
7 film.

8 A Okay, September 26, '12, all
9 right.

10 Q You do a line that there's an
11 equivocal, slight penetration as noted of the
12 disc allograft into the superior end plate of C6
13 which could be projectional in nature. What did
14 you mean by that statement?

15 A I was concerned that this wasn't
16 as good a lateral view as I wanted and there was
17 a slight possibility, not a very real
18 possibility, but there was a slight possibility
19 that the changes that I see in September were
20 more apparent than real. But the more I look at
21 it, the more I feel that the changes that we see
22 in September 26, 2012, are real.

23 Q I understand that, but my question
24 was a little different. What did you mean by
25 saying that it could be projectional in nature?

1 Haber, M.D.

2 Does that go to the angle of the film?

3 A That's right.

4 Q And that an angle may give you a
5 false sense of penetration?

6 A That's right. In this particular
7 case, I think it was overcautious. I think it
8 was a good film and the changes that we see on
9 9/26/12 are, in fact, real and reflective of
10 penetration.

11 (Telephone interruption.)

12 (Discussion off the record.)

13 Q Do you intend to offer any other
14 opinions other than what you've testified to
15 today?

16 A Unless I'm asked to review any
17 subsequent imaging, no.

18 Q If you are, I would ask that you
19 advise Counsel of that so that I can ask you
20 questions about that.

21 MS. MAGDEBURGER: Have I
22 fairly covered the proposed
23 testimony of this expert?

24 MR. SZOKOLY: Yes. He's
25 going to read your expert's

1 Haber, M.D.

2 testimony.

3 MS. MAGDEBURGER: And
4 comment on it. And if he does,
5 you'll let me know.

6 MR. SZOKOLY: Yes.

7 Q Have you understood all of
8 questions or asked me to rearticulate them?

9 A They're all perfectly clear.

10 Q There you go. And do you need to
11 modify or change any of your testimony upon
12 further thought?

13 A The only thing that I would add is
14 the 9/26/12 study technically isn't a bad study
15 at all, and I think that the changes that I see
16 of the disc allograft at C5, C6 are real, and
17 there's a very low possibility that it's going
18 to be technical in nature.

19 Q Do you agree that some individuals
20 despite best care do not fuse post-surgery?

21 A I didn't hear.

22 Q Do you agree that some individuals
23 despite best care do not fuse post-surgery?

24 MR. SZOKOLY: Objection.

25 Beyond this witness' expertise.

1 Haber, M.D.

2 You can answer.

3 A I have no comment.

4 Q That's all I have. Thank you.

5 MR. SZOKOLY: I have a few,
6 but I'll be brief.

7 EXAMINATION BY MR. SZOKOLY:

8 Q When we started way, way back when
9 this morning, Ms. Magdeburger had asked you some
10 questions about the American College of
11 Radiology ethical standards for forensic
12 testimony. Do you remember that?

13 A I remember she brought it up, yes.

14 Q And I don't think that it was
15 intentional, but I believe there was a
16 substantial misstatement as it pertains to the
17 ethical statement by the ACR and I'm going to
18 read it to you.

19 This is from the ACR bylaws of
20 2015-2016 on page 30. It says that (reading)
21 you should, in providing expert medical
22 testimony, exercise extreme caution to insure
23 the testimony provided is non-partisan,
24 scientifically correct and clinically accurate.

25 Have you done that today?

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Haber, M.D.

A Yes.

MR. SZOKOLY: Okay. I did have an opportunity to contact the office, Natalie, and I've got a March 21, 2016, invoice for \$1,350, that I'd be happy to email to you. And we also located an initial payment of \$250 on November 25th. I don't believe there was an invoice for it. I think I requested the check. So as far as I know, those are the two payments that we have made.

MS. MAGDEBURGER: Right. And there may be some outstanding billing issues that he needs to send --

MR. SZOKOLY: Entirely possible. I don't think there are any open bills.

THE WITNESS: There are no open bills, other than the work that I'm doing currently.

1 Haber, M.D.

2 BY MR. SZOKOLY:

3 Q And we covered it a little bit a
4 few moments ago, but as it pertains to your
5 opinions, you were asked at the beginning of the
6 deposition whether or not all of the opinions
7 you intend to offer in this case are embodied in
8 your report. Do you remember that question?

9 A No, I do not.

10 Q Okay. The reason I ask is I want
11 to make it clear for the record. Do you intend
12 to offer opinions to the jury in order to
13 explain what your opinions are that would touch
14 and concern upon your training and background as
15 a radiologist, as well as how x-rays work and
16 human anatomy?

17 A Yes.

18 Q Put differently, you're going to
19 have to give a little bit of a back story to
20 explain the opinions in your report?

21 A Yes.

22 Q And you currently teach clinical
23 radiology, correct?

24 A Yes.

25 Q And you are board certified,

1 Haber, M.D.

2 correct?

3 A Correct. I'm a fellow of the
4 American College of Radiology which is beyond
5 board certification.

6 Q On a very basic level, can we
7 agree that the purpose of a radiologist
8 reviewing studies done on a patient is to
9 provide additional information or information to
10 the doctor who requested it?

11 A Yes.

12 Q That's what you do is you read and
13 report, correct?

14 A Correct.

15 Q And Ms. Magdeburger had indicated
16 originally that Dr. Gokaslan testified that he
17 did not review Dr. Magid's report. And I had an
18 opportunity over the several hours that we'd
19 been there to get his testimony and what he
20 actually said was he doesn't remember.

21 You had indicated previously that
22 it would be your opinion as a physician that it
23 would depart from the standard of care for a
24 physician not to review the report of the
25 radiologist; is that correct?

1 Haber, M.D.

2 MS. MAGDEBURGER: Objection,
3 beyond the scope of this expert's
4 opinion, certification and you are
5 leading --

6 MR. SZOKOLY: I am leading a
7 little bit.

8 MS. MAGDEBURGER: -- and
9 you're also getting into clinical
10 issues.

11 A Who is going to determine whether
12 I should answer the question?

13 Q You.

14 A I will determine. I'm not going
15 to comment on the -- on the ethics of a
16 neurosurgeon. I would state from 40 years in
17 practice, it is my conviction that the
18 neurosurgeon will read my report, will
19 acknowledge its presence. For him not to read
20 it, in my opinion, is a departure. He isn't
21 obligated to follow my -- agree with my
22 impression, but he certainly is obligated to
23 read my report. It's my opinion and I'm stating
24 it from the perspective of the interactivity
25 between a radiologist and a neurosurgeon, I'm

1 Haber, M.D.
2 couching this as to what I would expect the
3 neurosurgeon to do is to read the report. It
4 makes common sense that the neurosurgeon would
5 want to read the report.

6 MS. MAGDEBURGER: And I
7 would object and move to strike the
8 testimony.

9 MR. SZOKOLY: Because it's?

10 MS. MAGDEBURGER: For all
11 the reasons I said in my objection.

12 MR. SZOKOLY: Okay, your
13 prior reasons. Got it.

14 And, Madam Reporter, if I
15 could just make for your record,
16 when I said it was trembular metal,
17 it was actually trabecular -- I'll
18 go a piece at a time.

19 At the second surgery, there
20 was a metal implant used and I
21 attempted to spell it for the record
22 before and I totally mangled the
23 spelling. It is not trembular
24 metal, it is trabecular metal, which
25 is t-r-a-b-e-c-u-l-a-r. I just

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wanted to make that clear for the
record. Thank you.

And we will read and sign.

(Whereupon, at 3:44 o'clock
a.m., the deposition was concluded.)

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C A P T I O N

The Deposition of jordan haber, m.d., taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

The Deponent will read and sign the transcript of said deposition.

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C E R T I F I C A T E

STATE OF _____ :
COUNTY/CITY OF _____ :

Before me, this day, personally appeared
jordan haber, m.d., who, being duly sworn, states
that the foregoing transcript of his/her
Deposition, taken in the matter, on the date, and
at the time and place set out on the title page
hereof, constitutes a true and accurate transcript
of said deposition.

jordan haber, m.d.

SUBSCRIBED and SWORN to before me this _____
day of _____, 2016, in the
jurisdiction aforesaid.

My Commission Expires Notary Public

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I N D E X

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JORDAN HABER, M.D.	Ms. Magdeburger	3
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E X H I B I T S

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2	Report of Jordan Haber, M.D.	4
3	Certificate of qualified expert	5
4	A photocopy of a scan	5
5	A photocopy of a scan	5
6	A second curriculum vitae of Jordan Haber, M.D.	75
7	Chiropractic report dated October 2, 2013	197
8	Folder containing reports	197

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C E R T I F I C A T E

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, CAROL MELE, a Registered Professional Shorthand (Stenotype) Reporter and Notary Public of the State of New York, do hereby certify that the foregoing Deposition, of the witness, JORDAN HABER, M.D., taken at the time and place aforesaid, is a true and correct transcription of my shorthand notes.

I further certify that I am neither counsel for nor related to any party to said action, nor in any wise interested in the result or outcome thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of May, 2016.

Carol Mele, RPR